

primary objective of protecting the public health, welfare, safety and the environment.

**XVI. WORK TO BE PERFORMED BY SETTLING DEFENDANTS**

49. Settling Defendants shall perform, in accordance with the requirements of the ROD and the RA SOW, at least the following Work in connection with the implementation of the OU1 Source Control Remedy at the Site:

- Obtain the institutional controls as required under Section XXIII of this Consent Decree, including the controls needed to implement and maintain the Operable Unit 1 Source Control Remedy at the Site, ensure non-interference with the remedial measures to be performed at the Site, and ensure placement of easements or restrictions to prevent land uses that would adversely affect the protectiveness of the remedial measures to be performed at the Site.
- Conduct community relation activities in cooperation with RIDEM and EPA as required under Section XXVII to keep the public informed about key developments at the Site.
- Following completion of construction of the cap at the Site, conduct routine inspection and monitoring of the cap and the fence periodically and provide for mowing of the grassed areas covering the cap, as needed, but, at a minimum, twice a year.
- Perform regular maintenance to the surface of the landfill cap as needed to address soil erosion resulting from rain, snow, wind, and other natural forces.
- Regrade areas of the storm drainage system where water is ponding to promote positive drainage.

- Maintain the storm drainage system and repair as soon as possible any damage to the storm water control structures due to subsidence, settlement, or erosion.
- Fill and compact any potholes or ruts that develop in the site access roads or access ramp within the designated specifications.
- Reseed and/or replant areas where vegetation has not been properly established, damaged turf areas and bare spots in the cap and areas of the Site which have been or will be impacted by Remedial Investigation, Remedial Design, and/or Remedial Action activities.
- Remove tree limbs or other debris that fall on the landfill surface and address any subsidence or settlement features that appear on the landfill surface or which may affect adequate drainage.
- Inspect gas vents and repair broken or damaged gas vents as soon as possible.
- Inspect groundwater monitoring wells and notify RIDEM and EPA of any damage to groundwater monitoring wells.
- Inspect perimeter fence and attached signs and replace or repair as needed.
- Inspect cover and perimeter plantings, drainage conduit and swales, subsidence/settlement features, and severe storm event damage, and replace or repair damaged elements as needed.

50. Following completion of construction of the cap at the Site, the Settling Defendants shall conduct routine inspection and monitoring of the items specified in the previous Paragraph (and the following two Paragraphs to the extent applicable) at least four times each year after the cap is deemed Operational and Functional, as well as inspections after severe storms. The frequency of the

routine inspections may be reduced to semi-annually after the first year if requested in writing by the Settling Defendants and approved by the State. Approximately three months in advance thereof, the State, with coordination from the Settling Defendants, will notify EPA of the date that 75% of the actual construction of the cap is expected to be completed, and the Settling Defendants shall submit an Operation and Maintenance Plan for the activities specified in the previous Paragraph (and the following two Paragraphs to the extent applicable), by that projected date to the State and to EPA, for review and approval or modification by the State, after reasonable opportunity for EPA to review and concur. The Settling Defendants shall inform EPA and the State of the results of the inspection, monitoring, maintenance, and repair work by sending a notice to the addressees in Section XXVI.

51. a. After the response actions that have been constructed have been determined to be Operational and Functional by the State, with EPA concurrence, if the Settling Defendants seek to perform groundwater monitoring requirements and/or landfill gas monitoring requirements and the State approves, with EPA concurrence, the Settling Defendants shall perform specified groundwater monitoring requirements and/or landfill gas monitoring requirements in accordance with the current Project Operations Plan and submit monitoring reports to EPA and the State. The State shall remain responsible to the United States for assurance that all groundwater monitoring requirements and landfill gas monitoring requirements are fully performed.

b. After the response actions that have been constructed have been determined to be Operational and Functional by the State, with EPA concurrence, if the Settling Defendants seek to replace or repair any groundwater monitoring wells that are noted during inspections to be damaged or otherwise not in working order and the State approves, with EPA concurrence, the Settling Defendants shall replace and repair the specified groundwater monitoring wells.

c. The Settling Defendants may also propose to perform other items that form part of the Remedial Action or Operation and Maintenance work and, if the State approves, with EPA concurrence, such proposals, the Settling Defendants shall perform those items of the Remedial Action or Operation and Maintenance work in accordance with all applicable plans and requirements.

