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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

W.R. GRACE & CO.-CONN.

Defendant.

CIVIL ACTION NO.

78-2045
98-2045 (Am)

CONSENT DECREE

FILED

APR 29 1999

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ENTERED

4-29-99
WILLIAM T. HESS, CLERK
By [Signature] Deputy Clerk

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XVIII. APPENDICES

- A. Federal Facility Agreement for the Wayne Interim Storage Site.**
- B. Escrow and Transfer Agreements as follows: Escrow Agreement executed on August 4, 1997, Amended Escrow Agreement executed on January 5, 1998, Second Amended Escrow Agreement executed on January 30, 1998, Third Amended Escrow Agreement executed on February 13, 1998, Transfer Agreement executed on August 13, 1997, Amended Transfer Agreement executed on December 30, 1997, Second Amended Transfer Agreement executed on January 30, 1998, Third Amended Transfer Agreement executed on February 13, 1998 and Fourth Amended Transfer Agreement executed on March 27, 1998.**
- C. Stipulation regarding transfer of funds from escrow to registry of the Court.**

I. BACKGROUND

A. The United States of America, by authority of the Attorney General, on behalf of the Chief of Engineers of the United States Army Corps of Engineers ("ACOE"), the Secretary of the United States Department of Energy ("DOE"), the Secretary of the United States Department of Interior ("DOI"), and the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613.

B. The United States in its complaint seeks payment of response costs incurred and to be incurred by ACOE, DOE and EPA for response actions in connection with the release or threatened release of hazardous substances at a site consisting of property formerly owned by W. R. Grace & Co.-Conn. ("W.R. Grace" or "Settling Defendant") and certain contaminated properties in the same vicinity located in or near Wayne, New Jersey ("Site"), a declaration of Settling Defendant's liability for further response costs, and compensation for Natural Resource Damages.

C. From in or about 1955 to 1984, W.R. Grace owned and/or operated a manufacturing facility, located at 868 Black Oak Ridge Road, Wayne, New Jersey, for the extraction of thorium and rare earths from monazite sands, and thorium products from thorium sludges.

D. In or about 1984, W.R. Grace transferred its interest in the property located at 868 Black Oak Ridge Road to DOE for \$1, along with a payment of \$800,000 to DOE.

E. The Site is contaminated with certain radiological wastes, which, for the purposes of this Decree, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

G. In July 1984 and March 1987, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, DOE commenced removal actions to address the contamination of certain properties in the vicinity of the former W.R. Grace manufacturing facility.

H. In October 1989, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, DOE commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. In April 1991, DOE and EPA entered a Federal Facilities Agreement ("FFA") with regard to DOE's and EPA's cooperation in the development, implementation and monitoring of response actions at the Site.

J. In August 1993, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, DOE commenced a removal action to address contamination at the Site.

K. In October 1993, DOE completed the Remedial Investigation ("RI") Report.

L. In November, 1993, DOE commenced the Feasibility Study ("FS") for the Site.

M. In July 1995, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, DOE commenced a removal action for the excavation and off-Site disposal of an interim storage pile on the Site.

N. On August 4, 1997, W.R. Grace deposited \$9 million in an escrow account with PNC Bank, National Association, pursuant to the "Escrow Agreement" made by and among W.R. Grace and PNC Bank, which funds are to be paid to the United States in partial settlement of ACOE's and DOE's claims for Response Costs, if this Consent Decree is approved by the Court.

O. On August 13, 1997, W.R. Grace entered into a "Transfer Agreement" with the United States concerning the \$9 million payment by W.R. Grace, described in Paragraph N, into an escrow account in advance of the lodging of this Consent Decree.

