

010 0394 S

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

Plaintiff,

v.

STATE OF WISCONSIN, et al.

Defendants.

DOCKET
NUMBER

U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

JUL 10 2001

CIVIL ACTION NO.

FILED/RECEIVED
JOSEPH W. SKUPNIEWITZ, CLERK

CASE
NUMBER

CONSENT DECREE

Copy of this document
provided to: USA & AAG
Peterson

this 10th day of Sept, 2001

By R. Peterson

[Signature]

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	5
III.	PARTIES BOUND	5
IV.	DEFINITIONS	6
V.	GENERAL PROVISIONS	13
VI.	PERFORMANCE OF THE WORK BY THE SETTLING PERFORMING PARTY	16
VII.	REMEDY REVIEW	22
VIII.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS	23
IX.	ACCESS AND INSTITUTIONAL CONTROLS	25
X.	REPORTING REQUIREMENTS	28
XI.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS	30
XII.	PROJECT COORDINATORS	32
XIII.	ASSURANCE OF ABILITY TO COMPLETE WORK	33
XIV.	CERTIFICATION OF COMPLETION	34
XV.	EMERGENCY RESPONSE	37
XVI.	REIMBURSEMENT OF RESPONSE COSTS	38
XVII.	INDEMNIFICATION AND INSURANCE	42
XVIII.	FORCE MAJEURE	44
XIX.	DISPUTE RESOLUTION	46
XX.	STIPULATED PENALTIES	50
XXI.	COVENANTS BY PLAINTIFF	54
XXII.	COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES	60
XXIII.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION	62

XXIV.	ACCESS TO INFORMATION	64
XXV.	RETENTION OF RECORDS	65
XXVI.	NOTICES AND SUBMISSIONS	66
XXVII.	EFFECTIVE DATE	68
XXVIII.	RETENTION OF JURISDICTION	68
XXIX.	APPENDICES	68
XXX.	COMMUNITY RELATIONS	69
XXXI.	MODIFICATION	69
XXXII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	70
XXXIII.	SIGNATORIES/SERVICE	70
XXXIV.	FINAL JUDGMENT	71

I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to section 106 and section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Refuse Hideaway Landfill Superfund Site (the Site) in the Town of Middleton, Dane County, Wisconsin, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP).

C. In accordance with the NCP and section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the State) no later than June 7, 2000, of negotiations with potentially responsible parties regarding the implementation of the remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Fish and Wildlife Service on August 12, 1996, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the federal trustee to participate in the negotiation of this Consent Decree.

E. The defendants who have entered into this Consent Decree (Settling Defendants) do not admit any liability to the United States arising out of the transactions or occurrences alleged in the United States' complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies

do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

F. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992, 57 Fed. Reg. 47180, 47184.

G. Beginning in 1989, the Wisconsin Department of Natural Resources (WDNR) took actions to address the risks posed by the Site, including but not limited to the following: installing, operating and maintaining a leachate collection system; installing, operating and maintaining a landfill gas collection and treatment system; installing water treatment systems in residences with private drinking water wells that were impacted by contamination originating from the Site; installing groundwater monitoring wells on-Site and off-Site; sampling those monitoring wells and private wells; analyzing the ground water samples for hazardous substances, pollutants and contaminants; developing a groundwater flow model; and repairing and maintaining an existing soil cap over the landfill at the Site.

H. On September 30, 1998, EPA issued a document entitled "Superfund Preliminary Site Close Out Report, Final Remedial Action for Refuse Hideaway Landfill, Middleton, Wisconsin." On page 5 of that document, EPA concluded: "The September 30, 1998 ESD documented that, based on the 1998 groundwater data, construction of a groundwater pump and treat system is not necessary. Therefore, all construction activities under the June 28, 1995 ROD, as amended by the September 30, 1998 ESD are complete. Long-term operation, maintenance and monitoring of the landfill cap, gas/leachate systems and groundwater in conjunction with five year reviews are the only activities remaining for the site." Pursuant to the requirements of this Consent Decree, the Settling Performing Party has agreed to undertake certain activities to complete the Remedial Action at the Site. These remaining activities are identified in the definition of Remedial Action contained in Section IV (Definitions) of this Consent

Decree.

I. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, during October 1993 the WDNR, in part funded by EPA pursuant to a cooperative agreement, commenced a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430.

J. The WDNR completed a Remedial Investigation (RI) Report on September 12, 1994, and the WDNR completed a Feasibility Study (FS) Report on February 3, 1995.

K. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 6, 1995, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator and the Secretary of the Wisconsin Department of Natural Resources based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (ROD), as modified by an Explanation of Significant Differences. The ROD was executed by the designee of the Regional Administrator of EPA Region 5 on June 28, 1995, and by the Secretary of the Wisconsin Department of Natural Resources on May 30, 1995. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with sections 117(b) and 117(d) of CERCLA, 42 U.S.C. §§ 9617(b), 9617(d). The ESD was executed by the designee of the Regional Administrator of EPA Region 5 on September 30, 1998. Notice of the ESD was published on November 5, 1998, in a major local newspaper of general circulation, in accordance with sections 117(c) and 117(d) of CERCLA, 42 U.S.C. §§ 9617(c), 9617(d). The ESD is included in the administrative record for the Site.

M. An Administrative Order on Consent Regarding Remedial Design and Operation and Maintenance (AOC) for the Site was issued by the designee of the Regional Administrator of EPA Region 5 on April 8, 1997. Forty-two Respondents signed the AOC. Under the AOC those Respondents agreed to perform, inter alia, the remedial design for the remedy selected in the ROD and the ESD. Under the AOC, the Respondents also funded a period of operation and maintenance of the existing remedy components (described in Paragraph G, above). In addition to the forty-two Respondents who signed the AOC, other entities provided funding for performance of the work required by the AOC; those parties, identified as "Performing Parties under the AOC", are listed in Appendix H.

N. The Settling Performing Party states that the State's obligations under this Consent Decree to perform Work will be implemented by the State under the management of the Wisconsin Department of Natural Resources (WDNR). The Settling Performing Party further states that the Attorney General of Wisconsin has the constitutional and legal authority to enter into this Consent Decree on behalf of the State of Wisconsin, pursuant to Wis. Stat. §§ 165.25(6)(a) and 165.25(6)(e), Wis. Const. art. VI, §3, and other applicable state laws. To assure compliance with this Consent Decree the Attorney General of Wisconsin, as represented by an assistant Attorney General who has been properly delegated full and complete authority to represent the State, will sign this Consent Decree. The State of Wisconsin does not agree to the use of this Consent Decree, or any provision therein, in any matter unrelated to the enforcement of this Consent Decree.

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

P. Solely for the purposes of section 113(j) of CERCLA, the Remedial Action selected by the ROD, as modified by the ESD, and the Work to be performed by the Settling

Performing Party shall constitute a response action taken or ordered by the President.