52. a. As part of any proposals to perform Work under Paragraph 51.a., b., or c. above, the Settling Defendants shall fully state how the Work would be performed and the amount of the credit under Section XVII of the Consent Decree that the Settling Defendants would request for each item of Work proposed.

b. The State shall remain responsible to the United States to ensure that all items of the Work are fully performed, including the Work the Settling Defendants are required to perform pursuant to Paragraphs 49-51 of this Consent Decree.

53. a. Settling Defendants and the State shall, in consultation with EPA, prepare a Reuse Plan and Reuse Assessment for the Site. In the preparation of the Reuse Plan and Reuse Assessment, Settling Defendants and the State will consider the Guidelines for Reuse Plan and Reuse Assessment set forth in Appendix H, attached hereto. Settling Defendants and the State agree that they will use their best efforts to find a beneficial reuse for the Site. Any beneficial reuse selected for the Site will be subject to mutual agreement by the Settling Defendants and the State. If the Settling Defendants and the State implement a beneficial reuse that results in an income stream, they will agree on an allocation of any net income that recognizes (1) the Settling Defendants' ownership of the Site and (2) the respective amounts contributed by the Settling Defendants and the State to clean up the Site. Settling Defendants and the State will also consider non-income generating reuses for the Site, such as parks and playing fields.

b. Settling Defendants shall continue annual reporting concerning the landfill gas monitoring and alarm operation and maintenance at residential properties adjacent to the Site, in accordance with RCRA order # I-93-1055, until such time as the State, with concurrence from EPA, determines that the potential for off-site migration of landfill gases no longer poses a threat to human health or the environment or, if an alternate monitoring system is selected and approved by RIDEM and EPA that does not include monitoring at these properties, until such time as the alternate monitoring system becomes operative.

54. In the event of a dispute concerning performance of the Work required under this Section XVI, the procedures specified in Section XV (Dispute Resolution between the United States and the State) above shall be followed, except that, for disputes concerning the performance of the Work required under Section XVI only, the references to "the State" in Section XV shall be read as "the Settling Defendants and/or the State" and the references to the "Chief, Office of Waste Management" (for the State) shall be read as the "Chief, Office of Waste Management (for the State) and/or the Town Manager(s) (for the Settling Defendants)."

#### **XVII. SETTling DEFENDANTS' REIMBURSEMENT TO STATE**

55. The Settling Defendants shall reimburse the State for 30 percent of the Reimbursable Costs the State incurs during the implementation of the Operable Unit 1 Source Control Remedy. That reimbursement by the Settling Defendants shall occur as follows:

a. **Annual Determination of State Reimbursable Costs.** On or after August 1 of each year during the implementation of the Operable Unit 1 Source Control Remedy, the State will deliver to the Settling Defendants an itemized written statement of Reimbursable Costs incurred by the State during the previous fiscal year (July 1 to June 30), along with the supporting bills, invoices

and similar statements that support each item of cost. The State will certify in writing and under oath the accuracy of this written statement. The Settling Defendants may within 30 days request additional information that relates to any of the costs identified by the State. The Settling Defendants may contest any of these costs by filing on or before September 15 a written statement explaining why the Settling Defendants contest a particular cost item or why the Settling Defendants need further information, which the State has either failed or refused to provide. If the Settling Defendants and the State cannot resolve any such contest by October 15, the matter will be determined by binding arbitration conducted by the Arbitrator. The State's Reimbursable Costs become final (1) if not challenged by the Settling Defendants, on or before September 15 or (2) if challenged, as agreed to by the Settling Defendants and the State or as determined by the Arbitrator to be fair or required as a result of applicable State purchasing processes and requirements. The State shall provide EPA with copies of the itemized statements of Reimbursable Costs, with attached documentation, required by this Section XVII at the same time they are provided to Settling Defendants, as well as a copy of the results of the resolution of any disputes between Settling Defendants and the State pursuant to this paragraph.