P. On December 31, 1997, W.R. Grace deposited \$1.5 million in an escrow account with PNC Bank, National Association, pursuant to the "Amended Escrow Agreement" made by and among W.R. Grace and PNC Bank, which funds are to be paid to EPA in partial settlement of EPA's claims for Response Costs, if this Consent Decree is approved by the Court. Also on December 31, 1997, W.R. Grace deposited \$270,000 in an escrow account with PNC Bank, National Association, pursuant to the "Amended Escrow Agreement" made by and among W.R. Grace and PNC Bank, which funds are to be paid to the United States in settlement of DOI's claim for Natural Resource Damages, if this Consent Decree is approved by the Court.

Q. On December 30, 1997, W.R. Grace entered into an "Amended Transfer Agreement" with the United States concerning the \$1.5 million and the \$270,000 payments by

W.R. Grace, described in Paragraph P, into an escrow account in advance of the lodging of this Consent Decree.

R. On February 1, 1998, W.R. Grace deposited \$8 million in an escrow account with PNC Bank, National Association, pursuant to the "Second Amended Escrow Agreement" made by and among W.R. Grace and PNC Bank, which funds are to be paid to the United States in partial settlement of ACOE's and DOE's claims for Response Costs, if this Consent Decree is approved by the Court.

S. On January 30, 1998, W.R. Grace entered into a "Second Amended Transfer Agreement" with the United States concerning the \$8 million payment by W.R. Grace, described in Paragraph R, into an escrow account in advance of the lodging of this Consent Decree.

T. On February 13, 1998, W.R. Grace entered into a "Third Amended Transfer Agreement" with the United States extending the agreement to March 27, 1998.

U. On March 27, 1998, W.R. Grace entered into a "Fourth Amended Transfer Agreement" with the United States extending the agreement to April 30, 1998.

V. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon the Settling Defendant and its 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 Defendant under 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. "ACOE" shall mean the United States Army Corps of Engineers and any successor departments or agencies of the United States.

b. "Action Memoranda" shall mean those ACOE and DOE memoranda authorizing removal actions to address the release or threat of release of hazardous substances at or from the Site.

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 Decree and any appendices thereto.

e. "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.

f. "DOE" shall mean the United States Department of Energy and any predecessor or successor departments or agencies of the United States.

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

h. "EE/CA" shall mean any Engineering Evaluation/Cost Analysis performed by DOE or ACOE setting forth removal actions for the Site.

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

j. "Federal Facility Agreement" or "FFA" shall mean the Agreement entered into between DOE and EPA which was signed by DOE on July 23, 1990, by EPA on September 17, 1990, and which became effective on April 18, 1991.

k. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States will incur in reviewing or developing plans, reports or other items pursuant to CERCLA, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to any remedy review or obtaining access or institutional controls at the Site (including but not limited to, attorneys

fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), and any other costs for any response actions at or in connection with the Site after the date of entry of this decree.

l. "Interest" shall, except as otherwise provided, mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

m. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any amendments thereto.

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

o. "Natural Resource Damages" means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site.

p. "Operable Unit" or "OU" shall mean any discrete geographical area, media, or type of contamination, as designated by ACOE, EPA or DOE that lends itself to efficient study or cleanup separate from other geographical areas, media, or types of contamination.

q. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by ACOE, EPA or DOE.

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

s. "Parties" shall mean the United States and the Settling Defendant.

t. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred for response actions at or in connection with the Site prior to the date of entry of this decree, plus Interest on such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

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

v. "Record[s] of Decision" or "ROD[s]" shall mean Record[s] of Decision for any OU relating to the Site signed by the President's authorized representative and all attachments thereto, which document(s) shall be issued in accordance with CERCLA, the NCP and the FFA.

w. "Remedial Action" shall have the meaning provided in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24).

x. "Removal Actions" or "Removal" shall have the meaning provided in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

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

z. "Settling Defendant" shall mean W.R. Grace & Co.-Conn.

aa. "Site" shall have the meaning of "Site" as described in the FFA on pages 3 through 7.

