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FILED
KAREN J. MURPHY
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS
SEP 16 7 AM 11:07

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

State of Ohio

Plaintiff,

v.

E. I. du Pont de Nemours and
Company and PPG Industries, Inc.,

Defendants and Third-
Party Plaintiffs,

v.

Ellen J. Bowers, as Executrix
of the Estate of John N. Bowers,
Georgia-Pacific Corporation, and
General Electric Company,

Third-Party Defendants.

C2 96- 783

CIVIL ACTION NO.

Judge Graham
Magistrate Judge King

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CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

State of Ohio)	
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Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
E. I. du Pont de Nemours and)	Judge Graham
Company and PPG Industries, Inc.,)	Magistrate Judge King
)	
Defendants and Third-)	
Party Plaintiffs,)	
)	
v.)	
)	
Ellen J. Bowers, as Executrix)	
of the Estate of John N. Bowers,)	
Georgia-Pacific Corporation,)	
General Electric Company,)	
)	
Third-Party Defendants.)	

CONSENT DECREE

I. BACKGROUND

A. WHEREAS the State of Ohio, on relation of Attorney General Betty D. Montgomery, has filed a Complaint in this matter pursuant to §§107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9607 and 9613, and pursuant to applicable sections of the Ohio Revised Code Chapters 3734 and 6111.

B. The State of Ohio in its Complaint seeks reimbursement for past costs in responding to releases and threatened releases of hazardous substances into the environment from the Bowers Landfill Site located in Pickaway County, Ohio ("Bowers Site" or "Site"), and

a declaratory judgment that the Defendants are liable for all future response costs to be incurred by the State of Ohio pursuant to the provisions of this Consent Decree.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

D. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, on January 15, 1985, the Settling Defendants signed an Administrative Order on Consent to perform a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. §300.430.

E. Settling Defendants completed a Remedial Investigation ("RI") Report on or about August 22, 1988, and Settling Defendants completed a Feasibility Study ("FS") Report on or about February 3, 1989.

F. A final Record of Decision ("ROD") was executed on March 31, 1989. The State has reviewed and commented and has given its concurrence to the ROD. (The ROD has been filed in this Court as Appendix A to the Consent Decree lodged by the United States on August 31, 1993 and approved by order of this Court entered December 14, 1993, in a companion action captioned United States of America v. E.I. du Pont de Nemours and Company and PPG Industries, Inc., et al. Case No.C2-91-742) (hereinafter referred to as the "U.S. EPA Consent Decree"). Notice of the final plan for the Remedial Action was published in accordance with Section 117(b) of CERCLA.

G. The Remedial Action has been completed by U.S. EPA. The First-Year Groundwater Monitoring task has been performed by the Settling Defendants in accordance with the First-Year Groundwater Monitoring Work Plan approved by U.S. EPA and Ohio EPA, attached to the U.S. EPA Consent Decree as Appendix B. The Operation and Maintenance of the Remedial Action will be performed by the Settling Defendants in accordance with this Consent Decree and the "Groundwater Monitoring/Operation and Maintenance Plan" approved by Ohio EPA which is attached hereto as Appendix A.

H. The State has incurred costs in addressing releases of hazardous substances from the Site and expects to incur additional costs.

I. The purpose of this Consent Decree is to provide for: (1) reimbursement of the State of Ohio's Response Costs, as this term is defined in Section IV of this Consent Decree, concerning the Site; (2) reimbursement of Ohio EPA's future Oversight Costs as this term is defined in Section IV of this Consent Decree; and (3) implementation of the Groundwater Monitoring/Operation and Maintenance Plan, which has been approved by Ohio EPA and is attached hereto as Appendix A.

J. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work as defined in Section IV of this Consent Decree to be performed by the Settling Defendants shall constitute response action taken or ordered by the President.

K. The Defendants and Third-Party Defendants that have entered

into this Consent Decree do not admit any liability to the State of Ohio arising out of the transactions or occurrences alleged in the Complaint.

L. 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, that performance of the requirements of this Consent Decree will facilitate the performance of the Operation and Maintenance Work Plan and will avoid prolonged and costly 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 herein, and the parties hereto pursuant to 28 U.S.C. §1331 and 42 U.S.C. §§9607 and 9613(b) and this Court's pendent jurisdiction over State claims. Settling Defendants and Third-Party Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree, and waive service of summons in this action. Venue is proper in this court. Settling Defendants and Third-Party Defendants shall not challenge the terms of this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the State of Ohio and upon Settling Defendants and Third-Party Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant or a Third-Party Defendant including, but not limited to, any transfer of assets or real or

personal property shall in no way alter such Settling Defendants' or Third-Party Defendants' responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their 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 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3).

IV. DEFINITIONS

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

"Additional Work" shall mean Work not required in the Operation

and Maintenance Work Plan, but required to maintain the effectiveness of the Remedial Action.

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

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

"Costs" shall mean Response Costs, and Oversight Costs.

"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 state 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.

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

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

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

thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action, including but not limited to groundwater and surface water monitoring, gas monitoring, wetlands maintenance, and inspection and maintenance of the landfill cap, as required under the Operation and Maintenance Work Plan approved by Ohio EPA pursuant to the ROD.

"Operation and Maintenance Work Plan" or "Work Plan" shall mean the document entitled "Groundwater Monitoring/Operation and Maintenance Plan," attached hereto as Appendix A, which has been approved by Ohio EPA and which describes the O&M activities to be undertaken pursuant to this Consent Decree, any documents incorporated by reference and any modifications made to Appendix A in accordance with this Consent Decree. The Operation and Maintenance Work Plan includes by reference: (1) a Health and Safety Plan for field activities which conforms to the applicable Occupational Safety and Health Administration requirements including, but not limited to, 29 C.F.R. § 1910.120; and (2) a Quality Assurance Project Plan ("QAPP") which is not inconsistent with the NCP and applicable guidance documents. The Health and Safety Plan which will be reviewed and commented on by Ohio EPA, and the QAPP, which will be approved by Ohio EPA are/shall be incorporated by reference in this Consent Decree but are not included in Appendix A hereto due to their voluminous nature. The Work Plan, including the Health and Safety Plan and the QAPP, is or shall upon completion be available for review at the information repository for the Site located at the

Pickaway County District Library in Circleville, Ohio, at Ohio EPA's Central District Office, Columbus, Ohio, and at U.S. EPA, Region V, in Chicago, Illinois.