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. The Settling Performing Party shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this

Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Performing Party within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"Administrative Order on Consent" or "AOC" shall mean the administrative order issued by EPA on April 8, 1997, to 42 Respondents for Remedial Design and one year of operation and maintenance at the Site.

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

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

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

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

"ESD" shall mean the Explanation of Significant Differences relating to the Site which

was signed by the designee of the Regional Administrator of EPA Region 5 on September 30, 1998, and all attachments thereto. The ESD is attached as Appendix B.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, fixed contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VII. Future Response Costs also shall include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from July 31, 2000, to the date of entry of this Consent Decree. Future Response Costs do not include costs incurred by EPA in connection with the circumstances referenced in Paragraphs 83 and 84.

"Groundwater Monitoring Program for Remedial Action" shall mean the groundwater monitoring program as described in the EPA-approved final groundwater monitoring program submission which is being developed pursuant to the Remedial Design Scope of Work (Appendix D).

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

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between July 31, 2000, and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"Municipal Solid Waste" shall mean all waste materials generated by households,

including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes: (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to section 3001(d)(4) of the Solid Waste Disposal Act, 42 U.S.C. § 6921(d)(4).

Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"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.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action, after the completion of the Remedial Action has been certified pursuant to Paragraph 47 of this Consent Decree, as required under the Remedial Action Scope of Work, and as required under the Operation and Maintenance Plan which is being developed pursuant to the AOC and the Remedial Design Scope of Work.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

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

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through July 31, 2000, plus interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section VII.A of the ROD as modified and Section II of the Remedial Action Scope of Work, and include standards of control, quality criteria and other substantive requirements, criteria, or limitations including all Applicable or Relevant and Appropriate Requirements (ARARs) identified in the ROD as modified by the ESD.

"Performing Parties under the AOC" shall mean the 42 entities which signed the Administrative Order on Consent (issued by EPA on April 8, 1997, and which called for performance of the Remedial Design and one year of operation and maintenance of the existing remedy components at the Site) and the additional parties which provided funding to perform the work required by the AOC. The "Performing Parties under the AOC" are listed in Appendix H.

"Plaintiff" shall mean the United States.

"RA SOW" or "RA Scope of Work" shall mean the Remedial Action Scope of Work for implementation of the Remedial Action and Operation and Maintenance at the Site, attached hereto as Appendix E of this Consent Decree, and any modifications made in accordance with this Consent Decree.

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

"RD SOW" or "RD Scope of Work" shall mean the Scope of Work for design of the implementation of the Remedial Action and Operation and Maintenance at the Site, attached hereto as Appendix D of this Consent Decree.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on June 28, 1995, by the designee of the Regional Administrator, EPA Region 5, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, undertaken or to be undertaken by the Settling Performing Party to implement the ROD as modified by the ESD. "Remedial Action" also shall include those activities set forth in the Remedial Action Scope of Work, including any subsequent modifications approved by EPA. The Remedial Action Scope of Work (Appendix E), identifies the remaining activities necessary to complete the Remedial Action at the Site. This includes:

- 1) Preparation and submission to EPA of the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action, which documents shall include a Performance Standard Verification Plan (which Plan shall be comprised of a Groundwater Monitoring Program, a Quality Assurance Project Plan, and a Field Sampling Plan), an updated or amended Health and Safety Plan, and an updated or amended Operation and Maintenance Plan;
- 2) Notifying EPA of the selected Supervising Contractor;
- 3) Implementing and performing the Remedial Action;
- 4) Submitting to EPA annual progress reports;
- 5) Assisting in the preparation of five-year review assessments; and
- 6) Scheduling and participating in a pre-certification inspection for completion of the Remedial Action, and submitting a written report to EPA.

"Remedial Action Objectives" shall mean the goals of the Remedial Action, set forth in Section VII.A of the ROD as modified by the ESD and Section II of the Remedial Action Scope of Work, and include attainment of the Performance Standards, standards of control, quality criteria and other substantive requirements, criteria or limitations including all Applicable or Relevant

and Appropriate Requirements (ARARs) identified in the ROD as modified by the ESD,

"Remedial Design" shall mean those activities that have been, and are to be, undertaken by the Performing Parties under the AOC and by the Settling Performing Party to develop the final drawings, plans and specifications for the Remedial Action pursuant to the RD Scope of Work, as approved by EPA.

"Remedial Design Report" shall mean the document discussed in the Remedial Design Scope of Work, including any amendments or supplements, that has been and is being developed by the Performing Parties under the AOC and the Settling Performing Party, and that is approved by EPA.

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral, unless some other document is explicitly referenced.

"Settling Defendants" shall mean those Parties that are identified in Appendix F and that also have signed this Consent Decree. For purposes of this Agreement, Settling Defendants include the Settling Performing Party.

"Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix G, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

"Settling Performing Party" shall mean the State of Wisconsin (the "State" as defined in this Section).

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or

federally owned treatment works.

"Site" shall mean the Refuse Hideaway Landfill Superfund Site, encompassing approximately 40 acres and located in Section 8, Township 7N, Route 8E, of the Town of Middleton, Dane County, Wisconsin, off of U.S. Route 14 approximately two miles west of the City of Middleton, and depicted generally on the map attached as Appendix C.

"Small Business" shall mean any business entity that employs no more than 100 non-Statutory individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. § 631 et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986.

"Source Control Systems" shall mean the following actions undertaken by, and systems installed by the WDNR: a leachate collection system, a landfill gas collection and treatment system, water treatment systems in residences with private drinking water wells that were impacted by contamination originating from the Site, groundwater monitoring wells located on-Site and off-Site, and a soil cap over the landfill at the Site.

"State" shall mean the State of Wisconsin including all departments, agencies, instrumentalities, divisions, offices, and other units of the government of the State of Wisconsin.

"Superfund" shall mean, with respect to payments made under this Consent Decree, the Hazardous Substance Superfund established by 26 U.S.C. § 9507.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Performing Party to implement the Work under this Consent Decree.

"United States" shall mean the United States of America, including its departments, agencies, and instrumentalities, which includes, without limitation, EPA, the Settling Federal

Agencies and any federal natural resources trustee.

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

"Wisconsin State Law" shall mean the Wisconsin Constitution; the Wisconsin Statutes, any relevant laws enacted through Session Laws by the Wisconsin Legislature, administrative rules duly promulgated by a Wisconsin state agency, and Wisconsin case law. The phrase "subject to the limitations of Wisconsin State Law" in this Consent Decree shall be deemed to include a reference to article VIII, section 2 of the Wisconsin Constitution; section 20.903(1) of the Wisconsin Statutes, State bid and contracting statutes applicable to WDNR as an agency of the State; and other applicable limitations under Wisconsin law by virtue of the nature of the Settling Performing Party.

"WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the WDNR.

