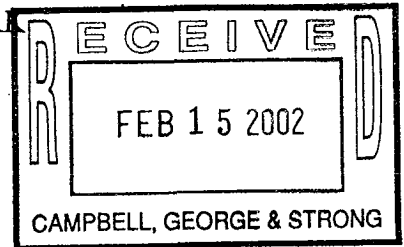


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER
COMPANY and NIAGARA FALLS U.S.A.
CAMPSITE, INC.,

Defendants,

THE GOODYEAR TIRE & RUBBER
COMPANY,

Third Party Plaintiff,

v.

JOHN A. BRUNDAGE, and
GUY T. SOTTILE,

Third Party Defendants.

CIVIL ACTION NO.
96-CV-07215S(H)

CONSENT DECREE

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. By leave of Court, the United States is filing, at the same time as it lodges this Consent Decree, an amended complaint.

B. The United States in its amended complaint seeks, inter alia, reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Forest Glen Subdivision Superfund Site in the Town of Niagara and the City of Niagara Falls, Niagara County, New York, together with accrued interest, performance of response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"), and damages for injury to, destruction of, or loss of natural resources.

C. Defendant The Goodyear Tire & Rubber Company asserted cross-claims against defendant Niagara Falls U.S.A. Campsite, Inc., and filed a third-party complaint against third-party defendants John A. Brundage and Guy T. Sottile. Defendant Niagara Falls U.S.A. Campsite, Inc. and third-party defendants John A. Brundage and Guy T. Sottile asserted cross-claims against defendant The Goodyear Tire & Rubber Company.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on May 22, 1998 of negotiations with potentially responsible parties regarding the implementation of the remedial design and

remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on May 22, 1998 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff or any other person or entity arising out of the facts or transactions or occurrences alleged in the amended complaint or recited in this Consent Decree, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Unless otherwise waived in this Consent Decree, Settling Defendants reserve any available defenses to claims relating to the Site.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on November 21, 1989, 54 Fed. Reg. 48,184.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA has undertaken removal and remedial actions.

I. EPA commenced a focused feasibility study ("FFS") relating to the Site in 1989. EPA completed its FFS in November of 1989. The FFS resulted in a Record of Decision for the

first operable unit of the remedy for the Site (the "1989 ROD"), issued in December of 1989, which called for the permanent relocation of the residents of the former Forest Glen Subdivision. The Federal Emergency Management Agency ("FEMA"), by agreement with EPA, undertook the permanent relocation of the residents. As a result of implementing the permanent relocation, the United States through FEMA obtained property interests in certain parcels of real property within the Site (the "Relocation Parcels").

J. The State has assured EPA that it will accept transfer of the United States' property interests in the Site, including the Relocation Parcels, pursuant to section 104(j)(2) of CERCLA, 42 U.S.C. § 9604(j)(2), in accordance with a State Superfund Contract executed with EPA dated April 24, 1990 and any agreement executed between the State and the RD/RA Settling Defendant.

K. EPA commenced a remedial investigation and feasibility study ("RI/FS") for the Site in 1994. The RI/FS resulted in a Record of Decision for the second operable unit of the remedy for the Site (the "1998 ROD"), issued in March of 1998, which addressed remediation of soil contamination at the Site. The 1998 ROD called for the excavation, consolidation and capping of contaminated soils at the Site.

L. EPA conducted a supplemental groundwater investigation in 1997 and conducted a feasibility study for the groundwater remedy in 1998. As a result of these studies and the earlier RI/FS, in April, 1999 EPA issued a proposed plan for the third operable unit of the remedy for the Site (groundwater) and an amended remedy for the second operable unit (soils).

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the groundwater feasibility study and of the proposed plan for the groundwater

remedial action and amended soils remedial action on April 16, 1999, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

N. The decision by EPA on the soils and groundwater remedial action to be implemented at the Site was embodied in a record of decision, executed on September 29, 1999 ("1999 ROD"), on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The 1999 ROD selects a remedy for contaminated groundwater at the Site (third operable unit or "OU3") and amends the 1998 ROD for soils and sediments (second operable unit or "OU2"). In summary, the 1999 ROD is currently not inconsistent with commercial development of the Site and calls for (1) construction of an engineered cover system (landfill cap) over the contaminated soils at the Site, with some contaminated soils and sediments in portions of the Site (the Northern Aspect and East Gill Creek) being excavated and consolidated under the cap; (2) implementation of a long-term inspection and maintenance program to ensure cap integrity; (3) removal and off-site disposal of the permanent and mobile homes at the Site; (4) institutional controls and fencing at the Site as appropriate to limit future Site activities and future access to the capped area; (5) capping with six inches of clean sediment or excavation of contamination followed by restoration in the Wooded Wetland; (6) performance of an investigation in East Gill Creek during remedial design to determine if there are upstream sources of contamination that may impact the Site; (7) extraction of contaminated ground water from the on-property plume and transfer of the

extracted water to the City of Niagara Falls Wastewater Treatment Plant; (8) construction of an on-site 12-hour holding tank and sampling from the storage tank effluent pipe as required by the City of Niagara Falls Wastewater Treatment Plant; (9) implementation of a long-term groundwater monitoring program; and (10) natural attenuation of the off-property plume, together with performance of a monitored natural attenuation study to determine if natural attenuation is effective in remediating the off-property groundwater contamination. The 1999 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

P. RD/RA Settling Defendant has entered into agreements with third parties pursuant to which portions of the Site will be developed for commercial and light industrial use. EPA will require that such development be consistent with the 1999 ROD, i.e., that in areas where the ROD requires capping, any structures, parking areas and other facilities to be constructed will be equivalent to the landfill cap called for in applicable or relevant and appropriate state regulations (specifically 6 NYCRR Part 360) and will otherwise satisfy the requirements for the cap set forth in the 1999 ROD. Based on the information presently available to EPA, EPA believes that development of the Site can be constructed in a manner consistent with implementation of the remedy selected in the 1999 ROD.

Q. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the 1999 ROD, and the Work to be performed by RD/RA Settling Defendant shall constitute a response action taken or ordered by the President.

R. Each of the ATP Settling Defendants has submitted Financial Information to Plaintiff. Plaintiff has reviewed the Financial Information submitted by each of the ATP Settling Defendants to determine whether such ATP Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, Plaintiff has determined that each of the ATP Settling Defendants has limited financial ability.

S. 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 among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

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

III. PARTIES BOUND

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

3. RD/RA Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. RD/RA Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. RD/RA Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with RD/RA Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Ability-to-Pay Settling Defendants” or “ATP Settling Defendants” shall mean Niagara Falls U.S.A. Campsite, Inc., John A. Brundage, and Guy T. Sottile.

“ATP Defendant Parcels” shall mean those parcels of real estate in which one or more of the ATP Settling Defendants holds an ownership interest as of the date when such ATP Settling Defendant(s) execute(s) this Consent Decree, and which are identified in Appendix D to this Consent Decree. ATP Defendant Parcels do not include the personal residences of ATP Settling Defendants John A. Brundage and Guy T. Sottile.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675 .

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

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

“DOI” shall mean the United States Department of the Interior, and any successor departments or agencies of the United States.

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

"Financial Information" shall mean those financial documents identified in Appendix F.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise performing removal or remedial action pursuant to this Consent Decree or implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls, including, but not limited to, the amount of just compensation), XV, and Paragraph 95 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the amount to be paid by RD/RA Settling Defendant pursuant to Paragraph 53 that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from October 1, 1999 to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, in connection with the Site, (a) paid by the United States between September 30, 1999 and the effective date of this Consent Decree, or (b) incurred by the United States between July 31, 1999 and the effective date of this Consent Decree but paid after the effective date.

"Interest" shall 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).

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue

removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

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

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

"Natural Resource Damages" shall mean all damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, as defined in Sections 107(a)(4)(C), 101(6), and 101(16) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9601(16).

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

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

"Owner Settling Defendant" shall mean, with respect to the requirements of Paragraph 9, any of the Settling Defendants that owns any interest in any real property at the Site on the day that performance of such requirements is due.

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

"Parties" shall mean the United States and Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 30, 1999, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the performance standards as set forth in paragraph 7, pp. 4-5, of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991 (also known as the Resource Conservation and Recovery Act).

"RD/RA Settling Defendant" shall mean The Goodyear Tire & Rubber Company and any successor entity thereto.

"Record of Decision" or "ROD," unless otherwise specified, shall mean the 1999 ROD (i.e. the Record of Decision relating to the groundwater remedy and the amended soils remedy for the Forest Glen Subdivision Superfund Site, signed on September 29, 1999, by the Regional Administrator, EPA Region II, or her delegate), and all attachments thereto. The ROD is attached as Appendix A.