"Oversight Costs" shall mean all costs not inconsistent with the National Contingency Plan, incurred by the State in monitoring and ensuring compliance with the requirements of this Consent Decree, including but not limited to monitoring and ensuring compliance with the Operation and Maintenance Work Plan including any modifications thereto. Such costs shall include, but are not limited to, payroll and other direct costs, indirect and overhead costs, sampling and laboratory costs, travel costs, contractor costs, and all costs of reviewing the Work performed pursuant to this Consent Decree.

"Owner Settlor" or "Owner" shall mean Third-Party Defendant Ellen J. Bowers, as Executrix of the Estate of John N. Bowers, or her successor.

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

"Parties" shall mean the State of Ohio, the Defendants and the Third-Party Defendants.

"Plaintiff" shall mean the State of Ohio.

"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).

"Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Bowers Site signed on March 31, 1989, by the Regional Administrator, U.S. EPA Region V, and all attachments

thereto.

"Remedial Action" shall mean those activities undertaken by U.S. EPA and/or Ohio EPA to implement the remedy as selected in the ROD. For purposes of this Consent Decree, Remedial Action shall not include Operation and Maintenance activities.

"Response Costs" shall mean all direct and indirect costs incurred by the State concerning the Site, which are not inconsistent with the National Contingency Plan and which are (1) incurred by the State prior to the entry of this Consent Decree, or (2) incurred pursuant to this Consent Decree. Response Costs shall include, without limitation, costs incurred by the Ohio Attorney General's Office and the ten percent (10%) share of the costs to complete the Remedial Action incurred by the United States pursuant to the June 1991 "Superfund State Contract Between the Ohio Environmental Protection Agency and the United States Environmental Protection Agency for Remedial Activities at the Bowers Landfill Site". Only for the purposes of this Consent Decree, Response Costs shall not include Oversight Costs. Nothing in this definition or this Consent Decree shall be construed as an admission by the State that oversight costs are not recoverable as costs of removal or remedial action under 42 U.S.C. 9607(a). Nothing in this definition or this Consent Decree shall be construed as an admission by Settling Defendants that oversight costs are recoverable as costs of removal or remedial action under 42 U.S.C. 9607(a).

"Settling Defendants" or "Defendants" shall mean E.I. du Pont de Nemours and Company and PPG Industries, Inc.

"Site" shall mean the Bowers Landfill Superfund Site, encompassing approximately 12 acres, located in rural Pickaway County, Ohio, approximately 2.5 miles north of the City of Circleville, Ohio. The Site is immediately northwest of the intersection of Island Road and Circleville-Florence Chapel Road, on the east side of the Scioto River Valley. The landfill lies within the Scioto River floodplain. Its northwestern and southern-most points abut the Scioto River as depicted generally on the map attached as Appendix C.

"State" shall mean the State of Ohio, including without limitation its agencies, departments, successors and assigns.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the performance of the Work under this Consent Decree.

"Third-Party Defendants" or "Settling Third-Party Defendants" shall mean Ellen J. Bowers, as Executrix of the Estate of John N. Bowers, Georgia-Pacific Corporation, and General Electric Company.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. §9601(33); and (3) any "hazardous waste" under Ohio Revised Code §3734.01(J) and the rules promulgated thereunder.

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree in conjunction with the requirements of the Operation and Maintenance Work Plan (including

any modifications thereto) to maintain the effectiveness of the Remedial Action, except those activities required by Section XXIII (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, welfare and the environment at the Site by the performance of Operation and Maintenance activities, at the Site by the Settling Defendants in accordance with this Consent Decree and the Operation and Maintenance Work Plan and to reimburse the State of Ohio's Oversight Costs and Response Costs.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work, and Additional Work, if any, required pursuant to Paragraph 11 of this Consent Decree, in accordance with this Consent Decree and shall reimburse the State for Oversight Costs as provided in this Consent Decree. Settling Defendants and Third-Party Defendants, excepting the Owner, together shall reimburse the State for Response Costs, as provided in this Consent Decree.

b. Notwithstanding any other provision in this Consent Decree, Settling Defendants do not agree, nor shall they be required by this Consent Decree, to perform any task, in addition to the Work, or Additional Work, if required, which constitutes "corrective action" as that term is used in the ROD. By entering into this Consent Decree, the State of Ohio and the Settling Defendants are admitting neither that the Settling Defendants are liable to perform

a "corrective action" as used in the ROD, nor that the Settling Defendants are not so liable. The Parties will determine that liability in the future, if and when the need arises. The State of Ohio reserves all rights to take any action to require any or all Settling Defendants to perform "corrective action" as that term is used in the ROD.

c. The obligations of Settling Defendants to finance and perform the Work and to reimburse the State for Oversight Costs are joint and several. The obligations of Settling Defendants and Third-Party Defendants, excepting the Owner, to reimburse the State for its Response Costs are joint and several. In the event of the insolvency or other failure of one of the Settling Defendants to perform the Work required by this Consent Decree or to pay the State's Oversight Costs, the remaining Settling Defendant shall complete the Work and pay such costs. In the event of the insolvency or other failure of one of the Settling Defendants or Third-Party Defendants, excepting the Owner, to pay the State's Response Costs, the remaining Settling Defendants or Third-Party Defendants, excepting the Owner, shall pay such Response Costs.

7. Compliance With Applicable Law

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

Operation and Maintenance Work Plan.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Delays in performance of Work or Additional Work covered by this Consent Decree due to the time taken for government review shall not be considered a violation of this Decree or counted toward the running of time limits under this Decree.