"Work" shall mean all activities the Settling Performing Party is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Performing Party, to reimburse response costs of the Plaintiff, and to resolve the claims of the Plaintiff against Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent

Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies

a. Settling Defendants shall reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree. The Settling Federal Agencies shall reimburse the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs, as provided in this Consent Decree.

b. The Settling Performing Party shall finance and perform the Work in accordance with this Consent Decree, the ROD as modified by the ESD, the RA SOW, and the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site and other plans, standards, specifications, and schedules as set forth in subparagraph 10.b or developed by the Settling Performing Party and approved by EPA pursuant to this Consent Decree. To that end, the Settling Performing Party may enter into contracts that provide for the performance of work required under this Consent Agreement, subject to provisions of Wisconsin State Law and Paragraph 6.c of this Consent Decree, including those that condition performance of the work on the availability of funds.

c. The Parties to this Consent Decree recognize and acknowledge that the obligations of the Settling Performing Party to pay Past Response Costs and Future Response Costs and to finance and perform Work under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Notwithstanding any other provision herein, nothing in this Consent Decree shall be interpreted or construed as an agreement, commitment or requirement that the Settling Performing Party obligate or pay funds in contravention of Wis. Stat. § 20.903(1) or Wis. Const. art. VIII, §2, or of any other applicable Wisconsin State Law. The terms and limitations of this Paragraph are referred to elsewhere in this Consent Decree, but the absence of any such cross-reference elsewhere in this Consent Decree is not intended to diminish the applicability of the terms and limitations of this Paragraph.

d. Until it has satisfied all of its obligations under this Consent Decree, including, but not limited to, its obligations under Sections VI (Performance of the Work by the Settling Performing Party); XVI (Reimbursement of Response Costs), and XVII (Indemnification and Insurance), the Settling Performing Party shall include in each of its budget requests to the Wisconsin Legislature, made through the WDNR, requests for funding sufficient to allow the Settling Performing Party to complete the Work, and satisfy or pay all of its obligations under this Consent Decree.

e. If EPA assumes performance of the Work or any portion thereof due to the fact that the Settling Performing Party has insufficient funds to timely perform the Work, the Settling Performing Party is obligated under this Consent Decree to seek funding to reimburse EPA for costs EPA incurs in performing such Work, and the Settling Performing Party will request funding to reimburse EPA for such costs in the Settling Performing Party's future budget requests to the Wisconsin Legislature in accordance with Paragraphs 6.c and 6.d above.

f. As of the effective date of this Consent Decree, the Settling Performing Party shall be substituted for the Performing Parties under the AOC, and shall be responsible for the satisfactory performance and completion of all obligations under the AOC, and the Performing Parties under the AOC shall be discharged from further responsibility under the AOC. The Settling Performing Party agrees to this substitution in exchange for payment by the Performing Parties under the AOC of the amount of \$55,716.15. Payment by the Performing Parties under the AOC of this amount to the Settling Performing Party shall be made payable to "Wisconsin Department of Natural Resources" and shall be paid within the time period set forth in Paragraph 51.a of this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by the Settling Performing Party pursuant to this Consent Decree shall be performed in accordance with the

requirements of all applicable federal and state laws and regulations. The Settling Performing Party also must comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD as modified by the ESD and in the RA and SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. ~~General~~ Permits

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

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

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

VI. PERFORMANCE OF THE WORK BY THE SETTLING PERFORMING PARTY

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Settling Performing Party pursuant to Sections VI (Performance of the Work by the Settling Performing Party), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Settling

Performing Party or, as it may delegate, under that of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 15 days after the lodging of this Consent Decree, the Settling Performing Party shall notify EPA in writing of the name, title, and qualifications of any contractor selected or otherwise proposed to be the Supervising Contractor. EPA will issue a notice of acceptability for any contractor selected or otherwise proposed to be the Supervising Contractor. If at any time thereafter the Settling Performing Party proposes to change a Supervising Contractor, it shall give such notice to EPA and must obtain from EPA a notice of acceptability for that new Supervising Contractor before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. The proposed Supervising Contractor will be considered approved unless rejected by EPA within 30 days of submission. In the event of a sudden and unexpected withdrawal of the Supervising Contractor, the Settling Performing Party may continue work as necessary until a replacement Supervising Contractor is selected and approved.

b. If EPA disapproves the selected or otherwise proposed Supervising Contractor, EPA will notify the Settling Performing Party in writing. The Settling Performing Party shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and a notice of acceptability with respect to any of the other contractors. The Settling Performing Party may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's notice of acceptability.

c. If EPA fails to provide written notice of acceptability as provided in this Paragraph and this failure prevents the Settling Performing Party from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, the Settling

Performing Party may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

10. Remedial Action.

a. Within 120 days after EPA's issuance of a notice of acceptability pursuant to Paragraph 9, and in accordance with the schedule in the RA SOW, the Settling Performing Party shall submit to EPA documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site. These documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site shall provide for implementation of the remedy set forth in the ROD as modified by the ESD and shall provide for achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the ESD, the RA SOW, and the design drawings, plans and specifications developed in the Remedial Design Report and as approved by EPA. Upon EPA's receipt and approval of these documents referenced in the prior two sentences, these documents shall be incorporated into, and become enforceable under, this Consent Decree. These documents shall include a Health and Safety Plan for field activities required for the Work which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site shall include the following, as appropriate: plans and schedules for implementation of all Remedial Action tasks identified in Section IV of the RA SOW and the approved Remedial Design Report, Groundwater Monitoring Program for Remedial Action document (developed as part of the approved RD), a Quality Assurance Project Plan, a Field Sampling Plan, a Health and Safety Plan, an O & M Plan, drawings, specifications, and as-builts. The documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site also shall include an initial general schedule for implementation of all Remedial Action tasks identified in the final design submittals

and shall identify the initial formulation of the Settling Performing Party's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon EPA's receipt and approval, pursuant to Section XI (EPA Approval of Plans and Other Submissions), of the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site, the Settling Performing Party shall implement the activities required for the Remedial Action.

11. The Settling Performing Party shall continue to implement the Remedial Action until the Performance Standards are achieved and shall implement the O & M for so long thereafter as is otherwise required under this Consent Decree.

12. Modification of the RA SOW or Related Documents.

a. If EPA determines that modification to the work specified in the RA SOW, and/or in the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site which are developed pursuant to the RA SOW, is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD as modified by the ESD, EPA may require that such modification be incorporated in the RA SOW and/or such documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD as modified by the ESD.

b. For the purposes of this Paragraph 12 and Paragraphs 47 and 48 only, the "scope of the remedy selected in the ROD as modified by the ESD" is: imposition of deed restrictions and/or zoning controls on the Site; maintenance of Site security; monitoring, operation and maintenance, repair and modification and/or upgrade of Source Control Systems at the Site including the landfill cap; the leachate collection and extraction for treatment system,

and the landfill gas collection, extraction and destruction (flare) system; off-loading of collected leachate and transport to an appropriately licensed wastewater treatment facility; operating an on-Site and off-Site groundwater monitoring program designed to determine whether in-situ bioremediation of contaminants in the groundwater is occurring, until the Remedial Action Objectives for groundwater are attained as specified in the ROD and ESD; continued operation of water treatment systems currently installed at private residences until Safe Drinking Water Act MCLs are no longer exceeded in two consecutive semi-annual rounds of groundwater monitoring at a particular private residence; and, as a contingent remedy, installation of additional water treatment systems at private residences.

c. If the Settling Performing Party objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 63 (record review). The RA SOW and/or related documents, plans, drawings and specifications shall be modified in accordance with final resolution of the dispute.

d. The Settling Performing Party shall implement any work required by any modifications that, in accordance with this Paragraph, are incorporated in the RA SOW and/or in the documents (including but not limited to plans, drawings and specifications) which specify the manner in which the Settling Performing Party shall perform the Remedial Action at the Site.