"Relocation Parcels" shall mean those parcels of real property within the Site, identified in Appendix E, in which the United States obtained an ownership interest as a result of the relocation of residents from the Site carried out by FEMA in conjunction with EPA.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by RD/RA Settling Defendant to implement the ROD, including OU2 (soils/sediments) and OU3 (groundwater) in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA. For purposes of this Consent Decree, "Remedial Action" does not include the soils/sediments remedy selected in the 1998 ROD.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by RD/RA Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan, including (1) any such plans that are listed in Appendix G which have been prepared, submitted, and approved in writing by EPA in anticipation of the entry of this Consent Decree; and (2) such plans, if any, that are prepared, submitted, and approved by EPA after lodging of this Consent Decree but prior to entry of this Consent Decree, in anticipation of the entry of this Consent Decree.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

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

“Settling Defendants” shall mean, unless otherwise specified, The Goodyear Tire & Rubber Company, Niagara Falls U.S.A. Campsite, Inc., Guy T. Sottile, and John A. Brundage.

“Site” shall mean the Forest Glen Subdivision Superfund Site, including parcels of real property encompassing approximately 39 acres, located near Service Road off Porter Road to the east of Interstate Route 190, in the City of Niagara Falls and the Town of Niagara, Niagara County, New York, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of New York.

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

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

“Trustees” shall mean DOI and NOAA.

“United States” shall mean the United States of America.

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

“Work” shall mean all activities that RD/RA Settling Defendant is required to perform under this Consent Decree (including the securing and implementation of institutional controls), except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by RD/RA Settling Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants and the claims of Settling Defendants inter se as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. RD/RA Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by RD/RA Settling Defendant and approved by EPA pursuant to this Consent Decree.

b. Settling Defendants shall reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

c. Ability-to-Pay Settling Defendants shall transfer the ATP Defendant Parcels and make payments to the United States as provided in this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. RD/RA Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and

the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

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

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

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

9. Notice to Successors-in-Title

a. With respect to any property, owned or controlled by any of the Owner Settling Defendant(s), that is located within the Site, within 30 days after the entry of this Consent Decree or on the day after the documents of transfer of title for the ATP Defendant Parcels and the Relocation Parcels have been released from escrow for delivery to the appropriate recording office to effectuate transfer of title as provided in Paragraph 120, such Owner Settling Defendant(s) shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Registry of Deeds, or other appropriate office, Niagara County, State of New York, which

shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 29, 1999, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Owner Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access

and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

d. The requirements of sub-paragraph b. of this Paragraph shall not apply to the conveyance of real property pursuant to the requirements of Paragraph 120.

e. Owner Settling Defendant(s) shall not be required to comply with the requirements of sub-paragraph a. of this Paragraph for any property which, before the time for performance of such requirements expires, is conveyed to the Site Trust pursuant to Paragraph 120, provided that prior to such conveyance the trustee of the Site Trust has agreed in writing to comply with such requirements within ten days after receiving title to such property.

VI. PERFORMANCE OF THE WORK BY RD/RA SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by RD/RA Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Defendant's Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Settling Defendant, as the "practice of engineering" is

defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law. Within 10 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, RD/RA Settling Defendant proposes to change a Supervising Contractor, RD/RA Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify RD/RA Settling Defendant in writing. RD/RA Settling Defendant shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to RD/RA Settling Defendant within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. RD/RA Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents RD/RA Settling Defendant

from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, RD/RA Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

d. The United States acknowledges that because RD/RA Settling Defendant has performed certain response activities prior to the entry of this Consent Decree with regard to the remedial design of the remedy selected in the 1999 ROD, separate Remedial Design Work Plans may be submitted by RD/RA Settling Defendant pursuant to Paragraph 11 for OU2 (soils and sediment operable unit) and OU3 (groundwater operable unit) to more expeditiously implement the remedy, or some portion thereof, at the Site. Any portion of the remedial design that has been approved in writing by EPA prior to the entry of this Consent Decree shall be deemed satisfactorily performed as if performed and approved after entry of the Consent Decree. The periods set forth below in Paragraph 11 will apply to each such Remedial Design Work Plan, except to the extent and reflecting that certain required activities may have been performed and approved by EPA prior to the entry of this Consent Decree. In the latter case, upon entry of this Consent Decree, the time for completion of any subsequent activities shall begin to run as if the previously approved activities had been approved pursuant to the applicable provisions of this Consent Decree. If RD/RA Settling Defendant elects to submit separate Remedial Design Work Plans, in no event shall that election affect, or justify any delay in, the respective schedules of Remedial Design or Remedial Action activities for OU2 and OU3 as otherwise required in this Section (Section VI, Performance of the Work by RD/RA Settling Defendant).

11. Remedial Design.

a. Within 30 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, RD/RA Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a Sampling Plan and Quality Assurance Project Plan for the RD Soil and the RD Ground-water Investigations; (2) a preliminary design submittal; (3) a pre-final/final design submittal; (4) a Construction Quality Assurance Plan; (5) an updated Health and Safety Plan, as necessary, for field activities required by the Remedial Design Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and (6) Wetlands Mitigation Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, including submittal of the Health and Safety Plan for all field activities to EPA and the State, RD/RA Settling Defendant shall implement the

Remedial Design Work Plan. RD/RA Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, RD/RA Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. Consistent with Section D of the SOW, if any further soil sampling is necessary, RD/RA Settling Defendant shall conduct such sampling and report the results of this sampling in Supplemental Field Investigation Report(s).

e. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) project delivery strategy; (3) preliminary plans, drawings and sketches; (4) required specifications in outline form; and (5) preliminary Remedial Action Schedule.

f. The pre-final and final design submittals shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Sampling, Analysis and Monitoring Plan (directed at measuring progress towards meeting Performance Standards); and (5) a plan for establishing any required institutional controls that are not already in place. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. The United States acknowledges that because RD/RA Settling Defendant has performed certain response activities prior to the entry of this Consent Decree with regard to the remedial design of the remedy selected in the 1999 ROD, separate Remedial Action Work Plans may be submitted by RD/RA Settling Defendant for OU2 (soils and sediment operable unit) and OU3 (groundwater operable unit) to more expeditiously implement the remedy, or some portion thereof, at the Site. The time periods set forth below will apply to each such Remedial Action Work Plan, except to the extent and reflecting that certain required activities may have been performed and approved by EPA prior to the entry of this Consent Decree. If RD/RA Settling Defendant does elect to submit separate Remedial Action Work Plans, in no event shall that election affect, or justify any delay in, the respective schedules of Remedial Design activities for OU2 and OU3 as otherwise required in this Section (Section VI, Performance of the Work by RD/RA Settling Defendant).

b. RD/RA Settling Defendant shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The due date for submission of the Remedial Action Work Plan shall be ninety (90) days after approval of the final design submittal or forty-five (45) days after the effective date of this Consent Decree, whichever is later. RD/RA Settling Defendant shall submit the Remedial Action Work Plan no later than the due date specified in the preceding sentence, except that if at that time the transfer of real property interests pursuant to Paragraph 120 has been prevented from taking place because of an order issued by a court of competent jurisdiction (provided that such order was not sought by any of the Parties or by any person in a contractual relationship with any of the

Parties), then RD/RA Settling Defendant shall submit the Remedial Action Work Plan no later than thirty (30) days after the documents of transfer of title for the ATP Defendant Parcels and the Relocation Parcels have been released from escrow for delivery to the appropriate recording office to effectuate transfer of title as provided in Paragraph 120.

c. The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methodology for implementation of the Construction Quality Assurance Project Plan; (4) a Long-Term Ground-Water monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) tentative formulation of the Remedial Action team; (8) construction quality control plan (by constructor); (9) procedures and plans for the decontamination of equipment and the disposal of contaminated material; (10) procedures and plans for identifying and mitigating adverse impacts to wetlands ; and (11) an updated Health and Safety Plan, as necessary, for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks

identified in the final design submittal and shall identify the initial formulation of RD/RA Settling Defendant's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

d. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, RD/RA Settling Defendant shall implement the activities required under the Remedial Action Work Plan. RD/RA Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, RD/RA Settling Defendant shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. RD/RA Settling Defendant shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree, the SOW, and the Remedial Action Work Plan.