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

cc. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and (4) any "FUSRAP Waste" as defined at page 4 of the FFA.

dd. "W.R. Grace" shall mean W.R. Grace & Co. - Conn.

ee. "W.R. Grace Property" shall mean the approximately 6.5 acres, located at 868 Black Oak Ridge Road in Wayne Township, Passaic County, New Jersey, previously owned and/or operated by W.R. Grace.

V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site, to reimburse response costs of Plaintiff, and to resolve claims of Plaintiff against the Settling Defendant as provided in this Consent Decree.

5. Effect of Settlement. The execution by Settling Defendant and the United States of this Consent Decree is not an admission by them of liability with respect to any issue dealt with in this Consent Decree nor is it an admission or denial of any issue of fact or law. This Consent Decree shall not be admissible as evidence in any proceeding other than one to enforce the terms of this Consent Decree.

**VI. PAYMENT OF RESPONSE COSTS AND SETTLEMENT OF
NATURAL RESOURCE DAMAGE CLAIMS**

6. Settling Defendant shall pay the United States for Past and Future Response Costs, and shall pay DOI in settlement of its claim for Natural Resource Damages, in accordance with the following procedure:

a. Settling Defendant deposited the following principal amounts into an escrow account, managed by PNC Bank as the Escrow Agent, for the United States' benefit in accordance with the Amended Escrow and Amended Transfer Agreements attached hereto as Appendix B: \$9,000,000 on August 4, 1997 and \$8,000,000 on February 1, 1998 for ACOE's and DOE's Future Response Costs; \$1,500,000 on December 31, 1997 of which \$887,604 is for EPA's Past Response Costs and \$612,396 is for EPA's Future Response Costs; and, \$270,000 on December 31, 1997 in settlement of DOI's claim for Natural Resource Damages;

b. On or before February 1, 1999, Settling Defendant shall pay to the United States the amount of \$7,000,000.00 for ACOE's and DOE's Future Response Costs by FedWire Electronic Funds Transfer ("EFT") in accordance with the procedures set forth in Paragraph 7.a. In the event that this Consent Decree is not entered by February 1, 1999 and not disapproved by the Court, Settling Defendant shall deposit this amount in the custody of the Court in accordance with the stipulation attached as Appendix C;

c. On or before February 1, 2000, Settling Defendant shall pay to the United States the amount of \$6,000,000.00 for ACOE's and DOE's Future Response Costs by EFT in accordance with the procedures set forth in Paragraph 7.a. In the event that this Consent Decree is not entered by February 1, 2000 and not disapproved by the Court, Settling Defendant shall

deposit this amount in the custody of the Court in accordance with the stipulation attached as Appendix C;

d. At the direction of the parties, all amounts deposited into escrow by Settling Defendant in accordance with Paragraph 6.a. shall be transferred by PNC Bank as the Escrow Agent into the registry of the Court immediately upon lodging of this Consent Decree in accordance with the stipulation attached as Appendix C;

e. Within 10 days of the entry of this Consent Decree, the Clerk of the District Court shall transfer all amounts in the registry of the Court to the United States Department of Justice account in accordance with instructions provided by the United States following entry of this Consent Decree. These instructions shall reference the EPA Region and Site Spill Identification Number (02N8) and shall direct that: (i) all amounts deposited by Settling Defendant for ACOE's and DOE's Future Response Costs plus the interest which has accrued on these amounts since deposited by Settling Defendant shall be transferred to the EPA W.R. Grace/Wayne Superfund Site Response Special Account; (ii) all amounts deposited by Settling Defendant for EPA's Past Response Costs (\$887,604) plus the interest which has accrued on this amount since deposited by Settling Defendant shall be transferred to the EPA Hazardous Substance Superfund; all amounts deposited by Settling Defendant for EPA's Future Response Costs (\$612,396) plus the interest which has accrued on this amount since deposited by Settling Defendant shall be transferred to the EPA W.R. Grace/Wayne Superfund Site Oversight Special Account; and (iii) all amounts deposited by Settling Defendant in settlement of DOI's claim for Natural Resource Damages plus the interest which has accrued on these amounts since deposited by Settling Defendant shall be transferred to DOI Account Number 14X5198.