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

13. The Settling Performing Party acknowledges and agrees that nothing in this Consent Decree, the RA SOW, or the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site, constitutes a warranty or representation of any kind by Plaintiff, or by the State in its capacity as a governmental entity which concurred on the ROD and ESD pursuant to the NCP, that compliance with the work

requirements set forth in the RA SOW and those documents will achieve the Performance Standards:

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

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

b. The identity of the receiving facility and the receiving state will be determined by the Settling Performing Party following the award of the contract for Remedial Action construction. The Settling Performing Party shall provide the information required by Paragraph 14.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

15. Payments by Settling Performing Party to Others. The Settling Performing Party shall reimburse the owners of the two existing point-of-entry treatment systems that were installed to remove contaminants from the two private water supplies that were impacted by contaminants from the Site. Within ninety (90) days of the lodging of this Consent Decree, the Settling Performing Party shall pay \$12,000 to each of the two owner couples of the two existing

point-of-entry treatment systems, Al and Jean Stoppleworth and Steve and Shirley Noles.

These payments are full compensation for the past costs paid by those owners for operation and maintenance of the point-of-entry treatment systems.

VII. REMEDY REVIEW

16. Periodic Review. The Settling Performing Party shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by section 121(c) of CERCLA and any applicable regulations.

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

18. Opportunity To Comment. Settling Defendants and, if required by sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Performing Party's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Performing Party shall undertake such further response actions to the extent that the reopener conditions in Paragraph 79 or Paragraph 80 (United States' reservations of liability based on unknown conditions or new information) are satisfied. The Settling Performing Party may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute: (1) EPA's determination that the reopener conditions of Paragraph 79 or Paragraph 80 of Section XXI (Covenants by Plaintiff) are satisfied;

(2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 65 (record review).

20. Submissions of Plans. If the Settling Performing Party is required to perform further response actions pursuant to Paragraph 19, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by the Settling Performing Party) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. The Settling Performing Party shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to the Settling Performing Party of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. The Settling Performing Party shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the RA SOW, the NCP and applicable guidance documents. This QAPP may be a project document already existing for the Site or an amendment or update to an existing document. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Settling Performing Party shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling

Performing Party in implementing this Consent Decree. In addition, the Settling Performing Party shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Settling Performing Party shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. The Settling Performing Party shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Settling Performing Party shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Performing Party shall allow split or duplicate samples to be taken by EPA or its authorized representatives. The Settling Performing Party shall notify EPA of all sample collection activity through the progress reports to be submitted, or the briefings to be held, pursuant to Section X (Reporting Requirements). In addition, EPA shall have the right to take any additional samples that it deems necessary. Upon request, EPA shall allow the Settling Performing Party to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Performing Party's implementation of the Work.

23. The Settling Performing Party shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Performing Party with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than EPA, the State, or any of the Settling Defendants, the Settling Performing Party shall use its best efforts to secure from such persons:

a. an agreement to provide access thereto for the Settling Performing Party, as well as for the United States on behalf of EPA, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraphs 83 and 84 of this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Performing Party or its agents, consistent with Section XXIV (Access to Information);
- (8) Assessing the Settling Performing Party's compliance with this Consent Decree; and

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

b. an agreement, enforceable by the Settling Performing Party and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation of the remedial measures to be performed or that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree; and

c. the execution and recordation in the Registry of Deeds or other appropriate land records office of Dane County, State of Wisconsin, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives and (ii) the State and its representatives.

25.1 Notwithstanding the requirements of this Section (Access and Institutional Controls), the Settling Performing Party represents that all access and control requirements of this Section may be fully satisfied by the access to property and transference of responsibility authorities under Wis. Stat. §§ 289.46(2), 289.91, 292.11(8) and 292.31(3)(e), and as those laws may be amended or supplemented in the future. The Settling Performing Party further represents that it and its contractors have had and will continue to have full and satisfactory access to the Site and the ability to enforce the institutional control requirements of this Consent

Decree related to the Site under the Wisconsin statutory authorities listed in this Paragraph for purposes of complying with all the requirements of this Consent Decree, including this Section.

26. For purposes of Paragraphs 25 and 25.1 of this Consent Decree, "best efforts" includes the Settling Performing Party's exercise and enforcement of all State laws providing the State with authority to secure access, access easements, land/water use restrictions, and/or restrictive easements/covenants. If, at any time following entry of this Consent Decree, the Settling Performing Party is unable to obtain access to the Site property for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, or is unable to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree, the Settling Performing Party shall promptly notify the United States in writing, and shall include in that notification a summary of the steps the Settling Performing Party has taken to attempt to comply with Paragraph 25 of this Consent Decree. The United States may, as it deems appropriate, assist the Settling Performing Party in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. The Settling Performing Party shall reimburse the United States, in accordance with the procedures for payment of costs contained in Paragraph 84, for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

27. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD as modified by the ESD, ensure the integrity and protectiveness

thereof, or ensure non-interference therewith, the Settling Performing Party shall cooperate with EPA's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

29. In addition to any other requirement of this Consent Decree, the Settling Performing Party shall submit to EPA two copies of written annual progress reports that:

- (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous year;
- (b) include a summary of all results of sampling and tests and all other data received or generated by the Settling Performing Party or its contractors or agents in the previous year;
- (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous year;
- (d) describe all actions, which are scheduled for the next year and provide other information relating to the progress of the Remedial Action;
- (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) include any modifications to the plans, documents or other schedules that the Settling Performing Party has proposed to EPA or that has been approved by EPA; and
- (g) describe all activities undertaken in support of the Community Relations Plan during the previous year and those to be undertaken in the next year.

The Settling Performing Party shall submit these progress reports to EPA by February 1 of each year beginning with February 1, 2002, until EPA notifies the Settling Performing Party pursuant to Paragraph 48.b of Section XIV (Certification of

Completion). If requested by EPA, the Settling Performing Party also shall provide briefings for EPA to discuss the progress of the Work. These briefings may be conducted by telephone or by electronic mail. After a minimum of two years after the entry of this Consent Decree, the Settling Performing Party may petition EPA to reduce the frequency of this reporting.