14. Modification of the SOW or Related Work Plans.

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

b. For the purposes of this Paragraph 14 and Paragraphs 49 and 50, only, the “scope of the remedy selected in the ROD” is:

i. the OU2 (soils/sediments) component of the remedy includes (a) construction of an engineered cover system (landfill cap) in conformance with Part 360 of the New York Code of Rules and Regulations for landfill caps over the contaminated soils/sediment at the Site, i.e. the Berm, and the portions of contaminated soil in the former Subdivision and the Edgewood Drive Wooded Lots; contaminated soils located in areas of the Northern Aspect and contaminated sediments excavated along East Gill Creek will be excavated and consolidated under the cover system, (b) removal and off-site disposal of the vacant trailers and two permanent homes to prepare the Site for excavation and capping, (c) implementation of a long-term inspection and maintenance program to ensure cap integrity, (d) provision for institutional controls to limit future Site activities, as appropriate, (e) placement of fencing to limit future access to the capped area, as appropriate, (f) placement of a cap of six inches of clean sediment on the wooded wetland area or, if an assessment leads EPA to conclude that sediment would have an adverse impact on the wetland, excavation of contamination in the wooded wetland area and restoration of the area, and (g) performance of an investigation in East Gill Creek during Remedial Design as set forth in section B.3.d. of the SOW to determine if there are upstream sources of contamination that may impact the Site.

ii. the OU3 (groundwater) component of the remedy includes (a) extraction and treatment of contaminated groundwater at the Site to restore the potable aquifer underlying the Site to drinking-water quality, (b) implementation of a long-term groundwater monitoring program to assess the remedy, and (c) performance of a monitored natural attenuation study to

evaluate intrinsic biodegradation and other natural attenuation processes and determine whether natural attenuation is effective in remediating the off-property groundwater contamination or whether active remedial measures must be implemented.

c. If RD/RA Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 74 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. RD/RA Settling Defendant shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

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

15. RD/RA Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

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

a. RD/RA Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. RD/RA Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by RD/RA Settling Defendant following the award of the contract for Remedial Action construction. RD/RA Settling Defendant shall provide the information required by Paragraph 16.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

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

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

19. Opportunity To Comment. If required by Sections 113(k)(2) or 117 of CERCLA, the public will be provided with an opportunity to comment on any further response actions

proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

20. RD/RA Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation" (EPA QA/R5), dated October 1987; "Preparing Perfect Project Plans" (EPA/600/9-89/087), dated October 1989, and subsequent amendments to such guidelines upon notification by EPA to RD/RA Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, RD/RA Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. RD/RA Settling Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by RD/RA Settling Defendant in implementing this Consent Decree. In addition, RD/RA Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. RD/RA Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods.

Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic Analysis" (Revision No. 9, 1994), and any amendments made thereto during the course of the implementation of this Consent Decree.

RD/RA Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

RD/RA Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

21. Upon request, RD/RA Settling Defendant shall allow split or duplicate samples to be taken by EPA, the State, or their authorized representatives. RD/RA Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow RD/RA Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of RD/RA Settling Defendant's implementation of the Work.

22. RD/RA Settling Defendant shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of RD/RA Settling Defendant with respect to the Site and/or the implementation of this Consent Decree within 10 days of the date when those results or data become available to RD/RA Settling Defendant, unless EPA agrees otherwise.

23. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

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

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

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in Paragraph 95 of this Consent Decree;

vii. 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);

viii. Assessing Settling Defendants' compliance with this Consent Decree; and

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

b. commencing on the date that such Settling Defendant executes this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the performance or integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, a prohibition against use of any portion of the Site for residential, school, or child care purposes. EPA may require other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the Work. If any Settling Defendant objects to any such other restriction, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 74 (record review).

c. commencing on the effective date of this Consent Decree, if EPA so requests, execute and record in the Recorder's Office, Registry of Deeds, or other appropriate land records office of Niagara County, State of New York, 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 24.a. of this Consent Decree, and

(ii) grants the right to enforce the land/water use restrictions required pursuant to Paragraph 24.b. of this Consent Decree. 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, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendant(s) shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. A draft easement that is enforceable under the laws of the State of New York, 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
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendant(s) 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 Recorder's Office, Registry of Deeds, or other appropriate office of Niagara County. Within 30 days of recording the easement, such Settling Defendant(s) 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.

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

the Settling Defendants, RD/RA Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for RD/RA Settling Defendant, 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 24.a. of this Consent Decree;

b. an agreement, enforceable by RD/RA Settling Defendant and the United States, to abide by the obligations and restrictions established by Paragraph 24.b. 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. if EPA so requests, the execution and recordation in the Recorder's Office,

Registry of Deeds, or other appropriate land records office of Niagara County, State of New York, 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 24.a. of this Consent Decree, and (ii) grants the right to enforce the land water use restrictions listed in Paragraph 24.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land water use restrictions shall be granted to 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) RD/RA Settling Defendant and its representatives, and/or (iv) other appropriate grantees. Within 45 days of the date of a request

therefor by EPA, RD/RA Settling Defendant shall submit to EPA for review and approval with respect to such property:

- i. a draft easement that is enforceable under the laws of the State of New York, 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
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, RD/RA Settling Defendant 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 Recorder's Office, Registry of Deeds, or other appropriate office of Niagara County. Within 30 days of the recording of the easement, RD/RA Settling Defendant 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.

26. For purposes of Paragraph 25 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 25.a. or 25.b. of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 25.c. of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of EPA's request therefor, RD/RA Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of

the steps that RD/RA Settling Defendant has taken to attempt to comply with Paragraph 25 of this Consent Decree. The United States may, as it deems appropriate, assist RD/RA Settling Defendant 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. RD/RA Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all direct and indirect costs incurred by the United States 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.

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

28. If RD/RA Settling Defendant enters into any contract (including without limitation any trust agreement) that would result in another entity developing or having an ownership interest in any real property within the Site or the ATP Defendant Parcels, RD/RA Settling Defendant shall ensure that such contract requires compliance by such entity with the obligations set forth in Paragraph 24 of this Consent Decree and with any requirements of Paragraph 9 of this Consent Decree that have not been performed before such entity obtains its ownership interest (if any). If any such entity seeks from Plaintiff a covenant not to sue (commonly known as a "prospective purchaser agreement"), Plaintiff, consistent with its policy, will require among other things provision of access and institutional controls as conditions of any such covenant not to sue.

Settling Defendants' obligations under this Section shall not be reduced in any way by Plaintiff's granting or withholding of a covenant not to sue with respect to any such entity, or by the contents of any such covenant not to sue.

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, RD/RA Settling Defendant shall submit to EPA and the State written progress reports, monthly or less frequently if less frequent submission is approved in writing by EPA, that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by RD/RA Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that RD/RA

Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. RD/RA Settling Defendant shall submit these progress reports to EPA by the tenth day of every month following the lodging of this Consent Decree until EPA notifies RD/RA Settling Defendant pursuant to Paragraph 50.c. of Section XIV (Certification of Completion). If requested by EPA, RD/RA Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

31. RD/RA Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that RD/RA Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), RD/RA Settling Defendant shall within 24 hours of the time when it or its agent knew or should have known of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the time when RD/RA Settling Defendant or its agent knew or should have known of an event of the type referred to in the preceding Paragraph, RD/RA Settling Defendant shall furnish to Plaintiff a written report, signed by RD/RA Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, RD/RA Settling Defendant shall submit a report setting forth all actions taken in response thereto.

34. RD/RA Settling Defendant shall submit all plans, reports, and data required by Section VI, above, the SOW, the EPA-approved Remedial Design Work Plan, the EPA-approved Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW and such approved plans. RD/RA Settling Defendant shall simultaneously submit copies of all such plans, reports and data to the State, in accordance with the requirements of Section XXVI, below.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that RD/RA Settling Defendant modify

the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing RD/RA Settling Defendant at least one notice of deficiency and an opportunity to cure, comment on, or consult with EPA within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

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

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), RD/RA Settling Defendant shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), RD/RA Settling Defendant shall proceed, at the direction of EPA, to take any action required by

any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve RD/RA Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, RD/RA Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless RD/RA Settling Defendant invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if RD/RA Settling Defendant does not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties shall accrue for such violation, as provided in Section XX, from the date on which the initial submission was originally required.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree.

In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, RD/RA Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other party (i.e., RD/RA Settling Defendant or EPA, as appropriate) at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. RD/RA Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. RD/RA Settling Defendant's Project Coordinator shall not be an attorney for RD/RA Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. RD/RA Settling Defendant's Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, RD/RA Settling Defendant shall establish and maintain financial security in the amount of \$ 8,000,000 in one or more of the following forms:

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

46. If RD/RA Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, RD/RA Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R.

Part 264.143(f). If RD/RA Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), then after initial submission of items specified in 40 C.F.R. Part 264.143(f)(3), RD/RA Settling Defendant shall send updated information to EPA in accordance with 40 C.F.R. Part 264.143(f)(5) annually, within 90 days of the end of RD/RA Settling Defendant's fiscal year, which is currently December 31. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, RD/RA Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting any of the other requirements set forth in Paragraph 45 of this Section. RD/RA Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

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

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

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

a. RD/RA Settling Defendant has, prior to the entry of this Consent Decree, performed certain response activities with regard to the remedial design of the remedy selected in the 1999 ROD, and EPA has overseen and approved in writing certain of such activities. For this reason, the procedure for certifying the completion of the Remedial Action set forth in this Paragraph may be used either once, to certify the completion of the entire Remedial Action, or, if the OU2 remedial activities and the OU3 remedial activities (not including O & M) are completed at different times and RD/RA Settling Defendant elects to request certification of completion of remedial action for each operable unit separately, such procedure may be used more than once, to separately certify completion of the required remedial activities (not including O & M) for OU2 (soils and sediment operable unit) and OU3 (groundwater operable unit).

b. Within 90 days after RD/RA Settling Defendant concludes that the Remedial Action has been performed and the Performance Standards have been attained, RD/RA Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by RD/RA Settling Defendant and EPA. If, after the pre-certification inspection, RD/RA Settling Defendant

still believes that the Remedial Action has been performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and RD/RA Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of RD/RA Settling Defendant or by RD/RA Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify RD/RA Settling Defendant in writing of the activities that must be undertaken by RD/RA Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require RD/RA Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or

require RD/RA Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). RD/RA Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to seek to require performance of further response actions as otherwise provided in this Consent Decree.