7.a. Any EFT Payments required to be made by Settling Defendant pursuant to Paragraphs 6.b. and 6.c. shall be made as follows. Transfers shall be wired and credited to the United States Department of Justice account in accordance with current EFT procedures and shall be accompanied by a statement identifying the Site, the name and address of the Settling Defendant, the caption and civil action number of this Consent Decree, the United States Attorneys Office ("USAO") file number, the EPA Region and Site Spill Identification Number (02N8), and the United States Department of Justice ("DOJ") case number (90-11-2-1200). The statement should direct that the funds are to be deposited to the EPA W.R. Grace/Wayne Superfund Site Response Special Account. Payments shall be made in accordance with EFT procedures provided to Settling Defendant by the Financial Litigation Unit of the USAO in the District of New Jersey following entry of this Consent Decree. Any payments received by the USAO after 4:00 p.m. Eastern Standard Time will be credited on the next business day. Settling Defendant shall send notice that payment has been made to the United States as specified in Section XIII (Notices and Submissions).

b. Any unused balance remaining in the EPA W.R. Grace/Wayne Superfund Site Response Special Account or Oversight Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund upon publication of the Notice of Deletion of the Site from the National Priorities list in the Federal Register.

VII. FAILURE TO MAKE TIMELY PAYMENTS

8. Interest on Late Payments. In the event that any payment[s] required by Paragraphs 6.b. or 6.c. are not made when due, interest shall continue to accrue on the unpaid balance at the rate authorized by 28 U.S.C. § 1961, through the date of payment.

9. Stipulated Penalty. If any amounts due to the United States under Paragraphs 6.b. and 6.c. of this Consent Decree are not paid by the required date, the Settling Defendant shall pay as a stipulated penalty, in addition to the interest required by Paragraph 8, \$2,500.00 per day or portion thereof that such payment is late. Stipulated penalties are due and payable within 30 days of the Settling Defendant's noncompliance with or violation of the requirements of this Consent Decree. Penalties shall accrue as provided above regardless of whether the United States has notified the Settling Defendant of the non-compliance with or violation of the requirements of this Consent Decree, or made a demand for payment. All payments under this Section shall be paid by certified or cashier's check made payable to "EPA Hazardous Substances Superfund" within thirty (30) days of the Settling Defendant's receipt from the United States of a demand for payment of the penalties. Such payments shall reference the EPA Region and Site Spill Identification Number (02N8) and DOJ Case Number 90-11-2-1200, and shall be mailed to "EPA- Region 2, Attn: Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251," and shall indicate that the payment is for stipulated penalties. Copies of the check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XIII (Notices and Submissions).

10. If the United States must bring an action to collect any payment required by this Consent Decree, the Settling Defendant shall reimburse the United States for all costs related to such action, including but not limited to costs of attorney time.

11. Payments made under Paragraphs 8-10 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments required by this Decree.

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

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

13. In consideration of the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 14, 15, 18 and 20, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106, 107(a) and 113(f) of CERCLA, and Section 7003 of RCRA, relating to the Site. The United States also covenants not to sue Settling Defendant with respect to natural resource damages, including the reasonable costs of assessing such injury, with respect to the resources at the Site for which the United States is the trustee. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the United States of all payments required by Section VI. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

14. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the

Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion:

(1) conditions at the Site, previously unknown to the United States, are discovered, or

(2) information, previously unknown to the United States, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Removal and Remedial Actions performed or to be performed at the Site are not protective of human health or the environment.

15. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to the United States, are discovered, or

(2) information, previously unknown to the United States, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Removal and Remedial Actions performed at the Site are not protective of human health or the environment.

