

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN VASI, et al.,

Defendants.

Civil Action No.

STATE OF OHIO, ex rel.
Celebrezze,

v.

DONALD GEORGEOFF, et al.,

Defendants.

Civil Action No.
C81-1961

Judge Dowd

CONSENT DECREE

I.

INTRODUCTION

This Consent Decree is made and entered into by and between the United States of America ("United States") on behalf of the United States Environmental Protection Agency ("U.S. EPA"), the State of Ohio ("State"), and the companies and individuals listed as defendants in Appendix A ("Settling Defendants").

WHEREAS, U.S. EPA, pursuant to § 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. § 9605, placed the Summit National Facility in Portage County, Ohio (the "Facility") on the National Priorities List, which is set forth at 40 C.F.R. Part 300, by publication in the

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Federal Register on September 15, 1983.

WHEREAS, on October 1, 1981, the State of Ohio filed in the United States District Court for the Northern District of Ohio, Eastern Division a Complaint for the recovery of response costs incurred or to be incurred to prevent, minimize or eliminate the threat posed by the hazardous substances at the Summit National property; for the recovery of damages to the State's natural resources; for nuisance abatement; for injunctive relief; for declaratory relief; and for civil penalties. The State's action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Ohio Water Pollution Control Act, O.R.C. Chapter 6111; the Ohio Solid and Hazardous Waste Control Act, O.R.C. Chapter 3734; the Ohio Public Nuisance Law, O.R.C. Chapter 3767; the Federal Declaratory Judgment Act, 28 U.S.C. § 2201; and common law liability in tort. The State of Ohio's Complaint sets forth fourteen (14) counts against forty-two (42) Defendants comprised of the owners and operators of the Summit National property, the generators of the hazardous substances disposed of at the property, and the transporters of the hazardous substances which were disposed of at the property.

WHEREAS, subsequent to the filing of the State's Complaint the State entered into settlements with twenty (20) of the defendants in the above referenced action, resolving all or part of their liability to the State. Those Defendants with whom the State settled in that action are as follows:

Goodyear Aerospace Corporation
 Goodyear Tire and Rubber Company
 Morgan Adhesives Company
 General Motors Corporation
 Koppers Company
 Packaging Corporation of America
 Gould, Inc.
 Airco, Inc.
 Union Process, Inc.
 Chemtrol Adhesives, Inc.
 Mobil Oil Corporation
 The Warner & Swasey Company
 Monsanto Company
 The University of Akron
 Union Carbide Corporation
 Akron City Hospital
 St. Thomas Hospital
 Akron General Medical Center
 Universal Plating, Inc.
 Mays Corporation

WHEREAS, prior to the filing of the State's Complaint in U.S. District Court, the State had entered into agreements with twenty-two (22) potentially responsible parties and resolved all State claims against those parties, through a complete discharge of all liability of those parties to the State of Ohio. Those parties who took part in these pre-filing settlements with the State are as follows:

Olin Corporation
 E.I. DuPont de Nemours & Co., Inc.
 Reynolds Metals
 Inland Chemical
 Lamb Electric
 Babcock & Wilcox
 Parker Hannifin
 Ceilkote
 Mansfield Graphics
 H.K. Porter
 The Firestone Tire & Rubber Company
 Ford Motor Company
 Norton Company
 Beckton Dickinson Company
 Harshaw Chemical Company
 Detrex
 PPG Industries

Deft Incorporated
Smithers Company
Matco Allied Equipment Company
Diamond Shamrock
Calgon Corporation

WHEREAS, the State enters into this Consent Decree in order to settle all liability and claims brought pursuant to the State's case in the United States District Court for the Northern District of Ohio, Eastern Division, Case No. C-81-1961, against those Defendants who have not previously settled with the state in any other form or manner. These Defendants are set forth in Paragraph III below;

WHEREAS, in response to a release or a substantial threat of release of a hazardous substance at or from the Facility, the U.S. EPA in the Fall of 1984, commenced a Remedial Investigation and Feasibility Study (RI/FS), pursuant to 40 C.F.R. 300.68, for the Facility;

WHEREAS, the U.S. EPA completed a Remedial Investigation ("RI") Report and a Feasibility Study ("FS") Report on February 12, 1988;

WHEREAS, the FS report contains a proposed plan for remedial action at the Facility;

WHEREAS, on February 12, 1988, the U.S. EPA, pursuant to § 117 of the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, Pub. L. 99-499 ("CERCLA"), 42 U.S.C. § 9617, published notice of completion of the RI/FS and of the proposed plan for remedial action identified in the FS Report and provided

opportunity for public comment to be submitted in writing to U.S. EPA by March 11, 1988, and subsequently extended to March 21, 1988, or to be submitted orally at a public meeting in Deerfield, Ohio held on February 29, 1988;

WHEREAS, U.S. EPA, pursuant to § 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public;

WHEREAS, certain persons have provided comments on the proposed plan for remedial action identified in the FS Report, and to such comments U.S. EPA provided a summary of responses;

WHEREAS, considering the information in the Administrative Record, including that developed in the RI, the evaluation of remedial alternatives in the FS and the proposed plan for remedial action identified therein and the public comments received, U.S. EPA selected a remedial action plan alternative which is embodied in a document called a Final Record of Decision, dated June 30, 1988;

WHEREAS, on April 1, 1988, U.S. EPA, pursuant to § 122 of CERCLA, 42 U.S.C. § 9622, notified certain entities that the U.S. EPA determined each entity to be a Potentially Responsible Party ("PRP") regarding the proposed remedial action at the Facility;

WHEREAS, in accordance with § 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), U.S. EPA notified the State of Ohio on November 2, 1987 of negotiations with PRPs regarding the scope of the remedial action for the Facility, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and

be a party to any settlement;

WHEREAS, pursuant to § 122(j) of CERCLA, 42 U.S.C. § 9622(j), U.S. EPA notified the Federal and State natural resource trustees of negotiations with PRPs on the subject of addressing the release or threatened release of hazardous substances at the Facility;

WHEREAS, pursuant to § 122 of CERCLA, 42 U.S.C. § 9622, the parties to this Consent Decree have participated in negotiations leading to the Settling Defendants' agreement to perform remedial design and remedial action Work at the Summit National Facility, which Work is embodied in this Consent Decree and the Appendices hereto, which shall constitute an amended remedial action plan, within the meaning of § 117 of CERCLA, 42 U.S.C. § 9617, for the Summit National Facility;

WHEREAS, prior to issuing a revised Record of Decision finally adopting this Consent Decree as the final remedial action plan for the Summit National Facility, and prior to presentation of this Decree to the Court for entry, U.S. EPA will provide the public with an opportunity to submit comments on the remedial action plan set forth herein, and U.S. EPA will consider and respond to significant public comments;

WHEREAS, pursuant to § 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA is providing notice of the remedial action plan embodied in this Consent Decree and its Appendices, including notice of their availability to the public for review at U.S. EPA offices and a local community repository located in Deerfield, Ohio;

WHEREAS, pursuant to § 117(d) of CERCLA, 42 U.S.C. § 9617(d),

the notice is being published in a major local newspaper of general circulation and the notice includes an explanation of any significant differences between the proposed remedial action plan contained in the FS and the remedial action plan set forth in this Consent Decree;

WHEREAS, pursuant to § 121(d)(1), U.S. EPA, the State, and Settling Defendants ("the Parties") believe that the remedial action plan embodied in this Consent Decree and its Appendices will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment which at a minimum assures protection of human health and the environment at the Facility;

WHEREAS, pursuant to § 121(d)(2) of CERCLA, 42 U.S.C. § 9621 (d)(2) the Parties believe that the remedial action plan set forth in this Consent Decree provides for remedial action that is relevant and appropriate under the circumstances presented by the release or threatened release of hazardous substances, pollutants or contaminants at the Facility;

WHEREAS, pursuant to § 121(b)(1) and (2) of CERCLA, 42 U.S.C. § 9621(b)(1) and (2), the Parties believe the remedial action plan embodied in this Consent Decree and its Appendices provides for performance of remedial actions that will include treatment that will permanently and significantly reduce the volume, mobility and/or toxicity of hazardous substances, pollutants and contaminants at the Facility;

WHEREAS, the Parties believe that the remedial action plan

embodied in this Consent Decree and its Appendices is in accordance with § 121 of CERCLA, 42 U.S.C. § 9621; with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300; and with O.R.C. Chapters 3734 and 6111;

WHEREAS, Settling Defendants agree to implement the final remedial action plan adopted by U.S. EPA and set forth in this Consent Decree and its Appendices, and U.S. EPA and the State have determined that the Work required under the Decree will be done properly by Settling Defendants, and that Settling Defendants are qualified to implement the remedial action plan embodied in this Consent Decree and its Appendices;

WHEREAS, the Settling Defendants desire to settle the claims made against them by the Plaintiffs;

WHEREAS, in order to expedite and simplify the negotiation of this Consent Decree, the parties have agreed that issues pertaining to the liability of certain de minimis PRPs should be resolved separately from this settlement;

WHEREAS, the Parties recognize, and intend to further hereby, the public interest in the expeditious cleanup of the Facility and agree that the settlement and entry of this Consent Decree is made in good faith to avoid prolonged and complicated litigation between the Parties, without admission of liability for any purpose and to settle and resolve claims which were and are disputed; and

WHEREAS, in consideration of, and in exchange for, the promises and the mutual undertakings and covenants herein, and intending to be bound legally hereby, the Plaintiffs and the

Settling Defendants, by their authorized representatives, have agreed to the entry of this Decree.

NOW, THEREFORE, before the taking of any testimony and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

II.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to 42 U.S.C. § 9601 et seq. and 28 U.S.C. §§ 1332 and 1345. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Decree.

III.

