

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
vs.	)	CAUSE NO. 1:81-cv-448-RLY-KPF
	)	Consolidated
CBS CORPORATION,	)	
Defendant.	)	
_____	)	
THE CITY OF BLOOMINGTON,	)	
INDIANA, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
vs.	)	[Cause No. 1:83-cv-009-RLY-KPF]
	)	
CBS CORPORATION, <i>et al.</i> ,	)	
Defendants.	)	
_____	)	
SARAH ELIZABETH FREY, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
vs.	)	[Cause No. 1:00-cv-660-RLY-KPF]
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY and CBS	)	
CORPORATION,	)	
Defendants.	)	

**ENTRY ON THE UNITED STATES' MOTION TO ENTER THE AGREED
AMENDMENT TO THE CONSENT DECREE PROVIDING FOR REMEDIAL
ACTIONS AT NEAL'S LANDFILL, LEMON LANE LANDFILL AND
BENNETT'S DUMP**

(This Entry applies to Cause Nos. 1:81-cv-448-RLY-KPF and 1:83-cv-9-RLY-KPF)

Before the court is the United States' Motion to Enter the Agreed Amendment to the Consent Decree Providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump (the "Remaining Sites"). The motion formalizes the remediation plans for the three Remaining Sites and comprehensively resolves all outstanding non-remediation issues among the parties regarding all six contaminated sites that have been the subject of this litigation for decades. For the reasons explained below, the court approves, and will issue, the proposed Amendment to the Consent Decree.

I. Background

The factual and procedural background of these cases has been previously explained in decisions of this court and the United States Court of Appeals for the Seventh Circuit. *Frey v. EPA*, 403 F.3d 828 (7th Cir. 2005) ("*Frey II*"); *Frey v. EPA*, 270 F.3d 1129 (7th Cir. 2001) ("*Frey I*"); *Schalk v. Reilly*, 900 F.2d 1091 (7th Cir.), *cert. denied*, 498 U.S. 981 (1990); *City of Bloomington v. Westinghouse Electric Corp.*, 824 F.2d 531 (7th Cir. 1987); *Frey v. EPA*, Cause No. 1:00-cv-660-RLY-KPF, Entry on All Pending Summary Judgment Motions, 2008 WL 696009 (S.D. Ind., March 11, 2008); *Frey v. EPA*, Cause No. 1:00-cv-660-RLY-KPF, Entry on Defendants' Motion to Dismiss, 2006 WL 2849715 (S.D. Ind., Sept. 29, 2006); *United States v. Westinghouse Electric Corp.*, Cause No. IP-83-9-C, Ruling on Motion to Dismiss Third-party Complaint, 1983 WL 160587 (S.D. Ind., June 29, 1983). The court therefore provides only a brief background as foundation for the present motion.

From 1958 to 1972, CBS (formerly Westinghouse Electric Corp.) operated a plant in Bloomington, Indiana, where it manufactured electrical capacitors containing an insulating fluid composed of polychlorinated biphenyls (“PCBs”), which are hazardous substances within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”). CBS disposed of defective capacitors at local dumps and landfills, resulting in the release of PCBs into the environment. In addition, CBS discharged PCBs from its plant through the sewer system to the Winston Thomas Sewage Treatment Plant (“Winston Thomas”).

In the late 1970s, harmful levels of PCBs were detected in streams, sediments, plants, and wildlife around the Bloomington area, which were traced to CBS’ plant and to six sites – Lemon Lane Landfill, Neal’s Landfill, Bennett’s Dump, Anderson Road Landfill, Neal’s Dump (located in Owen County), and Winston Thomas. In 1981 and 1983 respectively, the Plaintiffs – the United States, the State of Indiana, the City of Bloomington, and Monroe County (“Plaintiffs”) – brought the present two lawsuits under CERCLA to compel clean-up of the six sites.

In 1985, after extensive litigation, CBS entered into the Original Consent Decree with the Plaintiffs that required CBS to clean up the six sites. A central feature of the Original Consent Decree required CBS to dig up all soil within the confines of each site, down to bedrock, and burn the excavated material in a high-temperature incinerator to be constructed and operated by CBS.

Despite the approvals of the local, state, and national governments to the remediation scheme, elements of the public opposed the plan for incineration. Opposition continued in the years after issuance of the Original Consent Decree, as the plans for the incinerator and other remediation work were being finalized and interim clean-up and containment steps were being implemented, at significant expense to CBS and the Plaintiffs. This opposition to the incinerator culminated in the early 1990s with the passage of several bills by the Indiana legislature that were designed to delay, and eventually to preclude, construction of the incinerator, in part by preventing state and local issuance of the required construction and operation permits.

In February 1994, the parties filed with the court a set of principles “to guide the process of exploring alternative remedies” to replace those set forth in the Original Consent Decree. These principles, known as the Operating Principles, provided for additional studies of the sites and, if the parties agreed upon an alternative remedy, the parties would present the alternative remedies to the court as an amendment to the Original Consent Decree or other legal instrument.

From 1994 to 1999, with the assistance of the Special Master, the parties agreed upon alternative remedies for three of the six sites covered by the Original Consent Decree – Winston-Thomas, Neal’s Dump, and Anderson Road Landfill. Three Consent Decree Amendments memorializing these agreements were approved by the court in

1997, 1998, and 1999¹, respectively. The parties also made progress towards cleanup of the Remaining Sites – Lemon Lane Landfill, Neal’s Landfill, and Bennett’s Dump – but were unable to reach agreement on final alternative remedies for those sites until they negotiated the proposed Amendment until now.

The parties approached the clean-up of the Remaining Sites in stages or “operable units,” with each unit to be incorporated in a formal Environmental Protection Agency (“EPA”) Record of Decision (“ROD”) and presented to the court as an amendment to the Original Consent Decree. The first stage, or “source control operable unit,” addressed PCB contamination within the “fill” areas of the former landfills. The purpose of this operable unit was to prevent people and wildlife from coming into direct contact with PCB-contaminated waste material and to minimize the migration of PCB-contaminated groundwater from these sites. After soliciting and responding to public comments, EPA selected the alternative source control operable units for the Remaining Sites in three separate ROD amendments issued on October 16, 1998 (Bennett’s Dump), March 29, 1999 (Neal’s Landfill), and May 12, 2000 (Lemon Lane Landfill). CBS completed all three source control operable units by the end of 2000, as required by an order issued by the court on February 1, 1999.

¹ Although the parties have never amended the Original Consent Decree with respect to Anderson Road Landfill, CBS excavated and removed all wastes from the Anderson Road Landfill and stored the waste at an Interim Storage Facility (“ISF”) at Winston-Thomas. CBS closed the ISF in accordance with a court order issued on November 25, 1997.

The second and third operable units, which CBS will implement under the proposed Amendment, will address PCB contamination in groundwater, surface water, and sediment at or related to the Remaining Sites. The purpose of these operable units is to prevent people and wildlife from coming into contact with PCB contamination in streams located near the Remaining Sites. The PCBs have migrated to these streams through conduits in the bedrock beneath the former landfills. Each of the Remaining Sites is located over water-soluble limestone bedrock, which is known as “karst.” The movement of groundwater through cracks and fissures in the bedrock has caused the karst bedrock to dissolve and, over time, resulted in a network of underground streams, caves, and sinkholes. The drainage in such topography is largely subterranean. Thus, after PCBs were dumped at the sites over 30 years ago, some of the PCBs quickly migrated into the fractured bedrock, which contains PCBs to this day. Groundwater flowing through the bedrock transports the PCBs to nearby springs.

From 2006 to 2007, EPA published for public comment three proposed plans to address PCB contamination in groundwater, surface water, and sediment. Risk assessments completed by EPA showed an unacceptably high risk of noncarcinogenic health effects in humans who might consume fish contaminated with PCBs, as well as an unacceptably high risk of reproductive impairment in mink and kingfishers that live along stream corridors. Consequently, EPA proposed additional remedial measures to reduce the mass of PCBs released in nearby springs and decrease the concentration of PCBs in

fish. After receiving public comments, EPA selected the second and third operable units in three separate ROD amendments issued on September 26, 2006 (Bennett's Dump), September 29, 2006 (Lemon Lane Landfill), and September 25, 2007 (Neal's Landfill).

In January 2008, the parties reached a settlement on all remaining issues in these cases and filed with the court their proposed final Amendment to the Consent Decree, which included the remediation work at the three Remaining Sites and comprehensive, non-site-specific terms such as financial responsibility, termination conditions, and reopener provisions. The proposed Consent Decree Amendment then underwent formal EPA administrative notice, comment, and adoption and, in March 2009, the government filed the present motion for approval of the Consent Decree Amendment. In April 2009, CBS filed a memorandum in support of the motion, and the *Frey* Plaintiffs,² while not parties to the remediation cases, filed a statement opposing approval at this time.

II. Summary of Terms

The Amendment provides that all terms of the Original Consent Decree continue in effect unless changed or superseded by the proposed Amendment. Below is a summary of its terms.

² *Frey, et al. v. United States Environmental Protection Agency and CBS*, 1:00-cv-660-RLY-KPF, is a citizens-suit challenge to the excavations (first operable units) at the three Remaining Sites. On July 16, 2008, the court consolidated the *Frey* case with 1:81-cv-448-RLY-KPF for case management purposes only.

The most obvious change made to the Original Consent Decree is that all contaminated material will not be excavated: some will remain at the Lemon Lane Landfill and Neal's Landfill Sites, under landfill caps, with water and sediment treatments added to capture and treat continued PCB run-off.

Remediation for each of the three Remaining Sites is governed by an EPA ROD and its implementing Statement of Work, which specify the water treatments, sediment removals, and continued monitoring and testing to be done at each site (operable units two and three), all of which are incorporated into the Consent Decree Amendment.

The Amendment expands the geographical boundaries of the Remaining Sites to include springs and seeps where CBS will perform remedial measures.

A. Lemon Lane Landfill

Lemon Lane Landfill is a former sanitary landfill located to the northwest of the City of Bloomington. In accordance with the source control ROD Amendment issued by EPA in May of 2000, CBS has already excavated and removed "hot spots" from the former landfill where PCB concentrations in the soil exceeded 50 ppm (parts per million) on average. This work involved the excavation of over 80,087 tons of PCB-contaminated "hot spots" and 4,402 capacitors, which CBS transported to hazardous waste disposal facilities in Michigan and Texas. CBS consolidated 40,000 cubic yards of remaining material under a landfill "cap," which consists of, among other things, six inches of

topsoil, eighteen inches of granular fill, and a geomembrane that is impervious to water. The former landfill now spans nine acres and is surrounded by a fence.

Upon approval of the Consent Decree Amendment, CBS will assume ownership and operation of, and will expand, the water treatment plant that EPA built in 1996 at Illinois Central Spring (“ICS”) (about one-half mile away). EPA estimates that, as expanded, the plant will remove over 99% of the mass of PCBs released into Clear Creek, above the current 70% removed by the existing interim plant. CBS will be required to operate the plant until the groundwater emerging from ICS for a 12-month period has a PCB concentration equal to or less than the PCB effluent limit of 0.3 ppb.

In accordance with the Lemon Lane Landfill ROD Amendment for Operable Units Two and Three, the proposed Amendment requires CBS to extend the effluent line for the treatment plant by approximately 1,000 feet so that the treated water discharges beyond a sinkhole in order to prevent re-entry of treated water into the contaminated bedrock. CBS will also extend the capture system to include three additional small springs and convey this water to the ICS treatment plant for treatment; remove contaminated soils and sediments from certain defined areas within the site to specified concentration standards; and conduct periodic sampling of domestic wells within a 5,000-foot radius of the site and within the hydrogeological zone of influence of the site.

B. Neal’s Landfill

Neal's Landfill is a former landfill that is located approximately five miles west of the City of Bloomington. In accordance with the source control ROD Amendment issued by EPA on March 29, 1999, CBS has already excavated "hot spots" from the former landfill where PCB concentrations exceeded 500 ppb. This work involved the excavation and removal of 41,747 tons of PCB-contaminated material and 4,119 capacitors, which CBS transported to hazardous waste disposal facilities in Michigan and Texas. CBS consolidated the remaining waste under a landfill "cap" which reduced the size of the landfill from 18 to 10 acres.

The proposed Amendment requires CBS to implement the remedial action selected by EPA in the Neal's Landfill ROD Amendment for Operable Units Two and Three. CBS will modify and operate a groundwater collection and treatment system that will capture and treat a large part of the total mass of continuing discharges of PCBs to surface waters from springs and seeps near Neal's Landfill. An existing groundwater collection and treatment system, which CBS constructed in 1989 as part of the interim remedial measures required under the Original Consent Decree, captures PCB-contaminated groundwater released from previously identified springs and seeps and conveys the captured groundwater to a treatment plant that is able to treat up to 500 gallons per minute. Under the proposed Amendment, CBS will be required to modify and expand the collection system to capture discharges of groundwater from previously unidentified seeps. CBS will be obligated to continue operating the treatment plant until groundwater

emerging from these springs and seeps has a PCB concentration equal to or less than the PCB effluent limit of 0.3 ppb for a 12-month period.

The expanded collection system will be able to capture all flow rates up to 450 gallons per minute. Based upon a CBS-developed computer model, EPA determined that capacity should be sufficient to reduce PCB concentrations in fish below the target concentrations determined by EPA to be protective of human health and the environment. However, because the predictive accuracy of CBS' model is uncertain, the proposed Amendment includes a Remedy Confirmation Clause, under which CBS may be required to implement additional remedial measures selected by EPA in the event the PCB concentrations in fish do not decline as predicted by the computer model.

The proposed Amendment also requires CBS to conduct a removal of PCB-contaminated sediment and soil along Conard's Branch stream. The removal must achieve a PCB cleanup standard of 1 ppm on average for PCBs in stream sediment and 5 ppm on average for PCBs in flood plains. In the event the soil or sediment becomes recontaminated with PCBs at a concentration greater than these clean-up criteria, CBS must conduct another removal, unless CBS can demonstrate that the recontamination is not contributing to PCB concentrations in fish greater than the target value set by EPA to protect human health and the environment.

C. Bennett's Dump

Bennett's Dump is located in an abandoned limestone quarry one mile to the northwest of the City of Bloomington, and occupies three acres adjoining a small stream known as "Stout's Creek." As part of the source control ROD Amendment issued by the EPA in October 1998, CBS fully excavated the site, achieving an average residual PCB concentration of 25 ppm, which is EPA's standard cleanup criterion for low-use/industrial property. In total, CBS removed 36,172 tons of material and 1,756 capacitors and covered the site with a twelve-inch soil cover. CBS also excavated 10 cubic yards of sediment from adjoining Stout's Creek.

The Amendment also requires CBS to implement the remedial action selected by the EPA in the Bennett's Dump ROD Amendment for Operable Units Two and Three. The remedial action will take place in two stages. The first stage centers on the installation of a passive drain system to lower the water level in several rain-filled quarry pits around the site. Because these pits currently recharge the groundwater that feeds nearby springs and seeps, lowering the water elevation in the pits will reduce, if not eliminate, on-going releases of PCB-contaminated groundwater from springs and seeps. The second stage of the remedial action includes the design, construction, and operation of a new treatment plan and collection trench. The latter would cut deep enough into the bedrock to intercept any remaining discharges of PCB-contaminated groundwater into Stout's Creek and convey such water to the treatment plant. CBS would be required to operate the treatment plant until the groundwater emerging from these springs and seeps

at the site has a concentration equal to or less than the effluent limit of 0.3 ppb for a twelve-month period.

D. Terms Common to the Remaining Sites

Pursuant to the proposed Amendment, CBS is required to conduct periodic samples of domestic wells within a 5,000-foot radius of the boundaries of, and within the hydrogeological zone of influence of, each site. If PCBs are detected, CBS is required to provide an alternative potable water supply.

CBS is to continue appropriate maintenance of the sites. This maintenance includes periodic inspection of the landfill caps, mowing the grass, the application of herbicides and the removal of deep-rooted plants so as to prevent penetration of the landfill caps, and groundwater monitoring.

E. General Terms

CBS will pay \$6,669,000 to the United States within 30 days of entry of the settlement in reimbursement of a portion of the response costs incurred by the United States in connection with the sites. In addition, CBS shall pay \$1,881,000 to the United States for natural resources damages within 30 days of the entry of settlement. These amounts are in addition to the Original Consent Decree's requirement that CBS pay \$1,000,000 to the United States for reimbursement of expenses it incurred in connection

with Neal's Landfill, Neal's Dump, Bennett's Dump, and Lemon Lane Landfill.