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

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner shall record a certified copy of this Consent Decree with the Recorder's Office, Pickaway County, State of Ohio. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the State, and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner with respect to the

provision of access under Section VIII (Access) and compliance with the deed restrictions set forth in Appendix D, shall be binding upon such Owner and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner shall record at the Recorder's Office, Pickaway County, a notice of obligation to provide access under Section VIII (Access) and related covenants, and a fully executed copy of the deed restrictions set forth in Appendix D hereto. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice, deed restrictions, and covenants applicable to the property.

c. The Owner and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to Ohio EPA and U.S. EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' and Third-Party Defendants' obligations under this Consent Decree, including such obligations as are set forth in Section VIII to provide or secure access, shall continue to be met by the Settling Defendants and Third-Party Defendants. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants and Third-Party Defendants to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants) and VII (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a qualified engineer, geologist, architect, or other individual, with expertise in hazardous waste site investigations and remediation. The Supervising Contractor is Cummings Riter Consultants, Inc. If at any time Settling Defendants propose to change the Supervising Contractor or Subcontractor, Settling Defendants shall give such notice to Ohio EPA at a minimum of five (5) days prior to initiating such change.

11. Additional Work.

a. Should Ohio EPA determine that Additional Work is necessary, Ohio EPA may notify Settling Defendants of the need for such Additional Work. Within twenty (20) working days of receipt of such notification from Ohio EPA or as otherwise agreed by the Site Coordinator, Settling Defendants shall prepare and submit to Ohio EPA for review and approval a new or revised document incorporating the Additional Work. If Settling Defendants elect not to perform such proposed Additional Work, within fourteen (14) calendar days from receipt of notification from Ohio EPA of the need for Additional Work, Settling Defendants shall notify Ohio EPA in writing of this election, and Settling Defendants shall institute dispute resolution

mechanisms as set forth in Section XVII. Notwithstanding the provisions of this paragraph, Work or Additional Work needed to address emergency situations shall be governed by Paragraph 32 of this Consent Decree.

b. Should Settling Defendants determine that Additional Work is necessary, Settling Defendants shall, prior to performance of the Additional Work, submit to Ohio EPA for approval their plan for performing such Additional Work.

c. In the event that Additional Work is necessary for any task described in this Consent Decree, and should Settling Defendants elect to perform such Additional Work or be directed to perform such Additional Work by this Court, the deadline for completing such task(s) shall be extended by the amount of time required to perform the Additional Work required, including the period of time required to plan and/or obtain approval from the Ohio EPA for the performance of such work.

VII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

12. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for the Operation and Maintenance samples in accordance with the applicable provisions of guidance documents which are either listed in Appendix B or are referenced in the Operation and Maintenance Work Plan and QAPP, and any subsequent amendments to such guidance documents upon notification by Ohio EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

13. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP, incorporated by reference in Appendix A hereto and approved by Ohio EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

14. Settling Defendants shall ensure that Ohio EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in carrying out this Consent Decree. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted U.S. EPA methods. Accepted U.S. EPA methods consist of those methods which are documented in the QAPP and any amendments made thereto during the course of the performance of this Consent Decree. Settling Defendants shall ensure that all laboratories which they use for analysis of samples taken pursuant to this Consent Decree participate in a U.S. EPA or U.S. EPA-equivalent QA/QC program.

15. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by Ohio EPA, U.S. EPA, and/or their authorized representatives. Settling Defendants shall notify Ohio EPA and U.S. EPA not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by Ohio EPA. In addition, Ohio EPA and U.S. EPA shall have the right to take any additional samples that Ohio EPA or U.S. EPA deems necessary. Upon request, Ohio EPA and U.S. EPA shall allow the Settling Defendants to take split or duplicate samples of any samples

taken as part of the oversight of the Settling Defendant's performance of the Work provided that such split or duplicate sampling does not delay sampling by Ohio EPA to a degree to which Ohio EPA does not approve. The Ohio EPA states its intention, in the normal course, to notify the Supervising Contractor not less than fourteen days before collecting any samples, provided that failure to give prior notice will not invalidate or limit use of samples by Ohio EPA in any proceeding or subject Ohio EPA to sanction under this Consent Decree or otherwise; and provided that despite the stated intention, Ohio EPA retains all rights-of-entry and other authorities and rights set forth in R.C. §§3734.07 and 3734.20 and referred to in paragraph 18 of this Consent Decree.

16. In addition to reporting requirements in the Work Plan, Settling Defendants shall submit to Ohio EPA two (2) copies of the results of all sampling and/or tests or other data, reports, analyses obtained or generated by or on behalf of Settling Defendants outside the requirements of the Work Plan with respect to the Site and/or the performance of this Consent Decree, unless Ohio EPA agrees otherwise.

17. Notwithstanding any provision of this Consent Decree, the State 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.

VIII. ACCESS

18. Commencing upon the date of filing this Consent Decree, Owner agrees to permit Settling Defendants, and their representatives

and contractors, access at all reasonable times to the Site and to any other property within the control of Owner to which access is required for the purposes of performing the activities required to comply with this Consent Decree. Commencing upon the date of filing this Consent Decree, Owner also agrees to permit the State and the United States, and their respective representatives, including Ohio EPA , U.S. EPA, and their contractors, access at all reasonable times to the Site and to any other property to which access is required for the performance of this Consent Decree for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to Ohio and/or the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIII; and
- g. Assessing compliance with this Consent Decree.

Settling Defendants and Third-Party Defendants also are bound by this Paragraph to the extent that they control access to the Site or any other property to which access is required for the performance of

this Consent Decree.

19. To the extent that the Site or any other property to which access is required for the performance of this Consent Decree is owned or controlled by persons other than Settling Defendants or Owner, Settling Defendants or Owner shall use best efforts to secure from such persons access for Settling Defendants, as well as for the State and the United States and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of filing this Consent Decree, or within 45 days of the date Ohio EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the State, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The State may, as it deems appropriate, assist Settling Defendants or Owner in obtaining access. Settling Defendants shall reimburse the State in accordance with the procedures in Section XIII (Reimbursement), for all costs incurred by the State in obtaining access. Owner shall not be entitled to any compensation by other parties to this Consent Decree for permitting access to the Site, and to any other property controlled by Owner to which access is required for the performance of this Consent Decree.