30. The Settling Performing Party shall notify EPA of any change in the schedule described in the annual progress report for the performance of any activity, including, but not limited to, data collection and implementation of the documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site, no later than seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that must be reported pursuant to section 103 of CERCLA or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), within 24 hours of the onset of such event the Settling Performing Party shall orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA section 103 or EPCRA section 304.

32. Within 20 days of the onset of such an event, the Settling Performing Party shall furnish to Plaintiff a written report, signed by the Settling Performing Party's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, the Settling Performing Party shall submit a report setting forth all actions taken in response thereto.

33. The Settling Performing Party shall submit two copies of all plans, reports, and data required by the RA SOW, all documents specifying the manner in which the Settling

Performing Party will perform the Remedial Action at the Site, or any other approved plans to EPA in accordance with the schedules set forth in such plans.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Party modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Settling Performing Party at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where a previous submission has been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35.a, 35.b, or 35.c, the Settling Performing Party shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35.c and the submission has a material defect, EPA retains its right to seek penalties, as provided in Section XX

(Stipulated Penalties).

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35.d, the Settling Performing Party shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35.d, the Settling Performing Party shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Settling Performing Party of any liability for penalties under Section XX (Stipulated Penalties).

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

39. If upon resubmission a plan, report, or item is disapproved or modified by EPA due to a material defect, the Settling Performing Party shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Performing Party invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any penalties during Dispute Resolution. If EPA's disapproval or modification is

upheld, penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

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

42. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager

(RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

43. EPA's Project Coordinator and the Settling Performing Party's Project Coordinator will consult, at a minimum, on a monthly basis, or on such other schedule to which the Parties shall agree. Such meetings may be held by teleconference upon the mutual agreement of both Project Coordinators.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

44. The Settling Performing Party shall submit to EPA, as part of each annual progress report to be submitted to EPA pursuant to Paragraph 29, the documents described in subparagraph 44.a, and shall submit to EPA the information described in subparagraph 44.b within 30 days of each EPA request for such information, unless in writing EPA indicates otherwise.

a. Each biennial budget for the State's Environmental Fund as appropriated by the Wisconsin Legislature and, if applicable, any specific budget items for, and appropriations for, performing any obligation pursuant to this Consent Decree; and

b. All additional information related to the Settling Performing Party's ability to meet its financial obligations under this Consent Decree and its obligations under Paragraph 6.d of this Consent Decree which EPA requests for the purpose of determining the Settling Performing Party's ability to fulfill those obligations pursuant to this Consent Decree, the ROD as

modified by the ESD, the RA SOW and other EPA-approved documents specifying the manner in which the Settling Performing Party shall perform the Remedial Action at the Site, including plans, standards, specifications and schedules.

45. Except as provided for in Section XVIII (Force Majeure) of this Consent Decree, as soon as practicable but no less than 10 days prior to the date on which the Settling Performing Party is to perform any obligation(s) pursuant to this Consent Decree, the ROD as modified by the ESD, the RA SOW and other EPA-approved documents specifying the manner in which the Settling Performing Party shall perform the Remedial Action at the Site, including plans, standards, specifications and schedules, the Settling Performing Party shall provide written notice to EPA if it is unable to perform such obligation(s). Such written notice to EPA shall specify the cause(s) of the Settling Performing Party's inability to perform. If EPA determines that the Settling Performing Party has failed or is failing to comply with this Consent Decree, the ROD as modified by the ESD, the RA SOW and other EPA-approved documents, plans, standards, specifications and schedules, EPA shall notify the Settling Performing Party.

46. The Settling Performing Party's inability to demonstrate financial ability to complete the Work pursuant to this Consent Decree shall not excuse its performance of any obligations required under this Consent Decree. Nothing in this Section shall affect the Settling Performing Party's obligation to pay stipulated penalties pursuant to Section XX (Stipulated Penalties) of this Consent Decree.

XIV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action

a. Within 90 days after the Settling Performing Party concludes that the Remedial Action has been fully performed and the Performance Standards have been achieved and maintained for a period of eight consecutive quarters, as discussed in the RA SOW, the

Settling Performing Party shall schedule and conduct a pre-certification inspection to be attended by the Settling Performing Party and EPA. Any incomplete Remedial Action components discovered during the Inspection shall be identified. If, after the pre-certification inspection, the Settling Performing Party still believes that the Remedial Action has been fully performed and the Performance Standards have been attained for the requisite time period, within 30 days of the pre-certification inspection the Settling Performing Party, pursuant to Section XI (EPA Approval of Plans and Other Submissions), shall submit to EPA for approval a written report requesting certification of the completion of the Remedial Action. In the report, a registered professional geologist and the Settling Performing Party's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree and the Performance Standards have been achieved and maintained for a period of eight consecutive quarters. The report shall contain the following statement, signed by the Settling Performing Party's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved and maintained for a period of eight consecutive quarters, EPA will notify the Settling Performing Party in writing of the activities it must perform pursuant to this Consent Decree to complete the Remedial Action and to achieve the Performance Standards. Provided, however, that EPA may only require the Settling Performing Party to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD as modified by the ESD," as that term is defined in Paragraph 12.b. EPA

will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RA SOW or will require the Settling Performing Party's Project Coordinator to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Settling Performing Party shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting certification of completion of the Remedial Action, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved and maintained for a period of eight consecutive quarters, EPA will so certify in writing to the Settling Performing Party. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiff). Certification of Completion of the Remedial Action shall not affect the Settling Performing Party's obligations under this Consent Decree.

48. Completion of the Work

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

To the best of my knowledge, after thorough investigation, I certify that the

information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and reviewing the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Settling Performing Party in writing of the activities that it must perform pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require the Settling Performing Party to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD as modified by the ESD," as that term is defined in Paragraph 12.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RA SOW or require the Settling Performing Party's Project Coordinator to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Settling Performing Party shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by the Settling Performing Party, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Performing Party in writing.

XV. EMERGENCY RESPONSE

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

environment, the Settling Performing Party shall, subject to Paragraph 50 immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Performing Party shall notify the EPA Emergency Response Branch, Region 5. The Settling Performing Party shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the RA SOW. In the event that the Settling Performing Party fails to take appropriate response action as required by this Section, and EPA takes such action instead, the Settling Performing Party shall reimburse EPA for all costs of the response action not inconsistent with the NCP in accordance with the procedures for payment of costs contained in Paragraph 84.