In exchange for CBS' performance of its obligations under the proposed Amendment, the Plaintiffs promise not to assert claims against CBS for specified matters described in the "Covenant Not to Sue" with respect to the Remaining Sites. This covenant, which is based upon the Covenant Not to Sue in the Original Consent Decree, is effective upon entry of the proposed Amendment, but is subject to a reservation of rights that would allow the United States to seek further response actions, or to recover additional costs, from CBS under specified conditions. Under this "reservation of rights" provision, the United States may assert future claims for injunctive relief and cost recovery with respect to releases (or threatened releases) resulting from "previously unknown or unforeseen conditions that arise or are discovered after the entry of this Amendment." After EPA certifies completion of the remedial action with respect to a particular site, the United States may only exercise this clause with respect to conditions that arise or are discovered after EPA issued the certification.

The proposed Amendment retains the language from the Original Consent Decree with respect to CBS' waiver of claims against the United States, except that CBS has agreed to broaden the waiver to include claims under Section 106(b)(2) and 113 of CERCLA. CBS also covenants not to sue the United States or other government Plaintiffs for breach of contract or any other violation of the Original Consent Decree arising prior to the entry of the proposed Amendment. CBS, however, reserves the right

to sue the State of Indiana for breach of the Original Consent Decree in the event that the United States takes any civil or administrative action to seek additional relief under the “reservation of rights” provision or the “Remedy Confirmation Clause.”

III. Standard of Review

Approval of a consent decree is a judicial act that is committed to the sound discretion of the district court. *Madison County Jail Inmates v. Thompson*, 773 F.2d 834, 845 (7th Cir. 1985); *United States v. BP Amoco Oil PLC*, 277 F.3d 1012, 1019 (8th Cir.), *cert. denied*, 537 U.S. 942 (2002). Courts, however, should exercise this discretion in a limited and deferential manner, as the fairness of a settlement is “a matter best left to the negotiation between the parties.” *Mars Steel Corp. v. Continental Illinois Nat’l Bank and Trust Co. of Chicago*, 834 F.2d 677, 681 (7th Cir. 1987).

In general, public policy strongly favors settlements of disputes without litigation. *Donovan v. Robbins*, 752 F.2d 1170, 1177 (7th Cir. 1985); *United States v. BP Oil Exploration & Oil Co.*, 167 F.Supp.2d 1045, 1050 (N.D. Ind. 2001); *United States v. Seymour Recycling Corp.*, 554 F.Supp. 1334, 1337-38 (S.D. Ind. 1982). “[T]he limitations of judicial competence and the desirability of encouraging out-of-court settlements in order to lighten the judicial caseload create a presumption in favor of approving the settlement.” *Donovan*, 752 F.2d at 1177. The public policy favoring settlements “is particularly strong where a consent decree has been negotiated by the

Department of Justice on behalf of a federal agency, like the Environmental Protection Agency, which enjoys substantial expertise in the environmental field.” *BP Exploration*, 167 F.Supp.2d at 1050 (citing *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991)).

In reviewing CERCLA consent decrees, in particular, the court determines “not whether the settlement is one which the court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute.” *United States v. Cannon Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990); *see also United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991). Thus, in evaluating whether to approve a consent decree settlement, the court considers the following four factors: (1) fairness (both procedural and substantive), (2) reasonableness, (3) consistency with applicable law, and (4) the public interest. *In re Tutu Water Wells CERCLA Litig.*, 326 F.3d 201, 207 (3rd Cir. 2003); *BP Amoco Oil PLC*, 277 F.3d at 1018; *United States v. Davis*, 261 F.3d 1, 23-28 (1st Cir. 2001); *BP Exploration*, 167 F.Supp.2d at 1051-54; *Seymour Recycling Corp.*, 554 F.Supp. at 1337-42.

IV. Analysis

A. Fairness

1. Procedural Fairness

Procedural fairness requires that the parties’ settlement negotiations be conducted

in good faith and at arm's length. "A court should 'look to the negotiation process and attempt to gauge its candor, openness and bargaining balance.'" *In re Tutu*, 326 F.3d at 207 (quoting *Cannons Eng'g Corp.*, 899 F.2d 79 at 86); *BP Amoco Oil*, 277 F.3d at 1020; *Davis*, 261 F.3d at 23.

The court finds the proposed Amendment is procedurally fair because it was negotiated at arms-length and under the supervision of the court-appointed Special Master. None of the comments from the public present any facts from which the court could infer otherwise. One commenter did note that the negotiation of the Original Consent Decree was tainted by an alleged conflict of interest because an attorney that represented the EPA in the negotiation of the Original Consent Decree allegedly left EPA after the entry of that settlement to work for a law firm that had represented the City of Bloomington in the same negotiations. As there is no suggestion that the former EPA employee had any role whatsoever in the discussions that led to the proposed Amendment, the court finds the commenter's concerns without merit. (See Docket # 40, United States Response to Public Comments, Government Ex. 2 ("Government Ex. 2") at 72-73).

2. Substantive Fairness

“Substantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally

responsible.’” *BP Amoco Oil*, 277 F.3d at 1020 (quoting *Cannons Eng’g*, 899 F.2d at 87). The court will uphold the terms of the settlement so long as “the measure of comparative fault on which the settlement terms are based is not arbitrary, capricious, and devoid of a rational basis.” *In re Tutu*, 326 F.3d at 207.

The court finds the proposed Consent Decree Amendment is substantively fair because CBS, the legally responsible party, will bear the entire cost of conducting an alternative cleanup that EPA has determined will provide adequate protection of human health and the environment. As previously discussed, the proposed Amendment will require CBS to incur the cost of implementing remedial measures to address PCB contamination in groundwater, surface water, and sediments. EPA has valued the costs of the remedial measures over the next 30 years to be approximately \$15 million. This cost is in addition to the source control work CBS has already implemented, which EPA valued at \$50 million. In addition, the proposed Amendment includes a Remedy Confirmation Clause for Neal’s Landfill, which assures that CBS will perform additional response actions at that site if currently defined remedial measures do not achieve projected reductions in containment levels. Further, the proposed Amendment reserves the right of the United States to seek additional relief if an unknown or unforeseen condition results in the release, or threatened release, of hazardous substances, and such release or threatened release presents an imminent and substantial endangerment to human health or the environment. Finally, CBS will pay \$6,669,000 to reimburse EPA

for past response costs and pay \$1,881,000 to compensate the public for natural resources damages.

C. Reasonableness

In evaluating the reasonableness of the proposed Amendment, courts have identified a number of factors that may be considered, including: (1) the nature and extent of potential hazards, (2) the technical adequacy of the cleanup, (3) the availability of viable alternatives, and (4) the extent to which the consent decree reflects the relative strengths or weaknesses of the government's case against the defendant. *B.P. Exploration*, 167 F.Supp.2d at 1053; *Seymour*, 554 F.Supp. at 1339.

1. Nature and Extent of Potential Hazards

In selecting the original remedy in 1984, EPA concluded that the sites must be fully excavated because it believed the PCB-contaminated waste left on site would be mobilized through "backflooding" – a phenomenon that occurs during large storms when runoff floods conduits in the bedrock, causing groundwater to reverse its ordinary flow. EPA feared that this backflooding would cause PCBs to migrate into the groundwater system. Based upon hydrogeologic information that was generated after the entry of the Original Consent Decree, however, EPA now knows that water material can be safely left on site. Piezometric (water elevation) monitoring shows that the consolidated waste is not coming into contact with groundwater. At Lemon Lane Landfill, the piezometers

indicate that water levels have always been below the base of the waste materials. At Neal's Landfill, only one of five piezometers has shown significant groundwater, but the water in the piezometer has been consistently below the consolidated waste since September 2003, and continues to drop. Based upon these facts, EPA has concluded that backflooding is not a concern at the Remaining Sites.

Another area where EPA's knowledge has improved since the Original Consent Decree concerns the impact of PCBs upon nearby streams. For example, EPA now knows that PCBs are being released into ICS. Moreover, EPA now knows that the removal of the PCBs from the "fill" area of the former landfills, as required by the Original Consent Decree, will not stop the releases of PCBs into the surface streams. Investigations have shown that the releases are fueled by PCBs that have migrated into nearby streams into the bedrock below the sites. Therefore, PCBs would continue to be released into nearby streams even if CBS were to remove all the soil down to the bedrock surface.

EPA represents that it has conducted site-specific risk assessments for each of the Remaining Sites to determine threats to human health and the environment resulting from ongoing releases of PCBs to surface water, and has concluded that the releases pose high risks to people and to wildlife that may come into contact with the contaminated streams. Thus, the purpose of the settlement is to abate ongoing releases of PCBs to surface water by removing PCB-contaminated soils and sediments in and near the affected streams, and

restore and replace natural resources that have been injured as a result of the releases.

These measures – save some sediment removal at Neal’s Landfill – were not included in the Original Consent Decree.

Commenters have objected to several aspects of the proposed Amendment. First, some commenters are troubled by the fact that CBS will not be removing “all material” from the Remaining Sites as required by the Original Consent Decree. These commenters fear that PCBs left on-site at Lemon Lane Landfill and Neal’s Landfill, above the karst geology and without a bottom liner, pose a continuing threat to the environment as the PCBs emerge from streams, springs, and seeps.

The commenters concerns misapprehend the purpose of a remedial action under CERCLA. The National Contingency Plan (“NCP”) does not require complete removal of all hazardous substances from the environment regardless of risk, nor does it require EPA to include within its risk assessments the effects of pollutants released from other sources in the region. Rather, the NCP provides that remedial action should “adequately protect human health and the environment . . . from unacceptable risks posed by hazardous substances, pollutants, or contaminants present at the site.” 40 C.F.R. § 300.430(e)(9)(iii)(A).

Here, there is no evidence that PCBs at the Remaining Sites pose risks to persons or wildlife at any location other than along the stream corridors where PCBs continue to

be released. In fact, the Agency for Toxic Substances and Disease Registry conducted a public health assessment in connection with the PCB sites at issue in the 1990s and concluded that “the general populations of Bloomington and surrounding areas are either not being exposed to PCBs and other site-related contaminants or are not being exposed at levels that would be expected to produce human body burden sufficient to cause adverse health effects.” (Government Ex. 2 at 36-37).

Second, the commenters also note concern with other contaminants from the Remaining Sites, including dioxin and furan (which were commingled with the PCB waste), as threats to human health and the environment. The United States’ Response to Public Comment No. 8 addresses this concern, and reflects that sampling data from the Remaining Sites over the past 20 years show that dioxin and furan contamination is not driving the risk to human health and the environment. The most recent sampling conducted by the EPA’s contractor, after PCBs were removed from the Remaining Sites (but before landfill caps were installed as part of the source control operable units), confirmed that dioxin-furan contamination was at least an order of magnitude lower than the cleanup level set by the EPA to protect human health and the environment from dioxin and furans. (*Id.* at 16-19). Thus, the remedial actions performed by CBS not only abated risks posed by PCB contamination at the sites, but abated risks posed by dioxin and furan at those sites.

Finally, the plaintiffs in the *Frey* litigation assert in their public comments³ that the EPA's procedures for evaluating site risks were defective. They argue, as they do in *Frey*, that the EPA failed to conduct a remedial investigation and feasibility study ("RI/FS"), or the functional equivalent thereof, in contravention of the NCP.

The court addressed this argument in its Entry on Pending Summary Judgment Motions in the *Frey* case, and found that EPA was not literally required to comply with the RI/FS requirement set forth in the NCP at 40 C.F.R. §§ 300.430(d), (e). (Docket # 53, Entry on Pending Summary Judgment Motions at 14). The court explained that the EPA must demonstrate only that the primary purpose of the RI/FS was accomplished at some point prior to, or as part of, the ROD Amendment process. (*Id.* at 16). As noted in the United States' Response to Public Comments, the administrative record for each of the

³ The *Frey* plaintiffs also filed a Statement and Advice to the Court (Docket # 48), in which they ask the court to decide the merits of their citizens-suit challenge prior to deciding the present motion to enter the agreed Amendment. Their primary concern is the risk of inconsistent remedies. In other words, if the court were to award them the relief the *Frey* plaintiffs seek, the remedy the *Frey* plaintiffs are awarded may conflict with the remedy provided for in the Amendment and approved by the court. CERCLA contemplates, however, that citizens-suit challenges commence only after completion of the remedial action. See 42 U.S.C. § 9659(a); *Schalk v. Reilly*, 900 F.2d 1091, 1095 (7th Cir. 1990) ("The obvious meaning of this statute [42 U.S.C. § 9659] is that when a remedy has been selected, no challenge to the cleanup may occur prior to completion of the remedy."). Thus, while this case is the unusual case, the court finds the *Frey* plaintiffs' concerns insufficient to delay the court's approval of the Amendment given the parties' present circumstances. Indeed, the governmental Plaintiffs' shared funding of the water-treatment systems, particularly ICC, is likely exhausted. (See Docket # 49, Motion for Expedited Status Conference, ¶ 7 ("It is anticipated that the monies previously contributed by the parties to fund [ICC] will be exhausted before the end of May 2009.")). Upon the court's approval of the Amendment, however, CBS will assume full operation and maintenance of the sites and will assume the funding of the cleanup. The court finds these circumstances outweigh the *Frey* plaintiffs' concerns.

Remaining Sites contains a number of documents that, when taken together, are the functional equivalent of an RI/FS. (*See id.* at 3-5 (documents for each Remaining Site listed in a table)). Specifically, these documents reflect that the EPA completed the functional equivalent of an RI for each site by: (1) characterizing the nature and extent of the contamination, (2) identifying application and relevant and appropriate requirements, and (3) preparing a risk assessment. The EPA also completed the functional equivalent of a FS by explaining how it identified various remedial alternatives, and then selecting a response action based upon an analysis of the nine evaluation criteria set forth in the NCP. (*Id.* at 3).

Moreover, in May 2000, the EPA Ombudsman Office examined this issue, and determined that the EPA and its site manager were “doing a commendable job consistent with the [NCP],” and that “RI/FS equivalent analyses have been performed prior to the remediation presently occurring at applicable [operable units].” (*Id.* at 6).

For the reasons set forth above, the court finds the proposed Amendment adequately addresses the nature and extent of potential hazards posed by PCBs.

2. Technical Adequacy of the Proposed Amendment and the Availability of Remedial Alternatives

In selecting the original remedy for the site in 1984, the EPA determined that the unique geology of the sites prevented consideration of traditional methods of remediating

groundwater contamination, such as pumping contaminated groundwater from the ground and cleaning the water at a water treatment plant. As a result, in selecting alternative remedial measures, the EPA decided to concentrate on preventing groundwater contamination from reaching human or other biological receptors by capturing it when it emerges to the surface and routing it to water treatment plants.

a. Commenter's Objections

Commenters posed a number of objections relating to the technical adequacy of the proposed remedy. Three of the objections are addressed below.

First, commenters object to the Amendment on grounds that it fails to address the risks of airborne PCB releases from uncovered streams, seeps, springs, water treatment facilities, and airborne releases through landfill caps. In response to concerns about air emissions from the Remaining Sites, the EPA evaluated potential risks from such emissions and concluded that the risks are well within acceptable ranges. Air sampling at the water treatment plant at ICC showed an average PCB concentration ranging from 0.011 to 0.185 micrograms per cubic meter of air. As discussed in the United States' Response to Comments, the EPA reviewed this data and concluded that nearby residents or persons visiting the facility would have no significant cancer or non-cancer risk as a result of exposure to these observed concentrations. (*Id.* at 27-28). Air samples from Lemon Lane Landfill and Neal's Landfill showed concentrations that were lower than

those detected at the water treatment plant at ICC – the equivalent of .03 micrograms per cubic meter of air. (*Id.* at 26-28). Finally, there is no risk of PCB air emissions from Bennett’s Dump because CBS did not consolidate waste material at that site, and the springs at the site contain much smaller quantities and lower concentrations of PCBs than at the other Remaining Sites. (*Id.* at 28).