PARTIES BOUND

As described herein, this Decree applies to and is binding upon the undersigned Settling Defendants and their agents, successors and assigns. This Consent Decree applies to and is binding upon the United States and each Settling Defendant, its agents, successors and assigns. This Consent Decree applies to and is binding as between the State of Ohio, on the one hand, and Goodyear Aerospace Corporation and Goodyear Tire and Rubber Company, and their agents, successors and assigns, on the other hand, only with respect to Paragraphs I [Preamble], II [Jurisdiction], III [Parties Bound], IV [Definitions], XVIII [Covenant Not To Sue], and XXVI [Effective And Termination Dates]. This Consent Decree applies to and is binding upon the State of

Ohio and the following parties and their agents, successors and assigns, to the extent that such parties execute this Consent Decree all other Settling Defendants having previously resolved their liability to the State through separate settlements:

Morton Thiokol, Inc.
GenCorp, Inc., formerly General Tire & Rubber Company and/or
Diversitech General
Bofors Lakeway, Inc.
Occidental Chemical Corp, formerly known as Hooker Chemical
& Plastics Corporation
Chemetron Corporation
Bechtel-McLaughlin, Inc.
Mansfield Industries, Inc.
Ferriot Brothers, Inc.
Container Corporation of America
Edge Industries, Inc.
Akron Equipment Company
Browning-Ferris Industries of Ohio, Inc.
Browning-Ferris Industries of Pennsylvania, Inc.
Erieway, Inc., formerly known as Erieway Pollution Control,
Inc.
Canton Drop Forge
Columbia Gas Transmission Corp.
Approved Industrial Removal, Inc.
Garland A. Allison
Norman Werchowsky
Summit National Services
Summit National Liquid Services, Inc.
Donald M. Georgeoff
Angelo Sottanti
John Vasi

The undersigned representative of each party to this Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Decree and to execute and legally bind that party to it. Settling Defendants shall provide a copy of this Decree to each contractor hired to perform the Work required by this Decree and shall require each contractor to provide a copy thereof to any subcontractor retained to perform any part of the Work required by

this Decree.

Notwithstanding the establishment of a Summit National Facility Trust Fund, the appointment of a Trustee to manage and direct the activities of such Trust Fund, the appointment of any Escrow Agent pursuant to Paragraph V.B.5, below, and the retention of any Contractor or subcontractor to perform, direct or oversee implementation of any activity required pursuant to this Consent Decree, Settling Defendants shall remain liable for timely completion of all Work in accordance with all standards and requirements set forth in this Decree. In any proceeding against Settling Defendants to enforce the provisions of this Consent Decree, the failure of a Contractor or subcontractor to comply with the provisions of any contract relating to the performance of Work required under this Consent Decree or to comply with any instructions or directions from either the Trustee or Settling Defendants shall not be a defense to compliance with this Consent Decree, except to the extent that Settling Defendants establish such failure was the result of causes beyond the control of the Contractor or subcontractor.

IV.

DEFINITIONS

Whenever the following terms are used in this Decree or the Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "Architect" or "Engineer" means the company or companies retained by the Settling Defendants to prepare the construction

plans and specifications necessary to accomplish the remedial action described in the Statement of Work (SOW) which is attached to this Decree as Appendix B.

B. "Contractor" means the company or companies retained by the Trustee on behalf of Settling Defendants to undertake and complete any Work required by this Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained. The Contractor shall be deemed to be related by contract to each Settling Defendant within the meaning of 42 U.S.C. § 9607(b)(3).

C. "De Minimis Settlers" means those persons, as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21), who are not parties to this Consent Decree but who enter into a final settlement with the U.S. EPA pursuant to § 122(g) of CERCLA, 42 U.S.C. § 9622(g), with respect to the Facility, within 90 days of the date of lodging of this Consent Decree.

D. "Facility" means the Summit National "facility" as that term is defined at § 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Facility is located in Portage, County, Ohio.

E. "Future liability" to the State or federal governments refers to liability arising after U.S. EPA's and OEPA's Certification of Completion is issued pursuant to Paragraph XXVI.

F. "Hazardous substance" shall have the meaning provided in § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

G. "National Contingency Plan" or "NCP" shall be used as that term is used in § 105 of CERCLA, 42 U.S.C. § 9605.

H. "Non-settling PRP" means a person, as that term is defined in § 101(21) of CERCLA, 42 U.S.C. 9601(21), who is liable to the United States or the State of Ohio under CERCLA with respect to the Facility, but who is not a signatory to this Decree or to an Administrative Order on Consent between the U.S. EPA and De Minimis Settlers resolving such person's liability to the United States with respect to the Facility.

I. "OEPA" means the Ohio Environmental Protection Agency.

J. "Off-Site" means beyond the boundaries of the Site.

K. "On-Site" means within the boundaries of the Site.

L. "Oversight Costs" mean any costs not inconsistent with the NCP incurred by U.S. EPA or the State in monitoring the activities performed by the Settling Defendants, and/or their Contractors pursuant to this Decree, or in implementing any requirement of this Consent Decree.

M. "Owner Settling Defendant" means the owner of the property used for conducting the Summit National Services and Summit National Liquid Service business located near the intersection of State Route 224 and U.S. 225 near Deerfield, Ohio, and all successors and assigns.

N. "Parties" means the United States of America, the State of Ohio and the Settling Defendants.

O. "Performance Standards" means standards that shall be achieved by the remedial measures to be performed pursuant to this Consent Decree, including risk and hazard levels established pursuant to this Consent Decree, and the standards for conduct of

the Work as set forth in Paragraph VI of this Decree.

P. "Plaintiffs" means the United States of America and the State of Ohio, and their agencies and departments.

Q. "Potentially Responsible Party" or "PRP" shall mean any person, as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21), which is or may be liable to the United States and/or the State with respect to the Summit National Facility under §§ 104, 106, or 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 or 9607.

R. "Remedial Construction Work Plan" or "RC Work Plan" means the following documents relating to the remedial construction and remedial action required under this Consent Decree and the SOW, upon approval of such documents in accordance with the requirements of this Decree: RC quality assurance project plan; RC health and safety plan; RC sampling and analysis plan; operation and maintenance plan; and the construction schedule.

S. "Remedial Design Work Plan" or "RD Work Plan" means the following documents relating to the remedial design required under this Consent Decree and the SOW, upon approval of such documents in accordance with the requirements of this Decree: a quality assurance project plan for remedial design activities; a health and safety plan for remedial design activities; a sampling and analysis plan for remedial design activities; and the remedial design schedule.

T. "Response Costs" means:

(1) any costs not inconsistent with the NCP incurred by Plaintiffs pursuant to 42 U.S.C. § 9601 et seq., in connection with

the Site or the Facility; and

(2) any necessary costs of response that are consistent with the NCP, incurred by the Settling Defendants in connection with the Site or the Facility.

U. "Settling Defendants" means those parties other than the United States of America and the State who sign this Decree, as identified in Appendix A which is incorporated herein by reference.

V. "Site" means all of the following areas:

1. All property within the metes and bounds set forth in Appendix C to this Consent Decree, which property was used by Donald Georgeoff, Summit National Services and/or Summit National Liquid Disposal Services for the operation of a hazardous waste treatment, recycling, storage and disposal facility near the intersection of State Route 224 and U.S. Route 225 in Deerfield, Portage County, Ohio;

2. The area to the east of the aforesaid property, as shown on Appendix D to this Consent Decree; and

3. The area located to the south and southeast of the property described in Subparagraph (1) above, as shown on Appendix D to this Consent Decree.

W. "State" means the State of Ohio and all of its agencies, departments and branches.

X. "Statement of Work" or "SOW" means the Statement of Work for implementation of the remedial design, remedial action, and operation and maintenance of the remedial action required under this Consent Decree.

Y. "Summit National Facility Trust Fund" means the trust fund established pursuant to Paragraph V of this Consent Decree.

Z. "Trustee" means the person(s) or entity(ies) appointed, under the provisions of Subparagraph A.1. of Paragraph V, to manage the Summit National Facility Trust Fund and who, for purposes of compliance with this Consent Decree, shall be deemed the agent of the Settling Defendants.

AA. "United States" means the United States of America and all of its agencies, departments or branches.

BB. "U.S. EPA" means the United States Environmental Protection Agency.

CC. "U.S. DOJ" means the United States Department of Justice.

DD. "Waste Material" means any hazardous substance, as defined by 42 U.S.C. § 9601(14), and any associated pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

EE. "Work" means the design, construction and implementation, in accordance with Paragraphs VI and VII hereof, of the tasks described in the revised ROD and any revisions thereto, and in the Statement of Work, RD Work Plan, RC Work Plan, and any other schedules or plans required to be submitted pursuant to this Consent Decree, including operation and maintenance of the elements of the remedial design for the Facility, and any revisions thereto.

V.

GENERAL PROVISIONS

A. Facility Trust Fund:

1. The Settling Defendants shall present, to the Plaintiffs, a trust agreement, in the form set forth in Appendix E attached hereto, and shall enter into and be bound by said agreements. Such agreement shall provide for the collection, handling, reporting and disbursement of amounts required to be paid by the Settling Defendants and the State pursuant to this Consent Decree. Said Trust Agreement is attached to this Consent Decree as Appendix E and is incorporated herein by reference.

2. The Trust Agreement shall be construed to confer upon the Trustee, as agent for the Settling Defendants, all powers and authority necessary to fulfill the obligations of Settling Defendants under this Consent Decree. The failure of the Trustee to comply with the provisions of the Trust Agreement or the Consent Decree shall not constitute a defense in any proceeding against Settling Defendants to enforce the provisions of this Consent Decree and shall not constitute grounds for "Unavoidable Delay" under Paragraph XIII below.