b. **Payment of Reimbursable Costs.** The Settling Defendants shall pay 30% of Reimbursable Costs by first making annual payments beginning in January following the third full year after the date of the Pre-final Inspection, as described in Section II.G. of the RA SOW, but in no event later than June 30, 2012. The methodology for the cost sharing arrangement between the State and the Settling Defendants is set forth on Exhibit 1 for illustrative purposes using present cost estimates for the Operable Unit 1 Source Control Remedy. The Settling Defendants and the State agree that as these costs change they will adjust the Town payments so that the relative proportion and timing of the costs borne by the Settling Defendants and the State remain approximately the same as

in the Exhibit 1 illustration. The Settling Defendants and the State agree that at some time in the future, the estimated value of the remaining O&M work at the Site may be equal to the total estimated value of the Settling Defendants' expected remaining payments to the State. On Exhibit 1 this is projected to occur in year 2022. When that occurs, if approved by the State, with concurrence by EPA, the Settling Defendants will accept responsibility for completing the O&M work and shall perform that work in full satisfaction of their obligations to make any further payments to the State for Operable Unit 1 pursuant to this Consent Decree. The State shall remain responsible to the United States for assurance that all of the remaining O&M work is fully performed in accordance with the ROD, RA SOW and plans developed thereunder, and the Consent Decree. If unexpected costs occur after the Settling Defendants assume responsibility for the O&M work, the Settling Defendants and the State agree to share those costs on a 30% - 70% basis consistent with this agreement. Any dispute regarding values, estimates, or costs will be decided by the Arbitrator at the request of one of the parties.

56. Payment to the State shall be made by Settling Defendants by certified or cashier's check(s) payable to "General Treasurer" (for deposit in the Environmental Response Fund), and shall be sent to the Office of the Director, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908. At the time of each payment to the State, Settling Defendants shall send notice that payment has been made to the State in accordance with Section XXVI (Notices and Submissions).

57. a. The State will permit the Settling Defendants to pay at least a portion of the Settling Defendants' share of Reimbursable Costs through in kind services, provided that the in kind services are properly performed. The in-kind services shall include the response activities the Town is

required to perform pursuant to Paragraph 49 above, except as provided in Paragraph 57.b., and may include, without limitation, the response activities that the Town may be performing pursuant to Paragraph 51 above. The Settling Defendants will deliver to the State an itemized written statement of costs incurred by the Settling Defendants for in-kind services performed pursuant to this Decree during the previous fiscal year (July 1 to July 30), along with the supporting bills, invoices and similar statements that support each item of cost. The Settling Defendants will certify in writing and under oath the accuracy of this written statement. The State may within 30 days request additional information that relates to any of the costs identified by the Settling Defendants. The State may contest any of these costs by filing within 30 days of receipt of the Town's written statement or, if requested, within 30 days of receipt of the additional information, a written statement explaining why the State contests a particular cost item or why the State needs further information, which the Settling Defendants have either failed or refused to provide. If the Settling Defendants and the State cannot resolve any such contest within 30 days, the matter will be determined by binding arbitration conducted by the Arbitrator. The Settling Defendants' in-kind services costs become final (1) if not timely challenged by the State or (2) if challenged, as agreed to by the Settling Defendants and the State or as determined by the Arbitrator to be correct and consistent with the ROD. The value of the Settling Defendants' in-kind services will include applicable costs associated with services performed with Town personnel (including salary, fringe benefits, and a markup at the same indirect rate as is applied to State costs that is agreed to between EPA and the State in cooperative agreements under CERCLA ) and/or approved or agreed upon equipment costs. Any dispute will be resolved by the Arbitrator in the manner described in Paragraph 57.a. Any in-kind services performed by the Settling Defendants prior to the first annual payment will be credited against the initial annual



payment, and any succeeding annual payments, until the credit is exhausted. Thereafter, the value of in-kind services will be credited against the annual payment for the fiscal year in which the services are rendered. The Settling Defendants will provide the State with information requested by the State concerning any in-kind services proposed or rendered by the Settling Defendants.