16. For purposes of Paragraph 14 (Pre-Certification Reservations), the information and conditions known to the United States shall mean all information provided to or discovered by

DOE, EPA, ACOE, DOI, and DOJ through their own investigations or through the investigations of any other entity and set forth in the following categories of documents contained in DOE's, EPA's, ACOE's, DOI's, and DOJ's files regarding the Site as of the date this Consent Decree is signed:

- a. information provided to the United States during settlement negotiations;
- b. information related to radiological contamination at the Site resulting from the processing of monazite sands and thorium sludges;
- c. information from the records of DOE, AEC and NRC concerning the Site including contracts between Settling Defendant or its predecessors and the AEC for materials processed at the Site, and revisions or amendments thereto, NRC Filings, AEC Filings, reports to AEC and AEC License Applications and Licenses, AEC and NRC compliance, inspection and investigation documents, NRC decommissioning reports, inspections and information, and correspondence between Settling Defendant and the AEC and NRC;
- d. information contained in records or applications for permits, licenses, inspections, and investigations by local and state agencies regarding the Site;
- e. information contained in the records in the possession of the United States Department of Justice relating to the case of *William Merklin v. United States*, Civil Action No. 83-4953;
- f. analyses, diagrams, maps, reports, surveys, summaries performed regarding the Site by or on behalf of the United States by independent consultants; and,
- g. information and conditions set forth in final ACOE and DOE Action Memoranda and EE/CA's in existence as of the date this Consent Decree is signed and their

respective administrative records, the Remedial investigation Report, and the draft Feasibility Study dated May 1995.

17. For purposes of Paragraph 15 (Post-Certification Reservations), the information and the conditions known to the United States shall mean all information provided to or discovered by DOE, EPA, ACOE, DOI, and DOJ through their own investigations or through the investigations of any other entity and set forth in the following categories of documents contained in DOE's, EPA's, ACOE's, DOI's, and DOJ's files regarding the Site as of the date of issuance of the Certification of Completion of the Remedial Action:

- a. information provided to the United States during settlement negotiations;
- b. information related to radiological contamination at the Site resulting from the processing of monazite sands and thorium sludges;
- c. information from the records of DOE, AEC and NRC concerning the Site including contracts between Settling Defendant or its predecessors and the AEC for materials processed at the Site, and revisions or amendments thereto, applications for licenses or permits, NRC Filings, AEC Filings, reports to AEC and all AEC License Applications and Licenses, AEC and NRC compliance, inspection and investigation documents, NRC decommissioning reports, inspections and information, and correspondence between Settling Defendant and the AEC and NRC;
- d. information contained in records or applications for permits, licenses, inspections, and investigations by local and state agencies regarding the Site;

e. information contained in the records in the possession of the United States Department of Justice relating to the case of *William Merklin v. United States*, Civil Action No. 83-4953;

f. analyses, diagrams, maps, reports, surveys, summaries performed regarding the Site by or on behalf of the United States by independent consultants; and,

g. information and conditions set forth in final ACOE and DOE Action Memoranda and EE/CA's in existence as of the date of the issuance of the Certificate of Completion for Remedial Action and their respective administrative records, the Record(s) of Decision, and the administrative record(s) supporting the Record(s) of Decision as augmented pursuant to the National Contingency Plan, 40 C.F.R. 300.825, following issuance of the Record(s) of Decision but prior to the issuance of the Certification of Completion for the Remedial Action.

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

19. For the purposes of Paragraph 18, conditions known to the United States with respect to the Site on the date of lodging of this Consent Decree, and information received for purposes

of Natural Resources Damages, shall include all sampling data in the possession of DOE, ACOE, EPA, DOI and DOJ as of the date of lodging of this Decree, any evaluation of DOE, ACOE, EPA, DOI and DOJ of such data as of the date of lodging of this Decree, all literature referenced in such evaluations, including discussions of both possible or observed effects of hazardous substances on natural resources, and all information referenced in Paragraph 16 of this Consent Decree.

20. General reservations of rights by Plaintiff. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 13. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and,

(3) criminal liability.