3. Within thirty (30) days after entry of this Decree, each of the Settling Defendants shall pay to the Summit National Facility Trust Fund established under the Trust Agreement the amount which is shown for that Settling Defendant in Appendix F hereto, which Appendix is incorporated herein by reference. Settling Defendants shall make additional payments to the Summit

National Facility Trust Fund when and as necessary to ensure that the Work is fully funded and the other obligations of the Trust are met, including but not limited to payments required under Subparagraph A.4. below. Any Settling Defendant that fails or refuses to make timely payments to the Summit National Facility Trust Fund in accordance with the provisions of this Subparagraph V.A and the attached Trust Agreement shall be liable to the Trustee for the full amount required to be paid pursuant to Paragraph V.A. of this Consent Decree, plus a stipulated penalty equal to ten (10) per cent of such amount for each month that such payment is delinquent. The failure or refusal of any Settling Defendant to make timely payments to the Summit National Facility Trust Fund in accordance with this Subparagraph shall not affect the obligation of the remaining Settling Defendants to finance and perform the Work or to make additional payments to the Summit National Facility Trust Fund in accordance with Subparagraph V.A.5, below. Payments by Settling Defendants to the Summit National Facility Trust Fund do not constitute a fine, penalty or monetary sanction of any kind, except to the extent that civil or stipulated penalties paid or payable under this Consent Decree shall be treated in accordance with applicable rules of the United States Internal Revenue Service and with the applicable rules of the Ohio Department of Taxation or the taxing authorities of other jurisdictions with taxing powers over any Settling Defendant. Within sixty (60) days of the entry of this Consent Decree, OEPA shall pay into the escrow account established pursuant to Paragraph V.B.5, below, the sum of

\$548,312.40, received from its previous settlements reached with various parties with respect to the Summit National Site. The monies paid by the State shall be applied only to performance of the Work at the Site or Facility.

4. The Summit National Facility Trust Fund shall be used to: (a) pay the Contractor for the Work required by this Consent Decree, including operation and maintenance; (b) reimburse the State and United States for past costs (to the extent required under Paragraph XVI of this Consent Decree), future response costs and oversight costs incurred in connection with the implementation of this Consent Decree, the Statement of Work, and the Work including any costs incurred by the United States and the State in obtaining access to areas where the Work is to be performed; (c) pay the United States any stipulated penalties, civil penalties or other amounts owed pursuant to Paragraph XVII of this Consent Decree; and (d) finance such other action(s) on behalf of the Settling Defendants as may be contemplated by the Trust Agreement.

5. In the event the cost of the Work required pursuant to this Consent Decree and its Appendices exceeds the sum of the initial amounts collected under Subparagraph A.3. of this Paragraph, with the balance remaining in any escrow account established pursuant to Paragraph V.B.5, below, Settling Defendants, upon notification by and within the time prescribed by the Trustee but no later than thirty (30) days after notification, shall be responsible for and shall pay to the Summit National Facility Trust Fund such additional amounts in the same proportions

relative to each other as shown in Appendix F as are necessary to fund such additional cost. In the event that any Settling Defendant fails to pay any such additional amount, the other Settling Defendants shall pay that additional amount in the same proportions relative to each other as set forth in Appendix F, less the proportion of the Settling Defendant(s) that fail(s) or refuse(s) to pay. The failure of any Settling Defendant to pay for its share of the costs of the Work, including increased costs, shall not excuse timely completion of the Work and reimbursement of costs payable to the United States or the State. Failure or refusal of any Settling Defendant to pay any amount as described herein shall subject such Settling Defendant to stipulated penalties or other sanctions available under law for enforcement of this Decree.

6. The additional payments required by the preceding Subparagraph shall be made in sufficient time to assure the uninterrupted progress and timely completion of the Work required under this Consent Decree. Settling Defendants shall assure that periodic financial reports are submitted by the Trustee to the parties on an annual basis, beginning within one year after the entry of this Consent Decree. Such reports shall include cash flow projections that project the level of funds that will be necessary to finance the Work to be performed during the succeeding one year period. If the amount of money in the Summit National Facility Trust Fund, together with any balance remaining in the escrow account established pursuant to Paragraph V.B.5, below, is less

than such projected level, Settling Defendants shall make such additional payments to the Summit National Facility Trust Fund in accordance with the arrangements set forth in Subparagraph 5 above, as are necessary to assure that funds necessary to achieve such projected levels are available. The necessary additional payments required pursuant to this Subparagraph are to be made no later than six (6) months before the projected need for such payments. The Trustee shall notify Plaintiffs of the amount of such payments and the time within which the payments are required to be made.

B. Commitment of Plaintiffs and Settling Defendants.

1. Settling Defendants agree to finance and perform the Work.

2. The Work required under this Consent Decree shall be completed in accordance with all requirements of this Decree and its Appendices, including Performance Standards identified in Paragraph VI below, and engineering specifications and standards in the SOW and RD and RC Work Plans, and within the time periods set forth in Paragraph VI and in the SOW and RD and RC Work Plans.

3. Nothing in this Decree shall constitute preauthorization of any claim against the Hazardous Substance Superfund under CERCLA, 42 U.S.C. § 9601 et seq.

4. Pursuant to § 113 of CERCLA, 42 U.S.C. § 9613, Plaintiffs recognize that Settling Defendants who have resolved their liability to Plaintiffs shall not be liable for claims for contribution regarding matters addressed in this Decree; provided, however, that except as provided in Paragraph XVIII.F. of this

Consent Decree, nothing herein shall be construed to limit or abridge any right of contribution that may have accrued to any person prior to the entry of this Consent Decree. Except as otherwise provided herein, upon the entry of this Decree the liability of Settling Defendants to the United States, and to the State with respect to those parties listed in Paragraph III, above, for "Covered Matters", as defined in Paragraph XVIII, is resolved. Nothing in the Consent Decree shall preclude the Settling Defendants from asserting such claims as they may have against Non-settling PRPs.

5. Settling Defendants shall enter into an Escrow Agreement, in the form set forth in Appendix G, attached hereto, establishing an escrow account in an institution mutually acceptable to the United States and the Settling Defendants. Except as otherwise specifically provided in such Escrow Agreement, all moneys which De Minimis Settlers are required to pay pursuant to the provisions of any settlement agreements between De Minimis Settlers and the United States with respect to the Summit National facility shall be placed in such escrow account. Funds shall be disbursed from the escrow account only in accordance with the conditions and provisions of the Escrow Agreement. Upon satisfaction of all conditions required to authorize disbursement of escrow funds to pay for Work performed at, or services connected with, the Facility, in accordance with Section 3.2 of the Escrow Agreement, the Escrow Agent shall thereafter be deemed the exclusive agent of Settling Defendants for purposes of enforcement

of this Consent Decree.

C. Permits and Approvals:

1. All activities undertaken by the Settling Defendants pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits. The United States and the State have determined that the obligations and procedures authorized under this Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

2. The United States and the State have determined that no federal, state or local permits are required for Work conducted entirely on-Site. Pursuant to § 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), Settling Defendants shall obtain all permits or approvals necessary under federal, state and local laws for off-Site Work, including transport and/or disposal of waste materials removed from the Site, and shall submit timely applications and requests for any such permits and approvals.

3. The standards and provisions of Paragraph XIII describing Unavoidable Delay, shall govern delays in obtaining permits required for the Work and also the denial of any such permits.

4. Settling Defendants shall include in all contracts or subcontracts entered into for Work required under this Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities

required by such contracts or subcontracts in compliance with all applicable laws and regulations and such other contractual commitments as may be necessary so as to enable the Settling Defendants to comply with the provisions of this Consent Decree. This Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or state statute or regulation.

D. Restrictions on Use and Conveyance of the Site

1. Within thirty days of approval by the Court of this Decree, the Settling Defendants shall record a copy of this Decree with the Recorder's Office, Portage County, State of Ohio.

2. The Owner Settling Defendant shall provide to the Plaintiffs, to the Settling Defendants, and to their respective employees, representatives and contractors, access to the property owned by Owner Settling Defendant in Deerfield, Ohio, which constitutes all or part of the Summit National Site. Such access shall be in accordance with the provisions of the Access Agreement, attached hereto as Appendix H and incorporated herein by reference.

3. The Owner Settling Defendant shall not in any way inhibit, obstruct, delay or interfere with the performance of any Work required pursuant to this Consent Decree; nor shall the Owner Settling Defendant take or allow any action to modify, remove, damage, or interfere with the operation and effectiveness of any response action constructed or installed pursuant to this Consent Decree, including without limitation, any cover, groundwater collection trench system, extraction or monitor well, liner,

leachate collection system, drainage system or wastewater treatment facility constructed or installed on his property within the Site. The Owner Settling Defendant shall not conduct or allow any filling, grading, excavating, building, drilling, mining, farming or other development on his property within the Site, except for activities required pursuant to this Consent Decree, without the prior written approval of Plaintiffs. Except as specifically provided in this Consent Decree, the Owner Settling Defendant shall not use or permit the extraction, development or use of groundwater or surface water from his property within the Site for any purpose, without the prior written approval of Plaintiffs.

4. Subject to the access agreement referred to in Subparagraph 2, above, and the conditions, use restrictions and prohibitions set forth below in Subparagraphs 5-9, below, the Owner Settling Defendant may freely alienate or transfer any interest in his property within the Site, provided that at least sixty days prior to the date of such alienation or transfer, the Owner Settling Defendant notifies Plaintiffs of such proposed alienation or transfer and the name of the grantee. Any person acquiring any such interest from the Owner Settling Defendant shall grant to Plaintiffs, their employees, agents and contractors and to Settling Defendants and their employees, agents and contractors, a right of entry for purposes of performing all Work required pursuant to this Consent Decree.

5. In the event of any alienation or transfer of any interest of Owner Settling Defendant in property within the Site,

all of Settling Defendants' obligations pursuant to this Decree shall continue to be met by all Settling Defendants or, subject to OEPA and U.S. EPA approval, by Settling Defendants and the grantee.