b. Although the costs incurred by the Settling Defendants to obtain title to and/or provide access and institutional controls on the Frisella property pursuant to this Consent Decree may exceed \$60,000, only such costs up to \$30,000 shall be eligible for credit under Paragraph 57.a. of this Consent Decree. Any such costs incurred by the Towns and/or the State shall not be considered Remedial Action costs for purposes of Paragraph 10 of this Consent Decree. In the event that it is necessary for EPA to incur costs to obtain access to and/or institutional controls on the Frisella property, the Towns shall reimburse EPA for such costs, in accordance with the procedures in Paragraph 6.

#### **XVIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

58. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraphs 5, 6, 8, 9, 11, and 55 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

59. Stipulated Penalty.

a. If any amounts due under Paragraphs 5, 6, 8, 9, 11, and 55 are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 58, for days 1 through 30, \$500 per violation per day that such payment is late and, for every additional day thereafter, \$1,000 per violation per day that such payment is late. Stipulated penalties for failure to comply with Paragraphs

5, 6, 8, 9, and 11 shall be paid 100% to the United States, and stipulated penalties for failure to comply with payment requirements of Paragraph 55 shall be paid 100% to the State.

b. If the Settling Defendants fail to comply with any of the requirements of Section X (State Natural Resource Damages Settlement), Section XVI (Work to be Performed by Settling Defendants), Section XXIII (Access and Institutional Controls), and Section XXVII (Community Relations), Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, for days 1 through 30, \$500 per violation per day and, for every additional day thereafter, \$1,000 per violation per day. Except for stipulated penalties for failure to comply with Section X, any such stipulated penalties shall be paid 50% to the United States and 50% to the State. Stipulated penalties for failure to comply with Section X shall be paid 100% to the State.

c. Stipulated penalties owed to the EPA are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made 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, Settling Defendants shall send notice that such payment has been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions).

d. Stipulated penalties owed to NOAA are due and payable within 30 days of the date of the demand for payment of the penalties by NOAA. All payments to NOAA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier's check made 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. At the time of such payment, Settling Defendants shall send notice that such payment has been made to NOAA and DOJ in accordance with Section XXVI (Notices and Submissions).

e. Stipulated penalties owed to DOI are due and payable within 30 days of the date of the demand for payment of the penalties by DOI. All payments to DOI under this Paragraph shall be identified as “stipulated penalties” and shall be made in the same manner as set forth in Paragraph 11.c. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for DOI and DOJ.

f. Stipulated penalties owed to the State are due and payable within 30 days of the date of the demand for payment of the penalties by the State. All payments to the State under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier's check made payable to “General Treasurer” (for deposit in the Environmental Response Fund), and shall be sent to the Office of the Director, RIDEM, 235 Promenade Street, Providence, Rhode Island 02908. At the time of each payment, Settling Defendants shall send a notice that such payment has been made to the State in accordance with Section XXVI (Notices and Submissions). The State shall retain and use any amount(s) paid pursuant to Paragraph 59.f. to conduct or finance response actions for Operable Unit 1 at or in connection with the Site.

g. Penalties shall accrue as provided in this Paragraph regardless of whether EPA, NOAA, DOI, or the State has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

h. This dispute resolution provision shall apply to any disputes concerning demands for stipulated penalties.

i. Any dispute concerning a demand for stipulated penalties 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.

ii. In the event that the parties to the dispute cannot resolve the dispute by informal negotiations, then the position advanced by EPA, NOAA, DOI, or the State, with respect to a stipulated penalties demand by EPA, NOAA, DOI, or the State, respectively, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Subparagraph by serving on the party making the demand for stipulated penalties 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.

iii. Within 30 days after receipt of Settling Defendants' Statement of Position, the party making the demand for stipulated penalties 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 that party. Within 14 days after receipt of that Statement of Position, Settling Defendants may submit a Reply.