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to RD/RA Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, provided, however, that as used in Paragraph 64 and in Section XXI (Covenant Not to Sue by Plaintiff), the term "Certification of Completion of the Remedial Action" refers to the certification of the completion of the Remedial Action set forth in the 1999 ROD, including both OU2 and OU3. Certification of Completion of the Remedial Action shall not affect RD/RA Settling Defendant's obligations under this Consent Decree.

50. Completion of the Work

a. RD/RA Settling Defendant has, prior to the entry of this Consent Decree, performed certain response activities with regard to the remedial design of the remedy selected in the 1999 ROD, and EPA has overseen and approved in writing certain of such activities. For this

reason, the procedure for certifying the completion of the Work set forth in this Paragraph may be used either once, to certify the completion of all Work, or, if the portions of the Work (including O & M) related to OU2 and OU3 are completed at different times and RD/RA Settling Defendant elects to request certification of completion of work for each operable unit separately, such procedure may be used more than once, to separately certify completion of the portion of the Work (including O & M) related to either OU2 (soils and sediment operable unit) or OU3 (groundwater operable unit). However, as used in Paragraph 111 and in Section XXI (Covenant Not to Sue by Plaintiff), the term "Certification of Completion of the Work" refers to the certification of the completion of the Work set forth in this Consent Decree, including both OU2 and OU3.

b. Within 90 days after RD/RA Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, RD/RA Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by RD/RA Settling Defendant and EPA. If, after the pre-certification inspection, RD/RA Settling Defendant still believes that the Work has been fully performed, RD/RA Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of RD/RA Settling Defendant or by RD/RA Settling Defendant's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify RD/RA Settling Defendant in writing of the activities that must be undertaken by RD/RA Settling Defendant pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require RD/RA Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require RD/RA Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). RD/RA Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to RD/RA Settling Defendant's right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

c. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by RD/RA Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify RD/RA Settling Defendant in writing.

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment,

RD/RA Settling Defendant shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, RD/RA Settling Defendant shall notify the Chief of the Removal Action Branch, EPA Region II, at (732) 321-6658. RD/RA Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that RD/RA Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, RD/RA Settling Defendant shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. RD/RA Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$8,600,000 in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer

("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 94V0912, EPA Region II and Site/Spill ID #023U, and DOJ case number 90-11-3-698. Payment shall be made in accordance with instructions provided to RD/RA Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York following lodging of the Consent Decree. RD/RA Settling Defendant shall make the payment required by this Paragraph no later than thirty (30) days after the effective date of this Consent Decree, except that if at that time the transfer of real property interests pursuant to Paragraph 120 has been prevented from taking place because of an order issued by a court of competent jurisdiction (provided that such order was not sought by any of the Parties or by any person in a contractual relationship with any of the Parties), then RD/RA Settling Defendant shall make payment no later than thirty (30) days after the documents of transfer of title for the ATP Defendant Parcels and the Relocation Parcels have been released from escrow for delivery to the appropriate recording office to effectuate transfer of title as provided in Paragraph 120. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. RD/RA Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

54. RD/RA Settling Defendant shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will periodically send RD/RA Settling Defendant billings for such costs. The billings will be accompanied by a printout of cost data in EPA's financial management system and, if applicable, in DOJ's financial management system. Any billing shall also be accompanied by a brief statement of the activities performed. RD/RA Settling Defendant shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. RD/RA Settling Defendant shall make all payments via EFT. Unless EPA instructs otherwise, payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as follows. To make payment via EFT, RD/RA Settling Defendant shall provide the following information to its bank:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank ABA Routing Number: **043000261**
- v. Name of RD/RA Settling Defendant: **The Goodyear Tire & Rubber Company**
- vi. Case number: **90-11-3-698**
- vii. Site spill identifier: **023U**

Along with this information, RD/RA Settling Defendant shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that RD/RA Settling Defendant's payment is properly recorded, RD/RA Settling Defendant shall send a letter to the United States within one week of the EFT, which references the date of the EFT, the

payment amount, the name of the Site, the DOJ case number, and RD/RA Settling Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

55. RD/RA Settling Defendant may contest payment of any Future Response Costs under Paragraph 54 if it determines that the United States has made a mathematical error or has erroneously included costs incurred in connection with a different site or if RD/RA Settling Defendant alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, RD/RA Settling Defendant shall within the 30-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54. Simultaneously, RD/RA Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. RD/RA Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account

under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, RD/RA Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, RD/RA Settling Defendant shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 54. If RD/RA Settling Defendant prevails concerning any aspect of the contested costs, RD/RA Settling Defendant shall pay that portion of the costs for which it did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 54; RD/RA Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding RD/RA Settling Defendant's obligation to reimburse the United States for its Future Response Costs. Nothing in this Paragraph shall be deemed to change the definition of Future Response Costs in Paragraph 4.

56. ATP Settling Defendants Guy T. Sottile, John A. Brundage, and Niagara Falls U.S.A. Campsite, Inc. shall pay to the EPA Hazardous Substance Superfund eighty-one thousand dollars (\$81,000), in reimbursement of Past Response Costs, in accordance with the schedule and terms set forth in Paragraph 57. ATP Settling Defendants' obligation to make the payment required by this Paragraph shall be joint and several.

57. ATP Settling Defendants may make full payment of \$81,000 as required by Paragraph 56, without Interest, no later than thirty days after the effective date of this Consent Decree. If ATP Settling Defendants do not make full payment of the amount required by Paragraph 56 within thirty days after the effective date of this Consent Decree, then ATP Settling Defendants shall comply with the following schedule for partial payments:

a. ATP Settling Defendants shall make an initial payment of at least twenty-one thousand dollars (\$21,000) no later than thirty (30) days after the effective date of this Consent Decree, except that if at that time the transfer of real property interests pursuant to Paragraph 120 has been prevented from taking place because of an order issued by a court of competent jurisdiction (provided that such order was not sought by any of the Parties or by any person in a contractual relationship with any of the Parties), then the initial payment required by this sub-Paragraph shall be made no later than thirty (30) days after the documents of transfer of title for the ATP Defendant Parcels and the Relocation Parcels have been released from escrow for delivery to the appropriate recording office to effectuate transfer of title as provided in Paragraph 120.

b. ATP Settling Defendants shall make an additional payment of at least twenty thousand dollars (\$20,000), plus Interest on that amount in accordance with Paragraph 59, no later than four hundred fifty-five (455) days after the date the initial payment was due under sub-Paragraph a. of this Paragraph:

c. ATP Settling Defendants shall make a final payment of forty thousand dollars (\$40,000), plus Interest on that amount in accordance with Paragraph 59, no later than

eight hundred eighty (880) days after the date the initial payment was due under sub-Paragraph a. of this Paragraph. ATP Settling Defendants may make any of the payments required by the preceding sub-Paragraphs before the date such payment is due, and any Interest due shall accrue only through the date on which payment is actually made.

58. If any of the ATP Settling Defendants files a voluntary petition in bankruptcy or is adjudicated a bankrupt under the Bankruptcy Code of the United States, or is the subject of a petition in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, the full balance of all outstanding payments (including Interest if applicable) due from ATP Settling Defendants under Paragraphs 56 and 57 and Section XX (Stipulated Penalties) shall become immediately due and payable. Upon the occurrence of any of the events or conditions described in this Paragraph, ATP Settling Defendants shall give immediate written notice to the United States as specified in Section XXVI (Notices and Submissions).

59. In the event that any of the payments required by Paragraphs 53, 56 and 57 is not made within 30 days of the effective date of this Consent Decree or any of the payments required by Paragraph 54 is not made within 30 days of receipt of each bill, the Settling Defendant(s) owing such payment shall pay Interest on the unpaid balance, which shall accrue through the date such payment is made. The Interest to be paid under this Paragraph on payments due for reimbursement of Past Response Costs shall begin to accrue 30 days after the effective date of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of receipt of the bill. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the failure of any of the Settling

Defendants to make timely payments under this Section. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54.