Second, the commenters note concern with airborne PCBs and their ability to be absorbed by plants that later enter the food chain. In the United States’ Response to Comment 16, the United States reported that Dr. James Chapman (“Dr. Chapman”), an ecologist, used data collected from air monitors around the perimeter of ICC from April 7 to 19, 2002, to calculate the accumulation of airborne PCBs by leafy vegetables and legumes under worst-case scenarios where the plants are assumed to grow immediately adjacent to the treatment plant. (*Id.* at 29-30). Even under these assumptions, Dr. Chapman determined that the cancer risk from eating vegetables from a garden adjacent to the ICS property was 2 individuals in 100,000. (*Id.*). Dr. Chapman concluded that these cancer risk estimates are well within EPA’s acceptable risk management range of 1 individual in 10,000 to 1 individual in a million. (*Id.*). Dr. Chapman also calculated the non-cancer risks to people, including children, from eating vegetables from a garden adjacent to the ICS property and concluded that non-cancer risks were not significant. (*Id.*).

Third, the commenters note concern that contamination in the groundwater might

be released from springs or seeps that are presently unknown or undiscovered. In the United States' Response to Comment 13, the United States represents that the EPA and CBS have studied and catalogued the hydrogeology and geology of the Remaining Sites sufficient to support the EPA's remedial actions. (*Id.* at 22). As discussed in the United States' Response to Comment No. 13, the EPA has essentially ruled out the possibility that contamination in the groundwater is migrating to springs and seeps other than those subject to the proposed Amendment. (*Id.* at 22-24). Further, there is no evidence to support the commenters' theory that the groundwater system is changing and that new springs or seeps might appear in the future. (*Id.* at 46-48, 75). While it is possible that there have been local changes in the discharge point of the groundwater system at Neal's Landfill, the proposed Amendment requires CBS to build a new collection system several hundred feet downstream from the springs and seeps, thereby expanding the collection zone to accommodate any minor changes in the discharge point in the groundwater system.

b. Commenters' Proposed Remedy

Some commenters have suggested that the EPA should require excavation of the bedrock to remove a portion of the mass of PCBs that will otherwise remain in the bedrock for an indeterminate time. The EPA has determined, however, that the PCBs in the bedrock do not pose a threat to human health or the environment unless and until they migrate to nearby streams. Thus, from the standpoint of protecting human health and the

environment, the excavation of the bedrock does not offer any significant advantages over the containment remedies selected by the EPA. Further, excavation alone would not fully protect human health or the environment. Despite years of investigation, the main conduits in the bedrock through which PCBs migrate have not been discovered. Even if discovered, it is highly unlikely that PCBs could be effectively cleaned from every crack and fissure where they may have come to reside over the past 50 years since they were dumped at the Remaining Sites. Thus, excavation of the bedrock would not obviate the need for water treatment plants.

Moreover, excavation of the bedrock poses technical challenges, in that high concentrations of PCBs are located beneath a railroad track and cemetery. (*Id.* at 68). Excavation beneath such obstacles would be difficult and would almost certainly arouse objections from some members of the public. Further, even if these obstacles could be overcome, CBS would need to jackhammer through more than sixty feet of bedrock to reach the area where PCBs are known to reside. (*Id.* at 68). Such work would generate significant amounts of dust and could create a new risk to local residents from volatilizing PCBs.

Finally, excavation of the bedrock would be enormously expensive. In selecting the source control operable units, the EPA estimated that the cost of fully excavating Lemon Lane Landfill and Neal's Landfill would be \$54.35 million and \$80.24 million respectively (the cost does not include excavating into the bedrock). (*Id.* at 62-63). The

EPA estimates that it would cost nearly \$270 million to excavate the bedrock below the Remaining Sites. (*Id.* at 62-64) (estimating \$108 million to excavate the bedrock at Lemon Lane Landfill and \$160 million to do the same at Neal’s Landfill). While even such extremely high costs do not automatically disqualify a remedial action, cost is certainly an appropriate balancing factor (40 C.F.R. § 300.430(e)(7)(iii)) and can weigh heavily where, as here, the high cost alternative’s comparative benefits and feasibility are doubtful at best.

For the reasons set forth above, the court finds the proposed Amendment is technically adequate to accomplish the goal of cleaning the environment in and around the Remaining Sites. The court further finds that EPA’s containment remedy is superior to the commenters’ proposed remedial alternative.

3. The Proposed Amendment Reflects the Strengths and Weaknesses of the Government Plaintiffs’ Case Against CBS

The proposed Amendment reflects the strengths and weaknesses of the parties’ positions in light of the terms of the Original Consent Decree and the circumstances which prevented implementation of that agreement. The Original Consent Decree provided CBS with a “Covenant Not to Sue” protecting it from environmental claims relating to the sites, subject to certain specific reservation of rights. This protection extended to all of the types of claims that are now the subject of this settlement – namely, claims for additional response actions, the reimbursement of response costs, and natural

resource damages. Thus, absent a settlement, Plaintiffs' ability to pursue these claims would be extraordinarily difficult.

Under its reservations to the "Covenant Not to Sue" in the Original Consent Decree, the United States has the right to assert claims against CBS for injunctive relief or response costs (but not for natural resource damages) where such claims arise from an unknown or unforeseen condition at the site. To rely on this reservation, the United States would have to demonstrate that the ongoing releases from seeps and springs at the Remaining Sites, or their hydrogeologic connections to the contaminated groundwater at these sites, were an unknown or unforeseen condition in 1985. In response to such arguments, CBS would point to certain documents and information in the public record at the time, which CBS would argue demonstrate that these conditions were foreseen or even actually known at the time the "Covenant Not to Sue" was given to CBS in the Original Consent Decree.

In the alternative, the United States could assert all of its claims against CBS, including its claim for natural resource damages, if it could successfully satisfy the requirements for voiding the "Covenant Not to Sue" with respect to the Remaining Sites. To prevail, the United States would have to show that CBS failed to perform its obligations under the Original Consent Decree. CBS, of course, would argue to the contrary.

These are just a few examples of the complexities raised by this litigation. The court finds that the Plaintiffs, and the public, are far better served by the proposed Amendment. By requiring CBS to perform the amended remedies selected by EPA for the Remaining Sites, the proposed Amendment fully satisfies Plaintiffs' remedial objectives, while compromising a portion of Plaintiffs' claim for recovery of response costs, as well as compromising various counterclaims that could have been asserted by CBS. In light of the complexities and risks associated with litigation, not to mention the substantial delay in the cleanup of the site if litigation were to continue, the proposed compromise of response costs and natural resource damages is reasonable.

D. The Proposed Amendment is Consistent with Applicable Law and the Public Interest

The purpose of CERCLA is (1) to "abate and control the vast problems associated with abandoned and inactive hazardous waste disposal sites," and (2) to "shift the costs of cleanup to the parties responsible for the contamination." *Metro. Water Reclamation Dist. v. North Am. Galvanizing & Coatings, Inc.*, 473 F.3d 824, 827 (7th Cir. 2007). The court finds the proposed Amendment will advance both goals. It provides for CBS to assume responsibility for the Remaining Sites, and for CBS to reimburse the United States for a significant portion of EPA's past response costs. In addition, the proposed Amendment will generate funding for restoring and replacing natural resource damages by PCBs, as well as providing for CBS to reimburse the United States for a significant

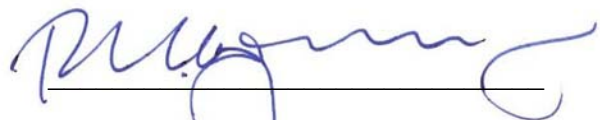
portion of the Department of Interior's assessment costs.

The proposed Amendment is also in the public interest. The implementation of the proposed Amendment will protect human health and the environment from released hazardous substances without further expenditure of limited Superfund resources, while at the same time reimbursing a portion of past Superfund expenditures which can be used to fund cleanups at other sites. The settlement will also allow implementation of the final remedial actions to begin immediately, whereas litigation would result in delay for an unknown, but lengthy, period of time and would impose significant burdens on the resources of all parties and the court.

V. Conclusion

The court finds that the parties' proposed Amendment to the Consent Decree is procedurally and substantively fair, its terms are reasonable and adequate, and it is consistent with the goals and purposes of CERCLA. The United States' Motion to Enter the Agreed Amendment to the Consent Decree Providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump is therefore **GRANTED** (Docket # 40). The proposed Amendment will be entered and effective as of the date of this Order.

SO ORDERED this 23rd day of July 2009.



RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Electronic Copies to:

David R. Berz
WEIL GOTSHAL & MANGES LLP
david.hird@weil.com

Daniel R. Dertke
UNITED STATES DEPARTMENT OF JUSTICE
daniel.dertke@usdoj.gov

Geoffrey Mitchell Grodner
MALLOR CLENDENING GRODNER & BOHRER
gmgradne@mcgb.com

David B. Hird
WEIL GOTSHAL & MANGES LLP
david.hird@weil.com

Rudolph William Savich
rsavich@aol.com

William Kent Steger
MONROE COUNTY ATTORNEY
wsteger@co.monroe.in.us

Valerie Marie Tachtiris
INDIANA OFFICE OF THE ATTORNEY GENERAL
vtachtiris@atg.state.in.us

Brent D. Taylor
BAKER & DANIELS
bdtaylor@bakerd.com

Joseph William Chinn Warren
UNITED STATES DEPARTMENT OF JUSTICE
joseph.warren@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CBS CORPORATION, f/k/a, VIACOM INC.,	)	
f/k/a CBS CORPORATION, f/k/a	)	
WESTINGHOUSE ELECTRIC CORPORATION,	)	
et al.,	)	
	)	
Defendant.	)	Cause
	)	No. 1:81-cv-0448-RLY-KPF
	)	
THE CITY OF BLOOMINGTON, INDIANA, et al.,	)	JUDGE RICHARD L.
	)	YOUNG
	)	
	)	
Plaintiffs,	)	
	)	
	)	MAGISTRATE JUDGE
	)	KENNARD P. FOSTER
v.	)	
	)	
CBS CORPORATION, f/k/a, VIACOM INC.,	)	
f/k/a CBS CORPORATION, f/k/a	)	
WESTINGHOUSE ELECTRIC CORPORATION,	)	
et al.,	)	
	)	
Defendant.	)	
	)	

AGREED AMENDMENT TO THE CONSENT DECREE PROVIDING
FOR REMEDIAL ACTIONS AT NEAL'S LANDFILL
LEMON LANE LANDFILL, AND BENNETT'S DUMP
AND ADDRESSING GENERAL MATTERS

TABLE OF CONTENTS

I.	Definitions	4
II.	Remedial Provisions of Original Consent Decree Superseded by this Amendment	7
A.	Design, Construction and Operation of Incinerator	8
B.	Excavation and Transportation	8
C.	Sediment Removal	8
D.	Closure	9
E.	Post-Closure	9
F.	Interim Measures	9
G.	Interim Storage	10
H.	Groundwater Monitoring Protocol	10
I.	Reporting	10
J.	Parties to be Notified	11
K.	Insurance	14
L.	CBS's Right to Seek Modification of the Remedy	14
M.	Document Retention	14
N.	Original Consent Decree as Previously Amended Remains in Full Force and Effect	16
III.	Geographic Boundaries of Consent Decree Sites	17
IV.	Alternative Remedies for Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump	18
A.	Bennett's Dump	18
1.	Source Control Operable Unit	18

2.	Groundwater, Surface Water and Sediment Operable Unit	18
3.	Completion	19
B.	Lemon Lane Landfill	19
1.	Source Control Operable Unit	19
2.	Groundwater, Surface Water and Sediment Operable Unit	20
3.	Completion	23
C.	Neal’s Landfill	23
1.	Source Control Operable Unit	23
2.	Groundwater, Surface Water and Sediment Operable Unit	24
3.	Completion	25
V.	Purpose of the Consent Decree and Obligations of the Governmental Parties	25
A.	Purpose	25
B.	Governmental Parties’ Obligations	25
C.	City and County Obligations	26
VI.	Payment for Response Costs	26
A.	Additional Payment by CBS	26
B.	Payment Mechanics	26
VII.	Payment for Natural Resource Damages	27
A.	Natural Resource Damages Payment	27
B.	Allocation of Payment	28

VIII.	Covenants Not to Sue	29
A.	Anderson Road Landfill, Winston-Thomas Facility, Neal’s Dump and Other Areas	29
B.	Neal’s Landfill, Lemon Lane Landfill and Bennett’s Dump	29
C.	Covenant Not to Sue for Natural Resource Damages	33
D.	Covenant Not to Sue by CBS	33
E.	Waiver of Claims Against Hazardous Substances Response Trust Fund and the United States	34
IX.	Remedy Confirmation Clause for Neal’s Landfill	35
A.	General	35
B.	Statistical Hypothesis Testing	39
C.	Termination of CBS’s Obligation To Modify Remedy Under the RCC	40
D.	Evaluation of Achievement of Target Concentrations in Fish	42
1.	First Five-Year Review	42
2.	Second Five-Year Review	47
3.	Third Five-Year Review (and Beyond)	50
E.	Standard for Continuing Enhanced Monitoring	51
F.	CBS’s Right to Challenge EPA’s Determination To Modify the Remedy	51
G.	Modification of the Remedy under the RCC	53
H.	Sampling Plan	56

X.	Rights and Responsibilities under Original Consent Decree	58
XI.	Termination	58
XII.	Lodging and Opportunity for Public Comment	58
	A. Lodging	58
	B. Agreement Voidable if Not Entered by the Court	58
XIII.	Effective Date of this Amendment to the Consent Decree	59
XIV.	Final Judgment	59

APPENDICES

A	Geographic boundaries for Bennett’s Dump Site
B	Geographic boundaries for Lemon Lane Landfill Site
C	Geographic boundaries for Neal’s Landfill Site
D	Record of Decision Amendment for Operable Units 2 and 3 at Bennett’s Dump
E	Bennett’s Dump Statement of Work for Operable Units 2 and 3
F	Record of Decision Amendment for Operable Units 2 and 3 at Lemon Lane Landfill
G	Lemon Lane Landfill Statement of Work for Operable Units 2 and 3
H	Record of Decision Amendment for Operable Units 2 and 3 at Neal’s Landfill
I	Neal’s Landfill Statement of Work for Operable Units 2 and 3

WHEREAS, this Court entered a consent decree in this civil action on August 22, 1985 (the “Original Consent Decree”) resolving certain matters at issue in this litigation between the plaintiffs, the United States of America (the “United States”), the State of Indiana and the Indiana Department of Environmental Management (both entities referred to herein collectively as the “State”), Monroe County, Indiana (the “County”), the City of Bloomington, Indiana and the Utilities Service Board of Bloomington, Indiana (previous two entities referred to herein collectively as the “City”), and the remaining defendant, CBS Corporation, formerly known as Westinghouse Electric Corporation and Viacom Inc. (hereinafter referred to as “CBS”), all of whom shall be referred to herein collectively as the “Parties;”

WHEREAS, the Original Consent Decree required, among other things, that CBS design, build and operate an incinerator to incinerate Polychlorinated Biphenyls (“PCBs”) and other materials that CBS excavated and removed from six sites in and around Bloomington, Indiana – namely, Winston Thomas Sewage Treatment Plant (“Winston-Thomas Facility”), Anderson Road Landfill, Neal’s Dump, Neal’s Landfill, Bennett’s Dump and Lemon Lane Landfill;

WHEREAS, on February 8, 1994, the Parties submitted a status report informing the Court that they had decided to explore whether alternative clean-up measures should be used to replace the incineration remedy set forth in the Original Consent Decree. Along with the status report, the Parties submitted a statement of agreed-upon operating principles that would guide the Parties’ consideration of alternatives;

WHEREAS, on August 18, 1997, the Court entered the First Amendment to the Consent Decree, providing for implementation of alternative clean-up measures for the

sludge drying beds and sludge digesters at Winston-Thomas Facility – one of the sites addressed in the Original Consent Decree;

WHEREAS, on November 25, 1997, the Court ordered the Parties to proceed with an alternative method of disposing of wastes from the interim storage facility (required under Section XII of the Original Consent Decree), which held materials that had been excavated in accordance with the terms of the Original Consent Decree from the Anderson Road Landfill, a second site addressed in the Original Consent Decree, and certain streambeds, also addressed in the Original Consent Decree;

WHEREAS, on June 8, 1998, the Court approved a Stipulation Concerning Removal Measures for Selected Portions of the Winston-Thomas Facility, which provided for implementation of agreed upon alternative clean-up measures for the tertiary lagoon, trickling filter, and abandoned lagoons at the Winston-Thomas Facility;

WHEREAS, on February 8, 1999, the Court approved an Amendment to the Consent Decree for Neal’s Dump Remedial Action, which provided for implementation of agreed upon alternative clean-up measures at Neal’s Dump – a third site addressed in the Original Consent Decree;