iv. An administrative record of the dispute shall be maintained by the party making the demand for stipulated penalties and shall contain all statements of position and supporting documentation. EPA Region I's Director of the Office of Site Remediation and Restoration, RIDEM's Chief of the Office of Waste Management, or persons designated by NOAA or DOI, shall issue a final administrative decision on any stipulated penalties demand made by EPA, RIDEM, NOAA, or DOI, respectively. The final administrative decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the party making the demand a motion for judicial review of the decision. The party making the demand may file a response to Settling Defendants' motion.

v. The parties agree that the Court's review of the dispute shall be resolved in accordance with applicable law. Where the dispute challenges a Federal or State agency 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.

vi. The invocation of dispute resolution procedures under this Subparagraph shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, nor shall payment of penalties alter in any way Settling Defendants' obligation to complete any Work required of the Settling Defendants under the Consent

Decree. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a final administrative decision that is not appealed to this Court, accrued penalties determined to be owing shall be paid within 30 days of the agreement or the receipt of the final administrative decision.

B. If the dispute is appealed to this Court and the party demanding the stipulated penalties prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed 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 Defendants shall pay all accrued penalties determined by the District Court to be owing 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 the party making the stipulated penalties demand or to Settling Defendants to the extent they prevail.

D. If Settling Defendants fail to pay stipulated penalties when due, the party making the stipulated penalties demand may institute proceedings to collect the stipulated penalties, as well as Interest.

60. If the United States or the State brings an action to enforce this Consent Decree against the Settling Defendants and the United States or the State prevails, Settling Defendants shall

reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

61. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

62. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree and to perform the Work the Settling Defendants are to perform under this Consent Decree are joint and several. In the event of the failure of any one of the Settling Defendants to make the payments required under this Consent Decree and/or perform the Work the Settling Defendants are to perform under the Consent Decree, the remaining Settling Defendant shall be responsible for such payments and/or performance.

63. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VII, Section IX, and Section XVII or from performance of any other requirements of this Consent Decree.

#### **XIX. COVENANT NOT TO SUE BY PLAINTIFFS**

64. a. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for payment of Past Response Costs, Future Response Costs, Additional U.S. RD/RA Response Costs, and Natural Resource Damages. This covenant not to sue

shall take effect upon receipt by EPA, NOAA, and DOI of all payments required by Paragraph 6 of Section VII (Payment Regarding United States Response Costs) and Paragraph 11 of Section IX (Federal Natural Resource Damages Settlement) and any amount due under Section XVIII in regard to noncompliance with or delay in compliance with the requirements of Paragraph 6 and/or Paragraph 11. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

b. Covenant Not to Sue by the State. Except as specifically provided in Section XX (Reservation of Rights by Plaintiffs), the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and R.I.G.L. Chapters 23-18.9 and 23-19.1, for payment of State Future Response Costs and Natural Resource Damages. This covenant not to sue shall take effect upon receipt by the State of all payments required by Paragraph 55 of Section XVII (Settling Defendants' Reimbursement to State) and any amount due under Section XVIII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

## **XX. RESERVATION OF RIGHTS BY PLAINTIFFS**

65. General Reservations of Rights by United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 64.a. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:



- a. liability for failure of Settling Defendants to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for response costs and injunctive relief or administrative order enforcement under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for response actions that are not within the definition of Operable Unit 1;
- d. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs, Future Response Costs, and Additional U.S. RD/RA Response Costs;
- e. liability for the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Parties, other than as provided in the ROD or otherwise ordered by EPA; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

66. Federal Reservations Concerning Natural Resource Injury. Notwithstanding any other provision of this Decree, the United States, on behalf of the Federal Natural Resource Trustees, reserve 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 Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received by the United States after the date of lodging of the Consent Decree which, together with other relevant information, 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 Consent Decree.