6. Any deed, title or other instrument of conveyance which transfers any right, title or interest or which permits any use or occupation of the property of the Owner Settling Defendant within the Site, shall contain a notice that the Site is the subject of this Decree, and such notice shall set forth the style of the instant action, case number and Court having jurisdiction herein. The Owner Settling Defendant shall provide a copy of this Decree to the transferee of such interest, who shall take this property subject to future liability.

7. In any deed transferring title of Owner Settling Defendant's property within the Site, or in any lease, license or other instrument which transfers any right, title or interest or which permits any use or occupation of the property of the Owner Settling Defendant within the Site, the Owner Settling Defendant shall include restrictions prohibiting the transferee of such right, title or interest, and all successors in interest of such transferee, from engaging in or allowing any filling, grading, excavating, building, drilling, mining, farming or other development on such property within the Site, except for activities required pursuant to this Consent Decree, without the prior written approval of Plaintiffs. In addition, any such deed, lease, license or other instrument shall prohibit the transferee, and all

successors in interest of the transferee, from allowing or engaging in the extraction, development or use of groundwater or surface water from property within the Site for any purpose, without the prior written approval of Plaintiffs, except as required pursuant to this Consent Decree. The Owner Settling Defendant shall require that all such restrictions shall run with the land.

8. In exchange for the resolution of claims against him and other good and valuable consideration, the Owner Settling Defendant agrees not to assert any claims against the United States related to any loss of use or value of his property, including but not limited to claims under the Tucker Act, 28 U.S.C. § 1491, or CERCLA, 42 U.S.C. § 9601, et seq.

9. The Settling Defendants shall have a lien on the property of the Owner Settling Defendant located within the Site for the full value of the Response Costs they have incurred or will incur under the terms of this Consent Decree or any subsequent action which imposes monetary obligations on the Settling Defendants with respect to the Facility. Such lien shall be subordinate to the lien of the United States which is now recorded with the Recorder of Deeds for Portage County, Ohio.

VI.

PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

A. All remedial design Work to be performed by the Settling Defendants pursuant to this Decree shall be under the direction and supervision of a qualified professional engineer. The Settling

Defendants have notified U.S. EPA and the State, in writing, of the name, title, and qualifications of the engineer proposed to be used in carrying out the remedial design Work to be performed pursuant to this Decree. Selection of any such engineer shall be subject to approval by the U.S. EPA and the State, and any disapproval shall state the basis therefor. Such approval shall not be unreasonably withheld.

B. All remedial action Work to be performed by the Settling Defendants pursuant to this Decree shall be under the direction and supervision of a qualified professional engineer. Prior to the initiation of remedial action Work at the Site, the Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed engineer, and the names of principal contractors and/or subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Decree. Selection of any such engineer, contractor and/or subcontractor shall be subject to approval by the U.S. EPA and the State. Such approval shall not be unreasonably withheld.

C. Appendix B to this Decree includes a Statement of Work for the completion of the remedial action at the Site. This Statement of Work is incorporated into and made an enforceable part of this Decree.

D. The Settling Defendants shall, during remedial design and remedial action at the Site, observe and comply with all legally applicable and relevant and appropriate requirements of federal, state and law pertinent to the Work at the time it is being

performed, and the Performance Standards set forth below. Prior to issuance of the Certification of Completion pursuant to Paragraph XXVI of this Consent Decree, the Settling Defendants must demonstrate, consistent with the requirements of § 121(d) of CERCLA, 42 U.S.C. § 9621(d), that the remedial action performed by them has met all legally applicable or relevant and appropriate requirements of federal and state law, or Settling Defendants have demonstrated that a waiver of one or more such requirements is warranted.

E. The following Work shall be performed:

1. Within 45 calendar days of the effective date of this Decree, the Settling Defendants shall submit an RD Work Plan to the U.S. EPA and the State for the remedial design for remedial action at the Site. The RD Work Plan shall be developed in conformity with the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided to the Settling Defendants by U.S. EPA. Upon final approval by the U.S. EPA and OEPA, the RD Work Plan shall become an enforceable part of this Consent Decree.

2. The RD Work Plan submittal shall include the following project plans: (1) a sampling and analysis plan governing remedial design activities; (2) a health and safety/contingency plan governing remedial design activities; and (3) a quality assurance project plan governing remedial design activities. The RD Work Plan shall also include a schedule for implementation of the remedial design tasks and for submittal of RD reports.

3. The Settling Defendants shall submit the following additional documents in support of the design of the remedial action for the Site according to the schedule set forth in this Paragraph. Upon final approval by the U.S. EPA and OEPA, these documents shall become an enforceable part of this Consent Decree:

- a. Within 75 calendar days of the effective date of this Decree, the Settling Defendants shall submit a Design Criteria Document to the U.S. EPA and OEPA for the remedial design for remedial action at the Site. The Design Criteria Document shall establish the basis for the design of the remedial action, and shall be developed in conformity with the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided to the Settling Defendants by U.S. EPA.
- b. Within 60 calendar days after approval of the Design Criteria Document and the RD Work Plan, Settling Defendants shall submit to the U.S. EPA and OEPA Preliminary (30 percent) Design Plans for the remedial action. Such Preliminary Design Plans shall set forth the technical requirements of the elements of the design in sufficient detail to allow determination whether the final design will

provide a functioning remedial action that will meet the Performance Standards and other requirements of this Consent Decree. This document shall include all necessary supporting data and documentation and design calculations reflecting the same percentage of completion as the designs they support.

c. Within ninety (90) days after approval of the Preliminary Design Plans, Settling Defendants shall submit Prefinal (95 percent) Design Plans. These plans shall include all necessary supporting data and documentation and design calculations reflecting the same percentage of completion as the designs they support.

d. Within thirty (30) days of approval of the Prefinal Design Plans, the Settling Defendants shall submit the Final Design Plans for the remedial action. The Final Design Plans shall include all necessary supporting data and final design calculations and analysis, final design drawings, and construction and engineering specifications ready for bidding.

4. Within ninety (90) calendar days after approval of the Preliminary Design Plans, Settling Defendants shall submit a Draft Remedial Construction (RC) Work Plan to the U.S. EPA and the

State for the remedial action at the Site. The Draft RC Work Plan shall be developed in conformity with the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided to the Settling Defendants by U.S. EPA, and with the documents identified in Subparagraph 3 above. Upon final approval by the U.S. EPA and OEPA, the RC Work Plan shall become an enforceable part of this Consent Decree.

5. The Draft RC Work Plan submittal shall include the following project plans: (1) an RC sampling and analysis plan; (2) an RC health and safety/contingency plan; (3) an RC quality assurance project plan; and (4) an RC operation and maintenance plan for the remedial action. The Draft RC Work Plan shall also include a schedule for implementation of the RC tasks and for submittal of RC reports.

6. Within thirty (30) days after receipt of U.S. EPA's and OEPA's comment on the Draft RC Work Plan, Settling Defendants shall submit the Final RC Work Plan containing the final plans, construction specifications and schedules for performance of the remedial action at the Site. The Final RC Work Plan shall govern the conduct of on-site construction, sampling, monitoring, operation and maintenance of the remedial action by the Settling Defendants.

7. All required documents submitted to Plaintiffs pursuant to this Consent Decree, other than the periodic reports required to be submitted pursuant to Paragraph XI, hereinafter referred to as "documents," shall be subject to review,

modification and approval by U.S. EPA and OEPA. Any modification or disapproval shall state the basis therefor.

8. The U.S. EPA Remedial Project Manager and State Project Coordinator shall notify Settling Defendants, in writing, of approval or disapproval of each document, or any part thereof. The Parties anticipate that U.S. EPA and OEPA will complete their review within forty-five (45) days; however, nothing herein is intended to limit U.S. EPA's and OEPA's right of approval or disapproval of documents, if the review is not completed within such forty-five (45) day period. In the event that a longer review period is required for any document, the U.S. EPA's Remedial Project Manager and OEPA's Project Coordinator shall notify Settling Defendants of that fact within thirty (30) calendar days of receipt of such document. In the event of any disapproval, U.S. EPA and OEPA shall specify, in writing, any deficiencies and required modifications to the document. Settling Defendants reserve the right to seek relief under the provisions of Paragraph XIII, including extension of their performance obligations under this Consent Decree, in the event that U.S. EPA and OEPA require more than forty-five (45) days to complete their review of any document which must be reviewed and approved for that portion of Settling Defendants' performance obligations to proceed.

9. In accordance with the schedule set forth in the Statement of Work, the Settling Defendants shall, within the periods set forth therein for response after receipt of any U.S. EPA and OEPA document disapproval, submit to U.S. EPA and OEPA a

revised document which incorporates the modifications required by U.S. EPA and OEPA, or Settling Defendants shall provide a notice of dispute pursuant to Paragraph XIV. Disputes concerning approval of documents shall be resolved in accordance with Paragraph XIV. Delays in performance by the Settling Defendants occasioned by extended review by the U.S. EPA and OEPA of revised documents submitted hereunder shall be subject to the provisions regarding delay set forth in Subparagraph E.8 above.

10. Remedial Action. The following elements of the remedial construction shall be performed in accordance with the performance schedules set forth in the SOW, the RC Work Plan and this Subparagraph. Any claims by the Settling Defendants that weather conditions have affected performance of the Work required in this Subparagraph 10 shall be subject to the provisions of Paragraph XIII (Unavoidable Delay):

- a. Within sixty (60) days of receipt of final U.S. EPA and OEPA approval of Final Design Plans and the RC Work Plan, Settling Defendants shall retain a contractor for performance of the remedial action.
- b. Within ninety (90) days of receipt of final U.S. EPA and OEPA approval of Final Design Plans and the RC Work Plan, Settling Defendants shall install the perimeter fence, and construct a decontamination facility. Settling Defendants shall also commence

construction of the groundwater treatment facility.