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

XVI. REIMBURSEMENT OF RESPONSE COSTS

51. Reimbursement by Settling Defendants.

a. Within thirty (30) days after lodging of this Consent Decree, or thirty (30) days after the issuance of a Court Order establishing a Court Registry account in this matter,

whichever is later, each Settling Defendant shall pay to the Clerk of the federal district court for the Western District of Wisconsin, for deposit into the Court Registry, the amount it is obligated to pay as specified in Appendix I, except, however, that certain Settling Defendants as specified in Appendix I may pay a portion of what they owe in future installments directly to the State. At the time of payment of the funds into the Court Registry, each Settling Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation to EPA and to the Chief, Environmental Enforcement Section of DOJ in accordance with Section XXVI (Notices and Submissions).

b. Within thirty (30) days after entry of this Consent Decree, the Clerk of Court shall transmit a total of \$793,895 by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number is 2001Z00142, the EPA Region and Site/Spill ID #05TN, and DOJ case number 90-11-2-1184. Payment shall be made in accordance with instructions provided to the Clerk of Court by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Wisconsin. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. The Clerk of Court shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to U.S. EPA Region 5, Attention: Program Accounting and Analysis Section, Comptroller Branch, P.O. Box 70753, Chicago, Illinois 60673. Payments made by the Clerk pursuant to this subparagraph shall be in reimbursement of Past Response Costs and Future Response Costs.

c. After payment is made pursuant to Paragraph 51.b, the Clerk of Court shall transmit the balance of funds in the Court Registry, less any fees assessed by the Court, to the State in the form of a certified check or checks made payable to "State of Wisconsin". The Clerk of Court shall send the certified check or checks to State of Wisconsin, Wisconsin

Department of Natural Resources, Bureau of Finance, Accounts Payable Section, P.O. Box 7921, Madison, Wisconsin 53703.

d. If this Consent Decree is disapproved by a final, non-appealable Order of this Court or if the Decree is withdrawn by the United States as provided in Paragraph 110, the Clerk shall return the deposited amount, plus interest and less any applicable court fees, to the State for reimbursement to the parties which contributed towards the payment. The Clerk shall mail such payment to the State at State of Wisconsin, Wisconsin Department of Natural Resources, Bureau of Finance, Accounts Payable Section, P.O. Box 7921, Madison, Wisconsin 53703. The State then shall return to each Settling Defendant the amount paid by that Settling Defendant plus accrued interest on the amount paid.

e. In the event that a Settling Defendant does not make the payment required by Paragraph 51.a within thirty (30) days after lodging of this Consent Decree, or thirty (30) days after the issuance of a Court Order establishing a Court Registry account in this matter, whichever is later, such Settling Defendant shall pay Interest on its unpaid balance. The Interest shall continue to accrue through the date of such Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of a Settling Defendant's failure to make a timely payment under this Section. Each Settling Defendant shall make all payments required by this Paragraph to the Settling Performing Party in the manner described in Paragraph 51.c.

f. The payment made under Paragraph 51.b above, shall be deposited into the Refuse Hideaway Landfill Site Special Account within the EPA Hazardous Substance Superfund and shall be retained by EPA and may be used by EPA to conduct or finance any response actions pursuant to CERCLA with respect to hazardous substances released at the Refuse Hideaway Landfill Site, including any response actions required under this Consent Decree which the Settling Performing Party fails to perform. The Settling Defendants shall have

no obligation to deposit or transfer the payments required by Paragraph 51.b into the Refuse Hideaway Landfill Site Special Account. Any balance remaining in the Refuse Hideaway Landfill Site Special Account at the time of certification of completion of the Work for the Refuse Hideaway Landfill Site shall be transferred by EPA to the Hazardous Substance Superfund.

51.1. Reimbursement by Settling Federal Agencies. As soon as reasonably practicable after the effective date of this Consent Decree, and consistent with subparagraph 51.1(ii), the United States, on behalf of the Settling Federal Agencies, shall:

(i) Pay to the EPA Hazardous Substance Superfund \$32,845.11 in reimbursement of Past Response Costs and Future Response Costs, which payment includes premium payments for Future Response Costs.

(ii) If the payment to the EPA Hazardous Substances Superfund required by this subparagraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

51.2. In the event that payments required by Paragraph 51.1 are not made within 120 days of the effective date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

51.3. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency

obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

51.4 The payment made under Paragraph 51.1(i) above shall be deposited into the Refuse Hideaway Landfill Site Special Account within the EPA Hazardous Substance Superfund and shall be retained by EPA and may be used by EPA to conduct or finance any response actions pursuant to CERCLA with respect to hazardous substances released at the Refuse Hideaway Landfill Site, including any response actions required under this Consent Decree which the Settling Performing Party fails to perform. The Settling Federal Agencies, or the United States on their behalf, shall have no obligation to deposit or transfer the payment required by Paragraph 51.1(i) into the Refuse Hideaway Landfill Site Special Account.

XVII. INDEMNIFICATION AND INSURANCE

52. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Settling Performing Party as EPA's authorized representative under section 104(e) of CERCLA. The Settling Performing Party agrees to indemnify and save and hold harmless the United States and its officials, agents, and employees for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Performing Party, its officers, employees, and agents in carrying out the activities pursuant to this Consent Decree for which the Settling Performing Party is legally liable and for which it therefore is legally responsible to pay pursuant to Wis. Stat. §§ 775.01, 893.82, and 895.46. Further, the Settling Performing Party agrees to pay the United States all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Performing Party, its officers, employees, and agents in carrying out activities

pursuant to this Consent Decree to the extent that the Settling Performing Party is legally responsible to pay such costs pursuant to Wis. Stat. §§ 775.01, 893.82, and 895.46. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Performing Party in carrying out activities pursuant to this Consent Decree. The Settling Performing Party shall require that all contractors and subcontractors it retains to perform the Work or a portion of the Work name the United States has an additional insured entity in their applicable insurance policies. Neither the Settling Performing Party nor any such contractor shall be considered an agent of the United States.

53. The United States shall give the Settling Performing Party notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 52, and shall consult with Settling Performing Party prior to settling such claim. The Settling Performing Party waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Settling Performing Party and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Settling Performing Party shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Performing Party and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays to the extent that the Settling Performing Party is legally responsible to indemnify another for such claims pursuant to Wis. Stat. §§ 775.01, 893.82, and 895.46.

54. Prior to the effective date of this Consent Decree, the Settling Performing Party provided EPA with information that satisfies EPA as to its financial resources and its ability to provide the equivalent of comprehensive general liability insurance with limits of \$1 million per

occurrence with an annual aggregate of \$4 million.

55. For the duration of this Consent Decree, the Settling Performing Party shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of the Settling Performing Party and in furtherance of this Consent Decree.

XVIII. FORCE MAJEURE

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

57. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Performing Party shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 5 days of when the Settling Performing Party first knew that the event might cause a delay. Within 5 days

thereafter, the Settling Performing Party shall provide in writing to EPA an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, the Settling Performing Party's rationale for attributing such delay to a force majeure event if it intends to assert such a claim, and a statement as to whether, in the opinion of the Settling Performing Party, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Performing Party shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Performing Party from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Performing Party shall be deemed to know of any circumstance of which any entity controlled by the Settling Performing Party, or the Settling Performing Party's contractors, knew or should have known.