67. General Reservation of Rights by the State. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in Paragraph 64.b. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for response costs and injunctive relief or administrative order enforcement under Section 107 of CERCLA, 42 U.S.C. § 9607, and R.I.G.L. Chapters 23-18.9 and 23-19.1 for response actions that are not within the definition of Operable Unit 1;
- d. liability for costs incurred or to be incurred by the State that are not within the definition of State Future Response Costs;
- e. liability for the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Parties, other than as provided in the ROD or otherwise ordered by EPA; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

68. State Reservations Concerning Natural Resource Injury. Notwithstanding any other provision of this Decree, the State in its capacity as Natural Resource Trustee, 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 State at the date of lodging of this Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received by the State after the date of lodging of the Consent Decree which, together with other relevant information, 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 State at the date of lodging of this Consent Decree.

**XXI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

69. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, Operable Unit 1, Natural Resource Damages, or this Consent Decree, including but not limited to:

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

b. any claim arising out of Operable Unit 1 or out of the response actions for which the Past Response Costs, Future Response Costs, State Future Response Costs, and Additional U.S. RD/RA Response Costs were or will be incurred; and

c. any claim against the United States and/or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, Future Response

Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, or Natural Resource Damages.

70. Nothing in this Consent Decree shall be deemed to constitute approval or 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).

71. 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. 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.

**XXII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

72. Except as provided in Paragraph 71, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 71, 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.

73. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, Federal Natural Resource Damages, subject to the reservation in Paragraph 66, and State Natural Resource Damages, subject to the reservations in Paragraph 68.

74. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing within 10 days of service of

the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ and the State 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, for matters related to this Consent Decree.

75. If the Settling Defendants or the State pursue a contribution claim or other action against a person not party to this Consent Decree to recover Site costs, they will inform each other and offer a participation agreement that involves an equitable sharing of costs and of any net recovery. If the other party declines to participate, the prosecuting party shall pay all of the expenses and keep any recovery. Any dispute regarding the participation agreement will be resolved by the Arbitrator. The United States reserves all of its rights against persons who are not parties to this Consent Decree, and this Paragraph shall in no way affect any rights of the United States.

76. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other 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 or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by Plaintiffs set forth in Section XIX.

### **XXIII. ACCESS AND INSTITUTIONAL CONTROLS**

77. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, 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, RIDEM, and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
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. 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);
7. Assessing Settling Defendants' compliance with this Consent Decree;
8. 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;
9. Conducting operation and maintenance activities; and
10. Conducting 5-year reviews.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or any other property, in any manner that would interfere with or adversely affect the integrity or

protectiveness of the remedial measures to be implemented at or in connection with the Site or that would result in the use, extraction, or consumption of ground water or surface water at the Site or that would result in the disturbance of the surface or subsurface of the land, other than for the purpose of conducting response activities at the Site; and

c. execute and record in the Town Clerk's Office, Town of South Kingstown, Washington County, State of Rhode Island, an easement, running with the land, that (i) grants a right of access for the purpose of conducting response activities, operation and maintenance, and 5-year reviews at the Site, and (ii) grants the right to enforce the land/water use restrictions referred to in Paragraph 77.b. of this Consent Decree and the Record of Decision for Operable Unit 1, 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 at the Site. Such Settling Defendant(s) shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, and (ii) the State and its representatives. Such Settling Defendant(s) shall, within 45 days of entry of this Consent Decree, submit to EPA and the State for review and approval with respect to such property:

1. a draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of Rhode Island, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"). Within 15 days of EPA's approval and acceptance



of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Town Clerk, Town of South Kingstown, Washington County, Rhode Island. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

78. 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 Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, 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 77.a of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants, the State, and, if requested by the United States, the United States, to abide by the obligations and restrictions established by Paragraph 77 of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. at EPA's request, the execution and recordation in the Town Clerk's Office, Town of South Kingstown, Washington County, State of Rhode Island, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 77.a of this Consent Decree,

and (ii) grants the right to enforce the land/water use restrictions referred to in Paragraph 77.b of this Consent Decree and the Record of Decision for Operable Unit 1, 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 one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request, Settling Defendants shall submit to EPA and the State for review and approval with respect to such property:

1. a draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of Rhode Island, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. a current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"). Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Town Clerk, Town of South Kingstown, Washington County, Rhode Island. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