IX. COVENANTS BY SETTLING DEFENDANT

21. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United

States, pursuant to CERCLA Sections 107 and 113 related to the Site, or any claims arising out of response activities at the Site, except with respect to claims under Section 113 for contribution for Natural Resource Damages claims not otherwise addressed by this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

22. 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. 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.

23. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Excepting the matters reserved in Paragraphs 14, 15, 18 and 20, the matters addressed in this settlement are all removal and remedial actions taken and to be taken by ACOE and DOE and all costs incurred and to be incurred by ACOE, DOE and EPA at or in connection with DOE's and ACOE's removal and remedial actions at the Site prior to Certification of Completion of the Remedial Action.

24. 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 the United States in writing

no later than 60 days prior to the initiation of such suit or claim. 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 in writing the United States within 30 days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within 30 days of service or receipt of any Motion for Summary Judgment and within 30 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiff).

XI. CERTIFICATION OF COMPLETION

26. Upon completion of the Remedial Action under a ROD for any OU, and pursuant to the FFA, ACOE will submit a written request to EPA for a Certification of Completion. If EPA concludes that the Remedial Action for that OU has been performed in accordance with the applicable ROD, and pursuant to the FFA, EPA will so certify in writing to ACOE and Settling Defendant. This certification shall constitute Certification of Completion of the Remedial Action for the purposes of this Consent Decree, including but not limited to, Section VIII (Covenants Not To Sue By Plaintiffs).

XII. RETENTION OF RECORDS

27. Until 6 years after the entry of this Consent Decree, the Settling Defendant shall preserve and retain at least one copy of all records and documents 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 conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

28. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall, unless ACOE, DOI, DOE and EPA otherwise agree in writing, deliver any such records or documents to ACOE, DOI, DOE and EPA. Settling Defendant may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege, it shall provide ACOE, DOI, DOE and EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a document, the document shall be provided to ACOE, DOI DOE and EPA in redacted form to mask the privileged information only.

XIII. NOTICES AND SUBMISSIONS

29. 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. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, ACOE, DOI, DOE, EPA and the Settling Defendant, respectively.

As to the United States:

Joel M. Gross, Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ# 90-11-2-1200

As to ACOE:

District Engineer
U.S. Army Corps of Engineers
New York District, Executive Office
26 Federal Plaza, Room 2109
New York, NY 10278

As to DOE:

James J. Fiore
Acting Deputy Assistant Secretary for Environmental Restoration
Office of Environmental Management
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

As to EPA:

Robert F. Vaughn, Chief
Special Projects Branch
Emergency and Remedial Response Division
EPA Region II, 18th Floor
290 Broadway
New York, NY 10007
Attn: Grace/Wayne Superfund Site Remedial Project Manager

Delmar Karlen, Chief
New Jersey Superfund Branch
Office of Regional Counsel
EPA Region II, 17th Floor
290 Broadway
New York, NY 10007
Attn: Grace/Wayne Superfund Site Attorney

As to DOI:

Mark Barash, Esq.
Office of the Northeast Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton, MA 02158-2802

As to Settling Defendant:

Mark Stoler, Esq.
Assistant Vice-President, Environment, Health and Safety
W.R. Grace & Co.
One Town Center Road
Boca Raton, FL 33486

Anthony J. Marchetta, Esq.
Pitney, Hardin, Kipp & Szuch
P.O. Box 1945
Morristown, NJ 07962-1945

XIV. EFFECTIVE DATE AND TERMINATION

30. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein. When the United States has been paid by the Settling Defendant pursuant to Section VI of this Consent Decree, the United States and the Settling Defendant shall jointly petition the Court for termination of this Consent Decree. Termination shall not affect the provisions of Sections VIII (Covenants Not to Sue By Plaintiff), IX (Covenants By Settling Defendant), X (Effect of Settlement; Contribution Protection), and XI (Retention of Records).

XV. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of thirty (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. Settling Defendant consents to the entry of this Consent Decree without further notice.

33. 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.