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

59. If the Settling Performing Party elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) it shall do so no later than 15 days after receiving EPA's notice. In any such proceeding, the Settling Performing Party shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Performing Party complied with the requirements of Paragraphs 56 and 57, above. If the Settling Performing Party carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Performing Party of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

61. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties to the dispute a written Notice of Dispute. Each Party shall use its best efforts to resolve all disputes or differences informally and in good faith.

62. a. In the event that the parties to the dispute cannot resolve the dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, the Settling Performing Party invokes the formal dispute resolution procedures of this Section by serving on the United States (except that notice need not be given to the Chief, Environmental Defense Section of DOJ) a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by it. The Statement of Position shall specify the Settling Performing Party's position as to whether formal dispute resolution should proceed under Paragraph 63 or Paragraph 64.

b. Within 10 days after receiving the Settling Performing Party's Statement of Position, EPA will serve on the Settling Performing Party its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 63 or 64. Within 10 days after receiving EPA's Statement of Position, the Settling Performing Party may submit a Reply.

c. If there is disagreement between EPA and the Settling Performing Party as to whether dispute resolution should proceed under Paragraph 63 or 64, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Performing Party ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 63 and 64.

63. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record

under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Settling Performing Party regarding the validity of the provisions of the ROD as modified by the ESD.

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

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 63.a. This decision shall be binding upon the Settling Performing Party, subject only to the right to seek judicial review pursuant to Paragraph 63.c and 63.d.

c. Any administrative decision made by EPA pursuant to Paragraph 63.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Performing Party with the Court and served on EPA within 10 days of the Settling Performing Party's receiving EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Performing Party's motion.

d. In proceedings on any dispute governed by this Paragraph, the Settling Performing Party shall have the burden of demonstrating that the decision of the Superfund

Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 63.a.

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

a. Following receipt of the Settling Performing Party's Statement of Position submitted pursuant to Paragraph 62, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Performing Party unless, within 10 days of receipt of the decision, it files with the Court and serves on EPA a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to the dispute to resolve the dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Performing Party's motion.

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

65. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Performing Party under this Consent Decree which is not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties, if applicable, with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Performing Party does not

prevail on the disputed issue, penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

66. The Settling Performing Party shall, subject to the limitations of Wisconsin law and Paragraph 6.c of this Consent Decree, be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by the Settling Performing Party shall include completion of the activities under this Consent Decree, any documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site, and any other plan or report approved by EPA under this Consent Decree and identified below, in accordance with all applicable requirements of law, this Consent Decree, the RA SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

67. Stipulated Penalties Amounts – Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 200	1st through 14th day
\$ 400	15th through 30th day
\$ 600	31st day and beyond

b. Compliance Milestones and Other Requirements.

(1) Failure to implement the activities required for the Remedial Action (as described in Paragraph 10.c);

- (2) Failure to Take Action to Abate an Endangerment under Section XV (Emergency Response); and
- (3) Failure to Comply with Approved Plans or Approved Documents specifying the manner in which the Settling Performing Party will perform the Remedial Action at the Site (as described in Paragraph 10).

68. Stipulated Penalty Amounts – Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 9, 10, 12, 29, 30, 37, 39, 47, and 48 (except as otherwise provided under Paragraph 65, above):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 200	1st through 14th day
\$ 400	15th through 30th day
\$ 600	31st day and beyond

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXI (Covenants by Plaintiff), Settling Performing Party shall be liable for a stipulated penalty in the amount of \$300,000.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Party of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 63.b or 64.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Party's reply to EPA's

Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

72. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Performing Party's receipt from EPA of a demand for payment of the penalties, unless the Settling Performing Party invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid to the "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #05TN, the DOJ Case Number 90-11-2-1184, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States (except that notice need not be given to the Chief, Environmental Defense Section of DOJ) as provided in Section XXVI (Notices and Submissions).

73. The payment of penalties shall not alter in any way the Settling Performing Party's obligation to complete the performance of the Work required under this Consent Decree.

74. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the Settling Performing Party shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;

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

75. If the Settling Performing Party fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. The Settling Performing Party shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72.

76. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Settling Performing Party's violation of this Decree or of the statutes

and regulations upon which it is based, including, but not limited to, penalties pursuant to section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree. In entering into this Consent Decree, the State of Wisconsin does not waive any relevant constitutional defenses which may be available to it under the law, including but not limited to sovereign immunity.

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

XXI. COVENANTS BY PLAINTIFF

78. In consideration of the actions that will be performed by the Settling Performing Party and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 79, 80, and 82 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 47.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by each of the Settling Defendants of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

78.1 In consideration of the payments that will be made by the Settling Federal

Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 79, 80 and 82 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 51.1 of Section XVI (Reimbursement of Response Costs). With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 47.b of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

79. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies:

- a. to perform further response actions relating to the Site or
- b. to reimburse the United States for costs of response if, prior to

Certification of Completion of the Remedial Action:

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

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

80. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies:

- a. to perform further response actions relating to the Site or
- b. to reimburse the United States for costs of response if, subsequent to

Certification of Completion of the Remedial Action:

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

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

81. For purposes of Paragraph 79, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ESD was signed and set forth in the Record of Decision and the ESD for the Site and the administrative record supporting the Record of Decision and the ESD. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of the Remedial Action and set forth in the Record of Decision and the ESD, the administrative record supporting the Record of Decision as modified by the ESD, the post-ROD and post-ESD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

82. General reservations of rights. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 78 and 78.1. The United States reserves, and this Consent Decree is without prejudice to, all rights against each of the Settling Defendants, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- a. claims based on or arising from a failure by a Settling Defendant or the Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD as modified by the ESD, the Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- g. liability of the Settling Defendants (the Settling Federal Agencies have no such liability), prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 12 (Modification of the RA SOW or Related Documents);
- h. liability of the Settling Performing Party for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs; and
- i. liability of the Settling Defendants (the Settling Federal Agencies have no such liability) for costs that EPA will incur in connection with selection of further response actions

(Paragraph 17) and/or as a result of actions taken by EPA under Paragraphs 79 or 80.