60. The payments required by Paragraphs 56 and 57 shall be made by EFT to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 94V0912, EPA Region II and Site/Spill ID #023U, and DOJ case number 90-11-3-698. Such payments shall be made in accordance with instructions provided to ATP Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. ATP Settling Defendants shall send notice that such payment has been made, including a statement of any Interest amount included in the payment and the manner in which the Interest was calculated, to the United States as specified in Section XXVI (Notices and Submissions) and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

XVII. INDEMNIFICATION AND INSURANCE

61. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of RD/RA Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. RD/RA Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or

representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of RD/RA Settling Defendant, RD/RA Settling Defendant's officers, directors, employees, agents, contractors (including any party to a contract with RD/RA Settling Defendant for development or transfer of any portion of the Site), subcontractors, and any persons acting on RD/RA Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of RD/RA Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, RD/RA Settling Defendant agrees to reimburse the United States for all costs the United States incurs (including, but not limited to, reasonable attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of RD/RA Settling Defendant, RD/RA Settling Defendant's officers, directors, employees, agents, contractors (including any party to a contract with RD/RA Settling Defendant for development or transfer of any portion of the Site), subcontractors, and any persons acting on RD/RA Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of RD/RA Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither RD/RA Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give RD/RA Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 61.a., and shall consult with RD/RA Settling Defendant prior to settling such claim.

62. RD/RA Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement which RD/RA Settling Defendant may have with any person for performance of Work pursuant to this Consent Decree on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, RD/RA Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement which RD/RA Settling Defendant may have with any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

63. Settling Defendants shall, jointly and severally, indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from (a) any and all claims or causes of action arising from, or on account of, any legal insufficiency of the United States' efforts to transfer title to or other ownership interests in the Relocation Parcels pursuant to Paragraph 120.b. of this Consent Decree and (b) any and all claims or causes of action arising from, or on account of, any legal insufficiency of the ATP Settling Defendants' efforts to transfer title to or other ownership interests in the ATP Defendant Parcels pursuant to Paragraph 120.a. of this Consent Decree.

64. No later than 15 days before commencing any on-site Work, RD/RA Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.c. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of 2 million dollars, combined single limit,

and automobile liability insurance with limits of 1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, RD/RA Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of RD/RA Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, RD/RA Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. RD/RA Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If RD/RA Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, RD/RA Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

65. a. Each of the ATP Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of such ATP Settling Defendant, such ATP Settling Defendant's officers, directors, employees, agents, contractors, subcontractors, and any persons acting on such ATP Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, (i) any claims arising from such ATP Settling Defendant's compliance with Section XXXI (Transfer of Real Property Ownership

Interests), and (ii) any claims arising from any failure, delay, or legal insufficiency of such ATP Settling Defendant's compliance with Section XXXI (Transfer of Real Property Ownership Interests). Further, each of the ATP Settling Defendants agrees to reimburse the United States for all costs the United States incurs (including, but not limited to, attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of such ATP Settling Defendant, such ATP Settling Defendant's officers, directors, employees, agents, contractors, subcontractors, and any persons acting on such ATP Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of any of the ATP Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither any such ATP Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give the affected ATP Settling Defendant(s) notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 65.a., and shall consult with such ATP Settling Defendant(s) prior to settling such claim.

66. Each of the ATP Settling Defendants waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement which such ATP Settling Defendant(s) may have with any person for performance of any requirement of this Consent Decree. In addition, each of the ATP Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement which such ATP Settling

Defendant(s) may have with any person for performance of any requirement of this Consent Decree.

XVIII. FORCE MAJEURE

67. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of RD/RA Settling Defendant, of any entity controlled by RD/RA Settling Defendant, or of RD/RA Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite RD/RA Settling Defendant's best efforts to fulfill the obligation. The requirement that RD/RA Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, RD/RA Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when RD/RA Settling Defendant first knew that the event might cause a delay. Within 5 days thereafter, RD/RA Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for

implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; RD/RA Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of RD/RA Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. RD/RA Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements of this Paragraph shall preclude RD/RA Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. RD/RA Settling Defendant shall be deemed to know of any circumstance of which RD/RA Settling Defendant, any entity controlled by RD/RA Settling Defendant, or RD/RA Settling Defendant's contractors knew or should have known.

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

70. If RD/RA Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice under the preceding Paragraph. In any such proceeding, RD/RA Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, and that RD/RA Settling Defendant complied with the requirements of Paragraphs 67 and 68, above. If RD/RA Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by RD/RA Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

72. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

73. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, one or more of the Settling Defendants invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by such Settling Defendant(s). The Statement of Position shall specify the position of such Settling Defendant(s) as to whether formal dispute resolution should proceed under Paragraph 74 or Paragraph 75.

b. Within 14 days after receipt of a Statement of Position from one or more Settling Defendant(s), EPA will serve on Settling Defendant(s) its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 74 or 75. Within 14 days after receipt of EPA's Statement of Position, Settling Defendant(s) may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant(s) as to whether dispute resolution should proceed under Paragraph 74 or 75, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant(s) ultimately appeal(s) to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 74 and 75.

74. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions or the appropriateness of the remedy selected in the ROD.

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

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a written final administrative decision resolving the dispute based on the administrative record described in Paragraph 74.a. This decision shall be binding upon Settling Defendant(s), subject only to the right to seek judicial review pursuant to Paragraph 74.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 74.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed with the Court by at least one of the Settling Defendants that is a party to the dispute, and served on all parties to the dispute within 10 days of receipt of EPA's decision. The motion shall include a

description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the motion made by Settling Defendant(s).

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant(s) shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 74.a.

75. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of a Statement of Position submitted by one or more Settling Defendant(s) pursuant to Paragraph 73, the ERRD Director, EPA Region II, will issue a written final decision setting forth the manner in which the Director has resolved the dispute. The ERRD Director's decision shall be binding on Settling Defendant(s) unless, within 10 days of receipt of the decision, Settling Defendant(s) file(s) with the Court and serve(s) on the parties to the dispute a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the motion filed by Settling Defendant(s).

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

76. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 86. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant(s) do(es) not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

77. RD/RA Settling Defendant shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 78 and 79 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by RD/RA Settling Defendant shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

78. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in sub-paragraph b. of this Paragraph:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1st through 14th day
\$ 4,000	15th through 30th day
\$ 8,000	31st day and beyond

b. Sub-paragraph a. of this Paragraph applies to the following requirements:

- (i). submission and, if necessary, revision and resubmission of any plan, report, or other deliverable required by Section VI (Performance of the Work by RD/RA Settling Defendant) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;
- (ii). any deadline imposed by Section VI (Performance of the Work by RD/RA Settling Defendant) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;
- (iii). obligations imposed by Section XV (Emergency Response);
- (iv). any certification required for any submission by RD/RA Settling Defendant to EPA pursuant to this Consent Decree, including both the requirement to make the certification and the requirement that the certification be truthful;
- (v). any specific obligation that is imposed by this Consent Decree (including the SOW and any work plan approved under this Consent Decree) for

implementation of the design, construction, or operation and maintenance of particular portions of the Work;

(vi). modification of the SOW or related work plans pursuant to Paragraph 14, and implementation of the work called for by such modifications in accordance with the modified SOW or work plan, and

(vii). performance of studies and investigations and further response actions pursuant to Section VII.

79. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in sub-paragraph b. of this Paragraph:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1.000	1st through 14th day
\$ 2.000	15th through 30th day
\$ 4.000	31st day and beyond

b. Sub-paragraph a. of this Paragraph applies to the following requirements:

(i). permitting split or duplicate samples and submission of reports pursuant to Section VIII (Quality Assurance, Sampling, and Data Analysis);

(ii). designation of RD RA Settling Defendant's Project Coordinator as required by Section XII (Project Coordinators);

(iii). obligations imposed by Section XIII (Assurance of Ability to Complete Work);

(iv). timely submission and, if necessary, revision and resubmission of the

name, title and qualifications of the proposed Supervising Contractor pursuant to Section VI;

(v). certification of completion requirements set forth in Section XIV;

(vi). timely notification regarding any delay or anticipated delay, consistent with Paragraph 68;

(vii). insurance requirements set forth in Section XVII;

(viii). reporting requirements set forth in Section X;

(ix). timely submission of written notification of any off-site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 16;

(x). obligations imposed by Section IX (Access and Institutional Controls);

(xi). submission of documents and other information in accordance with Section XXIV; and

(xii). payments required by Section XVI (Reimbursement of Response Costs) and Section XXXII (Natural Resource Damages).

80. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiff), RD/RA Settling Defendant shall be liable for a stipulated penalty in the amount of \$500,000.

81. Each ATP Settling Defendant shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with any of the requirements of this Consent Decree that apply to such ATP Settling Defendant, including without limitation ATP Settling

Defendants' obligations to make payments pursuant to Section XVI and to convey interests in real property pursuant to Section XXXI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

82. All penalties pursuant to this Section shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies RD/RA Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region II, under Paragraph 74.b. or 75.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the reply by Settling Defendant(s) to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall

prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

83. Following EPA's determination that one or more of the Settling Defendant(s) has failed to comply with a requirement of this Consent Decree, EPA may give such Settling Defendant(s) written notification of the same and describe the noncompliance. EPA may send such Settling Defendant(s) a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant(s) of a violation.

84. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the date of receipt by Settling Defendant of EPA's demand for payment of the penalties, unless Settling Defendant(s) invoke(s) the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be made (i) by EFT, consistent with Paragraph 54 above, if the amount of the payment is at least \$10,000; or (ii) by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund", if the amount of the payment is less than \$10,000. Any payment by certified or cashier's check shall be mailed to EPA - Region II, P.O. Box 360188M, Pittsburgh, PA 15251. Attn: Superfund Accounting, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #023U, the DOJ Case Number 90-11-3-698, and the name and address of the party making payment; copies of the check and any accompanying transmittal letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

85. The payment of penalties shall not alter in any way RD/RA Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

86. Penalties shall continue to accrue as provided in Paragraph 82 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, all accrued penalties determined by the Court to be owing shall be paid to EPA within 60 days of receipt of the Court's decision or order, except as provided in sub-paragraph c of this Paragraph.

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

87. a. If one or more of the Settling Defendant(s) fail(s) to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Such Settling Defendant(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 84.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of violation by one or more of the Settling Defendants of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

89. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 90, 91, 93, 94, and 96 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA or Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect with respect to each of the Settling Defendants upon the receipt by the United States of the payments required from such Settling Defendant by Paragraphs 53, 56, 57, and 58 of Section XVI (Reimbursement of Response Costs) and Paragraph 122 of Section XXXII (Natural Resource Damages). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 49.c. of Section XIV (Certification of

Completion). These covenants not to sue, with respect to each of the Settling Defendants, are conditioned upon the satisfactory performance by that Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

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

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received, in whole or in part,
- and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

91. 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 any or all of the Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received,
- in whole or in part,

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

92. For purposes of Paragraph 90, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision and in any document, drawing or report prepared by RD/RA Settling Defendant that was submitted to EPA as part of the Work required by this Consent Decree and approved by EPA prior to the lodging of this Consent Decree. For purposes of Paragraph 91, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

93. Reservations Concerning Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States on behalf of the Trustees reserves the right to

institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on:

a. conditions with respect to the Site, that are not within "known conditions and information" as defined in this Paragraph, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of said natural resources at the Site, or

b. information received by DOI or NOAA, that is not within "known conditions and information" as defined in this Paragraph, which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to the Trustees at the date of lodging of this Consent Decree with the Court.

For purposes of this Paragraph only, "known conditions and information" shall mean (i) conditions in existence as of the date on which this Consent Decree is lodged with the Court; and (ii) information known to the Trustees as of the date on which this Consent Decree is lodged with the Court; and (iii) information relating to any of the compounds on the site-specific list of targeted organic compounds, attached as Appendix H, that becomes known to the Trustees as a result of RD/RA Settling Defendant's performance, pursuant to this Consent Decree, of an investigation in East Gill Creek during remedial design to determine if there are upstream sources of contamination that may impact the Site; and (iv) information relating to any of the compounds on the site-specific list of targeted organic compounds, attached as Appendix H, that becomes known to the Trustees as a result of any studies of East Gill Creek and/or Gill Creek that the Trustees may conduct using all or some of the funds paid by RD/RA Settling Defendant pursuant to Section XXXII (Natural Resource Damages); and (v) information that becomes known to the Trustees as a result of RD/RA Settling Defendant's performance, pursuant to this

Consent Decree, of an assessment of the impact of placing sediment on the wooded wetland area as part of the remedial action.

94. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 89. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by any of the Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- d. liability for any future response actions that EPA may select for the Site if zoning for all or part of the Site reverts to permit residential use, provided that such future response actions are selected as a consequence of the change in zoning and are not within the definition of "Remedial Action" in Paragraph 4 or the "scope of the remedy selected in the ROD" as set forth in Paragraph 14.b.;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards.

but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

95. Work Takeover. In the event EPA determines that RD/RA Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. RD/RA Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 74, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that RD/RA Settling Defendant shall pay pursuant to Section XVI (Reimbursement of Response Costs).

96. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action, against any of the ATP Settling Defendants, (i) if the Financial Information provided by such ATP Settling Defendant, or the financial certification made by such ATP Settling Defendant in Paragraph 113.b. is false or, in any material respect, inaccurate; or (ii) if such ATP Settling Defendant transfers any interest in any of the ATP Defendant Parcels other than as provided in Paragraph 120; or (iii) if such ATP Settling Defendant fails or refuses to transfer any of the ATP Defendant Parcels belonging to such ATP Settling Defendant as required by this Consent Decree.

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

XXII. COVENANTS BY SETTLING DEFENDANTS

98. Covenant Not to Sue. Subject to the reservations in Paragraph 99, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities;

d. any claims under the Tucker Act, 28 U.S.C. § 1491, or the United States Constitution, arising out of or relating to access to, implementation of institutional controls relating to or at, or response activities (including the permanent relocation of residents and associated transfer of title) undertaken at or relating to, the Site.

99. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting

within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

100. 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).

101. 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 prior to the date of the lodging of this Consent Decree, or having accepted for transport for disposal or treatment of hazardous substances at the Site prior to the date of the lodging of this Consent Decree, 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.

102. Each of the Settling Defendants hereby covenants not to sue and agrees not assert any claims or causes of action against the other Settling Defendants with respect to the Site, including, but not limited to, any claims under CERCLA Sections 107 or 113 related to the Site and any claims arising out of the claimant's compliance with its own obligations under the terms of this Consent Decree.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

103. Except as provided in Paragraph 101, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 101, 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.

104. 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 CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. For purposes of the preceding sentence, the "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person (except the State of New York) with respect to the Site; damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from release or threatened release of hazardous substances at or from the Site (but not including any liability to the State of New York for such damages); and the costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i). The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against any or all of the Settling Defendants coming within the scope of such reservations.

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

106. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, the Settling Defendant(s) against whom such suit or claim is brought will notify in writing the United States within 10 days of service of the complaint on them. In addition, such Settling Defendant(s) shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

107. 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 Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

108. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or

testimony relating to the Work or conditions at the Site, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

109. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the submitting Settling Defendant(s) 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, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Settling Defendant(s) assert(s) such a privilege in lieu of providing documents, the Settling Defendant(s) making the assertion shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant(s). However, no final documents, reports or other information required to be created or generated to implement the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

110. 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 factual information created or generated to implement the requirements of this Consent Decree evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

111. Until 10 years after RD/RA Settling Defendant's receipt of EPA's notification pursuant to Paragraph 50.c. of Section XIV (Certification of Completion of the Work), each of the Settling Defendants shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after RD/RA Settling Defendant's receipt of EPA's notification pursuant to Paragraph 50.c. of Section XIV (Certification of Completion of the Work), RD/RA Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

112. At the conclusion of this document retention period, each of the Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, such Settling Defendant(s) shall deliver copies of any such records or documents to EPA. Settling Defendant(s) may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any of the Settling Defendant(s) asserts such a privilege, the Settling Defendant making the assertion shall provide the Plaintiff with the

following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant(s). However, no final documents, reports or other information required to be created or generated to implement the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

113. Certifications.

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

b. Each of the ATP Settling Defendants hereby certifies individually that, to the best of its knowledge and belief, it has (i) fully complied with any and all requests for documents or information regarding its financial circumstances that have been made by the United States, and (ii) submitted to the United States Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the most recent time the Financial Information was submitted to the United States and the time the ATP Settling Defendant executed this Consent Decree.

XXVI. NOTICES AND SUBMISSIONS

114. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and each of the Settling Defendants, respectively.

As to the United States or EPA:

3 copies: Chief, New York Remediation Branch
 Emergency and Remedial Response Division
 U.S. Environmental Protection Agency, Region II
 290 Broadway, 20th Floor
 New York, NY 10007-1866

Attention: Forest Glen Subdivision Superfund Site Remedial Project Manager

One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866
Attention: Forest Glen Subdivision Superfund Site Attorney

and

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: DOJ # 90-11-3-698

As to the State:

When submitting to EPA any written communication required hereunder, RD/RA Settling Defendant shall simultaneously submit two copies of that communication (unless the given document is a plan or report, in which case 6 copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
Room 262
50 Wolf Road
Albany, NY 12233-7010

Attention: Project Manager, Forest Glen Site Manager No. 9-32-097

As to RD/RA Settling Defendant:

Manager, Global Environmental Services
The Goodyear Tire & Rubber Company
1144 East Market Street
Akron, OH 44316-0001

and

The Goodyear Tire & Rubber Company
1144 East Market Street
Akron, OH 44316-0001
Attn: Secretary

As to ATP Settling Defendants:

Thomas Caserta
800 Main Street
PO Box 248
Niagara Falls, NY 14302

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

116. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and or map of the Site.

"Appendix D" is the list of ATP Defendant Parcels.

"Appendix E" is the list of Relocation Parcels.

"Appendix F" is the list of Financial Information submitted by the ATP Settling Defendants.

"Appendix G" is the list of documents relating to Remedial Design that have been prepared and submitted by RD/RA Settling Defendant, and approved in writing by EPA, in anticipation of the entry of this Consent Decree.

"Appendix H" is the list of site-specific targeted organic compounds from the ROD.

"Appendix I" is the Site Trust Agreement.

"Appendix J" is the Document Deposit Agreement.