- c. Within three hundred (300) days of receipt of final U.S. EPA and OEPA approval of Final Design Plans and the RC Work Plan, Settling Defendants shall complete excavation and installation of the groundwater extraction and monitoring systems, and shall begin operation of the groundwater extraction system and the groundwater treatment plant.
- d. Within three hundred thirty (330) days of receipt of final U.S. EPA and OEPA approval of Final Design Plans and the RC Work Plan, Settling Defendants shall complete the installation of the incinerator and complete the demonstration burn provided in § 5 of Attachment A to the SOW.
- e. Within fifteen (15) days of receipt of final U.S. EPA and OEPA approval of the demonstration burn and final operating conditions report to be submitted pursuant to § 5 of Attachment A to the SOW, Settling Defendants shall commence incineration of soils and other materials as required by the SOW, the RC Work Plan and this Consent Decree. Incineration of all materials and

demobilization of the incinerator shall be completed within five hundred forty (540) days of commencement of incineration.

- f. Within fifteen (15) days of completion of incineration, Settling Defendants shall commence site cover activities, which shall include demolition of structures, pre-grading and levelling of the Site, installation of cover material and gas vents, and seeding to induce proper vegetative cover. Within two hundred eighty-five (285) days of completion of incineration, Settling Defendants shall complete all site cover activities.

11. Settling Defendants shall commence implementation of the Work detailed in the Final Design Plans and RC Work Plan, in accordance with the schedule in those documents, within five (5) days of receipt of approval of the Final RC Work Plan by U.S. EPA and OEPA, and shall proceed with and complete the several aspects of the Work according to the schedule. Unless otherwise directed by U.S. EPA and OEPA, the Settling Defendants shall not commence field construction activities until approval by U.S. EPA and OEPA of the RC Work Plan. The fully approved Design Plan and RD and RC Work Plans shall be deemed incorporated into and made an enforceable part of this Decree. All Work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the

requirements of this Decree, including the standards, specifications and schedule contained in the Final Design Plan and RD and RC Work Plans. Any claims by the Settling Defendants that weather conditions have affected performance of the Work required in this Subparagraph VI.E.11 shall be subject to the provisions of Paragraph XIII (Unavoidable Delay).

F. The Parties acknowledge and agree that neither the approved SOW, the Final Design Plans, the RD and RC Work Plans nor any other plans required to be submitted for approval pursuant to this Decree constitutes a warranty or representation of any kind by Plaintiffs that the remedial action set forth in those documents or any other plans required to be submitted pursuant to this Decree will achieve the Performance Standards herein, and shall not foreclose Plaintiffs from seeking performance of all terms and conditions of this Decree, including the Performance Standards set forth herein.

G. Performance Standards. Each groundwater collection system required pursuant to this Consent Decree, including the pipe and media drain system described in Section 4.1.1 of Appendix B of the SOW and the extraction well systems described in Sections 4.2 and 4.3 of Appendix B of the SOW, shall be designed, constructed, operated and maintained in a manner which prevents further migration of Site-related hazardous substances and assures that aquifers underlying and adjacent to the Site will not contain Site-related hazardous substances, pollutants or contaminants in concentrations which exceed Performance Standards established in

accordance with Subparagraphs G.1., G.2. and G.3. below, at the conclusion of the remedial action implemented pursuant to this Decree. For purposes of this Subparagraph G, "Site-related" shall mean any hazardous substance, pollutant or contaminant originating from the activities conducted by Donald Georgeoff, Summit National Services or Summit National Liquid Disposal Services at the Site. If the concentration of any hazardous substance, pollutant or contaminant detected at any compliance point specified below exceeds the applicable Performance Standard established for such substance, pollutant or contaminant in accordance with this subparagraph G at the time they seek to terminate groundwater treatment pursuant to subparagraph H, below, Settling Defendants shall have the burden of establishing that exceedance of the applicable Performance Standard is caused solely by hazardous substances, pollutants or contaminants that are not Site-related. If U.S. EPA and OEPA agree that any exceedance of Performance Standards is caused solely by hazardous substances, pollutants or contaminants that are not Site-related, Settling Defendants shall be deemed to have attained the Performance Standard applicable to such substance, pollutant or contaminant. If the U.S. EPA, OEPA and the Settling Defendants do not agree concerning the source of such hazardous substances, pollutants or contaminants which cause an exceedance of any Performance Standard established pursuant to this Subparagraph, the dispute shall be resolved in accordance with Paragraph XIV below. All Performance Standards established pursuant to this Subparagraph G shall be achieved on a continuing

basis at each of the following compliance points: each of the monitoring wells installed or to be installed in the Water Table Aquifer pursuant to this Consent Decree; each of the extraction and/or monitoring wells installed or to be installed in the Intermediate Unit Aquifer pursuant to this Consent Decree; and each of the monitoring wells installed or to be installed in the Upper Sharon Aquifer pursuant to this Consent Decree. The approximate locations of each of the presently anticipated wells is shown on Figures 10, 12 and 15 of Appendix B to the SOW. Wells which have been closed pursuant to the SOW are not to be considered compliance points.

1. Calculation of Performance Standards. Settling Defendants may seek to terminate operation of any groundwater collection system required pursuant to this Consent Decree, including the groundwater interceptor trench and any ground water extraction wells required pursuant to this Decree, in accordance with the provisions of Subparagraph H of this paragraph. Settling Defendants shall, in the demonstration submitted to U.S. EPA and OEPA pursuant to Subparagraph H, below, identify Performance Standards meeting the requirements set forth below in this paragraph for all hazardous substances, pollutants or contaminants that are detected in ground water in any sample that is required for shutdown under Subparagraph H below. Such Performance Standards shall be subject to U.S. EPA and OEPA approval, shall be based upon an evaluation of potential carcinogenic and non-carcinogenic effects of each such substance, and shall be

calculated in accordance with the provisions set forth below in Subparagraphs G.2. and G.3. The compounds to be considered in the calculations required hereunder must include all compounds identified in analyses of samples taken at any compliance point on and off the Site at the time of calculation.

2. Determination of Performance Standards for Substances with Possible Carcinogenic Effects. For each hazardous substance, pollutant or contaminant detected in ground water at any compliance point referred to above in this Subparagraph G that has been identified by U.S. EPA's Cancer Assessment Group as a possible, probable or known human carcinogen, Settling Defendants shall calculate a ground water concentration limitation adequate to assure that such substance will not present an individual excess lifetime cancer risk level greater than 1×10^{-6} at each compliance point identified above. The individual substance cancer risk calculations shall be performed in accordance with the methods employed by U.S. EPA in the Superfund Public Health Evaluation Manual and any subsequent revisions, or any successor document in effect at the time the calculations are performed. The toxicity data used in preparing the calculations for each substance shall be the most current data contained in such Manual or available from U.S. EPA's Cancer Assessment Group with respect to that substance. All individual substance risk calculations shall be based on the same exposure scenario used in the U.S. EPA's Remedial Investigation Public Health Evaluation for the Summit National Facility.

3. Determination of Performance Standards for Substances Not Believed to Have Carcinogenic Effects. For each hazardous substance, pollutant or contaminant detected in ground water at any compliance point referred to above that has not been identified by U.S. EPA's Cancer Assessment Group as a possible, probable or known human carcinogen, Settling Defendants shall calculate a ground water concentration limitation adequate to assure that such substances will not present a maximum cumulative chronic health index ("HI") greater than 1. The maximum cumulative chronic health index value shall be calculated in accordance with the Superfund Public Health Evaluation Manual and any subsequent revisions, or any successor document in effect at the time the calculations are performed. The toxicity data used in preparing the calculations shall be the most current data contained in such Manual or available from U.S. EPA's Integrated Risk Information System. All hazard index calculations shall be based on the same exposure scenario used in the U.S. EPA's Remedial Investigation Public Health Evaluation for the Summit National Facility.

H. Period of Operation of Groundwater Extraction and Treatment Systems -- Demonstration of Compliance and Shutdown Provisions. Operation of any or all of these groundwater collection or treatment systems may be halted if the Settling Defendants can demonstrate to U.S. EPA and OEPA, as required in Appendix B, Section 6.5 of the SOW, that a system has consistently achieved the Performance Standards set forth in this Paragraph. Upon acceptance by U.S. EPA and OEPA of such a demonstration,

operation of each system for which the demonstration has been made may be halted, subject to the provisions of Appendix B, Section 6.5 of the SOW.

I. Technical Impracticability.

1. Petition. After a minimum of ten (10) years of operation of the groundwater extraction system, the Settling Defendants may petition the U.S. EPA and OEPA to waive compliance with one or more of the Performance Standards established pursuant to Subparagraph G, above, based upon a demonstration, pursuant to § 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4), that achievement of such Performance Standard is technically impracticable from an engineering perspective.

2. Determination. U.S. EPA, in consultation with OEPA, shall review and consider the information in the Petition submitted pursuant to Subparagraph I.1 and shall make a determination, in accordance with applicable laws and regulations in effect at the time of the Petition, whether compliance with any of the Performance Standards shall be waived, and what alternative Performance Standards, or other protective measures, shall be established.

3. Review. Settling Defendants may challenge the U.S. EPA's determination under Subparagraph I.2 in accordance with the Dispute Resolution provisions under Paragraph XIV of this Consent Decree. The U.S. EPA's determination shall be treated as a determination regarding adequacy or selection of the remedy.

4. Periodic review. Any technical impracticability

waiver granted pursuant to this Subparagraph shall be subject to the periodic review provisions of Paragraph VIII of this Consent Decree and § 121(c) of CERCLA, 42 U.S.C. § 9621(c).

VII.