83. Notwithstanding any other provision of this Consent Decree, if at any time EPA in its sole discretion determines that the Settling Performing Party has failed to complete any portion of the Work according to the schedules provided under this Consent Decree, the ROD as modified by the ESD, and the RA SOW, or has failed to meet a Performance Standard, and that failure is due to the Settling Performing Party's lack of sufficient funds, upon EPA's providing written notice of such determination to the Settling Performing Party EPA may assume the performance of all or any portions of the Work for a period of time as EPA determines necessary and/or EPA may pursue any of its remedies against the Settling Performing Party, including, but not limited to, seeking injunctive relief from the Court or issuing an Unilateral Administrative Order under section 106 of CERCLA, 42 U.S.C. § 9606. Costs incurred by the United States in performing the Work as a result of the Settling Performing Party's insufficiency of funds shall not be considered Future Response Costs. On a periodic basis the United States will send the Settling Performing Party a bill requiring payment, which includes an Itemized Cost Summary, for the costs EPA has incurred pursuant to this Paragraph. Settling Performing Party shall make payment within 30 days of receiving each bill requiring payment, unless Settling Performing Party chooses to invoke the dispute resolution provisions of Section XIX in which case payment to EPA shall be made within 30 days of when a final decision is made in the dispute resolution process. Settling Performing Party shall make all payments required by this Paragraph to "EPA Hazardous Substance Superfund," referencing EPA Site/Spill #05TN and DOJ Case Number 90-11-2-1184, and shall send all payments to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673. At the time of each payment, Settling Performing Party shall send notice that payment has been made to the United States (except that notice need not be given to the Chief, Environmental Defense Section of DOJ) in accordance with Section XXVI (Notices and Submissions). The total amount of each such

payment shall be deposited in the Refuse Hideaway Landfill Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

84. Work Takeover. In the event EPA determines that the Settling Performing Party has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. The Settling Performing Party may invoke the procedures set forth in Paragraph 63 of Section XIX (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall not be considered Future Response Costs. On a periodic basis the United States will send the Settling Performing Party a bill requiring payment, which includes an Itemized Cost Summary, for the costs EPA has incurred pursuant to this Paragraph. Settling Performing Party shall make payment within 30 days of receiving each bill requiring payment, unless Settling Performing Party chooses to invoke the dispute resolution provisions of Section XIX in which case payment to EPA shall be made within 30 days of when a final decision is made in the dispute resolution process. Settling Performing Party shall make all payments required by this Paragraph to "EPA Hazardous Substance Superfund," referencing EPA Site/Spill #05TN and DOJ Case Number 90-11-2-1184, and shall send all payments to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673. At the time of each payment, Settling Performing Party shall send notice that payment has been made to the United States (except that notice need not be given to the Chief, Environmental Defense Section of DOJ) in accordance with Section XXVI (Notices and Submissions). The total amount of each such payment shall be deposited in the

Refuse Hideaway Landfill Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

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

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

86. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 87, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA sections 106(b)(2), 107, 111, 112, 113 or any other provision of law; except where the United States has asserted a claim against the Settling Defendants (not including the Settling Performing Party) under Paragraphs 79 or 80, or subparagraphs 82.g or 82.i.

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

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

86.1 Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through

CERCLA sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

87. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Performing Party's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraphs 79, 80, 82.b-d, or 82.h of Section XXI (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

88. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.

§ 300.700(d).

89. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property.

90. The Settling Defendants hereby covenant not to sue and agree not to assert any direct or indirect claims against each other or against their officers, directors, employees, agents or officials with respect to Matters Addressed in this Consent Decree, except as necessary to enforce the terms of any agreements by or between them relating to Matters Addressed in this Consent Decree.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

91. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA

section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against a Settling Defendant coming within the scope of such reservations.

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

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

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

XXIV. ACCESS TO INFORMATION

96. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, including the Remedial Design, or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants also shall make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work and the Remedial Design.

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

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant(s) asserts such a privilege in lieu of providing documents, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the

author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Settling Defendant(s). However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

98. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

99. Until 10 years after the Settling Performing Party's receipt of EPA's notification pursuant to Paragraph 48.b of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any record retention policy to the contrary. Until 10 years after the Settling Performing Party's receipt of EPA's notification pursuant to 44.b of Section XIV (Certification of Completion), it also shall instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States (except that notice need not be given to the Chief, Environmental Defense Section of DOJ) at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents,

records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendant. 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.

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

101.1 The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to section 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and § 9622(e), and section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

102. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be

directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agencies, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1184

and

Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-6-39.

and

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Re: Site ID #TN

As to EPA:

John V. Fagiolo
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Re: Site ID #TN

As to the
Settling Performing Party:

Harlan H. Kuehling
State Project Coordinator

Wisconsin Department of Natural Resources
3911 South Fish Hatchery Road
Fitchburg, Wisconsin 53711

As to each other
Settling Defendant:

Agent Authorized to Accept Service for
Each Settling Defendant

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the ESD.

"Appendix C" is the map of the Site.

"Appendix D" is the Remedial Design Scope of Work (RD SOW).

"Appendix E" is the Remedial Action Scope of Work (RA SOW).

"Appendix F" is the complete list of the Settling Defendants.

"Appendix G" is the complete list of the Settling Federal Agencies.

"Appendix H" is the list of the "Performing Parties under the AOC", as that term is defined in Section IV of this Consent Decree (Definitions).

"Appendix I" is the list of payments to be made by each Settling Defendant.

XXX. COMMUNITY RELATIONS

106. The Settling Performing Party will cooperate with EPA to develop and to implement the community relations plan and to provide information regarding the Work to the public. EPA will determine the appropriate role for the Settling Performing Party under the community relations plan. As requested by EPA, the Settling Performing Party shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

108. Except as provided in Paragraph 12 (Modification of the RA SOW or Related Documents), no material modifications shall be made to the RA SOW without written notification to and written approval of the United States (except that the Chief, Environmental Defense Section of DOJ need not be given notice and need not provide written approval), the Settling Performing Party, and the Court. Modifications to the RA SOW that do not materially alter that document may be made by written agreement between EPA and the Settling Performing Party.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

110. This Consent Decree shall be lodged with the Court for a period of not less than 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 Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

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

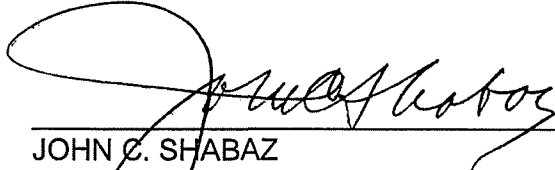
113. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

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

XXXIV. FINAL JUDGMENT

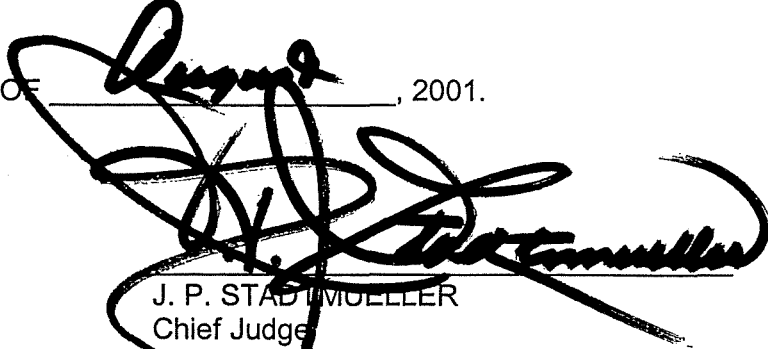
115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 29th DAY OF August, 2001.



JOHN C. SHABAZ
United States District Judge
Western District of Wisconsin

SO ORDERED THIS 31st DAY OF August, 2001.



J. P. STADTMUELLER
Chief Judge
Eastern District of Wisconsin