20. Notwithstanding any provision of this Consent Decree, the

State retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

21. Settling Defendants shall submit to Ohio EPA Gas Monitoring Documentation, Inspection Documentation, Maintenance Activity Documentation, and Site Safety Documentation as required by the Work Plan.

22. Reports submitted by Settling Defendants shall describe to Ohio EPA any change from the schedules in the approved Operation and Maintenance Work Plan for the performance of any activity, including but not limited to, data collection and implementation of work plans.

23. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify (1) the Ohio EPA Site Coordinator, or the supervisor of the Ohio EPA Site Coordinator if the Site Coordinator is not available, and (2) the Emergency Response Unit, Ohio Environmental Protection Agency. Notification of the Ohio EPA Site Coordinator or his or her supervisor is in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

24. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Ohio EPA and U.S. EPA a written report, signed by the Settling Defendant's Supervising Contractor, 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, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

25. Settling Defendants shall submit 2 (two) copies of all plans, reports, and data required by the Operation and Maintenance Work Plan (Appendix A), or any other approved plans, to Ohio EPA in accordance with the schedules set forth in such plans. Settling Defendants simultaneously shall submit 2 (two) copies of all such plans, reports and data to U.S. EPA.

26. All reports and other documents submitted by Settling Defendants to Ohio EPA and U.S. EPA which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

X. PROJECT/ SITE COORDINATORS

27. The names, address and telephone number of Settling Defendants' Supervising Contractor's Project Coordinator and Alternate Project Coordinator are Patrick F. O'Hara and Douglas E. Spicuzza, respectively, both of Cummings Riter Consultants, Inc., 339 Haymaker Road, Parkway Building, Suite 201, Monroeville, Pennsylvania 15146, (412) 373-5240. If a Supervising Contractor's Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Supervising Contractor's Project

Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work and carry out the terms of this Consent Decree. Settling Defendants shall notify Ohio EPA in writing of any subsequent Coordinator's name, title and qualifications. The Settling Defendants' Supervising Contractor'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 the Work.

28. The State may designate representatives, including, but not limited to Ohio EPA employees, and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. In addition, Ohio EPA's Site 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.

29. Ohio EPA's Site Coordinator, U.S. EPA's Project Coordinator, and the Settling Defendants' Supervising Contractor's Project Coordinator will meet at the earliest mutually agreeable date, if a meeting is requested by any of the said coordinators.

XI. ASSURANCE OF ABILITY TO COMPLETE WORK

30. Within 30 days of entry of this Consent Decree, Settling

Defendants shall establish and maintain financial security in the amount of \$1,975,369 in one of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or

(e) A demonstration that one or more of the Settling Defendants satisfies the requirements of O.A.C. §3745-55-45(F).

31. If Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 30(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of O.A.C. §3745-55-45(F). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 30(d) or (e), they shall resubmit sworn statements conveying the information required by O.A.C. §3745-55-45(F) annually, in accordance with the following provisions. Regardless of the form of financial security chosen by Settling Defendants, during the period in which Settling Defendants are performing the Work under this Consent Decree, and within ninety days after the close of their respective fiscal years, Settling Defendants shall estimate the total cost of the Work that remains to be done. If the value of the financial security established by

Settling Defendants is greater than the present value of the total estimated cost of the Work that remains to be done, the Settling Defendants may submit a written request to the Director for a reduction in the amount of financial security which has to be maintained and, for a trust, a release of the amount in excess of the current total estimated cost of the remaining Work. If the value of the financial security established by Settling Defendants is less than the total amount of the present value of the total estimated cost of the Work that remains to be done, the Settling Defendants shall, within ninety days after the close of their respective fiscal years, increase the amount of financial security which has to be maintained until it equals the present value of the total estimated cost of the remaining Work. Within ten days after entry of this Consent Decree, each Settling Defendant shall notify Ohio EPA in writing of date on which the fiscal year of the respective Settling Defendant closes. If the fiscal year closing date changes, the Settling Defendant shall notify the Ohio EPA of the change within thirty days after such change is made.

Instruments used by the Settling Defendants as financial assurance to comply with Paragraphs 30 and 31 of this Consent Decree shall conform to the requirements of Section 3745-55-51 of the Ohio Administrative Code, except that such instruments shall make reference to performing the Work under this Consent Decree in substitution of references to closure and post closure.

In the event that Ohio EPA determines at any time that the financial assurances provided pursuant to Paragraph 30(a), (b), (c),

(d), or (e) are inadequate, Settling Defendants shall, within 30 days of receipt of notice of Ohio EPA's determination, obtain and present to Ohio EPA for approval one of the forms of financial assurance listed in Paragraph 30 of this Consent Decree. Settling Defendants' failure to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XII. EMERGENCY RESPONSE

32. In the event of any action or occurrence during the performance of the Work at the Site which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation which presents an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 33, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Ohio EPA Emergency Response Unit, in Columbus, Ohio, and the Ohio EPA Site Coordinator, or, if the Site Coordinator is unavailable, Settling Defendants shall notify the supervisor of the Ohio EPA Site Coordinator. Settling Defendants also shall provide such immediate notification to the U.S. EPA Project Coordinator, or, if unavailable, the Alternate Project Coordinator. Settling Defendants shall take such actions in consultation with the Ohio EPA Site Coordinator or other available authorized Ohio EPA officer, and in accordance with all applicable provisions of the Health and Safety Plan and any other applicable plans or documents developed pursuant to the Operation and Maintenance Work Plan. In

the event that Settling Defendants fail to take appropriate response action as required by this Section, and Ohio EPA takes such action instead, Settling Defendants shall reimburse Ohio EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Reimbursement).

33. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the State to take, direct, or order all appropriate action or to 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.