WHEREAS, on January 20, 1999, Magistrate Judge Kennard Foster, as Special Master appointed by the Court, issued his Report and Recommendation (hereinafter “Report”). In this Report, the Special Master, *inter alia*, reported that the Parties had reached consensus with respect to alternative excavation components of the remedies at the three other sites addressed in the Original Consent Decree –Neal’s Landfill, Lemon Lane Landfill, and Bennett’s Dump (the “Remaining Sites”) – but that they continued to have disputes over other issues, including the United States’ demands for water treatment,

sediment removal, cost recovery, and natural resource damages, and CBS's defenses to those claims. The Special Master further reported that the Parties agreed to continue to negotiate the disputed issues;

WHEREAS, on February 1, 1999, the Court issued an Order approving the Special Master's Report and Recommendation and directed the Parties to proceed with selection and implementation of alternative excavation components of remedies at the Remaining Sites addressed in the original Consent Decree. The Court further ordered the Parties to engage in settlement negotiations regarding water treatment, sediment removal, cost recovery, and natural resource damages;

WHEREAS, CBS has now completed the alternative excavation components of the remedies at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump in accordance with Record of Decision ("ROD") Amendments issued by the U.S. Environmental Protection Agency ("U.S. EPA") on October 16, 1998, March 29, 1999, and May 12, 2000 after U.S. EPA received and responded to public comments regarding the alternative excavation components of the remedies;

WHEREAS, the Parties have completed their settlement discussions regarding water treatment, sediment removal, cost recovery, and natural resource damages and now have agreed to the terms set forth in this Amendment to the Consent Decree;

WHEREAS, with respect to the remedial actions set forth in this Amendment to the Consent Decree, U.S. EPA has (1) published for public comment proposed plans explaining the alternative remedial actions to be performed at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump, (2) responded to public comments received during each of the applicable public comment periods, and (3) published ROD Amendments

setting forth the remedial actions to be performed at the Remaining Sites, and

WHEREAS, the Parties intend for all provisions of the Original Consent Decree, as previously amended, to remain in full force and effect, except as is specifically modified or amended by this Consent Decree Amendment;

NOW THEREFORE, with the consent of the Parties, it is hereby Ordered, Adjudged, and Decreed that the original Consent Decree be amended as follows:

I. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Amendment to the Consent Decree which are defined in the Comprehensive Environmental Response, Compensation and Liability and Act (“CERCLA”), 42 U.S.C. § 101 *et seq.*, in regulations promulgated under CERCLA, or in the Original Consent Decree, shall have the meaning assigned to them in CERCLA, in such regulations or in the Original Consent Decree.

Whenever terms listed below are used in this Amendment to the Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

A. “Amendment to the Consent Decree” or “Amendment” shall mean this Amendment, all Appendices attached hereto, all plans reviewed and approved by U.S. EPA under this Amendment and its Appendices, and all plans incorporated by reference into the Amendment or its Appendices. In the event of conflict between this Amendment and any Appendix, this Amendment shall control.

B. “Bloomington Special Account” shall mean the special account established for the sites covered by this Amendment to the Consent Decree pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3) and this Consent Decree.

C. “Consent Decree” shall mean the Original Consent Decree entered by the Court on August 22, 1985 as modified by this Amendment and by the orders of the Court issued on April 18, 1996 (modifying decree with respect to Bennett’s Dump), August 18, 1997 (modifying decree with respect to the Winston-Thomas Facility), November 25, 1997 (modifying decree with regard to the interim storage facility), June 8, 1998 (modifying the decree with respect to the Winston-Thomas Facility) and February 9, 1999 (modifying the decree with respect to Neal’s Dump).

D. “Effective Date” shall mean the date upon which this Amendment to the Consent Decree is entered as an order of this Court, as set forth in Paragraph XIV of this Amendment to the Consent Decree.

E. “Governmental Parties” shall mean the United States of America (the “United States”), the State of Indiana and the Indiana Department of Environmental Management (both entities referred to herein collectively as the “State”), Monroe County, Indiana (the “County”), and the City of Bloomington, Indiana and the Utilities Service Board of Bloomington, Indiana (previous two entities referred to herein collectively as the “City”).

F. “ICS Treatment Plant” shall mean the spring water treatment facility constructed by U.S. EPA at Illinois Central Spring as a removal action in connection with Lemon Lane Landfill.

G. “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.

H. “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 Plans approved or developed by U.S. EPA pursuant to the attached Statements of Work (“SOWs”).

I. “Original Consent Decree” shall mean the text of the Consent Decree as entered by this Court on August 22, 1985, prior to any amendment thereto. To the extent that any provision of the Original Consent Decree refers to Westinghouse or Westinghouse Electric Corporation, it is understood that the Party referred to is now known as CBS Corporation.

J. “Paragraph” shall mean, depending on the context, the individual paragraphs of this Amendment to the Consent Decree referred to by the appropriate designation in this Amendment to the Consent Decree (e.g. “Paragraph IV.A of this Amendment to the Consent Decree”), or to an individual paragraph of the Original Consent Decree identified by an Arabic numeral (e.g., “Paragraph 82 of the Original Consent Decree”).

K. “Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the attached ROD Amendments and SOWs.

L. “Record of Decision Amendments” or “ROD Amendments” shall mean the U.S. EPA Record of Decision Amendments setting forth the Remedial Actions to address Source Control and contamination of groundwater, surface water and sediment at Neal’s Landfill (issued on September 25, 2007), Lemon Lane Landfill (issued on September 29, 2006), and Bennett’s Dump (issued on September 26, 2006) , which are attached as Appendices hereto.

M. “Remaining Sites” shall mean Bennett’s Dump, Lemon Lane Landfill, and

Neal's Landfill.

N. "Remedial Actions" shall mean those activities, except for Operation and Maintenance, to be undertaken and previously undertaken by the CBS at each of the Remaining Sites – Bennett's Dump, Lemon Lane Landfill, and Neal's Landfill – pursuant to the Consent Decree.

O. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred or will incur in the future at or in connection with Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump, plus interest on all such costs which has accrued or may accrue in the future.

P. "Section" shall mean, depending on the context, the Sections of this Amendment to the Consent Decree or the Sections of the Original Consent Decree, designated by the appropriate Roman numeral.

Q. "Statement of Work" or "SOW" shall mean any Statement of Work for implementation of the Remedial Designs, Remedial Actions, and Operation and Maintenance at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump, and any modifications to such Statements of Work.

R. "Work" shall mean all activities CBS is required to perform under this Amendment to the Consent Decree.

II. REMEDIAL PROVISIONS OF ORIGINAL CONSENT DECREE SUPERSEDED BY THIS AMENDMENT

Notwithstanding any provisions contained in the Original Consent Decree, CBS shall perform the alternative response actions set forth below in Section IV of this Amendment to the Consent Decree with respect to Neal's Landfill, Lemon Lane Landfill,

and Bennett's Dump. As a result of this change in response actions, CBS will no longer be required or allowed to perform the response actions identified below in Paragraphs II.A through II.M, except as specifically stated in this Amendment to the Consent Decree:

A. Design, Construction and Operation of Incinerator: CBS shall not be required to perform those duties generally described in Section IV (Purpose and Summary of Activities) of the Original Consent Decree regarding the design, construction, and operation of an incinerator or ash landfill, and shall not be required to perform those specific duties relating to incineration and the disposal of incinerator ash set forth in the following Sections of the Original Consent Decree:

- Section V (Incinerator Obligations);
- Section VI (Solid Waste Supplied by the City and County);
- Section VII (Ash Disposal);
- Section XXII (Permits and Construction Schedule).

B. Excavation and Transportation: CBS shall not be required to perform any further duties described in Section VIII (Removal Measures) of the Original Consent Decree relating to the excavation and transportation for incineration of materials within the horizontal and vertical dimensions of Bennett's Dump, Lemon Lane Landfill, and Neal's Landfill, and from buffer zones around them.

C. Sediment Removal: CBS has satisfied the requirements for sediment removal specified in Paragraph 51(a)-(f) of Section VIII (Removal Measures) of the Original Consent Decree. CBS shall not be required to perform those post-closure sediment removal activities set forth in Paragraph 51(g) of the Original Consent Decree.

D. Closure: CBS shall not be required to perform those closure duties set forth in Section IX (Closure) of the Original Consent Decree with respect to Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump. CBS has previously closed the Winston-Thomas Facility and Neal's Dump sites in accordance with the requirements of the Consent Decree. CBS has no closure obligations with respect to Anderson Road Landfill under the Consent Decree.

E. Post-Closure: CBS shall not be required to perform those post-closure duties set forth in Section X (Post-Closure) of the Original Consent Decree with respect to Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump. CBS's post-closure duties with respect to the Winston-Thomas Facility and Neal's Dump are set forth in the prior amendments to the Consent Decree approved by the Court on August 18, 1997 and February 8, 1999, respectively. CBS has no post-closure obligations with respect to Anderson Road Landfill under the Consent Decree.

F. Interim Measures: CBS has fully complied with the requirements of Section XI (Interim Measures) of the Original Consent Decree. As of the Effective Date, Paragraph 59(a) of the Original Consent Decree shall no longer apply with respect to the continued operation of the interim water treatment facility at Neal's Landfill, but CBS shall operate that facility in accordance with the terms of the Neal's Landfill SOW for Operable Units 2 and 3 attached at Appendix I and applicable provisions of this Amendment to the Consent Decree. Consistent with Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no National Pollutant Discharge Elimination System ("NPDES") permit or other permit from any governmental authority shall be required for the operation of that facility as of the Effective Date of this Amendment to the Consent Decree. Accordingly, as of the Effective

Date, the existing NPDES permit for the facility shall be deemed terminated.

G. Interim Storage: CBS is not presently storing materials containing PCBs pursuant to Section XII (Interim Storage of Materials Containing PCBs) of the Original Consent Decree and shall have no further obligation to do so. CBS shall close the existing Interim Storage Facility (“ISF”) in accordance with 40 C.F.R. § 761.61 and all other applicable federal, state, and local requirements related to closure of the ISF and ISF premises and pay the expenses thereof. CBS shall complete the closure of the ISF within one year of the Effective Date, including the demolition of the ISF, the removal of the demolished ISF from the Winston-Thomas Facility, and the restoration of the site on which the ISF was constructed by bringing to an even grade, seeding with grass seed and covering with straw. CBS shall perform verification sampling after the ISF is removed to ensure the soils beneath and no more than 25 feet from the building perimeter of the removed ISF do not exceed 2 ppm PCBs on average with no single sample being greater than 5 ppm PCBs.

H. Groundwater Monitoring Protocol: As of the Effective Date, CBS shall not be required to perform those duties set forth in Paragraphs 71-78 of Section XIII (Groundwater Monitoring Protocol) of the Original Consent Decree with respect to Neal’s Landfill, Lemon Lane Landfill, and Bennett’s Dump, but CBS shall perform the alternative Groundwater Monitoring Protocols set forth in each of the SOWs for the Remaining Sites with respect to groundwater, surface water, and sediment contamination. Paragraph 82 of the Original Consent Decree shall remain in full force and effect.

I. Reporting: CBS shall not be required to comply with the requirements in Section XIV (Reporting) of the Original Consent Decree. Specific reporting requirements relating to the Neal’s Landfill, Lemon Lane Landfill, and Bennett’s Dump sites are set

forth in the SOWs for each site attached to this Amendment to the Consent Decree.

J. Parties to Be Notified: Section XV of the Original Consent Decree is hereby rescinded and superseded. Each Party designates the following persons as its representatives for purposes of receipt of notice submitted pursuant to this Consent Decree and its amendments:

As to the United States Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DOJ #: 90-7-1-212A

As to the U.S. Environmental Protection Agency
(with respect to notice of payment under Section VI.B.2)

Chief, Superfund Accounting
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Regional Counsel
ATTN: Bloomington Sites
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
Remedial Project Manager
ATTN: Bloomington Sites
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

As to the U.S. Environmental Protection Agency
(with respect to all other notices under the Consent Decree)

Regional Counsel
ATTN: Bloomington Sites
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
Remedial Project Manager
ATTN: Bloomington Sites
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

As to the U.S. Department of the Interior
(with respect to notice of payment under Section under Section VII.B.2)

Department of the Interior
Natural Resource Damage Assessment and
Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, DC 20240

Office of the Solicitor
Division of Parks and Wildlife
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

As to the State of Indiana:

Valerie Tachtiris
Deputy Attorney General
Office of the Indiana Attorney General
IGCS, 5th floor
302 West Washington Street
Indianapolis, Indiana 46204

Jessica Huxhold Fliss
Federal Programs Section
Office of Land Quality
100 N. Senate Ave
MC 66-31 IGCN 1101
Indianapolis, IN 46204-2251
Ph (317)233-2823

As to the City of Bloomington:

Director of Utilities
P.O. 1216
600 East Miller Drive
Bloomington, Indiana 47402
(812) 349-3683 (fax)

Corporation Counsel
City of Bloomington
P.O. Box 100
401 North Morton Street
Bloomington, Indiana 47402
(812) 349-3441 (fax)

As to Monroe County:

President, Monroe County Board of
Commissioners
Monroe County Courthouse, Room 322
100 West Kirkwood Avenue
Bloomington, IN 47404

Dr. Thomas W. Sharp
Health Officer
Monroe County Board of Health,
119 West Seventh St,
Bloomington IN 47404

As to CBS Corporation:

Dorothy M. Alke
Director, Bloomington Project
CBS Corporation
11 Stanwix Street
Pittsburgh, PA 15222
(412) 642-2562
dottie.alke@cbs.com

With respect to legal matters, a copy to:

David R. Berz
David B. Hird
Weil, Gotshal & Manges LLP
1300 Eye Street, N.W.
Washington, D.C. 20005
(202) 682-7000
david.berz@weil.com
david.hird@weil.com

Each Party may change the identities of its representatives upon written notice to the other Parties. Also, each Party, upon notice to the other Parties, may designate a different individual to receive notice with respect to a specific topic (e.g., the on-scene coordinator of a particular site may be designated to receive technical documents relating to that site).

K. Insurance: Paragraph 99 of Section XX (Insurance) of the Original Consent Decree is hereby rescinded.

L. CBS's Right To Seek Modification of the Remedy: Paragraph 114(i) of the Original Consent Decree is hereby rescinded.

M. Document Retention: Paragraph 86 of the Original Consent Decree is hereby rescinded and superseded.

(1) With respect to each of the Remaining Sites, CBS shall preserve and retain, and instruct its contractors and agents to preserve, until 10 years after CBS's receipt

of the notification by U.S. EPA under the “Completion of the Work” provision of the attached SOWs that CBS has performed the Work in accordance with the Consent Decree, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that CBS (and its contractors and agents) must also retain copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

(2) With respect to each of the other sites covered by the Original Consent Decree (i.e. Neal’s Dump, Anderson Road Landfill and the Winston-Thomas Facility), CBS shall preserve and retain, and instruct its contractors and agents to preserve all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of work (including operation and maintenance activities) required under the Original Consent Decree as amended with respect to such site, provided, however, that CBS (and its contractors and agents) must also retain copies of all data generated during the performance of the work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply, regardless of any corporate retention policy to the contrary, until ten (10) years after completion of the work (including operation and maintenance activities) required under the Original Consent Decree as amended with respect to such site, or until five (5) years after entry of this Amendment to

the Consent Decree, whichever is later.

(3) At the conclusion of the document retention periods set forth above in Paragraphs II.M(1) and II.M(2), CBS 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, CBS shall deliver any such records or documents to U.S. EPA. CBS 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 CBS asserts such a privilege, it shall provide the United States 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 CBS. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Nor shall CBS claim privilege with respect to any data (excluding interpretations of results) relating to conditions at the Remaining Sites or in areas affected by releases from the Remaining Sites. Nothing in this Paragraph II.M.2 shall diminish CBS's right to claim privilege in response to a document demand or subpoena by a third-party.

N. **Original Consent Decree As Previously Amended Remains in Full Force and Effect:** Except as expressly provided in this Amendment to the Consent Decree, all terms of the Original Consent Decree as previously amended shall remain in full force and effect.

III. GEOGRAPHIC BOUNDARIES OF CONSENT DECREE SITES

A. The geographic boundaries of Bennett's Dump are revised by replacing Exhibit 2 (Bennett's Dump – South Area – Metes and Bounds of Horizontal Limit of Site) of the Original Consent Decree with the attached Appendix A.