MODIFICATION TO THE SOW

A. The SOW embodies a plan for response action at the Site and Facility which the parties believe will meet the Performance Standards set forth in this Consent Decree and will be protective of human health and the environment. In the event that one or more provisions of the SOW proves to be ineffective in accomplishing the Performance Standards or other requirements for the various components of the remedial action required under this Consent Decree, or is not protective of human health and the environment, U.S. EPA, OEPA or the Settling Defendants may request that relevant sections of the SOW be modified or supplemented to make better provisions, consistent with all the terms of this Consent Decree, for additional or different remedial action(s) which are capable of accomplishing the Performance Standards or other requirements of the Consent Decree, and are protective of human health and the environment. Such modifications or supplementations may include additional investigatory work, additional removal and disposal of materials, or further protective measures. Any request for modification or supplementation of the SOW under this Subparagraph shall describe the additional or different actions required, the reasons therefor and the schedule for completing such actions. The responses of the other parties shall be in writing and shall be

served upon all the parties.

B. If the parties agree, modification of the SOW, and of documents developed pursuant thereto, may be effected by written agreement. A copy of the written agreement shall be filed with the Clerk of the Court as an addendum to this Consent Decree. Any documents which the Settling Defendants have submitted previous to, or are required to submit after the date of such modification shall be amended and resubmitted to U.S. EPA and the State for reapproval following the procedures outlined in this Paragraph. All documents in progress or which are required to be submitted after the date of such modification shall be consistent with such modification.

C. In the event that the parties do not agree concerning the need for or nature of a proposed modification or supplementation of the SOW, such dispute shall be deemed a dispute concerning the adequacy or selection of the remedy and shall be resolved in accordance with the dispute resolution provisions of Paragraph XIV hereof.

D. If modification or supplementation of the SOW requires alteration of the response action required under this Consent Decree to an extent that brings it within the scope of the public participation requirements of § 117 of CERCLA, 42 U.S.C. § 9617, and the National Contingency Plan then in effect, the public shall be provided with notice and an opportunity to comment in accordance with the provisions of § 117 of CERCLA, 42 U.S.C. § 9617. Settling Defendants shall complete all Work in accordance with the revised SOW and schedules therein, and such performance shall be subject to

the enforcement provisions of this Consent Decree.

VIII.

PERIODIC REVIEW TO ASSURE
PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

A. Pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Decree to assure that human health and the environment are being protected by the remedial action being implemented. OEPA may participate in such reviews or conduct its own reviews.

B. During the pendency of this Consent Decree, upon completion of each five year review pursuant to this Paragraph, U.S. EPA shall notify OEPA and the Settling Defendants of its determination regarding the effectiveness of the remedy in protecting human health and the environment. To the extent that OEPA participates in or conducts its own review of the remedial action during the pendency of this Consent Decree, OEPA shall notify the U.S. EPA and Settling Defendants of its determination regarding the effectiveness of the remedy in protecting human health and the environment.

C. Notwithstanding any other provision of this Consent Decree, if U.S. EPA or OEPA determines, upon completion of any review of the remedial action pursuant to this Paragraph VIII, that further response action is appropriate at the Facility, then, consistent with Paragraphs VII (Modification To The SOW) and XVIII (Covenant Not To Sue) of this Decree, U.S. EPA or OEPA may take

such action as is authorized under § 104 of CERCLA, 42 U.S.C. § 9604, and thereafter institute proceedings against any person, pursuant to § 107 of CERCLA, 42 U.S.C. § 9607, to recover its response costs incurred in such action, or U.S. EPA may exercise any authority under § 106 of CERCLA, 42 U.S.C. § 9606, including issuance of an administrative order or initiation of judicial proceedings, to compel any person to perform additional response action to assure protection of human health and the environment. Upon a determination by OEPA that further action to protect public health and the environment is required at the Site, then, consistent with its previous settlements with some of the Settling Defendants and with Paragraphs III (Parties Bound), VII (Modification To The SOW) and XVIII (Covenant Not To Sue) of this Decree, OEPA may take such actions as are authorized by ORC Chapters 3734 and 6111, including performance of such further action, and/or institution of proceedings against any person which remains liable to the State to compel such further action, and/or to recover its Response Costs in performing such further action.

D. Settling Defendants reserve any rights they may have to contest or defend against any action initiated by the U.S. EPA or the State pursuant to this Paragraph.

IX.

QUALITY ASSURANCE

A. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality

Assurance Project Plans," (QAM-005/80) and subsequent amendments to such guidelines upon notification to Settling Defendants of such amendments by U.S. EPA. Application of such guidance shall be prospective only. Prior to the commencement of any monitoring project under this Decree, Settling Defendants shall submit a Quality Assurance Project Plan (QAPP) to U.S. EPA and the State that is consistent with the Statement of Work and applicable guidelines. Prior to preparation of the QAPP, Settling Defendants' representatives, including the Project Coordinator and persons in charge of laboratory analyses for the project shall meet with the U.S. EPA RPM and the U.S. EPA Region V Quality Assurance Office to discuss QAPP related matters. U.S. EPA, after review of Settling Defendants' QAPP and the State's comments thereon, will notify Settling Defendants of any required modifications, conditional approval, disapproval, or approval of the QAPP. Upon notification of disapproval or any need for modifications, Settling Defendants shall make all required modifications in the RD QAPP within twenty-one (21) calendar days of such notification, and in the RC QAPP within thirty (30) calendar days of such notification, subject to the dispute resolution provisions of Paragraph XIV. Sampling data generated consistent with the QAPP shall be admissible as evidence in any proceeding under Paragraph XIV of this Decree, or otherwise to enforce the terms of this Decree.

B. Settling Defendants shall require in all contracts or agreements for performance of any laboratory work in connection with the Site or Facility that U.S. EPA and OEPA personnel, and

authorized representatives of U.S. EPA and OEPA, shall be allowed access to any laboratory utilized by Settling Defendants in implementing this Decree. In addition, Settling Defendants shall have a designated laboratory analyze samples submitted by U.S. EPA or OEPA for quality assurance monitoring.

X.

SITE OR FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. Settling Defendants shall use their best efforts to obtain access agreements from all owners of property where Work is to be performed hereunder. Such access agreements shall authorize Settling Defendants and their contractors to perform the actions required under this Decree and all Appendices hereto, and shall grant access to Settling Defendants and their contractors for this purpose. In addition, such agreements shall provide access for U.S. EPA, the State and authorized representatives and contractors of U.S. EPA and the State. In the event that Settling Defendants cannot upon best efforts secure access to the Site and other properties where Work is to be performed according to this Subparagraph, they shall so notify the Plaintiffs. Plaintiffs may then use their available authorities to obtain such access. If such exercise of state or federal authority is required, Settling Defendants shall reimburse each Plaintiff for all costs incurred in securing such access, including costs of easements, licenses or other interests in such property, and related litigation costs, in accordance with the provisions of Paragraph XVI of this Decree.

B. After Quality Assurance and Quality Control review,

Settling Defendants shall make available to U.S. EPA and OEPA the results of all sampling and/or tests or other data generated by Settling Defendants with respect to the implementation of this Decree, and shall submit these results in periodic progress reports as described in Paragraph XI of this Decree. Settling Defendants shall insure that field notes, laboratory notes, gas chromatograms and other primary analytical output information are retained pursuant to the provisions of Paragraph XV, and shall provide such documents to the U.S. EPA and OEPA upon reasonable request.

C. At the request of U.S. EPA or the State, Settling Defendants shall allow split or duplicate samples to be taken by U.S. EPA, the State and/or their authorized representatives, of any samples collected by Settling Defendants pursuant to the implementation of this Decree. Settling Defendants shall notify U.S. EPA and the State not less than thirty (30) days in advance of any planned sample collection activity. However, in the event of an unplanned sampling activity by the Settling Defendants, not provided for in the RD or RC Work Plans, the Settling Defendants shall give reasonable notice under the circumstances. In addition, U.S. EPA and the State shall have the right to take any additional samples that U.S. EPA or the State deem necessary, and shall provide the Settling Defendants with notice of all such sampling activities. Upon request from any Settling Defendant, the U.S. EPA and/or the State shall make results of such sampling available.

XI.

REPORTING REQUIREMENTS

A. Settling Defendants shall submit written quarterly progress reports to U.S. EPA and OEPA which: (1) describe the actions, and any corrective actions directed toward problem areas, which have been taken toward achieving compliance with this Decree during the previous quarter; (2) include all results of sampling and tests and all other data received by Settling Defendants during the course of the Work during the previous quarter; (3) include all plans and procedures completed under the Work Plan during the previous quarter; (4) describe all actions, data and plans which are scheduled for the next quarter and provide other information relating to the progress of construction as is customary in the industry; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the SOW or RD or RC Work Plans, and any other plans required to be submitted pursuant to this Decree and a description of efforts made to mitigate those delays or anticipated delays; and (6) specifically identify each failure during the previous quarter to attain any deadline or milestone identified in Paragraph XVIII.A below. These progress reports are to be submitted to U.S. EPA and OEPA by the tenth day of the first month of each calendar quarter, commencing with the second calendar quarter following the effective date of this Decree, until the completion of all construction required under the RC Work Plan. Thereafter, Settling Defendants shall

submit annual progress and evaluation reports by the tenth day of the thirteenth month following completion of all construction, and annually thereafter on or before the anniversary of such filing.

B. If the date for submission of any item or notification required by this Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to § 103 of CERCLA, requires reporting to the National Response Center, Settling Defendants shall promptly orally notify the U.S. EPA Project Manager ("RPM") and OEPA Project Coordinator, or in the event of the unavailability of the U.S. EPA RPM, the Emergency Response Section, Region V, United States Environmental Protection Agency and OEPA Office of Emergency Response, in addition to the reporting required by § 103. Within 20 calendar days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 calendar days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken to respond thereto.