XIII. REIMBURSEMENT

34. Settling Defendants and Third-Party Defendants, excepting the Owner, shall:

a. Within 60 days of the entry of this Consent Decree, pay to the State of Ohio \$215,317.12 in settlement of all Response Costs incurred by the State through December 31, 1994, other than the State of Ohio's 10% share of the Remedial Action Costs incurred by U.S. EPA. Payment shall be made in accordance with Paragraph 35 and/or instructions to be provided by the State of Ohio to Settling Defendants upon execution of the Consent Decree;

b. Within 60 days of receipt of an Ohio EPA billing statement and cost itemization prepared in accordance with subparagraph 34.e, pay to the State in the manner directed above, additional Response Costs incurred for the period from January 1, 1995 through the date of entry of this Consent Decree;

c. Within 60 days of the entry of this Consent Decree, pay to the State of Ohio its 10% share of the Remedial Action Costs incurred by U.S. EPA, which 10% share is in the amount of \$393,429.22;

d. Within 60 days of receipt of an Ohio EPA billing statement and cost itemization prepared in accordance with subparagraph 34.e, Settling Defendants shall pay the State its Oversight Costs incurred after the entry of this Decree. Such payment is in addition to the payments required under Subparagraphs a, b and c above, and will occur on an annual, or other periodic basis.

e. Ohio EPA billing statements and cost itemizations will be prepared in accordance with the invoice requirements of Ohio Revised Code Section 125.01(B) and will contain the following information, unless Ohio EPA billing procedures are instituted which do not allow for the generation of such information: name of employee; brief and general description of task performed; hours worked, direct and indirect charges, and overtime rates.

35. All payments under this Section shall be made by corporate check payable to "Treasurer, State of Ohio", and mailed to Matt Sanders, or his successor at 30 East Broad Street, 25th floor, Columbus, Ohio 43215-3428, and shall reference OEPA Number 165-0106 and OAG Case Number E1890032. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to Edith Long, Fiscal Officer for Ohio EPA, Division of Emergency and Remedial Response, 1800 WaterMark Drive, P.O. Box 1949,

Columbus, Ohio 43266 as provided in Section XXIV (Notices and Submissions).

36. Settling Defendants shall have a limited opportunity to challenge the Costs billed pursuant to Subparagraphs 34 b and d, to the extent the State has included Costs not incurred by the State in connection with the Site or has otherwise made an accounting error. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the State pursuant to Section XXIV (Notices and Submissions), or any such objection shall be waived. Any such objection shall specifically identify the contested Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 60 day period pay all uncontested Costs to the State in the manner described in Paragraph 35.

Simultaneously, such Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Costs. Settling Defendants shall send to the State, as provided in Section XXIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XVII (Dispute

Resolution). If the State prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the State in the manner described in Paragraph 35. If the Settling Defendants prevail concerning any aspect of the contested costs, such parties shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the State in the manner described in Paragraph 35; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the obligations under this Decree to reimburse the State for its Costs.

37. In the event that the payments required by Paragraphs 34.a and c are not made within 60 days of the effective date of this Consent Decree or the payments required by Paragraphs 34.b and d are not made within 60 days of the Settling Defendants' receipt of an OEPA billing statement and cost itemization, the parties required to make such payments shall pay interest on the unpaid balance at the rate established pursuant to Section 131.02 of the Ohio Revised Code. The interest on the unpaid balance of payments required by Paragraphs 34.a and c shall begin to accrue on the 61st day following the effective date of this Consent Decree and interest on the unpaid balance of payments required by Paragraphs 34.b and d shall begin to accrue on the 61st day following the Settling Defendants' receipt of an OEPA billing statement and cost itemization. Interest on any

other Response Costs shall begin to accrue on the date payment of the Response Costs are due in accordance with the applicable provisions of the Consent Decree, or, if there are no applicable provisions specifying a due date, on the 61st day following Settling Defendants' receipt of the OEPA billing statement and cost itemization. Interest shall accrue at the rate specified through the date of the State's receipt of the required payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the failure by any party to make timely payments under this Section.

XIV. INDEMNIFICATION AND INSURANCE

38. The State does not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendants as Ohio EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the State and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the State all costs it 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 State based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The State shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants, nor any such contractor shall be considered an agent of the State.

39. Settling Defendants waive all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants 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, Settling Defendants shall indemnify and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

40. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain comprehensive general liability insurance and automobile insurance with limits of

\$2 million dollars and \$1 million dollars, respectively, combined single limit, naming as additional insured the State or Ohio EPA. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to Ohio EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to Ohio EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. It is agreed that the required insurance may be supplied by an endorsement to an existing policy, including, without limitation, a blanket policy.

XV. DELAYS CAUSED BY FLOODING

41. In the event that any site activity, or other requirement of this Consent Decree dependent upon a site activity, is delayed or may be delayed because of flooding or the residual effects of flooding on the Site, Settling Defendants shall notify the Ohio EPA

Site Coordinator within five (5) business days of the discovery of such delay or potential delay. The notice shall specify the field activity or other Consent Decree requirement that is being delayed or potentially delayed and estimate the anticipated duration of the delay. If Ohio concurs with the estimate, the time for the performance of the site activity or other requirement which is the subject of said notice shall be extended for a period equal to the duration of the delay caused by flooding or the residual effects of flooding on the site. Ohio EPA will not unreasonably withhold concurrence.

XVI. POTENTIAL FORCE MAJEURE

42. If any event occurs which causes or may cause a delay of any requirement of this Consent Decree applicable to Settling Defendants, Settling Defendants shall orally notify the Ohio EPA Site Coordinator or, in her or his absence, the Ohio EPA Site Coordinator's Supervisor, within 96 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Settling Defendants also shall provide this oral notification to the U.S. EPA Project Coordinator. Within five (5) days after this oral notification, Settling Defendants shall provide in writing to Ohio EPA, with a copy to U.S. EPA, an explanation and description detailing the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

43. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Settling Defendants may raise at that time a question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is the time that an enforcement action, if any, is commenced by Ohio. At that time the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Settling Defendants shall rest with Settling Defendants.

Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Settling Defendants, or serve as a basis for an extension of time under this Consent Decree.