B. The geographic boundaries of Lemon Lane Landfill are revised by replacing Exhibit 7 (Lemon Lane Landfill – Metes and Bounds of Horizontal Limit of Site) of the Original Consent Decree with the attached Appendix B.

C. The geographic boundaries of Neal's Landfill are revised by replacing Exhibit 9 (Neal's Landfill – Metes and Bounds of Horizontal Limit of Site) of the Original Consent Decree with the attached Appendix C.

D. To the extent that CBS investigates or remediates areas outside of the geographical boundaries of the Remaining Sites (as defined by Appendices A, B and C), CBS may petition the U.S. EPA for expansion of the boundaries of the Remaining Site(s) to include the additional areas investigated or remediated in the course of performing the Work. In the event that U.S. EPA, in consultation with the other Governmental Parties, agrees that CBS adequately investigated or remediated the additional areas pursuant to the Work required by this Amendment to the Consent Decree, the Parties shall file with the Court a revised version of the appropriate Appendix (or Appendices) to reflect the expanded boundaries of the Site(s). In the event that U.S. EPA denies CBS's petition, CBS may challenge U.S. EPA's decision under Section XXIV (Disputes Resolution) of the Original Consent Decree on the grounds that U.S. EPA's determination is arbitrary and capricious, otherwise not in accordance with law, or inconsistent with terms of this Consent Decree.

E. The geographic boundaries of Winston-Thomas Facility, Neal's Dump, and Anderson Road Landfill remain as specified in the Original Consent Decree, as amended prior to this Amendment to the Consent Decree.

IV. ALTERNATIVE REMEDIES FOR NEAL'S LANDFILL, LEMON LANE LANDFILL, AND BENNETT'S DUMP

A. Bennett's Dump:

1. Source Control Operable Unit

CBS has completed all Work required for implementation of the remedy for the Source Control Operable Unit for Bennett's Dump ("Operable Unit 1") in accordance with U.S. EPA's ROD Amendment of October 16, 1998, except O&M. CBS shall continue and complete performance of O&M and other requirements set forth in the March 2002 – Long-term Groundwater Monitoring Plan, which is herein incorporated by reference into this Amendment. When this plan is updated pursuant to the terms of this Amendment or the attached Statement of Work for Bennett's Dump at Appendix E, the updated plan shall replace and supersede the March 2002 plan.

2. Groundwater, Surface Water and Sediment Operable Unit

CBS shall perform all Work at Bennett's Dump in accordance with (i) the Bennett's Dump Record of Decision Amendment for the Groundwater, Surface Water and Sediment Operable Units ("Bennett's Dump ROD Amendment for OU2/3"), which is attached at Appendix D, (ii) the Bennett's Dump Statement of Work for the Surface Water, Groundwater and Sediment Remedial Action, ("Bennett's Dump SOW for OU2/3"), which is attached hereto as Appendix E, and (iii) all work plans and other plans, standards, specifications, and schedules approved by U.S. EPA under the Bennett's

Dump SOW for OU2/3 after reasonable opportunity for review and comment by the other Governmental Parties.

3. Completion

CBS shall continue to implement the Remedial Action and O&M at Bennett's Dump until (1) CBS submits a demonstration pursuant to the "Completion of Work" clause in the Bennett's Dump SOW for OU2/3 that all Work at Bennett's Dump required under Paragraphs IV.A.1 and IV.A.2 above have been fully performed and (2) either U.S. EPA approves this demonstration or the Court overrules EPA's disapproval of CBS's demonstration pursuant to the "Completion of Work" clause in the Bennett's Dump SOW for OU2/3 on the grounds that CBS has fully performed all Work at Bennett's Dump required under Paragraphs IV.A.1 and IV.A.2.

B. Lemon Lane Landfill:

1. Source Control Operable Unit

CBS has completed all Work required for implementation of remedy for the Source Control Operable Unit for Lemon Lane Landfill ("Operable Unit 1") in accordance with U.S. EPA's ROD Amendment of May 12, 2000, except O&M. CBS shall continue and complete performance of O&M and other requirements set forth in the approved plans under the Statement of Work for the Source Control Remedial Action at Lemon Lane Landfill. These approved plans, which are herein incorporated by reference into this Amendment, are as follows:

- June 2001 - Final RCRA Cap Inspection and Maintenance Plan for the Lemon Lane Landfill Site
- April 2003 - Long-term Groundwater Monitoring Plan for the Lemon Lane Landfill Site

In the event that either of the above plans is updated pursuant to the terms of this Amendment or the attached Statement of Work for Lemon Lane Landfill at Appendix G, the updated plan shall replace and supersede the relevant plan listed above.

2. Groundwater, Surface Water and Sediment Operable Units

a. CBS shall take over and continue operation of the ICS Treatment Plant no later than 20 days after the Effective Date of this Amendment to the Consent Decree. The City agrees to allow CBS unlimited access to the property on which the ICS Treatment Plant is located and to Lemon Lane Landfill for as long as is necessary to complete the Work required under this Amendment. To the extent that the United States, the State or the City are beneficiaries of access agreements with third parties in connection with the operation of the ICS Treatment Plant, the United States, the State, and the City shall use their best efforts to use those rights to provide access for CBS.

b. Simultaneously with CBS taking control of the ICS Treatment Plant under the proceeding Paragraph IV.B.2.a, all rights of ownership, if any, held by the City of Bloomington or the United States in the ICS Treatment Plant (excluding the underlying land, which the City of Bloomington shall continue to own) shall be transferred to, and held by, CBS. Such transfer of title shall occur automatically and without need of additional documentation or further action by the City of Bloomington, the United States, or CBS.

c. The Parties acknowledge that the ICS Treatment Plant was designed and constructed by U.S. EPA, operated and maintained by U.S. EPA until at least August 2, 2001, and operated and maintained by the State from August 2, 2001 to July 31, 2004, prior to CBS taking control of the plant under this Amendment. The Parties further

acknowledge that by taking ownership of the plant under this Amendment, CBS is not assuming any liability or any other responsibility for (1) the design and construction of the ICS Treatment Plant by the United States or its contractors, or (2) operation and maintenance of the ICS Treatment Plant prior to CBS's assumption of operation pursuant to this Paragraph IV.B.2.

d. The United States warrants that, as of the date of lodging of this Amendment, the ICS Treatment Plant is free from defects in design, construction, and workmanship, as well as free from defects resulting from the operation or maintenance of the facility prior to August 2, 2001. The State warrants that, as of the date of lodging of this Amendment, the ICS Treatment Plant is free from defects resulting from the operation or maintenance of the facility during the period of August 2, 2001 to July 31, 2004. CBS covenants not to assert any claims against the United States or the State for breach of this warranty, unless CBS becomes obligated (including by settlement agreement) to a person other than a party to this Amendment to pay damages or perform injunctive relief based on a claim relating to the ICS Treatment Plant (excluding any claim that amounts to a challenge to U.S. EPA's selection of a removal or remedial action), in which case, and solely to recover such damages or the costs of such injunctive relief, CBS reserves the right to assert claims against the United States and/or the State for breach of this warranty. The United States and the State reserve all defenses to such a claim, except that the United States and the State agree that they will not assert that CBS's claim for breach of warranty accrued prior to the time that CBS becomes obligated to a third party to pay damages or perform injunctive relief based on a claim relating to the ICS Treatment Plant. Any such claim for breach of warranty shall be brought in this Court pursuant to the Court's retention

of jurisdiction under Section XXXII of the Original Consent Decree. In determining whether or not the United States and/or the State breached the warranty provided under this paragraph, the Court shall apply federal law.

e. In the event that CBS receives notice of claim by a third party relating to the ICS Treatment Plant, which CBS believes may result in a claim under Paragraph IV.B.2.d above, CBS shall provide notice to the United States and the State of Indiana of such a claim within 60 days of the date that CBS first received notice of the claim. If CBS decides to pursue a breach of warranty claim against the United States and/or the State, CBS shall provide notice of its intent to assert such a claim, in which case the parties shall enter into a period of informal negotiations of at least 60 days from the date that the United States and the State of Indiana receive notice in an effort to resolve this claim before CBS asserts such a claim against the United States and/or the State pursuant to Paragraph IV.B.2.d above, and Sections XXIV and XXXII of the Original Consent Decree.

f. In the event that a third party asserts or attempts to assert a claim for damages or injunctive relief relating to the operation and maintenance of the ICS Treatment Plant from July 17, 2004 to the date that CBS takes control of the plant under this Amendment, CBS, the United States, the State and the City of Bloomington each reserves all rights and defenses each may have with respect to such claim.

g. CBS shall perform all Work at Lemon Lane Landfill in accordance with (i) the Lemon Lane Landfill ROD Amendment for the Groundwater, Surface Water and Sediment Operable Units (“Lemon Lane Landfill ROD Amendment for OU2/3”), which is attached as Appendix F, (ii) the Lemon Lane Landfill Statement of Work for the Surface Water, Groundwater and Sediment Remedial Action, (“Lemon Lane

Landfill SOW for OU2/3”), which is attached hereto as Appendix G, and (iii) all work plans and other plans, standards, specifications, and schedules approved by U.S. EPA under the Lemon Lane Landfill SOW for OU2/3 after reasonable opportunity for review and comment by the other Governmental Parties. The City shall implement the institutional controls required for the implementation of remedies for Lemon Lane Landfill for Operable Unit 1 (source control) and Operable Units 2 and 3 (control of PCB-contaminated groundwater, surface water and sediment) with respect to properties owned, leased, or otherwise controlled by the City.

3. Completion

CBS shall continue to implement the Remedial Action and O&M at Lemon Lane Landfill until (1) CBS submits a demonstration pursuant to the “Completion of Work” clause in the Lemon Lane Landfill SOW for OU2/3 that all Work at Lemon Lane Landfill required under Paragraphs IV.B.1 and IV.B.2 above have been fully performed and (2) either U.S. EPA approves this demonstration or the Court overrules EPA’s disapproval of CBS’s demonstration pursuant to the “Completion of Work” clause in the Lemon Lane Landfill SOW for OU2/3 on the grounds that CBS has fully performed all Work at Lemon Lane Landfill required under Paragraphs IV.B.1 and IV.B.2.

C. Neal’s Landfill

1. Source Control Operable Unit

CBS has completed all work requirements for implementation of the remedy for the Source Control Operable Unit for Neal’s Landfill (“Operable Unit 1”) in accordance with U.S. EPA’s ROD Amendment of March 29, 1999, except O&M. CBS shall continue and complete performance of O&M and other requirements set forth in the approved plans under

the Statement of Work for the Source Control Remedial Action at Neal's Landfill. These approved plans, which are herein incorporated by reference, are as follows:

- March 2001 - RCRA Cap Inspection and Maintenance Plan for the Neal's Landfill Site
- April 2002 - Long-term Groundwater Monitoring Plan for the Neal's Landfill Site

In the event that either of the above plans is updated pursuant to the terms of this Amendment or the attached Neal's Landfill Statement of Work for Operable Units 2 and 3 ("Neal's Landfill SOW for OU2/3") at Appendix I, the updated plan shall replace and supersede the relevant plan listed above.

2. Groundwater, Surface Water and Sediment Operable Unit

a. As set forth in Paragraph II.F above, upon entry of this Amendment to the Consent Decree, CBS shall operate the water treatment plant at Neal's Landfill in accordance with the terms of the Neal's Landfill SOW for OU2/3 and applicable provisions of this Amendment to the Consent Decree.

b. CBS shall perform all Work at Neal's Landfill in accordance with (i) the Neal's Landfill Record of Decision Amendment for the Groundwater, Surface Water and Sediment Operable Units ("Neal's Landfill ROD Amendment for OU2/3"), which is attached as Appendix H, (ii) the Neal's Landfill SOW for OU2/3, which is attached hereto as Appendix I, (iii) all work plans and other plans, standards, specifications, and schedules approved by U.S. EPA under the Neal's Landfill SOW for OU2/3 after reasonable opportunity for review and comment by the other Governmental Parties, and (iv) the Remedy Confirmation Clause for Neal's Landfill at Section IX of this Amendment to the Consent Decree.

3. Completion

CBS shall continue to implement the Remedial Action and O&M at Neal's Landfill until (1) CBS submits a demonstration pursuant to the "Completion of Work" clause in the Neal's Landfill SOW for OU2/3 that all Work at Neal's Landfill required under Paragraphs IV.C.1 and IV.C.3 above have been fully performed and all Performance Standards have been either achieved by CBS or waived by U.S. EPA as technically impracticable and (2) either U.S. EPA approves this demonstration or the Court overrules EPA's disapproval of CBS's demonstration pursuant to the "Completion of Work" clause in the Neal's Landfill SOW for OU2/3 on the grounds that CBS has fully performed all Work at Neal's Landfill required under Paragraphs IV.C.1 and IV.C.2 and that all Performance Standards have been either achieved by CBS or waived by U.S. EPA as technically impracticable.

V. PURPOSE OF THE CONSENT DECREE AND OBLIGATIONS OF THE GOVERNMENTAL PARTIES

A. Purpose: Section IV (Purpose and Summary of Activities) of the Original Consent Decree is hereby rescinded. Following the effective date of this Amendment to the Consent Decree, any provision of the Original Consent Decree that would otherwise be construed to require CBS to construct an incinerator or incinerate excavated materials from any site shall have no force or effect.

B. Governmental Parties' Obligations: The United States, the State, the County and the City are hereby excused from all obligations under Paragraphs 7, 101, and 102 of the Original Consent Decree to review CBS's permit applications and plans for an incinerator or ash landfill. The United States, the State, the County, the City and CBS all

remain subject to the requirements of Paragraph 88 and 135 of the Original Consent Decree to use best efforts to accomplish the terms of the Consent Decree, including all amendments thereto, provided that nothing herein or in the Original Consent Decree shall require the United States to violate the Anti-Deficiency Act, 31. U.S.C. 1341 *et seq.*

C. **City and County Obligations:** The City and County shall not be required to perform their obligations (and give up their rights) with respect to the following provisions of the Original Consent Decree: Section V (Incineration Obligations), Section VI (Solid Waste Supplied by the City and County), and Section VII (Ash Disposal). The City shall continue to be bound by Paragraph 116 of the Original Consent Decree.

VI. PAYMENT FOR RESPONSE COSTS

A. **Additional Payment by CBS:** Within 30 days of the Effective Date of this Amendment to the Consent Decree, CBS shall pay to the United States (in addition to the payment of \$1,000,000 made by CBS to the United States under Paragraph 115 of the Original Consent Decree) the amount of \$6,669,000 for Response Costs.

B. **Payment Mechanics:**

1. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1980v03100, EPA Site/Spill ID Numbers LL - IND980794341, BD - IND006418651 and NL - IND980614556, and DOJ Case Number 90-7-1-212A. Payment shall be made in accordance with instructions provided to CBS by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Indiana following lodging of the Amendment to 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.

2. At the time of payment, CBS shall send notice that payment has been made to the United States, to U.S. EPA, and to the Regional Financial Management Officer, in accordance with Section II.J of this Amendment to the Consent Decree.

3. The total amount to be paid by CBS pursuant to this Section VI shall be deposited in the Bloomington Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the sites covered by the Consent Decree or transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

4. In the event that the payment required under this Section is not received when due, interest shall accrue on the unpaid balance through the date of payment at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

VII. PAYMENT FOR NATURAL RESOURCE DAMAGES

A. **Natural Resource Damages Payment:** Within 30 days of the Effective Date of this Amendment to the Consent Decree, CBS shall pay to the United States the sum of \$1,881,000 for natural resource damages. CBS shall make this payment by electronic transfer to the United States in accordance with the current electronic funds transfer procedures and instructions to be provided to CBS by the Financial Litigation Unit, United States Attorney's Office for the Southern District of Indiana, following lodging of the Amendment to the Consent Decree. Any payments received by the Department of Justice

(“DOJ”) after 4:00 p.m. (Eastern Time) will be credited on the next business day. CBS shall provide notice of this payment to DOJ and the United States Department of the Interior (“DOI”) in accordance with Section II.J of this Amendment to the Consent Decree. In the event that the payment required under this Section is not received when due, interest shall accrue on the unpaid balance through the date of payment at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

B. Allocation of Payment:

1. Payment for Restoration Costs:

One million five hundred thousand dollars (\$1,500,000) of the amount to be paid by CBS pursuant to this Section shall be for deposit into the Bloomington Restoration Account, an account to be established within the DOI Natural Resource Damages Assessment and Restoration Fund (the “Restoration Account”). DOI will assign these funds a special project number to allow the funds to be maintained as a segregated account within the Restoration Account. All such funds shall be used by DOI to conduct or finance projects to permanently protect and restore riparian and forested wetland habitat in the White-River/Patoka River watershed to benefit impacted fish and wildlife species that the United States alleges to be injured by hazardous substances at the Remaining Sites. In particular, these projects will benefit birds, fish and bats through conversion of marginal agricultural land to palustrine open water emergent scrub shrub and forested habitats, and will be coordinated with the North American Waterfowl Management Plan and the Emergency Wetlands Resources Act. Any use by DOI of such funds for the purposes not

specified in this Amendment to the Consent Decree will not affect in any manner the rights and obligations of CBS under the Consent Decree.