79. For purposes of Paragraph 78 of this Consent Decree, "best efforts" includes the payment

of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 78.a or 78.b of this Consent Decree are not obtained within 45 days of EPA's request, or any access easements or restrictive easements required by Paragraph 78.c of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's request, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 78 of this Consent Decree. The State shall assist the Settling Defendants, and the United States may, as it deems appropriate, assist Settling Defendants and/or the State, in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States or the State, as applicable, in accordance with the procedures in Paragraph 6 of Section VII (Payment Regarding United States' Response Costs) or Paragraph 56 of Section XVII (Settling Defendants' Reimbursement to the State), for all costs incurred, directly or indirectly, by the United States or the State, as applicable, in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. The State agrees, pursuant to Section 104(j) of CERCLA, to accept title to any and all real property relating to the Site or the Consent Decree transferred to it by the United States.

80. 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 response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

81. 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.

#### **XXIV. ACCESS TO INFORMATION**

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

##### **83. Confidential Business Information and Privileged Documents.**

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

b. Settling Defendants may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling

Defendants assert such a privilege in lieu of providing documents or information, they shall provide Plaintiffs with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

84. 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**

85. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

86. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and the State at least 90 days prior to the destruction of any such

documents or information, and, upon request by EPA or the State, Settling Defendants shall deliver any such documents or information to EPA or the State. Settling Defendants may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiffs in redacted form to mask the privileged portion only. Settling Defendants shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

87. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential

liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## **XXVI. NOTICES AND SUBMISSIONS**

88. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and Settling Defendants, respectively.

### As to the United States:

the addressees and addresses for DOJ, EPA, NOAA, and DOI below

### As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-06627)  
P.O. Box 7611  
Washington, D.C. 20044-7611

Michael P. Iannotti  
Assistant United States Attorney  
District of Rhode Island  
Fleet Center  
50 Kennedy Plaza  
Providence, RI 02903

As to EPA:

David J. Newton, EPA Project Manager  
Office of Site Remediation and Restoration  
United States Environmental Protection Agency  
New England Region (HBO)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Regional Financial Manager  
Office of Finance and Cost Recovery  
United States Environmental Protection Agency  
New England Region (MFC)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

As to NOAA:

Gwendolyn A. Wilkie  
United States Department of Commerce  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Division  
Gloucester, MA 01930-2298

As to DOI:

Mark Barash  
U.S. Department of the Interior  
Office of the Solicitor  
One Gateway Center, Suite 612  
Newton Corner, MA 02158

As to the State:

Gary Jablonski, State Project Coordinator  
RI Department of Environmental Management  
Office of Waste Management  
235 Promenade Street  
Providence, RI 02908



As to Settling Defendants:

Town Manager  
Town of South Kingstown  
180 High Street  
Wakefield, RI 02879

Town Manager  
Town of Narragansett  
25 Fifth Avenue  
Narragansett, RI 02882-0777

**XXVII. COMMUNITY RELATIONS**

89. Settling Defendants shall cooperate with and provide support to the community relations efforts of EPA and the State relating to Operable Unit 1, including the provision of information regarding the Operable Unit 1 Work to the public. As requested by EPA and the State, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA and the State to explain activities at or relating to the Site. This support may include (i) the provision of presentations, logistical support, visual aids and equipment, (ii) publication and copying of fact sheets or updates, (iii) assistance in placing EPA and State public notices in print, and (iv) assistance in development of a Community Relations Plan.

**XXVIII. MODIFICATION**

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

91. No material modifications shall be made to the Remedial Design SOW or the Remedial Action SOW without written notification to and written approval of the United States, the State, 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). Modifications to the RD SOW or the RA SOW that do not materially alter that document, or material modifications to the SOW 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 the EPA and the State.

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

### **XXIX. RETENTION OF JURISDICTION**

93. This Court shall retain jurisdiction over this matter over both the subject matter of this Consent Decree and the Parties to this Consent Decree for the purpose of interpretation of the Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with the dispute resolution provisions of the Consent Decree.

### **XXX. INTEGRATION/APPENDICES**

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

“Appendix A” is the List of Settling Defendants.

“Appendix B” is the Map of Rose Hill Regional Landfill Site.