44. Failure by Settling Defendants to comply with the notice requirements of Paragraph 42 shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Settling Defendants' right to request an extension of its obligations under this Consent Decree based on such incident. Acceptance of this Consent Decree without a force majeure clause as to the State of Ohio does not constitute a waiver by

Defendant of any rights or defenses it may have under applicable law.

XVII. DISPUTE RESOLUTION

45. 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 State to enforce obligations of Settling Defendants if Settling Defendants have not availed themselves of the opportunity to dispute the said obligation in accordance with this Section.

46. The Coordinators shall, whenever possible, operate by consensus, and in the event that there is a disapproval of any report or disagreement about the conduct of the Work performed under this Consent Decree or Work Plan, or modified or additional work or schedules required under this Consent Decree, the coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

47. In the event that the Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Coordinator shall reduce his/her position to written form within seven (7) days of the end of the good faith negotiations referenced above. The written Statements of Position on the matter in dispute shall include but not be limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. Those written statements shall be immediately exchanged by the Coordinators.

48. Following the exchange of the written Statements of Positions, the parties shall have an additional seven (7) days to resolve their differences. If Ohio EPA concurs with the position of the Settling Defendants, Ohio EPA shall, when necessary, petition this Court for modification of the Consent Decree to include necessary extensions of time or variances of required work. If Ohio EPA does not concur with the position of the Settling Defendants, Ohio EPA will resolve the dispute based upon and consistent with the Consent Decree, the Work Plan, and State Law, and the regulations promulgated thereunder, the National Contingency Plan, 40 CFR Part 300 and any other applicable state or federal law. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

49. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of Work to be performed under this Consent Decree, except that upon mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by Ohio EPA. Elements of Work not affected by the dispute will be completed in accordance with the schedules contained in the Operation and Maintenance Work Plan.

50. If Settling Defendants or Ohio EPA do not agree on a resolution of the dispute within twenty-one (21) days, either party may institute an action in this Court to resolve the dispute under this Consent Decree. In this Court proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the

evidence that the decision by Ohio EPA is unlawful or unreasonable.

51. If either Ohio EPA or Settling Defendants believe that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, either party may petition the Court for relief without following the dispute resolution procedures of Paragraphs 45 through 48.

52. Within thirty (30) days of resolution of any dispute, Settling Defendants shall incorporate the resolution and final determination into the Operation and Maintenance Work Plan, schedule or procedures and proceed to implement this Consent Decree according to the amended Work Plan, schedule or procedures.

53. In any dispute subject to dispute resolution, the parties may, by written agreement, modify the procedures of Paragraphs 45 through 53 above.

XVIII. STIPULATED PENALTIES

54. In the event the Settling Defendants fail to meet any of the requirements of this Consent Decree, the Settling Defendants shall be immediately liable for and shall pay to the State the following stipulated penalties for each day of violation of each requirement:

- a) For each day Settling Defendants are late in submitting the reports required pursuant to the Operation and Maintenance Work Plan:

- \$250.00 for each day up to and including 10 days;
 - \$500.00 for each day from 11 through 30 days;
 - \$1,000.00 for each day from 31 days.

Any payment required under this paragraph shall be paid by corporate check, payable to the Treasurer of the State of Ohio, sent

to: Matt Sanders, Administrative Assistant, or his successor at the Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. All stipulated penalties due under this Section shall be paid within seven (7) days of the date of violation.

55. This Decree in no way affects, alters or diminishes the right of the State to pursue further enforcement action and/or penalties for violation of this Order or for future violations. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete performance of the Work required under this Consent Decree.

XIX. COVENANT NOT TO SUE BY PLAINTIFF

56. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and Third-Party Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 57 of this Decree, the State covenants not to sue or to take administrative action against Settling Defendants and Third-Party Defendants for recovery of any Costs related to the Site which were incurred by the State prior to December 31, 1994. This covenant not to sue, as to any past Response Costs incurred on or after December 31, 1994, shall be effective as to each such Response Cost upon Ohio EPA's receipt of the corresponding payment of that Response Cost made according to Subparagraph 34 b. This covenant not to sue, as to Oversight Costs, shall be effective as to each incremental Oversight Cost upon receipt by Ohio EPA of each corresponding payment of Oversight Costs made according to subparagraph 34.d. This covenant not to sue extends only

to the Settling Defendants and Third-Party Defendants and does not extend to any other person. This covenant not to sue does not apply to violations of this Consent Decree.

XX. GENERAL RESERVATIONS OF RIGHTS.

57. a. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 56. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Third-Party Defendants with respect to all other matters, including but not limited to:

- (1) claims based on a failure by Settling Defendants and Third-Party Defendants to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for damages for injury to, destruction of, or loss of natural resources;
- (4) liability for response costs that have been or may be incurred by the State of Ohio as a natural resources trustee;
- (5) criminal liability;
- (6) liability for violations of federal or state law;
- (7) liability for any corrective action, as that term is used in Section 10.1 of the ROD, determined by Ohio EPA to be necessary to address any groundwater contamination from the Site, based on groundwater monitoring conducted in accordance with the remedy selected in the ROD;
- (8) liability for any response actions taken or ordered, or response or oversight costs incurred, by the State following December 31, 1994 other than the Response Costs and Oversight Costs provided for in this Consent Decree; and

(9) liability for work beyond the scope of the Consent Decree.

b. Nothing herein shall in any way limit or restrict the response and enforcement authority of the State to initiate appropriate action, either judicial or administrative, under Sections 107, 121, and 310 of CERCLA, 42 U.S.C. §§9607, 9621 and 9659, or any other provision of State or Federal law, against any person or entity not a Party to this Consent Decree. Any claims or defenses which the Plaintiff, Settling Defendants, or Settling Third-Party Defendants may have against any other person or entity not a Party to this Consent Decree, including, without limitation, claims for indemnity or contribution, are expressly reserved.