XVII. SIGNATORIES/SERVICE

34. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

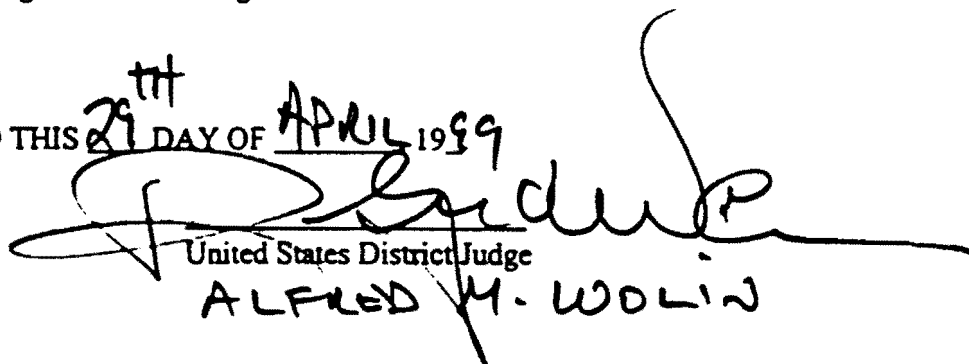
35. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

SO ORDERED THIS

th
29

DAY OF

APRIL 1999

A large, stylized handwritten signature in black ink, which appears to read "Alfred M. Wolin". The signature is written over the printed name and title.

United States District Judge

ALFRED M. WOLIN

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. W.R. Grace, relating to the W.R. Grace Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 4-29-98

Lois Schiffer (ge)

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 4/29/98

D.K. Mears

HENRY S. FRIEDMAN
Senior Attorney
DAVID K. MEARS
Trial Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. W.R. Grace, relating to the W.R. Grace Superfund Site.



JAMES M. OWENDOFF

Acting Assistant Secretary for Environmental
Management

Office of Environmental Management

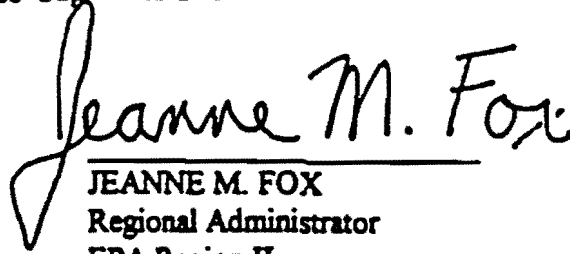
U.S. Department of Energy

1000 Independence Ave., S.W.

Washington, D.C. 20585

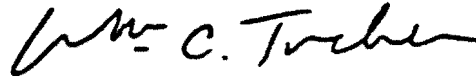
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. W.R. Grace, relating to the W.R. Grace Superfund Site.

Date: 3/30/98



JEANNE M. FOX
Regional Administrator
EPA Region II
290 Broadway
New York, NY 10007

Date: 3-18-98

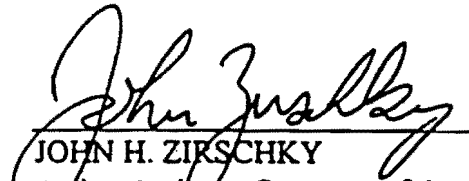


WILLIAM C. TUCKER
Assistant Regional Counsel
New Jersey Superfund Branch
Office of Regional Counsel
EPA Region II
290 Broadway
New York, NY 10007

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. W. R. Grace relating to the W. R. Grace Superfund Site.

Date:

3/18/98


JOHN H. ZIRSCHKY
Acting Assistant Secretary of the Army
(Civil Works)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. W.R. Grace, relating to the W.R. Grace Superfund Site.

FOR DEFENDANT



MR. ALBERT J. COSTELLO
President & Chief Executive Officer
W.R. Grace & Co.-Conn.
One Town Center Road
Boca Raton, FL 33486

Date: _____

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

Anthony J. Marchetta, Esq.
Pitney, Hardin, Kipp & Szuch
200 Campus Drive
Florham Park, NJ 07932-0950