2. Reimbursement of Assessment Costs

Three hundred eighty-one thousand dollars (\$381,000) of the amount to be paid by CBS pursuant to this Section shall be to reimburse damage assessment costs incurred by DOI.

VIII. COVENANTS NOT TO SUE

A. Anderson Road Landfill, Winston-Thomas Facility, Neal's Dump, and Other Areas: With respect to Neal's Landfill, Lemon Lane Landfill and Bennett's Dump, Section XXIII (Covenant Not to Sue) of the Original Consent Decree is hereby amended and superseded by Section VIII.B and C below. In all other respects, the Covenant Not to Sue in the Original Consent Decree remains in full force and effect.

B. Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump:

1. Effective upon entry of this Amendment to the Consent Decree, and conditioned only upon compliance by CBS with the provisions of this Consent Decree including this Amendment, and subject to the reservation of rights set forth in Paragraph VIII.B.4 below, the United States, State, City and County hereby covenant not to assert against CBS in any civil or administrative action or proceeding (i) any claim alleged in the complaints and amended complaints in these actions or (ii) any claim arising under federal, state or local law, including common law, intended to protect the environment, in either case resulting from or relating to:

a. The past disposal or discharge of PCBs or materials contaminated with PCBs at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump.

For purposes of the preceding sentence, the “past disposal or discharge” includes the subsequent migration of PCBs or materials that first entered the environment before entry of the Original Consent Decree.

b. The release or threatened release of PCBs or materials contaminated with PCBs from Neal’s Landfill, Lemon Lane Landfill or Bennett’s Dump. For the purposes of the preceding sentence, the “release or threatened release of PCBs” does not include releases or threatened releases from PCBs that first enter into the environment after the entry of the Original Consent Decree through the conduct of CBS, its contractors, representatives, or agents.

c. The release or threatened release of hazardous substances other than PCBs from Neal’s Landfill, Lemon Lane Landfill, or Bennett’s Dump. For the purposes of the preceding sentence, the “release or threatened release of hazardous substances other than PCBs” does not include releases or threatened releases from hazardous substances that first enter into the environment after the entry of the Original Consent Decree through the conduct of CBS, its contractors, representatives or agents.

d. Activities which CBS performs in compliance with the Consent Decree including, but not limited to, releases occurring as a result of CBS implementing the Work required under the Consent Decree, but excluding the performance of activities in a manner which violates standards of care required by applicable federal, state or local law, including common law.

2. Nothing herein shall be construed to relieve CBS from any liability at law or equity for (1) failure to perform in accordance with this Consent Decree or (2) any acts, omissions or events not expressly referred to in this Covenant. Subject to the

provisions of Section XXVII (Delay or Prevention of Performance) of the Original Consent Decree, in the event that this Court determines that CBS has failed to perform its obligations under this Amendment to the Consent Decree, the Covenant in favor of CBS shall become null and void and of no further force or effect except with respect to those sites and areas as to which CBS has performed its obligations under this Decree; and the United States, State, City and County, or each of them, may seek relief at law or in equity for any matters except to the extent that the Covenant remains effective.

3. To the extent that the law of the State of Indiana may be determined to control and govern the interpretation of this Consent Decree, the Parties hereto do not intend that this Covenant Not to Sue shall be a release as that term is defined by Indiana law. The Parties hereto intend that this provision shall be construed to be a covenant not to sue civilly, execute judgment, or take any civil or administrative action against CBS and only CBS but including its directors, officers, agents and employees. Nothing herein shall be construed to release any claims, causes of action, or demands in law or equity against any person or entity not party to this Consent Decree.

4. The Parties have determined on the basis of currently available information that the remedies for Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump provided under this Amendment to the Consent Decree are adequate to abate the release or threat of release of hazardous wastes or substances from sites and areas that are the subject of the Consent Decree and do not believe that further remedies will be necessary. However, presently unknown or unforeseen conditions may present an imminent and substantial endangerment to health, welfare or the environment in the future. Subject to the provisions of Paragraph 82 of the Original Consent Decree, and in addition

to the powers granted the On Scene Coordinator pursuant to Section XVII (On Scene Coordinator) of the Original Consent Decree, nothing in this Section VIII.B or in this Consent Decree as amended is intended to affect the statutory rights of the United States as follows:

a. United States' Pre-certification Reservations: The United States reserves, and this Consent Decree is without prejudice to, the right to seek appropriate relief to abate a release or threat of release of hazardous wastes or substances, or to seek cost recovery for removal or remedial actions undertaken by the United States or State to abate such a release or threat of release, where such release or threat of release may present an imminent and substantial endangerment to health, welfare or the environment and results from previously unknown or unforeseen conditions that arise or are discovered after entry of this Amendment to the Consent Decree but prior to the Certification of Completion of the Remedial Action with respect to the Remaining Site where the release or threatened release occurs.

b. United States' Post-Certification Reservations: The United States reserves, and this Consent Decree is without prejudice to, the right to seek appropriate relief to abate a release or threat of release of hazardous wastes or substances, or to seek cost recovery for removal or remedial actions undertaken by the United States or State to abate such a release or threat of release, where such release or threat of release may present an imminent and substantial endangerment to health, welfare or the environment and results from previously unknown or unforeseen conditions that arise or are discovered after Certification of Completion of the Remedial Action with respect to the Remaining Site where the release or threatened release occurs.

C. Covenant Not to Sue for Natural Resource Damages

Notwithstanding any other provision of the Original Consent Decree or any of its amendments (including this Amendment), upon payment of the amount specified in Section VII above, the Covenant Not to Sue in Paragraph 111 of the original Consent Decree and the Covenant Not to Sue in this Section VIII shall bar all claims that the United States, the State, the County and the City may have either now or in the future for natural resource damages arising from or relating to the past disposal or discharge, or the threatened release of PCBs, materials contaminated with PCBs, or other hazardous substances at or from (1) Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump as defined in this Consent Decree Amendment; (2) Winston-Thomas Facility, Neal's Dump, and Anderson Road Landfill as defined in the Original Consent Decree, as previously amended, and (3) all other sites and areas identified in Sections VIII and IV, or pursuant to Paragraphs 47 and 51 of the Original Consent Decree as amended. Such Covenants Not to Sue shall not be subject to any reservation of rights by the United States or any other Party to reassert such claims against CBS based on any new information or previously unknown or unforeseen conditions.

D. Covenant Not to Sue by CBS

1. Upon the Effective Date of this Amendment to the Consent Decree, CBS Covenants Not to Sue and agrees not to assert any claims against the United States, the State, the City, or Monroe County with respect to its claim for breach of contract or any violation of the Original Consent Decree arising prior to the Effective Date of this Amendment to the Consent Decree. Such Covenants Not to Sue shall not be subject to any reservation of rights by CBS, except as set forth below in Paragraph VIII.D.2 below.

2. CBS maintains that the State is liable for breach of the Original Consent Decree as a result of State legislature's enactment of Burns Ind. Code § 13-7-16.5-9 (recodified as Burns Ind. Code §§ 13-17-10-1 through 13-17-10-4) or of Burns Ind. Code § 13-7-8.5-11.3 (recodified as Burns Ind. Code § 13-22-3-9) (hereinafter "Breach of Contract Claim"). CBS's Covenant Not to Sue the State on the Breach of Contract Claim shall remain in effect only for as long as the United States does not take any civil or administrative action to seek additional relief pursuant to Paragraph 111(e) of the Original Consent Decree, or Sections IV.C.2.b or VIII.B.4 of this Amendment to the Consent Decree. In the event that the United States seeks such additional relief under any of the above listed provisions, CBS will have the right to pursue its Breach of Contract Claim against the State pursuant to Sections XXIV (Dispute Resolution) and XXXII (Retention of Jurisdiction) of the Original Consent Decree by filing a notice of its intent to pursue this Breach of Contract Claim within 90 days after the United States' action. The State agrees that it will not raise the defenses of statute of limitations or laches for the time period beginning on August 22, 2002 (the date of the Tolling Agreement among the United States, the State, and CBS), provided that a notice of CBS's intent to pursue such Breach of Contract Claim is timely filed with the Court under the terms of the preceding sentence.

E. Waiver of Claims Against Hazardous Substances Response Trust Fund and the United States

1. Paragraph 114(a) of the Original Consent Decree is hereby rescinded and superseded.

2. CBS agrees not to assert any claims or demands for compensation or payment under CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of

law or under this Consent Decree against the Hazardous Substances Response Trust Fund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), for or arising from any activity performed or expenses accrued pursuant to this litigation or under this Consent Decree, provided, however, that U.S. EPA hereby approves the Work which CBS is required to take pursuant to this Consent Decree as consistent with the National Contingency Plan for the purpose of allowing CBS to assert against any other person (other than Parties to this Consent Decree) any claim with respect to hazardous waste generated by that person.

3. Except as set forth in Paragraph IV.B.2.d and IV.B.2.f, CBS agrees not to assert any claims or demands for compensation or payment under CERCLA Sections 107 or 113 or any other provision of law against the United States for or arising from any activity performed or expenses accrued pursuant to this litigation or under this Consent Decree.

4. Nothing in this Paragraph VIII.E shall impair the obligation of the United States to fully pay in the event that the Court determines that the United States is liable to CBS for breach of the warranty provided by the United States in Paragraph IV.B.2.d.

IX. REMEDY CONFIRMATION CLAUSE FOR NEAL'S LANDFILL

A. General

1. The remedy selected by U.S. EPA in the Neal's Landfill ROD Amendment for OU2/3 is intended to reduce PCB concentrations in fish in Conard's Branch to "target" concentrations, which U.S. EPA has determined to be protective of

human health and the environment. These target concentrations are set forth in Table 1 below.

Table 1

Target PCB Concentration to Protect Ecological Receptors	
Sampling Location ⁽¹⁾	Target Mean PCB Concentration in Whole Fish (mg/kg Wet Basis)
Location B – lower reach of Conard’s Branch above Vernal Pike Bridge	2.3
Location D – Richland Creek at the Vernal Pike Bridge	0.9
Target PCB Concentration to Protect Human Receptors	
Sampling Location ⁽¹⁾	Target Mean PCB Concentration in Fillets (mg/kg Wet Basis)
Location F – Richland Creek at State Route 43 Bridge in Owen County	0.2

(1) “B”, “D”, and “F” refer to fish sampling locations as previously designated and utilized in 2001 - 2005 sampling

2. The Parties believe that the remedial actions selected by U.S. EPA in the Neal’s Landfill ROD Amendment for OU2/3 (hereinafter, for the purposes of this Section, “the remedy”) are adequate to achieve the above target concentrations in a period of 10 years (or less) from the date of the completion of construction of the Remedial Action to address PCB contamination in groundwater, surface water and sediment at Neal’s Landfill. The purpose of this Section IX Remedy Confirmation Clause (“RCC”) is to provide a process (subject to conditions set forth in Paragraphs IX.F and IX.G below) for U.S. EPA to modify the remedy for groundwater, surface water, and sediment contamination if U.S. EPA concludes, based upon criteria set forth in Paragraph IX.D, that the remedy has not achieved and will not achieve the target concentrations in fish.

3. To measure progress toward achieving the target concentrations for PCBs in fish, CBS shall collect fish samples from the sampling locations in Table 1 above (*i.e.* locations B, D and F) in accordance with a Sampling Plan approved by U.S. EPA under Paragraph IX.H below. The Parties shall use these fish samples to determine the mean concentration of PCBs in fish at each sampling location, and then the Parties shall use this mean concentration to measure progress toward achieving the target concentrations for PCBs in fish. For the purpose of this RCC, the term “mean concentration of PCBs in fish” shall refer to a simple arithmetic mean of fish tissue PCB concentrations at each sample location based upon the sample mixes set forth in the chart below. CBS shall continue to perform fish monitoring in accordance with the approved Sampling Plan until (1) CBS demonstrates statistically, in accordance with the methodology set forth in Paragraphs IX.B and IX.C below, that the mean concentration of PCBs in fish at each sample location is equal to or less than the pertinent target concentration, or (2) U.S. EPA modifies the remedy in accordance with the procedures set forth under this RCC, in which case CBS’s further monitoring obligations shall be determined consistent with the modified remedial action.

Population of Fish Sampled to Measure Progress Toward Achieving Target Concentrations in Fish Protective of Ecological Receptors	
Sampling Location	Sample Mix
Location B – lower reach of Conard’s Branch above Vernal Pike Bridge	50% Creek Chub 50% Green Sunfish, or 100% Creek Chub (if insufficient sunfish available)
Location D – Richland Creek at the Vernal Pike Bridge	33% Top Predator (e.g., Sunfish or Rock Bass) 33% Omnivores (e.g., Creek Chub) 33% Bottom Feeders (e.g. White Suckers)
Population of Fish Sampled to Measure Progress Toward Achieving Target Concentrations in Fish Protective of Human Receptors	
Sampling Location	Sample Mix
Location F – Richland Creek at State Route 43 Bridge in Owen County	75% Top Predator (e.g., Sunfish or Rock Bass) 25% Bottom Feeders (e.g. White Suckers)

4. U.S. EPA will evaluate the remedy every five years after the completion of construction to determine whether the mean concentration for PCBs in fish is statistically greater than or less than the target concentrations. Subject to the limitations set forth in Paragraphs IX.F and IX.G below, U.S. EPA may modify the remedy for groundwater and sediment contamination if it can statistically demonstrate that the remedy “has not achieved and will not achieve the target concentrations in fish” in accordance with the methodology set forth in Paragraphs IX.B and IX.D below, or in accordance with an alternative methodology mutually agreed to by U.S. EPA and CBS. In the event that U.S. EPA makes such a demonstration, it shall provide notice to CBS of this fact and of U.S. EPA’s intent to modify the remedy pursuant to the RCC. CBS will then have the opportunity under Paragraph IX.F below to challenge U.S. EPA’s determination. If CBS cannot meet its burden under Paragraph IX.F, U.S. EPA may modify the remedy subject to the limitations set forth under Paragraph IX.G below. In modifying the remedy, U.S. EPA shall be guided by the ROD amendment process in the National Contingency Plan.

5. Upon selection of the modified remedy by U.S. EPA, CBS shall be

required to perform the modified remedy. CBS, however, may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree to challenge U.S. EPA's selection pursuant to Paragraph IX.G.5 below.

B. Statistical Hypothesis Testing

1. There is inherent uncertainty in determining whether mean PCB concentrations in fish are above or below the target concentrations because of variability in sampling data. U.S. EPA and CBS shall use statistical sampling and analysis procedures to control the risk of reaching false conclusions with respect to whether the mean concentrations of PCBs in fish have achieved or will achieve the target concentrations set forth in Paragraph IX.A.1 above. Unless U.S. EPA and CBS, in consultation with the other Governmental Parties, mutually agree upon an alternative statistical methodology (e.g. regression analysis or statistical modeling), they shall use the statistical methodology known as "classical statistical hypothesis testing," which is described in the guidance documents *U.S. EPA QA/G-4 Guidance on Systematic Planning Using the Data Quality Objectives Process* (February 2006), and *U.S. EPA QA/G-9S Data Quality Assessment: Statistical Methods for Practitioners* (February 2006). U.S. EPA and CBS, in consultation with the other Governmental Parties, may mutually agree to use a regression model to test trends in the mean concentration of PCBs in fish, or to compare mean concentrations to target concentrations or historical data, while accounting for cofactors such as the year when sampling was conducted, the season when sampling was conducted, the sample location, the species of fish sampled, and the lipid content of the sampled fish.