58. In the event Ohio EPA determines that Settling Defendants have failed to perform any provisions of the Work in an adequate or timely manner, Ohio EPA may perform any and all portions of the Work as Ohio EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute Ohio EPA's determination that Settling Defendants failed to carry out a provision of the Work in an adequate or timely manner as unlawful or unreasonable. Costs incurred by the State in performing the Work pursuant to this Paragraph shall be considered Response Costs that Settling Defendants shall pay pursuant to Section XIII (Reimbursement).

59. By her signature to this Consent Decree, the Owner certifies to the best of her knowledge and belief that the information she has given the government in the companion Case, No.

C2-91-742 regarding the income and financial status of the estate of John N. Bowers is true, correct and complete. The State of Ohio reserves all rights it may have to bring any action against the Owner, and the covenant not to sue in Paragraph 56 of this Section shall not be effective, if this information is not true, correct, and complete.

60. Notwithstanding any other provision of this Consent Decree, the State retains all authority and reserves all rights to take any and all response actions authorized by law. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site, including but not limited to liability from any Response Costs and Oversight Costs unreimbursed by this Consent Decree. The State expressly reserves the right to sue any person other than Defendants, in connection with the Site.

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

61. 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.

62. With regard to claims for contribution against Settling Defendants and Third-Party Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants and Third-Party Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2).

The Settling Defendants and Third-Party 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 State in writing no later than 60 days prior to the initiation of such suit or claim.

63. The Settling Defendants and Third-Party 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 the State in writing within 10 days of service of the complaint on them. In addition, Settling Defendants and Third-Party Defendants shall notify the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

64. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants and Third-Party 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 State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenant Not to Sue by Plaintiff).

XXII. ACCESS TO INFORMATION

65. Settling Defendants shall provide to Ohio EPA and U.S. 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 or to the performance of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to Ohio EPA and U.S. 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.

66. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Ohio EPA under this Consent Decree to the extent permitted by and in accordance with applicable State law or 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 Ohio EPA will be

afforded the protection specified in applicable State law or 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to Ohio EPA, or if Ohio EPA has notified Settling Defendants that the documents or information are not confidential under the standards of applicable State law or Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by state or federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiff with the following information, except to the extent such information is subject to a privilege recognized under federal or State law: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. To the extent that Settling Defendants assert that any of the information enumerated above is subject to a privilege recognized under federal or state law, Settling Defendants shall identify the privilege asserted and the claimed basis for the privilege. 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.

67. 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.

XXIII. RETENTION OF RECORDS

68. a. Each Settling Defendant and Third-Party 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 corporate retention policy to the contrary for seven (7) years. Settling Defendants also shall instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work in the same manner and in accordance with the same time schedule set forth in this Decree.

b. At the conclusion of the document retention period specified in subparagraph 68.a, and all subsequent retention periods, Settling Defendants and Third-Party Defendants shall notify the State and the United States at least 90 days prior to the destruction of any such records or documents. In order to avoid piecemeal notification of records destruction, Settling Defendants and Third-Party Defendants shall give prior notification to the State of Ohio

of the proposed destruction of records during and only during the thirty days after any anniversary of the entry of this Consent Decree. Upon request by the State or the United States, Settling Defendants and Third-Party Defendants shall deliver in the manner required by Ohio EPA any such records or documents to Ohio EPA and/or U.S. EPA.

69. Settling Defendants and Third-Party Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If the Settling Defendants or Third-Party Defendants assert such a privilege, they shall provide Plaintiff with the following, except to the extent such information is subject to a privilege recognized under state or federal law: (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. To the extent that Settling Defendants assert that any of the information enumerated above is subject to a privilege recognized under state or federal law, Settling Defendants shall identify the privilege asserted and the claimed basis for the privilege. No documents, reports or other information created or generated pursuant to the requirements of the Consent Decree and no sampling or analytical data concerning the Site shall be withheld on the grounds that they are privileged.

70. Each Settling Defendant and Third-Party Defendant hereby certifies, individually, that 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 U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXIV. NOTICES AND SUBMISSIONS

71. 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 become incorporated by reference into and be an enforceable part of this Consent Decree. 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 State, Ohio EPA, the Settling Defendants, and Third-Party Defendants respectively.

As to Ohio EPA:

Diana Bynum (or her successor)
Ohio EPA Site Coordinator
Ohio Environmental Protection Agency

Central District Office
2305 Westbrooke, Building C
P.O. Box 2198
Columbus, Ohio 43266-2198

and

Ohio EPA
Attn: Technical and Program Support Section
Division of Emergency and Remedial Response
Re: Bowers
P. O. Box 1049
Columbus, Ohio 43216-0149

As to the State of Ohio:

Bryan F. Zima (or his successor)
Assistant Attorney General
State of Ohio
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-345

and

Director, Waste Management Division
United States Environmental Protection Agency
Region V
77 W. Jackson Blvd.
Chicago, IL 60604-3590

As to U.S. EPA:

David Wilson
U.S. EPA Project Coordinator
United States Environmental Protection Agency
Region V
77 W. Jackson Blvd.
Chicago, IL 60604-3590

As to the Settling Defendants:

John W. Ubinger, Jr.
Jones, Day, Reavis & Pogue
One Mellon Bank Center
500 Grant Street
Pittsburgh, Pennsylvania 15219

Ross E. Austin
Senior Counsel
E.I. du Pont de Nemours and Company
Legal Department-Room 7016
1007 Market Street
Wilmington, Delaware 19898

Senior Counsel, Environmental Health & Safety
PPG Industries, Inc.
One PPG Place
Pittsburgh, Pennsylvania 15272

As to the Third-Party Defendants, except the Owner:

Gary P. Gengel, Esq.
Popham, Haik, Schnobrich & Kaufman, Ltd.
Suite 3300
222 South 9th Street
Minneapolis, MN 55402

As to the Owner:

John E. Bowers, Esq.
233 North Court Street
Circleville, OH 43113

XXV. EFFECTIVE DATE

72. 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.

XXVI. RETENTION OF JURISDICTION

73. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants and Third-Party 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 XVII (Dispute Resolution) hereof.

XXVII. APPENDICES

74. All Appendices to this Consent Decree shall become incorporated by reference into and be an enforceable part of this Consent Decree. The following appendices are attached to this Consent Decree at the time of signing by the Parties:

"Appendix A" is the Operation and Maintenance Work Plan.