XXX. COMMUNITY RELATIONS

118. RD/RA Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for RD/RA Settling Defendant under the Plan. RD/RA Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, RD/RA Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site. As requested by EPA, ATP Settling Defendants shall cooperate with EPA in providing information regarding the ATP Defendant Parcels to the public and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the ATP Defendant Parcels.

XXXI. TRANSFER OF REAL PROPERTY OWNERSHIP INTERESTS

119. The Parties contemplate that, concurrently with or subsequent to the performance of the Remedial Action by RD/RA Settling Defendant, certain activities may take place at the Site for purposes of development of portions of the Site for commercial or light industrial use. Such development can be constructed in a manner consistent with the 1999 ROD and, pursuant to Paragraphs 24 and/or 25 above, Settling Defendants are required to provide and/or secure institutional controls which are intended to preclude any development activities that would interfere with the implementation and/or effectiveness of the Remedial Action. To facilitate the development activities, a trust ("Site Trust") has been created to hold title to and perform other actions with respect to real property and certain other assets at the Site, all as described and pursuant to the terms and conditions in the Site Trust Agreement attached as Appendix I hereto. To facilitate the transfer of title to such real property, as provided in Paragraph 120, an agreement (the "Document Deposit Agreement") has been entered into by the Parties and certain others pursuant to which they will deposit documents of title in escrow pending entry of this Consent Decree, and following entry of the Consent Decree, they will direct the Escrow Agent to release and deliver such documents to the appropriate recording office.

120. a. ATP Defendant Parcels. ATP Settling Defendants agree to convey all of their right, title and interest in the ATP Defendant Parcels to the Site Trust. To facilitate this conveyance, ATP Settling Defendants have executed documents of transfer of title and related instruments effective to convey title to the ATP Defendant Parcels and have deposited them in escrow pursuant to the Document Deposit Agreement on or before the date of lodging of this Consent Decree. Each of the ATP Settling Defendants agrees to direct the Escrow Agent

pursuant to the Document Deposit Agreement to release from escrow the documents of transfer of title for the ATP Defendant Parcels deposited with the Escrow Agent for delivery to the appropriate recording office to effectuate transfer of title to the ATP Defendant Parcels to the Site Trust, no later than thirty days after the effective date of this Consent Decree. RD/RA Settling Defendant and ATP Settling Defendants shall take all actions required of them by the Document Deposit Agreement, including without limitation transmitting their authorizations and RD/RA Settling Defendant's advancing the "Payment Fund" as described in the Document Deposit Agreement, at such time as will allow for compliance with the thirty-day time limit prescribed by the preceding sentence.

b. Relocation Parcels. Plaintiff agrees to convey all of its right, title and interest in the Relocation Parcels to the New York State Office of General Services ("OGS"). To facilitate this conveyance, Plaintiff has executed documents of transfer of title and related instruments effective to convey title to the Relocation Parcels and has deposited such documents in escrow under the Document Deposit Agreement on or before the date of lodging of this Consent Decree. Plaintiff agrees to direct the Escrow Agent to release the documents of transfer of title for the Relocation Parcels deposited in escrow for delivery pursuant to the Document Deposit Agreement to the appropriate recording office to effectuate transfer of title to the Relocation Parcels to OGS no later than thirty (30) days after the effective date of this Consent Decree. The Parties have been advised that OGS is willing to accept title to the Relocation Parcels at that time. The Parties recognize, however, that this Consent Decree is in no way binding upon the OGS to accept conveyance of or to perform any other actions with respect to the Relocation Parcels. The Parties further understand that Plaintiff does not undertake to ensure that OGS will

accept title or perform such other actions, and that any such anticipated actions by OGS form no part of the consideration for execution of this Consent Decree by any Party. Plaintiff's sole undertaking pursuant to this Paragraph is to convey all of its right, title and interest to the Relocation Parcels as described herein, by executing documents of transfer of title, depositing them in escrow, and directing the Escrow Agent to deliver them under the Document Deposit Agreement as provided for herein.

c. Any legal insufficiency of the title to the Relocation Parcels which are conveyed by the Plaintiff pursuant to this Paragraph shall (i) in no way excuse the performance of any obligation of any of the Settling Defendants pursuant to this Consent Decree and (ii) not affect the validity of Settling Defendants' Covenant Not to Sue set forth in Paragraph 98 of this Consent Decree. Any legal insufficiency of the title to the ATP Defendant Parcels conveyed by the ATP Settling Defendants which are conveyed pursuant to this Paragraph shall (i) in no way excuse the performance of any obligation of the RD/RA Settling Defendant to the Plaintiff pursuant to this Consent Decree and (ii) not affect the validity of Settling Defendants' Covenant Not to Sue set forth in Paragraph 98 of this Consent Decree.

121. Receipt of Net Site-Related Income by RD/RA Settling Defendant.

a. Annual Reports. RD/RA Settling Defendant shall provide annual reports to the United States of the cumulative amounts of Site-Related Income and Allowable Costs as defined in sub-paragraph b. of this Paragraph. The first such report shall be submitted no later than April 1 of the calendar year following the year in which the Court enters this Consent Decree, and subsequent reports shall be submitted no later than ninety (90) days after the end of RD/RA Settling Defendant's fiscal year, which is currently December 31.

b. Definitions. For purposes of this Paragraph:

(1) "Site-Related Income" shall mean all gross, pre-tax income that RD/RA Settling Defendant derives from the development, operation, or ownership of the ATP Defendant Parcels, the Relocation Parcels, the Site, or any portion thereof, including but not limited to income derived from renting or selling all or any portion of the Site property and payments from developers.

(2) "Allowable Costs" shall mean all costs RD/RA Settling Defendant incurs after September 29, 1999 (the date of the 1999 ROD) for the design, construction, operation, or maintenance of buildings or other developments at the Site, excluding (i) all costs of this litigation and of negotiating this Consent Decree (including without limitation payments to attorneys, contractors and consultants for attending and preparing for meetings with representatives of the United States or for preparing materials for presentation to representatives of the United States); (ii) all costs of performing any portion of the Work required under this Consent Decree, (iii) depreciation and similar costs that do not involve an actual outlay of funds by RD/RA Settling Defendant, and (iv) labor costs incurred for services performed by employees of RD/RA Settling Defendant. If RD/RA Settling Defendant makes any payment pursuant to sub-paragraph e. of this Paragraph, RD/RA Settling Defendant may include the amount of such payment as Allowable Costs in reports submitted after such payment is made.

c. Certification. RD/RA Settling Defendant hereby certifies that it has not and does not expect to derive any Site-Related Income in excess of Allowable Costs.

d. Content of Reports. The cumulative amounts of Site-Related Income and Allowable Costs reported in each annual report shall be determined consistent with the

definitions in this Paragraph and in accordance with generally accepted accounting principles.

Each annual report submitted pursuant to this Paragraph shall contain the following statement, signed by a responsible corporate official of RD/RA Settling Defendant or by a Certified Public Accountant:

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

Upon request by EPA, RD/RA Settling Defendant shall provide EPA with copies of the documentation upon which any report submitted pursuant to this Paragraph is based.

e. Payment. If any annual report submitted pursuant to this Paragraph reports cumulative Site-Related Income in excess of cumulative Allowable Costs, then RD/RA Settling Defendant shall pay to the United States an amount equal to one hundred percent (100%) of the amount by which the reported cumulative Site-Related Income exceeds the reported Allowable Costs. RD/RA Settling Defendant shall make such payment no later than thirty (30) days after submitting a report pursuant to this Paragraph showing cumulative Site-Related Income in excess of cumulative Allowable Costs (or, with respect to disputed amounts, after the conclusion of any dispute resolution relating thereto), in the manner provided in Paragraph 54, subject to the limitation of the following sub-Paragraph.

f. Limitation. The total amount of payments by RD/RA Settling Defendant to the United States under this Paragraph shall not exceed the amount of \$9,728,000 plus Interest on that amount accruing from October 1, 1999, provided that any amount paid by RD/RA Settling

Defendant pursuant to this Paragraph shall be deducted from the interest-bearing principal as of the date the United States receives the payment.

g. Dispute resolution. In the event of any disagreement regarding any amount due under this Paragraph, either the United States or RD/RA Settling Defendant may invoke the dispute resolution procedures of Paragraph 75, which shall be the sole mechanism for resolving the dispute.

h. Completion of Work. RD/RA Settling Defendant's obligations under this Paragraph shall in no way be affected by any Certification of Completion of Remedial Action, Certification of Completion of Work, or Work Takeover pursuant to Paragraph 95.