2. The following terms shall be given the same meaning in this RCC that they have in the two guidance documents cited above:

- baseline condition
- alternative condition
- gray region
- false rejection of the baseline condition
- false acceptance of the baseline condition
- false rejection decision error limit
- false acceptance decision error limit

C. Termination of CBS's Obligation to Modify Remedy under the RCC

1. At any time after the completion of construction of the remedy to address PCB contamination in groundwater, surface water, and sediment at Neal's Landfill, CBS may request a determination by U.S. EPA that the remedy has successfully achieved the target concentration for PCBs in fish set forth in Paragraph IX.A.1. CBS shall use statistical hypothesis testing to demonstrate to EPA that the remedy has achieved the target concentrations set forth in Paragraph IX.A.1 at each sampling location. Thus, CBS shall perform a total of three tests, one for each location.

2. In conducting the statistical hypothesis tests, CBS shall assume as its baseline condition that the mean PCB concentration in fish from any given sampling location is equal to or greater than the target concentration for that sampling location. If CBS can statistically prove with 95% confidence the alternative condition (*i.e.*, if CBS can demonstrate that the mean PCB concentration for fish is below the target value by a statistically significant margin) for all sample locations, CBS will have adequately demonstrated that the remedy has been successful. At that point, CBS's obligations under this RCC will terminate and CBS and the United States will so notify the Court. CBS will continue to have operation and maintenance obligations at the Site. These O&M obligations will include fish sampling (at the reduced level specified in the Long-term Monitoring Plan approved by U.S. EPA under the Neal's Landfill SOW for OU2/3) in

support of U.S. EPA's five-year review process. If U.S. EPA does not concur with CBS's statistical demonstration under the previous Paragraph IX.C.1 and this Paragraph IX.C.2, CBS may petition the Court under Section XXIV (Dispute Resolution) of the Original Consent Decree to demonstrate that U.S. EPA's non-concurrence is arbitrary and capricious or otherwise not in accordance with law.

3. In the event that CBS cannot meet the test set forth in the preceding Paragraph IX.C.2 with respect to all sample locations but it can meet the test with respect to a sample location in Richland Creek (*i.e.*, sample location D or F), CBS shall be relieved of its obligation to implement the sampling plan for enhanced fish monitoring approved by U.S. EPA under Paragraph IX.H with respect to that sample location and shall implement instead at that location the fish sampling specified in the Long-term Monitoring Plan approved by U.S. EPA under the Neal's Landfill Statement of Work for Operable Units 2 and 3.

4. For the purpose of estimating sample sizes for conducting each statistical hypothesis test, CBS shall estimate sample requirements as follows:

a. The upper bound of the gray region shall be set at the target concentrations set forth in Paragraph IX.A.1;

b. The lower bound of the gray region shall be set at 20% less than the upper bound. Specifically, the lower bound will be set at 1.8 mg/kg for location B, 0.72 mg/kg for location D, and 0.16 mg/kg for location F;

c. The false rejection decision error limit at the upper bound of the gray region (*i.e.*, the boundary of the gray region at the target concentration) shall be set at 5%, and;

d. The false acceptance decision error limit at the lower bound of the gray region (*i.e.*, the boundary of the gray region opposite the boundary formed by the target concentration) shall be set at 20%.

5. In accordance with Paragraph IX.H.3, the parameters set forth in Paragraph IX.C.4 above may be modified in light of the number of fish that are reasonably available in the streams for sampling. In the event that the parameters set forth in Paragraph IX.C.4 are modified, CBS may petition U.S. EPA to modify the hypothesis test set forth in Paragraph IX.C.2. In response, U.S. EPA may determine that hypothesis test shall remain unchanged, or alternatively, U.S. EPA may modify the hypothesis test pursuant to the mutual agreement of U.S. EPA and CBS. In either event, the hypothesis test shall be performed in accordance with U.S. EPA's determination, except that CBS may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree to challenge U.S. EPA's determination that the hypothesis test shall remain unchanged on the grounds that U.S. EPA's determination is arbitrary and capricious or otherwise not in accordance with law.

D. Evaluation of Achievement of Target Concentrations in Fish

1. First Five-Year Review

a. To demonstrate at the first five-year review that the remedy has not achieved and will not achieve the target concentrations in fish, U.S. EPA must show that (1) the mean concentration of PCBs in fish at any sampling location is greater than the target concentration set forth in Paragraph IX.A.1 for that location, and (2) the mean concentration of PCBs in fish at the same location has shown no improvement in comparison to pre-remedy data collected from the same location in 2003 through 2005. To

make this showing, U.S. EPA shall satisfy each part of the following two-part test with respect to any one of the three sampling locations:

i. First Part: U.S. EPA shall use statistical hypothesis testing to demonstrate that the mean concentration of PCBs in fish at a sampling location has failed to achieve the target concentration for that location. In conducting this test, U.S. EPA shall assume as its baseline condition that the mean concentration of PCBs in fish at the sampling location is equal to or less than the target concentration for the sampling location. In the event that U.S. EPA can statistically prove the alternative condition with 95% confidence (*i.e.*, that the mean concentration of PCBs in fish is greater than the target concentration by a statistically significant margin) at any one of the three sampling locations, U.S. EPA may then proceed to the second part of the test.

ii. Second Part: For each sampling location where the mean concentration of PCBs in fish is greater than the target value by a statistically significant margin (*i.e.*, for any sampling location where U.S. EPA has rejected the baseline condition that the mean concentration of PCBs in fish at the location is equal to or less than the target concentration), U.S. EPA shall use statistical hypothesis testing to determine whether there has been an improvement in the mean concentration of PCBs in fish in comparison to pre-remedy data collected from the same location in 2003 through 2005, as shown in the documents identified under Paragraph IX.D.1.a.iii below. In conducting this test, U.S. EPA shall assume as its baseline condition that the mean concentration of PCBs in fish in year 5 is equal to or less than the mean concentration for PCBs in fish at the same sampling location in 2003 through 2005. In the event that U.S. EPA can statistically prove the alternative condition with 95% confidence (*i.e.*, that the mean concentration of PCBs in

fish at year 5 is greater than the mean concentration in 2003 through 2005 by a statistically significant margin) for at least one sample location, U.S. EPA will have adequately demonstrated that the remedy has not and will not achieve the target concentrations for fish set forth in Paragraph IX.A.1.

iii. For the purposes of the previous Paragraph IX.D.1.a.ii, the term “pre-remedy data” shall mean data included within the following documents:

(1) All documents listed below from the Administrative Record for the Neal’s Landfill ROD Amendment for OU2/3:

- Document 179 - From U.S. EPA - Split Fish Sample Analytical Results for the Neal's Landfill Site (7/23/04)
- Document 205 - From CBS - Neal's Landfill Fish Samples May 2003 Validation with Attachments (8/6/04)
- Document 206 - From CBS - Neal's Landfill Fish Samples November 2003 Validation with Attachments (8/11/04)
- Document 207 - From Tetra Tech - Tetra Tech's Data Validation Review of Neal's Landfill Fish Samples May 2003 Validation (8/17/04)
- Document 208 - From Tetra Tech - Tetra Tech's Data Validation Review of Neal's Landfill Fish Samples November 2003 Validation (9/1/04)
- Document 210 - From Tetra Tech - Fish Tissue Sample Analytical Results at the Neal's Landfill Site with Attachments (9/7/04)
- Document 212 - From CBS - Viacom's Comments to Tetra Tech's Data Validation Review of Neal's Landfill Fish Samples May 2003 Validation (9/22/04)
- Document 213 - From U.S. EPA - Revised Fish Sample Analytical Results at the Neal's Landfill Site with Attachments (9/21/04)
- Document 215 - From Tetra Tech Responses to Viacom's Comments on Data Validation Review of Neal's Landfill Fish Samples May 2003 Validation (10/5/04)

- Document 259 - From U.S. EPA - Fish Tissue Split Sample Analytical Results at Neal's Landfill with Attachments (2/20/06)
- Document 260 - From CBS - Fall 2005 Fish Tissue Sampling for Aroclor and Lipid Analysis at Conard's Branch and Richland Creek Near Neal's Landfill (2/27/06)
- Document 262 - From CBS - Neal's Landfill November 2005 Fish Sample Congener PCB Validation (3/23/06)
- Document 265 - From Tetra Tech - Tetra Tech's Data Validation Review of Neal's Landfill Fish Sample November 2005 Congener PCB Validation (4/27/06)

or (2) all other documents added as an update to the Administrative Record for the Neal's Landfill ROD Amendment for OU2/3, provided that any such document includes pre-remedy fish data collected in 2003, 2004, or 2005 from one or more of the fish sample locations set forth in Paragraph IX.A.1, and that such data qualifies as contract lab program ("CLP") data or has been subject to quality assurance and quality control ("QA/QC") safeguards equivalent to those required for CLP data. Any Party may propose to place additional fish data in the Administrative Record as an update to the Neal's Landfill ROD Amendment for OU2/3 for the purposes of this Paragraph, and U.S. EPA shall accept any such proposed data, provided that it satisfies the conditions set forth in the proceeding sentence (*i.e.*, the data were collected in 2003, 2004, or 2005 from one or more of the fish sample locations set forth in Paragraph IX.A.1, and such data qualifies as CLP data or has been subjected to QA/QC safeguards equivalent to those required for CLP data).

b. For the purpose of estimating sample sizes for conducting each statistical hypothesis test set forth in Paragraph IX.D.1.a.i above, U.S. EPA shall apply the following parameters:

- i. The upper bound of the gray region shall be set at a

value equal to the target concentration set forth in Paragraph IX.A.1, plus 20% of the target concentration. Specifically, the upper bounds will be set at 2.8 mg/kg for location B, 1.1 mg/kg for location D, and 0.24 mg/kg for location F;

ii. The lower bound of the gray region shall be set at the target concentration set forth in Paragraph IX.A.1;

iii. The false rejection decision error limit shall be set at 5% at the lower bound of the gray region (*i.e.*, the boundary of the gray region formed by the target concentration); and

iv. The false acceptance decision error limit shall be set at 20% at the upper bound of the gray region (*i.e.*, the boundary of the gray region opposite the boundary formed by the target concentration).

c. For the purpose of setting sample sizes for conducting each statistical hypothesis test set forth in Paragraph IX.D.1.a.ii above, U.S. EPA shall apply the following constraints:

i. The upper bound of the gray region shall be set at a value equal to 20% of the mean of the historical data for each fish species at each sampling location;

ii. The lower bound of the gray region shall be set at zero, (corresponding to the case that there is no difference between the mean concentration of PCBs in post remediation fish and the mean concentration for PCBs in fish at the same sampling location in 2003 through 2005);

iii. The false rejection decision error limit shall be set at 5% at the lower bound of the gray region, and

iv. The false acceptance decision error limit shall be set at 20% at the upper bound of the gray region.

d. In accordance with Paragraph IX.H.3, the parameters set forth in Paragraph IX.D.1.b and IX.D.1.c above may be modified in light of the number of fish that are reasonably available in the streams for sampling. In the event that the parameters set forth in Paragraph IX.D.1.b and IX.D.1.c are modified, CBS may petition U.S. EPA to modify the hypothesis tests set forth in Paragraph IX.D.1.a. In response, U.S. EPA may determine that the hypothesis tests shall remain unchanged, or alternatively, U.S. EPA may modify the hypothesis tests pursuant to the mutual agreement of U.S. EPA and CBS. In either event, the hypothesis tests shall be performed in accordance with U.S. EPA's determination, except that CBS may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree on the grounds that U.S. EPA's determination is arbitrary and capricious or otherwise not in accordance with law.

2. Second Five-Year Review

a. To demonstrate at the second five-year review that the remedy has not and will not achieve the target concentrations in fish, U.S. EPA must show that (1) the mean concentration of PCBs in fish at one or more sample locations is greater than the target concentration listed in Paragraph IX.A.1 for that sample location, and (2) there is not a sufficient basis for U.S. EPA to conclude, based on trend data, that the mean concentration of PCBs in fish at that sample location will reach the target concentration in the future. To make this showing, U.S. EPA shall satisfy each part of the following two-part test with respect to any one of the three sample locations:

i. First Part: U.S. EPA shall repeat the same statistical

hypothesis testing that it used for the first part of the two-part test described above in Paragraph IX.D.1.a.i with respect to the first five-year review. Specifically, U.S. EPA shall use statistical hypothesis testing to demonstrate that the mean concentration of PCBs in fish at any sample location has not achieved the target concentration for that sample location. In conducting this test, U.S. EPA shall assume as the baseline condition that the mean PCB concentration in fish at a sample location is equal to or less than the target concentration set forth in Paragraph IX.A.1 with respect to that location. In the event that U.S. EPA can statistically prove the alternative condition (*i.e.*, that the mean concentration of PCBs in fish is greater than the target value with 95% confidence) for any sample location, U.S. EPA may then proceed to the second part of the test.

ii. Second Part: For each sampling location where the mean concentration of PCBs in fish is greater than the target concentration by a statistically significant margin (*i.e.*, for any sampling location where U.S. EPA has rejected the baseline condition that the mean concentration of PCBs in fish at the sample location is equal to or less than the target concentration), U.S. EPA shall use statistical hypothesis tests to determine if there is a decreasing trend at that location with respect to the mean concentration of PCBs in fish. In conducting this test, U.S. EPA shall assume as the baseline condition that there is no trend or the trend is increasing (trend is greater than or equal to zero) at the sample location. In the event that U.S. EPA cannot statistically prove the alternative condition (*i.e.* that PCB concentrations in fish are decreasing over time) with 95% confidence for at least one sample location, U.S. EPA will have adequately demonstrated that there is no significant decreasing trend and that failure to achieve the target concentrations in fish set forth in Paragraph IX.A.1 has occurred, and that the target

concentrations will not be met in the future.

b. For the purpose of estimating sample sizes for conducting statistical hypothesis testing set forth in Paragraph IX.D.2.a.i above, U.S. EPA shall apply the same parameters set forth in Paragraph IX.D.1.b above.

c. For the purpose of determining sample sizes for conducting each statistical hypothesis test set forth in Paragraph IX.D.2.a.ii above, U.S. EPA shall apply the following parameters:

i. The upper bound of the gray region shall be set at zero (corresponding to the case that there is no trend at that location with respect to the mean concentration of PCBs in fish);

ii. The lower bound of the gray region shall be set at a value corresponding to a 1% per year decrease in the mean concentration (*i.e.*, a slope for the trend line of -1%);

iii. The false rejection decision error limit shall be set at 5% at the upperbound of the gray region; and

iv. The false acceptance decision error limit shall be set at 20% at the lower bound of the gray region.

d. In accordance with Paragraph IX.H.3, the parameters set forth in Paragraph IX.D.2.b and IX.D.2c above may be modified in light of the number of fish that are reasonably available in the streams for sampling. In the event that the parameters set forth in Paragraph IX.D.2.b and IX.D.2c are modified, CBS may petition U.S. EPA to modify the hypothesis tests set forth in Paragraph IX.D.2.a. In response, U.S. EPA may determine that hypothesis tests shall remain unchanged, or alternatively, U.S.

EPA may modify the hypothesis tests pursuant to the mutual agreement of U.S. EPA and CBS. In either event, the hypothesis tests shall be performed in accordance with U.S. EPA's determination, except that CBS may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree to challenge U.S. EPA's determination that the hypothesis tests shall remain unchanged on the grounds that U.S. EPA's determination is arbitrary and capricious or otherwise not in accordance with law.

3. Third Five-Year Review (and Beyond)

a. Beginning with the third five-year review, U.S. EPA will no longer take into account the long-term trend of PCBs in fish to determine whether or not the remedy has achieved or will achieve the target concentrations set forth in Paragraph IX.A.1. Rather, U.S. EPA must show only that the mean concentration of PCBs in fish at any sampling location is statistically greater than the target concentration set forth in Paragraph IX.A.1 with respect to that location. To make this showing, U.S. EPA shall repeat the same statistical hypothesis testing that it used for the first part of the two-part tests described above in Paragraphs IX.D.1.a.i and IX.D.2.a.i with respect to the first and second five-year reviews with the baseline condition configured as described in those paragraphs.

b. For the purpose of estimating sample sizes for conducting statistical hypothesis testing set forth in Paragraph IX.D.3.a above, U.S. EPA shall apply the same parameters set forth in Paragraph IX.D.1.b.

c. In accordance with Paragraph IX.H.3, the parameters required under Paragraph IX.D.3.b above may be modified in light of the number of fish that are reasonably available in the streams for sampling. In the event that the parameters

required under Paragraph IX.D.3.b are modified, CBS may petition U.S. EPA to modify the hypothesis test set forth in Paragraph IX.D.3.a. In response, U.S. EPA may determine that hypothesis test shall remain unchanged, or alternatively, U.S. EPA may modify the hypothesis test pursuant to the mutual agreement of U.S. EPA and CBS. In either event, the hypothesis test shall be performed in accordance with U.S. EPA's determination, except that CBS may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree to challenge U.S. EPA's determination that the hypothesis test shall remain unchanged on the grounds that U.S. EPA's determination is arbitrary and capricious or otherwise not in accordance with law.