“Appendix C” is the Escrow Agreement.

“Appendix D” is the Record of Decision for the Operable Unit 1 Source Control Remedy.

“Appendix E” is the Cooperative Agreement for the OU1 Remedial Design,

including the OU1 Remedial Design Scope of Work.

“Appendix F” is the OU1 Remedial Action Statement of Work.

“Appendix G” is the draft access and institutional control instrument.

“Appendix H” is the Guidelines for Reuse Plan and Assessment.

“Appendix I” is the description and site plan for the Frisella property.

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

#### **XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

96. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. 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 this Consent Decree is inappropriate, improper, or inadequate. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

### **XXXII. EFFECTIVE DATE**

98. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

### **XXXIV. SIGNATORIES/SERVICE**

99. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and the Commissioner of the Department of Environmental Management of the State of Rhode Island certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Settling Defendants, the United States, and the State of Rhode Island, respectively, to this document.

100. 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

101. Each Settling Defendant shall identify, on the attached signature page, the name and address 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.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_.


\_\_\_\_\_

United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 11-29-02

  
Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice


Date: 11/15/02

  
Henry S. Friedman  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

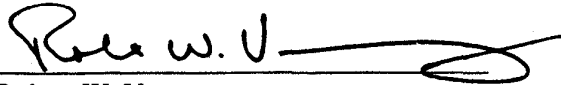
Margaret Curran  
United States Attorney

Date: 12-19-02

By:

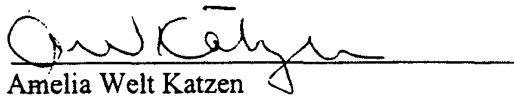
  
Michael D. Iannotti  
Assistant United States Attorney  
District of Rhode Island  
Fleet Center  
50 Kennedy Plaza  
Providence, RI 02903

Date: 9-30-02



Robert W. Varney  
Regional Administrator  
Region I  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Date: 9/30/02

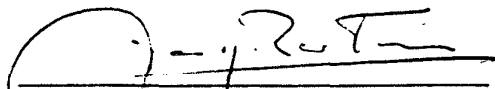


Amelia Welt Katzen  
Senior Enforcement Counsel  
Region I  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I. , relating to the Rose Hill Regional Landfill Superfund Site.

FOR THE STATE OF RHODE ISLAND

Date: 9/30/02



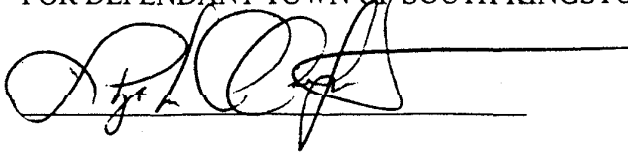
Jan Reitsma  
Director  
Department of Environmental Management  
235 Promenade Street  
Providence, Rhode Island 02908



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR DEFENDANT TOWN OF SOUTH KINGSTOWN, R.I.

Date: 10/16/2002

A handwritten signature in black ink, appearing to read 'S. Alfred', is written over a horizontal line.

Name: Stephen A. Alfred  
Title: Town Manager  
Address: 180 High Street  
Wakefield, RI 02879

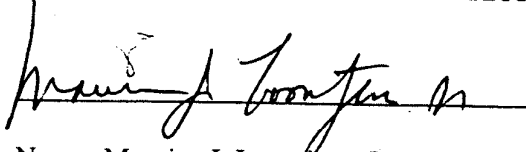
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Stephen A. Alfred  
Title: Town Manager  
Address: 180 High Street  
Wakefield, RI 02879

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR DEFENDANT TOWN OF NARRAGANSETT, R.I.

Date: 10.09.02



Name: Maurice J. Loontjens, Jr.

Title: Town Manager

Address: Town of Narragansett  
25 Fifth Avenue  
Narragansett, RI 02882

Town Council Authorized October 7, 2002  
Agenda Item 2002-10-335

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

Name: Jeffry Ceasrine, P.E.

Title: Town Engineer

Address: Town of Narragansett  
25 Fifth Avenue  
Narragansett, RI 02882