"Appendix B" is the Guidance Document List.

"Appendix C" is the map of the Site.

"Appendix D" contains deed restrictions applicable to the Site.

XXVIII. MODIFICATION

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

76. No material modifications shall be made to the Operation and Maintenance Work Plan without written notification to and written approval of the State and Settling Defendants. Prior to providing its approval to any modification, the State will provide the United States with a reasonable opportunity to review and comment on the proposed modification. Modifications that do not materially alter that document may be made by written agreement between Ohio EPA and

Settling Defendants, after providing the United States with a reasonable opportunity to review and comment on the proposed modification.

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

XXIX. COMMUNITY RELATIONS

78. Settling Defendants shall cooperate with Ohio EPA in providing information regarding the Work and the Site to the public. As requested by Ohio EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public which may be held or sponsored by Ohio EPA to explain activities at or relating to the Site.

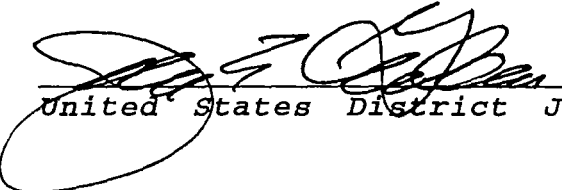
XXX. SIGNATORIES/SERVICE

79. Each undersigned representative of a Settling Defendant and Third-Party Defendant to this Consent Decree and the Assistant Attorney General for the State of Ohio Environmental Enforcement Section certifies that she or he 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.

80. Each Settling Defendant and Third-Party Defendant hereby agrees not to oppose entry of this Consent Decree by this Court nor to challenge any provision of this Consent Decree unless the State has notified the Settling Defendants and Third-Party Defendants in writing that it no longer supports entry of the Consent Decree.

81. Each Settling Defendant and Third-Party Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and Third-Party Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

SO ORDERED THIS 13th DAY OF September, 1996.

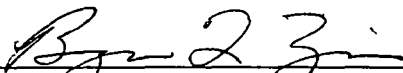

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR THE STATE OF OHIO:

Date: 8/4/96

Betty D. Montgomery
Attorney General of Ohio


BRYAN F. ZIMA (0001053)
Assistant Attorney General

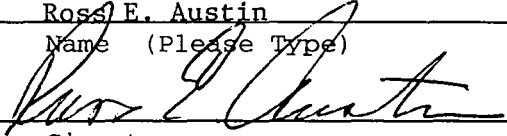
Environmental Enforcement
30 East Broad Street, 25th fl.
Columbus, Ohio 43215-3428
(614) 466-2766

Attorney for State of Ohio

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR: E. I. du Pont de Nemours & Co.
Name of Settling Party (Please Type)

Date: 7/16/96

Ross E. Austin
Name (Please Type)

Signature

Senior Counsel
Title

1007 Market St. D8068

Wilmington, DE 19898
Address

If different from above, the following is the name and address of the agent authorized to accept service on behalf of above-listed party:

Name

Address

Prior notice to all parties shall be provided by the above-listed party of any change in the identity or address of the above-listed party or its agent for service of process.

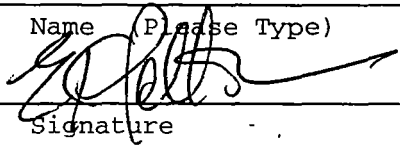
A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the State.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR: PPG Industries, Inc.
Name of Settling Party (Please Type)

Date: July 11, 1996

E. Kears Pollock
Name (Please Type)


Signature

Senior Vice President, Coatings & Resins
Title

One PPG Place

Pittsburgh, PA 15272
Address

If different from above, the following is the name and address of the agent authorized to accept service on behalf of above-listed party:

Anne M. Foulkes
Name

One PPG Place

Pittsburgh, PA 15272
Address

Prior notice to all parties shall be provided by the above-listed party of any change in the identity or address of the above-listed party or its agent for service of process.

_____ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the State.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR: Estate of John N. Bowers
Name of Settling Party (Please Type)

Date: June 27, 1996

Ellen J. Bowers
Name (Please Type)

Ellen J. Bowers
Signature

Executrix
Title

127 West High Street

Circleville, OH 43113
Address

If different from above, the following is the name and address of the agent authorized to accept service on behalf of above-listed party:

Name

Address

Prior notice to all parties shall be provided by the above-listed party of any change in the identity or address of the above-listed party or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the State.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR: Georgia-Pacific Corporation
Name of Settling Party (Please Type)

Date: 7/29/96

Gordon R. Alphonso
Name (Please Type)

Gordon R. Alphonso
Signature

Senior Counsel
Title

133 Peachtree Street, N.E.

Atlanta, Georgia 30303
Address

If different from above, the following is the name and address of the agent authorized to accept service on behalf of above-listed party:

Gary P. Gengel, Esq.
Name

Popham, Haik, Schnobrich & Kaufman

222 South Ninth Street
Address

Piper Jaffray Tower, Suite 3300
Minneapolis, Minnesota 55402-3336

Prior notice to all parties shall be provided by the above-listed party of any change in the identity or address of the above-listed party or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the State.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of State, ex rel. Montgomery v. E.I. du Pont de Nemours, et al. (No. _____, S.D. Ohio) relating to the Bowers Landfill Superfund Site.

FOR: General Electric Company
Name of Settling Party (Please Type)

Date: July 10, 1996

Ronald N. Cotman

Name (Please Type)



Signature

General Manager - Environment,
Health & Safety Department

Title

1975 Noble Road

Cleveland, Ohio 44112-6300

Address

If different from above, the following is the name and address of the agent authorized to accept service on behalf of above-listed party:

Gary P. Gengey, II
Popham, Haik, Schnobrich & Kaufman, Ltd

Name

Suite 3300, 222 South Ninth Street

Minneapolis, MN 55402

Address

Prior notice to all parties shall be provided by the above-listed party of any change in the identity or address of the above-listed party or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the State.