XII.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

A. U.S. EPA shall designate a Remedial Project Manager ("RPM") and/or an On-Scene Coordinator ("OSC") and OEPA shall

designate a Project Coordinator for the Site, and the Plaintiffs may designate other representatives including U.S. EPA and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Decree. The RPM and/or OSC shall have the authority lawfully vested in the RPM and/or the OSC by the National Contingency Plan, 40 CFR Part 300. In addition, the RPM and/or OSC shall have the authority to halt, conduct or direct any Work required by this Decree and to take any necessary response actions when conditions at the Facility may present an imminent and substantial endangerment to public health or welfare or the environment. Settling Defendants shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Site.

B. Nothing in this Paragraph XII shall limit, expand or otherwise affect the authority of the State Project Coordinator and other State and local officials under any applicable law, including Chapters 3704, 3734, 3745, 3767 and 6111 of the Ohio Revised Code and regulations adopted thereunder, to undertake actions at the Site or Facility in response to conditions which may present an immediate hazard to public health, safety, welfare or the environment. Any disputes between the RPM or OSC, on the one hand, and the State Project Coordinator or other State or local officials on the other hand, shall be resolved in accordance with the provisions of Paragraph XIV, below.

C. To the maximum extent possible, except as specifically

provided in the Decree, communications between Settling Defendants, the State and U.S. EPA concerning the implementation of the Work under this Decree shall be made between the Project Coordinators and the RPM.

D. Within twenty (20) calendar days of the effective date of this Decree, Settling Defendants, the State and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinators and Alternate Project Coordinators and of the RPM and Alternate RPM.

XIII.

UNAVOIDABLE DELAY

A. "Unavoidable Delay" for purposes of this Consent Decree is defined as any event or occurrence arising from causes beyond the control of Settling Defendants, which event delays or prevents the performance of any of Settling Defendants' obligations under this Consent Decree. "Unavoidable Delay" shall not include 1) increased costs or expenses, 2) nonattainment of the Performance Standards set forth in Paragraph VI hereof, except as provided in Subparagraph I of Paragraph VI, or 3) failure to apply for any required permits or approvals or to provide all information required therefor in a timely manner.

B. If circumstances occur which may delay or prevent the completion of any phase of the Work or delay or prevent access to the Site or to any property on which any part of the Work is to be performed, as a result of an "Unavoidable Delay," Settling Defendants shall within seven (7) days notify the RPM and the State

Project Coordinator by telephone, or in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA, and the OEPA Office of Corrective Action. Such notification shall include an explanation of the circumstances which may delay or prevent performance and any proposed alternatives or actions that may be taken to avoid, mitigate or remedy the delay or prevention of performance by the Settling Defendants. In addition, within thirty (30) days of the event or occurrence which Settling Defendants contend is responsible for the delay or prevention, Settling Defendants shall supply to Plaintiffs in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give oral notice to the RPM and State Project Coordinator and to give written explanation to Plaintiffs in a timely manner shall constitute a waiver of any claim of "Unavoidable Delay".

C. The U.S. EPA and OEPA shall provide the Settling Defendants with a written decision concerning the assertion of "Unavoidable Delay" within forty-five (45) calendar days of receipt of notification from the Settling Defendants pursuant to Paragraph B above. If U.S. EPA and OEPA agree that a delay is or was attributable to an "Unavoidable Delay" event, the U.S. EPA and OEPA, upon request of the Settling Defendants, shall agree to modification of the RD/RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase

of Work and/or any succeeding phase of the Work affected by such delay. In the event that Settling Defendants seek an extension that is longer than the actual duration of the delay, Settling Defendants shall bear the burden of demonstrating that such longer extension is warranted under the circumstances presented, including but not limited to weather-related construction delays occasioned by reviews of documents required to be submitted by the Settling Defendants to U.S. EPA and OEPA for such review, where the review requires more than forty-five (45) days to complete.

D. If U.S. EPA, OEPA and Settling Defendants cannot agree within fifteen (15) working days after receipt of OEPA's and U.S. EPA's written decision by Settling Defendants whether the reason for the delay was an "Unavoidable Delay" event, whether the duration of the delay is or was warranted under the circumstances, or cannot agree on an adjustment in the work schedules hereunder, the Parties shall resolve the dispute according to Paragraph XIV. Settling Defendants have the burden of proving "Unavoidable Delay" as a defense to compliance with this Decree.

XIV.

DISPUTE RESOLUTION

A. As required by § 121(e)(2) of CERCLA, the Parties to this Decree shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Decree or any Work required hereunder.

B. Should a dispute regarding implementation of this Consent Decree arise between the U.S. EPA and OEPA, including any dispute

with respect to approval or modification of any documents submitted to U.S. EPA and OEPA for approval, the U.S. EPA and OEPA shall first attempt to resolve such dispute expeditiously and informally, and to provide the Settling Defendants with a single Statement of Position. If the U.S. EPA and OEPA do not agree after a reasonable period, the dispute shall be resolved in accordance with the provisions of this Paragraph XIV.

C. In the event that any dispute arising under this Consent Decree is not resolved expeditiously through informal means, any party desiring dispute resolution under this Paragraph shall give prompt written notice to the other parties to the Decree.

D. Within ten (10) calendar days of the service of notice of dispute pursuant to Subparagraph C, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, all supporting documentation on which such party relies, and the party's view of the applicable standard and scope of review (hereinafter the "Statement of Position"). Opposing parties shall serve their Statements of Position, including supporting documentation, within thirty (30) days or such other time as may be agreed to by the parties or set by the Court.

E. An administrative record of any dispute regarding the adequacy and selection of the remedy for the Facility shall be maintained by U.S. EPA, and U.S. EPA may maintain administrative records with respect to disputes arising under other provisions of

this Decree. U.S. EPA shall give reasonable written notice to Settling Defendants of its intention to maintain an administrative record for those disputes that do not relate to the adequacy and selection of the remedy. All parties shall be responsible for submitting for inclusion in the administrative record all information they wish to have considered by the U.S. EPA decision maker, prior to the time of decision. Any such record shall include the written notification of such dispute, the Statements of Position served pursuant to the preceding Subparagraphs, and any other relevant information. Upon review of the administrative record, U.S. EPA shall issue a final decision and order resolving the dispute, and any other relevant information. The record shall be available for review and copying by all parties.

F. Any party desiring dispute resolution under this Paragraph may serve and file a motion for dispute resolution with the court subsequent to the final decision of U.S. EPA. In the case of an objection by any party to a decision or determination by U.S. EPA, the objecting party shall serve and file such motion within thirty (30) days of the receipt of the decision or determination complained of. Unless a party makes its objection in accordance with the provisions of this Subparagraph F, U.S. EPA's determination shall control.

G. Any party seeking dispute resolution pursuant to Subparagraph F shall include in its Motion a written statement of the issues in dispute, a recitation of the relevant facts and evidence upon which the dispute is based, and where appropriate a citation

to the documentation in the administrative record compiled pursuant to Subparagraph D above upon which such party relies.

H. Certification. The custodian of the record maintained pursuant to Subparagraph E shall certify and submit the administrative record to the Court upon the filing of a Motion for Dispute Resolution by U.S. EPA or, in the case of a motion challenging U.S. EPA's decision, upon the filing of the Agency's response to the Motion for Dispute Resolution.

I. Judicial Review

1. EPA Determinations Respecting Remedial Action. Pursuant to the provisions of § 113(j) of CERCLA, 42 U.S.C. § 9613(j), any decision or determination by U.S. EPA pertaining to the selection or adequacy of response action(s) taken under this Decree will be reviewed by the Court on the basis of the administrative record, and U.S. EPA's decision will be upheld by the Court unless it is arbitrary and capricious or otherwise not in accordance with law.

2. Other Issues. In the event of a dispute between the United States and the State regarding whether waiver of a legally applicable or relevant and appropriate standard, requirement, criteria or limitation is warranted under the provisions of Paragraph VI. D. above, the Court shall resolve the dispute on the basis of the administrative record maintained by the U.S. EPA. The Court shall affirm the determination of the U.S. EPA unless the State can demonstrate that such waiver is not supported by substantial evidence. Except as specified in Subparagraph I.1

above or otherwise in this Decree, this Decree does not establish the scope of review, burdens of proof or standards of any kind for judicial review of disputes between the parties.

3. Applicable Law. Notwithstanding the provisions in Subparagraph I.1, above, if Congress or a court of controlling jurisdiction establishes or provides for a different procedure or standard of review with respect to U.S. EPA decision-making pertaining to the selection or adequacy of response action, any party may move the Court to modify Subparagraph I.1 to conform to such procedure or standard of review.

J. The invocation of the procedures stated in this Paragraph shall not extend or postpone Settling Defendants' obligations under this Decree with respect to the disputed issue, unless and until U.S. EPA finds, or the Court orders, otherwise.

XV.

RETENTION AND AVAILABILITY OF INFORMATION

A. Settling Defendants shall retain, during the pendency of this Decree and for a period of five (5) years after its termination, one copy of all records and documents in their possession, custody, or control, which relate to the performance of the remedial action required under this Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by or on behalf of any Settling Defendant with respect to the Site, and shall, upon reasonable request, make such records available to the U.S. EPA and OEPA. For purposes of this Paragraph, Settling

Defendants may retain documents or records in any format approved by the Plaintiffs, including, without limitation, hard copy originals, microfilm, or electronic media, provided that each retained document and record is either a "duplicate" or an "original" within the meaning of Rule 1001 of the Federal Rules of Evidence. Settling Defendants agree to waive any and all objections under Rule 1003 of the Federal Rules of Evidence regarding genuineness and admissibility of any "duplicate" document retained pursuant to this Paragraph in any proceeding with respect to enforcement of the provisions of this Consent Decree or in any subsequent proceeding or action. Any such document generated by or on behalf of the Settling Defendants after termination of this Consent Decree which relates to matters described above and in this Paragraph, shall likewise be retained and made available to Plaintiffs in accordance with this Paragraph for a period of not less than five (5) years after the date of the document's creation. Settling Defendants shall require all contractors or subcontractors performing sampling and/or analysis of materials from the Site to provide to the Settling Defendants, or such of them by agreement designated and identified to U.S. EPA and the State, legible copies of all documents generated by such contractors and subcontractors in connection with such sampling and analysis.