E. Standard for Continuing Enhanced Monitoring

If the statistical hypothesis tests described in Paragraphs IX.C and IX.D above are inconclusive (*i.e.*, they fail to prove either that the remedy has achieved the target concentrations or, alternatively, that the remedy has not achieved and will not achieve the target concentrations), CBS shall continue to perform the enhanced monitoring required by the Sampling Plan approved by U.S. EPA in accordance with Paragraph IX.H, below, except to the extent that CBS is relieved of this obligation in accordance with Paragraph IX.C.3 above.

F. CBS's Right to Challenge U.S. EPA's Determination to Modify the Remedy

1. In the event that U.S. EPA determines in accordance with Paragraph IX.D that the target concentration of PCBs in fish has not been achieved and will not be achieved at one or more sample locations, U.S. EPA will provide CBS with a notice of this determination and of U.S. EPA's intent to modify the remedy under the RCC. CBS then

will be given time to conduct an evaluation and submit a petition to U.S. EPA challenging this determination. To prevail on its challenge, CBS bears the burden of demonstrating at least one of the following:

- a. U.S. EPA's determination under Paragraph IX.D was incorrect;
- b. The failure to achieve the target concentration(s) in fish set forth in Paragraph IX.A.1 was caused by conditions at the Site changing after entry of this Amendment for reasons beyond the control of CBS; or
- c. Sampling Location B was the only sampling location where the mean concentration of PCBs in fish exceeded the target concentration set forth in Paragraph IX.A.1, and that improvements in PCB concentrations in fish tissue at other sampling locations show that the remedy is protective of mink based upon the assumptions and conclusions set forth in U.S. EPA's ecological risk assessment. In such a case, CBS may petition U.S. EPA for approval to reduce enhanced monitoring of PCB concentrations in fish.

2. In the event that CBS persuades U.S. EPA of the merits of its challenge, U.S. EPA shall not modify the remedy under this RCC. However, nothing in this RCC in any way limits any rights of the United States under the re-opener clause at Paragraph VIII.B.4 of this Amendment to the Consent Decree.

3. In the event that U.S. EPA does not accept CBS's challenge, CBS may exercise its right under Section XXIV (Disputes Resolution) of the Original Consent Decree to challenge U.S. EPA's determination on the grounds that it is arbitrary and capricious or otherwise not in accordance with law. Assuming that CBS does not challenge

U.S. EPA's determination (or dispute resolution is resolved in U.S. EPA's favor), U.S. EPA may proceed to modify the remedy subject to the limitations set forth in Paragraph IX.G.

G. Modification of the Remedy under this RCC

1. Within 180 days of issuance of U.S. EPA's notice of its intent to modify the remedy under the RCC (or, in the event that CBS invokes dispute resolution, within 60 days of a final decision by U.S. EPA or the District Court, whichever is later, determining that U.S. EPA may modify the remedy under this RCC), CBS shall submit to U.S. EPA for review and approval a work plan for investigating and evaluating additional remedies that would accord the incremental reduction in risk necessary to achieve the target concentrations set forth in Paragraph IX.A.1. This work plan shall include:

a. A proposed list of additional remedies that CBS shall investigate and evaluate. The supplemental remedies proposed by CBS may include, but are not limited to, the removal of additional sediments within the streams if the sediments are shown to be recontaminated above 1 mg/kg on average and the sediments are believed to be a main contributor to the PCB levels in fish.

b. A proposed schedule for investigating and evaluating the proposed remedies.

2. Upon approval of the work plan, CBS shall proceed with the investigation and evaluation of the supplemental remedies in accordance with the approved schedule. At the completion of the investigation, CBS shall submit to U.S. EPA for review and approval a proposed plan for modifying the remedy to achieve the target concentrations set forth in Paragraph IX.A.1. The proposed plan shall include:

- a. A description of the investigatory actions performed by CBS;
- b. An evaluation of the additional remedies based upon the nine evaluation criteria set forth in the National Contingency Plan for evaluating remedial actions;
- c. A recommendation as to the preferred supplemental remedial action; and
- d. All documents, reports or other materials that were prepared or considered by CBS in preparing the proposed plan, together with an index of this record.

3. In addition to submitting the proposed plan required under Paragraph IX.G.2, CBS may propose an alternative plan for modifying the remedy. In support of this alternative plan, CBS shall demonstrate that (i) the target concentrations set forth in Paragraph IX.A.1 are technically impracticable, (ii) target concentrations proposed by CBS as an alternative to those set forth in Paragraph IX.A.1 are protective of human health and the environment, and (iii) remedial alternatives proposed by CBS, including potentially a “no further action” alternative, will achieve the alternative target concentrations proposed by CBS. In the event that U.S. EPA determines that CBS has adequately demonstrated all three conditions, U.S. EPA shall publish the proposed alternative plan for public comment in accordance with the procedures set forth below in Paragraph IX.G.4. Alternatively, in the event that U.S. EPA determines that CBS has not adequately demonstrated one (or more) of the conditions, U.S. EPA may reject the alternative plan, and CBS may challenge U.S. EPA’s determination under Section XXIV (Dispute Resolution) of the Original Consent Decree on the grounds that U.S. EPA’s determination is arbitrary and capricious or otherwise not in accordance with law.

4. Unless the alternative plan is approved by U.S. EPA pursuant to Paragraph IX.G.3, U.S. EPA may approve CBS's proposed plan or it may prepare its own proposed plan for additional remedial measures to achieve the target concentrations set forth in Paragraph IX.A.1. In either event, U.S. EPA shall publish the proposed plan for public comment in accordance with the requirements of the National Contingency Plan. After receiving and reviewing public comments, U.S. EPA may select an additional remedial action to achieve the target concentrations set forth in Paragraph IX.A.1. This RCC does not provide U.S. EPA with the authority to modify in any way the remedial actions that have been implemented by CBS for Operable Unit 1 for Neal's Landfill.

5. In the event that CBS disagrees with any additional remedial measures selected by U.S. EPA under this RCC, CBS retains the right, prior to implementation, to challenge U.S. EPA's decision before the Court pursuant to Section 113(j)(2) of CERCLA on the ground that all or part of the decision is arbitrary and capricious or otherwise not in accordance with law. To the extent that CBS prevails on its challenge, it is not required to implement the additional remedial measures selected by U.S. EPA.

6. Within 60 days of U.S. EPA's selection of the additional remedial action (or, in the event that CBS challenges U.S. EPA's selection, within 60 days of the Court's decision upholding the U.S. EPA's selection), CBS shall submit to U.S. EPA for review and approval a proposed plan and schedule for the design and construction of the additional remedial action. Upon approval of this proposed plan, CBS shall proceed with the design and construction of the additional remedial measures in accordance with the approved schedule.

7. All plans, reports and schedules submitted to U.S. EPA for review and approval under this Paragraph IX.G are subject to the pertinent provisions of the Statement of Work for Operable Units 2 and 3 at Neal's Landfill with respect to the approval of deliverables.

H. Sampling Plan

1. Within two years of execution of the Consent Decree, CBS shall submit to U.S. EPA for approval a sampling plan for enhanced fish monitoring, containing a plan for statistical evaluation of the fish tissue data. The plan shall comply with requirements set forth in the Consent Decree and shall be consistent with U.S. EPA's Data Objective ("DQO") Process as described in U.S. EPA's publication, *Guidance on Systematic Planning Using the Data Quality Objectives Process, EPA QA/G-4 (February 2006)*. The plan shall require fish sampling at the locations where target concentrations are set in Paragraph IX.A.1.

2. Further, the enhanced fish monitoring plan shall require CBS to collect sufficient fish samples to meet the parameters set forth in Paragraphs IX.C and IX.D for statistical hypothesis testing. This plan will require composite samples of at least 3 fish per composite sample to reduce the overall variance.

3. In the event that U.S. EPA or CBS believes that sample size estimates and composite sampling in the enhanced fish monitoring plan will result in sampling requirements that are not reasonable in light of the limited number of fish available for sampling at the agreed-upon locations in Conard's Branch and Richland Creek, U.S. EPA and CBS shall confer in an effort to reach agreement upon whether or not there should be adjustments to (i) composite sampling requirements and/or (ii) the

sampling parameters set forth in Paragraphs IX.C and IX.D. In the event that U.S. EPA and CBS cannot reach agreement, U.S. EPA may determine that no adjustments to sampling requirements are necessary, or alternatively, U.S. EPA may adjust the sampling requirements. In either event, CBS shall implement the enhanced fish monitoring plan in accordance with U.S. EPA's determination, except that CBS shall have the right to challenge U.S. EPA's determination under Section XXIV (Disputes Resolution) of the Original Consent Decree on the grounds that U.S. EPA's determination is arbitrary and capricious or otherwise not in accordance with law.

4. The enhanced fish monitoring plan shall require that the fish chosen from each location be representative of the sizes of fish found at that location, consistent with past sampling events and representative of the size of fish eaten by the human and ecological receptors assumed in the risk assessments prepared by U.S. EPA. Generally this requirement can be met by showing that the mean size of fish collected are within 1 standard deviation of the same species of fish collected by CBS or U.S. EPA at the appropriate location during prior sampling events after the completion of the source control operable unit.

5. The enhanced fish monitoring plan should ensure a balanced data set of composite samples to be included in the mean from both summer and fall time periods at each location. Specifically, "balanced" means that there are an equal number of fall and summer samples to be included in the mean. The mean can be calculated for samples collected over one year or two years.

6. The fish are to be analyzed using total congener and lipid methods equivalent to those analytical methods used in 2005.

X. RIGHTS AND RESPONSIBILITIES UNDER ORIGINAL CONSENT DECREE

Except as expressly provided in this Amendment to the Consent Decree or in prior amendments to the Consent Decree, the Original Consent Decree remains binding upon the Parties.

XI. TERMINATION

Termination of CBS's obligations under this Amendment to the Consent Decree shall be governed by Paragraph 138 of the Original Consent Decree. The Covenants Not to Sue in Paragraph 111 of the Consent Decree and Section VIII of this Amendment to the Consent Decree shall continue in effect even after the CBS's obligations hereunder have terminated.

XII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

B. Agreement Voidable if Not Entered by the Court: If for any reason the Court should decline to approve this Amendment to the Consent Decree in the form presented, this Amendment is voidable at the sole discretion of any Party and, if voided, the

terms of the agreement may not be used as evidence in any litigation between the Parties.

XIII. EFFECTIVE DATE OF THIS AMENDMENT TO THE CONSENT DECREE

This Amendment to the Consent Decree shall be effective upon execution by the United States District Judge assigned to this matter as set forth below and upon entry on the docket of the U.S. District Court for the Southern District of Indiana. Subject to Section XI of this Amendment, it shall remain in full force and effect thereafter unless modified or voided by a federal court with jurisdiction over the matter.

XIV. FINAL JUDGMENT

Upon approval and entry of this Amendment to the Consent Decree, the Consent Decree shall constitute a final judgment between and among the Governmental Parties -- the United States, the State of Indiana, the City of Bloomington and Monroe County -- and CBS. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2008

RICHARD L. YOUNG
United States District Judge

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump and addressing general matters in United States, et al. v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

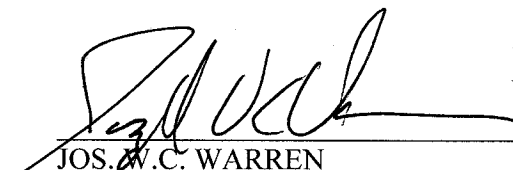
FOR THE UNITED STATES OF
AMERICA

Date _____



RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date 2-19-08



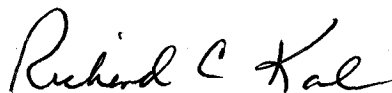
JOS. W.C. WARREN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

TIMOTHY M. MORRISON
Acting United States Attorney

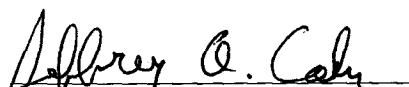
CHARLES GOODLOE, JR.
Assistant United States Attorney's
United States Attorney's Office
46 East Ohio Street, 5th Floor
Indianapolis, Indiana 46204

For the U.S. Environmental Protection Agency

Date 2-8-08


RICHARD C. KARL
Director of Superfund Division
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date 2/4/08


JEFFREY A. CAHN
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump and addressing general matters in United States, et al. v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

FOR THE CITY OF BLOOMINGTON

Date: 2/15/2008



GEOFFREY M. GRODNER
Mallor, Clendening, Grodner & Bohrer, LLP
511 Woodscrest Drive
P.O. Box 5787
Bloomington, IN 47407

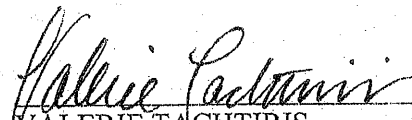
THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump and addressing general matters in United States, et al v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

FOR THE STATE OF INDIANA

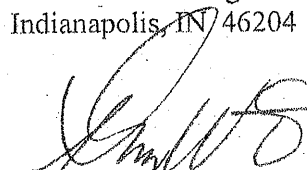
Date: February 5, 2008


GREGORY F. ZOELLER
Chief Counsel
Indiana Attorney General's Office
Indiana Government Center South
5th Floor
302 West Washington Street
Indianapolis, IN 46204

Date: 5 February 2008


VALERIE TACHTIRIS
Deputy Attorney General
Indiana Attorney General's Office
Indiana Government Center South
5th Floor
302 West Washington Street
Indianapolis, IN 46204

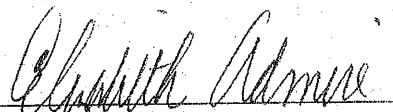
Date: FEBRUARY 5, 2008


THOMAS W. EASTERLY
Commissioner
Indiana Dept of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

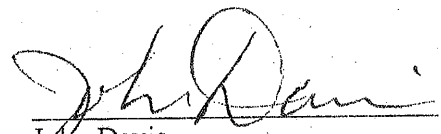
THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill, and Bennett's Dump and addressing general matters in United States, et al. v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

FOR THE STATE OF INDIANA

Date: 2/14/08


Elizabeth Admire
State Natural Resource Co-Trustee
Indiana Dept of Environmental Management

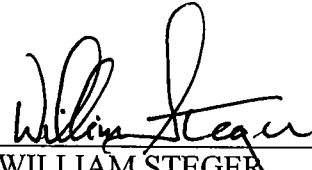
Date: 2-15-08


John Davis
State Natural Resource Co-Trustee
Indiana Dept of Natural Resources

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump and addressing general matters in United States, et al. v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

FOR MONROE COUNTY

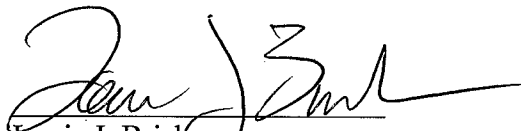
Date: 15 FEB. 2008


WILLIAM STEGER
County Attorney
Monroe County Legal Department
Monroe County Courthouse, Room 220
Bloomington, IN 47404

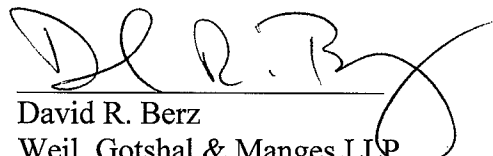
THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump and addressing general matters in United States, et al. v. CBS Corporation, Case No. 1:81-cv-0448-RLY-KPF (S.D. Ind.).

FOR CBS CORPORATION

Date: 2.7.08


Louis J. Briskman,
Executive Vice President and General Counsel
CBS Corporation
51 West 52nd Street
New York, NY 10019

Date: 2-12-08


David R. Berz
Weil, Gotshal & Manges LLP
1300 Eye Street, N.W.
Washington, D.C. 20005
(202) 682-7000
david.berz@weil.com

Counsel to CBS Corporation