XXXII. NATURAL RESOURCE DAMAGES

122. Payment.

a. RD/RA Settling Defendant shall pay four hundred forty-five thousand dollars (\$445,000) to the Trustees. This payment shall be made by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 94V0912, DOJ Case Number 90-11-3-698, and NRDAR Account Number 14X5198. Payment shall be made in accordance with instructions provided to RD/RA Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York following lodging of the Consent Decree. RD/RA Settling Defendant shall make the payment required by this Paragraph no later than thirty (30) days after the effective date of this Consent Decree, except that if at that time the transfer of real property interests pursuant to Paragraph 120 has been prevented from taking place because of an order issued by a court of competent jurisdiction (provided that such order was not sought

by any of the Parties or by any person in a contractual relationship with any of the Parties), then RD/RA Settling Defendant shall make payment no later than thirty (30) days after the documents of transfer of title for the ATP Defendant Parcels and the Relocation Parcels have been released from escrow for delivery to the appropriate recording office to effectuate transfer of title as provided in Paragraph 120. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. RD/RA Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to the following individuals:

Bruce Nessler
DOI Restoration Fund
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop 1313
1849 C Street, N.W.
Washington, DC 20240

Mark Barash
Office of the Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

DARP Program Attorney
Forest Glen Subdivision Superfund Site
NOAA Office of General Counsel
Northeast Region
One Blackburn Drive
Gloucester, MA 01930-2298

The notice shall reference DOJ Case Number 90-11-3-698 and Account Number 14X5198 (NRDAR) and shall state that the payment is for natural resource damages with respect to the

Forest Glen Subdivision Superfund Site, situated in the City of Niagara Falls and Town of Niagara, Niagara County, New York, and is being paid by The Goodyear Tire & Rubber Company.

b. Of the total amount due under this Paragraph, twenty-one thousand dollars (\$21,000) shall be in reimbursement of costs incurred by DOI to assess injury, destruction, or loss of natural resources resulting from release of hazardous substances at or from the Site. The trusteeships of NOAA and DOI for natural resources affected by the Site overlap. Accordingly, the remaining amount due under this Paragraph shall be held by DOI in an interest-bearing account on behalf of DOI and NOAA, shall be administered by the Trustees, and shall only be spent for restoration, including restoration planning, and other allowable expenditures associated with the Site, consistent with the Natural Resource Damages provisions of CERCLA. All expenditures, disbursements or other dispositions of funds in such account (including interest accrued thereon) shall be pursuant to the terms of a Memorandum of Agreement or other agreement to be entered into by the Trustees.

123. RD/RA Settling Defendant's performance of the obligations set forth in Paragraph 122 above, shall constitute full satisfaction of the Trustees' claims against RD/RA Settling Defendant for Natural Resource Damages related to the Site, subject to the reservations in Paragraph 93 above.

XXXIII. RECOVERY OF PROCEEDS BY ATP SETTLING DEFENDANTS

124. If any of the ATP Settling Defendant(s) recovers funds from insurance, indemnification, or contribution actions relating to the Site, such ATP Settling Defendant(s) shall pay to the United States eighty per cent (80%) of the net proceeds of any such recovery. For

purposes of this Paragraph, "net proceeds" means the proceeds from insurance, indemnification, or contribution actions minus reasonable attorney's fees actually paid by such ATP Settling Defendant(s). Payment shall be made within 30 days of the recovery in the manner described in Paragraph 54. At the same time that any ATP Settling Defendant(s) make(s) any payment to the United States under this Paragraph, such ATP Settling Defendant(s) shall provide the United States with written notice of (a) the gross amount of the recovery; (b) the amount of reasonable attorney's fees actually paid by such ATP Settling Defendant(s) and deducted from the gross recovery in order to calculate net proceeds. The United States may request documentation of the attorney's fees from such ATP Settling Defendant(s). The ATP Settling Defendant(s) of whom such request is made shall provide the requested documentation within seven days of the request. The United States may initiate dispute resolution using the procedures of Section XIX (Dispute Resolution) if the United States believes the attorney's fees are not adequately documented or are unreasonable.

125. In addition to the requirements of Paragraph 105, each ATP Settling Defendant agrees that with respect to any suit or claim for insurance or indemnification brought by it for matters related to this Consent Decree or the Site, such ATP Settling Defendant shall notify the United States in writing no later than sixty days prior to the initiation of such suit or claim.

XXXIV. MODIFICATION

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

127. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, RD/RA Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA (after providing the State with a reasonable opportunity to review and comment on the proposed modification) and RD/RA Settling Defendant.

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

XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

129.. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The United States will notify Settling Defendants if it elects to withdraw or withhold its consent to entry. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

agreement is voidable at the sole discretion of the United States at any time more than twelve months after the date of lodging of this Consent Decree, if (1) the transfer of property interests pursuant to Paragraph 120 has not taken place and (2) an order issued by a court of competent jurisdiction is in effect that prevents such transfer from taking place.

XXXVI. SIGNATORIES/SERVICE

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

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

133. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXVII. FINAL JUDGMENT

134. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling

Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

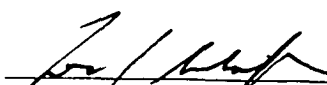
SO ORDERED THIS ____ DAY OF _____, 2000.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Goodyear Tire & Rubber Company, et ano., relating to the Forest Glen Subdivision Superfund Site.

FOR THE UNITED STATES OF AMERICA

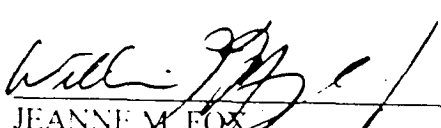
Date: 1/18/01


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

STEVE C. GOLD
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DENISE E. O'DONNELL
United States Attorney

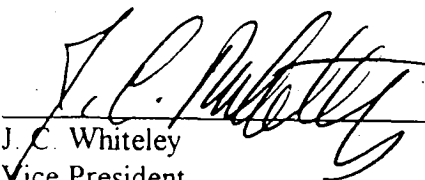
MARY K. ROACH
Assistant United States Attorney
Western District of New York
U.S. Department of Justice
Western District of New York
138 Delaware Ave.
Buffalo, NY 14202

 2/25/02
JEANNE M. FOX
Regional Administrator, Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Goodyear Tire & Rubber Company, et ano., relating to the Forest Glen Subdivision Superfund Site.

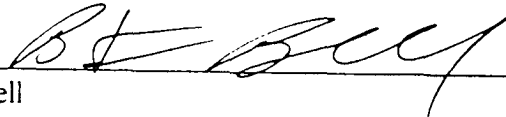
FOR THE GOODYEAR TIRE & RUBBER COMPANY

Date: September 28, 2000


J. C. Whiteley
Vice President

The Goodyear Tire & Rubber Company
1144 East Market Street
Akron, Ohio 44316-0001

Attest:


B. Bell
Assistant Secretary

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

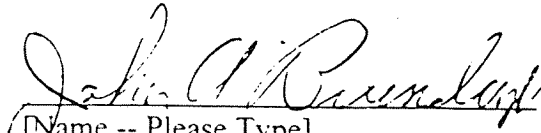
The Goodyear Tire & Rubber Company
1144 East Market Street
Akron, Ohio 44316-0001
Attn: Secretary

Telephone (330) 796-2408

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. The Goodyear Tire & Rubber Company, et ano., relating
to the Forest Glen Subdivision Superfund Site.

FOR NIAGARA FALLS U.S.A. CAMPSITE, INC.

Date: September 27, 2000


[Name -- Please Type]

President

[Title -- Please Type]

1401 College Avenue

Niagara Falls, New York 14305

[Address -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party (please type):

Name: THOMAS J. CASERTA, JR.

Title: Attorney at Law

Address: 800 Main Street - Suite 1A - N.P.O. Box 248, Niagara Falls, New York

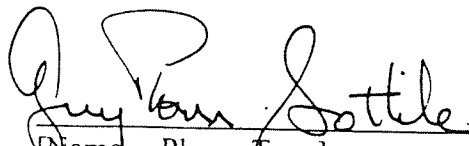
Tel Number: 716 284-7886

14302-0248

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. The Goodyear Tire & Rubber Company, et ano., relating
to the Forest Glen Subdivision Superfund Site.

FOR GUY T. SOTTILE

Date: October 2, 2000


[Name -- Please Type]

[Title -- Please Type]

949 McKinley Avenue
Niagara Falls, New York 14305

[Address -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party (please type):

Name: THOMAS J. CASERTA, JR.

Title: Attorney at Law

Address: 800 Main Street - Suite 1A - M.P.O. Box 248, Niagara Falls, New York

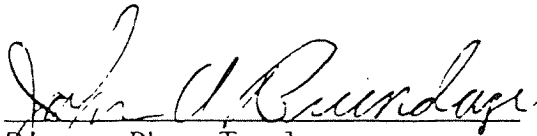
Tel. Number: (716) 284-7886

14302-0248

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. The Goodyear Tire & Rubber Company, et ano., relating
to the Forest Glen Subdivision Superfund Site.

FOR JOHN A. BRUNDAGE

Date: September 27, 2000


[Name -- Please Type]

[Title -- Please Type]

1401 College Avenue

Niagara Falls, New York 14305

[Address -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party (please type):

Name: THOMAS J. CASERTA, JR.

Title: Attorney at Law

Address: 800 Main Street - Suite 1A - M.P.O. Box 248, Niagara Falls, New York

Tel. Number: (716) 254-7888

14302-0248