B. In addition to the requirements of Subparagraph A, above, each Settling Defendant shall make available to U.S. EPA and the State and shall retain during the pendency of this Decree and for a period of five (5) years after its termination, one copy of all

non-privileged records in the possession, custody or control of such Settling Defendant, other than documents previously provided to U.S. EPA or the State, which relate in any way to any transactions between Settling Defendants and Donald Georgeoff, Angelo Sottanti, John Vasi, Summit National Liquid Services, Inc., and any other generator, transporter, treater or other person or entity acting in privity with them and which relate to the Site.

C. At the conclusion of the applicable document retention period established pursuant to this paragraph XV, Settling Defendants shall notify U.S. DOJ, U.S. EPA and the State at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or the State, Settling Defendants shall relinquish custody of the documents to U.S. EPA or the State.

D. Settling Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Decree in accordance with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R § 2.203(b) and applicable State law. Information acquired or generated by Settling Defendants in performance of the Work that is subject to the provisions of § 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants.

E. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R Part 2, Subpart B and, if determined to be entitled to confidential

treatment under State law by the State, afforded protection under State law by the State. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to Settling Defendants.

XVI.

REIMBURSEMENT

A. Past Response Costs of the United States. Settling Defendants shall reimburse the United States for response costs incurred by the United States prior to entry of this Consent Decree, to the extent provided in this Subparagraph A. All response cost payments required pursuant to this Subparagraph A shall be made in the manner provided in Subparagraph D, below.

1. Itemized Statement. The United States shall submit to Settling Defendants an itemized statement of all response costs incurred by the United States prior to entry of this Decree.

2. Initial Reimbursement. Subject to the provisions of Subparagraph C, below, within thirty (30) days after Settling Defendants' receipt of the itemized statement referred to in the preceding Subparagraph, Settling Defendants shall reimburse the United States for response costs incurred prior to entry of this Consent Decree, under the following conditions:

a. If the group of Settling Defendants that are signatories to this Consent Decree includes all PRPs which are set forth in Appendix I to this Consent Decree, Settling Defendants shall pay to the U.S. EPA eighty (80) percent of the costs itemized

under the provisions of Subparagraph 1 above, but such payment shall not exceed the sum of \$1.8 million.

b. If Settling Defendants are not required to reimburse the past response costs of the United States under the provisions of subparagraph 2.a. above, then to the extent that the United States does not recover all its unreimbursed past response costs from non-settling PRPs despite the exercise of due diligence in pursuing claims against non-settling PRPs, Settling Defendants shall pay the difference between the amount of past costs recovered from non-settling PRPs by the United States and eighty (80) percent of the past costs itemized as provided for in Subparagraph A.1. above, but such payments shall not exceed the sum of \$1.8 million. "Due diligence" within the meaning of this paragraph shall include investigating the liability and viability of Non-settling PRPs, and bringing and pursuing a claim against any Non-settling PRP who, in the sole judgment of the United States, is liable and capable of paying all or a significant portion of its "share" of unreimbursed response costs (its proportion of the total volumetric waste contributed to the site). "Due diligence" shall not include pursuing any defendant who, in the sole judgment of the United States, is not likely to be held liable by this Court or is not likely to be able to pay all or a significant portion of its "share", as described above. Notwithstanding the definition of "due diligence" set forth above, nothing herein shall be construed to alter or affect the nature or scope of any Non-settling PRP's liability. The United States and the State expressly reserve the

right to seek recovery on the basis of joint and several liability of all their remaining claims against any and all Non-settling PRPs.

3. Reservation of Rights; Pursuit of Non-Settlers. If the United States does not recover all response costs which it incurred prior to entry of this Consent Decree pursuant to the provisions of Paragraphs XVI.A.1 and A.2 above, the United States reserves the right to initiate and maintain proceedings against any person, excepting Settling Defendants and De Minimis Settlers, for such unrecovered past response costs. Consistent with the applicable provisions of Section 113(f)(3) of CERCLA, 42 U.S.C. § 9623(f)(3), it is the United States' present intention, subject to its prosecutorial discretion and not subject to judicial review in any manner or under any circumstances, to seek administrative or civil judicial relief against persons other than Settling Defendants or De Minimis Settlers for recovery of such unreimbursed past response costs.

B. Oversight Costs. Subject to Subparagraph C below, Settling Defendants shall pay all oversight costs of the United States and the State incurred in overseeing implementation of the Work, including costs incurred by the U.S. or the State in seeking to obtain access to, or the cost of acquiring any interest in, any property for purposes of implementing any requirement of this Decree and including costs of overseeing operation and maintenance and other obligations of the Settling Defendants that survive termination of this Consent Decree. U.S. EPA and OEPA shall use

their best efforts to coordinate their oversight activities to avoid duplication of oversight activities to the maximum extent practicable.

1. Itemized Statements. In January of each year following entry of this Decree, the United States and the State shall submit itemized statements documenting their oversight costs during the previous year.

2. Payment shall be made by the Settling Defendants on an annual basis and within thirty (30) days of submission of itemized cost statements and supporting documentation by the United States and the State. Payment shall be made in the manner specified in Subparagraphs D and F below.

C. Consistency With The NCP. Settling Defendants reserve the right to invoke the dispute resolution procedures of Paragraph XIV, above, to contest whether any response costs or oversight costs included in any itemized statement submitted pursuant to Subparagraphs A and B, above, are consistent with the National Contingency Plan ("NCP"). In any such proceeding Settling Defendants shall have the burden of proving that past response costs and oversight costs incurred by the United States and the State are inconsistent with the NCP. Settling Defendants shall not be required to reimburse the United States or the State for any past response costs or oversight costs that are determined to be inconsistent with the NCP. Response costs paid by Settling Defendants pursuant to Subparagraphs A and B, above, are consistent with the NCP.

D. All payments to the United States pursuant to this Paragraph XVI shall be made by certified check payable to "Hazardous Substance Superfund," shall reference the Summit National Site, and shall be addressed to:

U.S. Environmental Protection Agency
Region V
Attn: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall also be sent to:

Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

E. Settling Defendants acknowledge that the State in this action demands recovery of Response Costs incurred by it prior to the entry of this Decree in connection with the Facility of One Million Thirty-Eight Thousand Three Hundred Fourteen Dollars and Fourteen Cents (\$1,038,314.14).

F. Settling Defendants that remain liable to the State shall pay to the State, within forty-five (45) days of the entry of this Decree, Two Hundred Sixty-Three Thousand Sixteen dollars and Fourteen cents (\$263,016.14) in settlement of the State's demand for past Response Costs by means of a check made payable to "Treasurer, State of Ohio," and delivered to the Office of the Attorney General, 30 East Broad Street, Columbus, Ohio 43266-0410, Attention Charles R. Dyas, Jr., Assistant Attorney General, or his successor. Payment by Settling Defendants of \$263,016.14 as required under this Paragraph for settlement of this case shall not

preclude the State of Ohio from pursuing the collection of the remainder of the response costs set forth in Subparagraph E above which the State has incurred at the Summit National site, against any and all non-settling PRPs that remain liable to the State and against any responsible parties identified subsequent to the entry of this Consent Decree.

G. The Response Costs set forth in Subparagraph F of this paragraph were incurred by the State and are not inconsistent with the National Contingency Plan.

XVII.

STIPULATED PENALTIES

A. Penalties. All Settling Defendants shall be liable to the United States for payment of stipulated penalties for each of the following violations of this Decree, unless the violation is excused pursuant to Paragraph XIII above or waived by U.S. EPA. Stipulated penalties shall be paid in the amounts stated below, to the United States:

1. Late Plans or Reports. For each day that the Settling Defendants fail to submit periodic progress reports (other than the reports specified in Subparagraph A.2 below) in accordance with the requirements of this Decree or the SOW:

Payment Schedule

Days 1-7	\$100 per day
Days 8-30	\$250 per day
After 30 Days	\$500 per day

2. Delayed Remedial Plans and Work. For each day that

the Settling Defendants fail to submit the remedial action plans required to be submitted according to the schedules set forth in the Work Plans and the SOW, and for each day that the Settling Defendants fail to complete any item of Work as set forth in this Subparagraph in accordance with the schedules set forth in the Work Plans and the SOW:

Payment Schedule

Days 1 through 7	\$1000 per day
Days 8 through 30	\$2000 per day
Days 31 through 60	\$4000 per day
After 60 days	\$7000 per day

Schedule for Remedial Action Plans and Work

- a. Submission of the RD Work Plan.
- b. Submission of the RC Work Plan, including final plans for the design, construction and operation and maintenance of the remedial actions required under this Consent Decree.
- c. Performance of each of the major components of the remedial action:
 - i. Completion of construction of the water treatment plant.
 - ii. Commencement of operation of the water treatment plant.
 - iii. Completion of construction of the pipe and media drain collection system and extraction wells.
 - iv. Commencement of operation of the pipe and media drain collection system and extraction wells.
 - v. Completion of setup of the incinerator.
 - vi. Commencement of operation of the incinerator.

- vii. Completion of installation of the groundwater monitoring system.
- viii. Completion of the site cover.

Penalties for the untimely submission of plans for the design, construction and operation and maintenance of the remedial actions will be forgiven if the Settling Defendants complete all required remedial construction activities, including site cover activities required pursuant to Subparagraph VI.E.10.f, above, within fifty-six (56) months of the date of entry of this Consent Decree. For the following stated elements of the stipulated penalties set forth above, penalties for failure to meet the milestone set forth the specified Subparagraphs will be forgiven if the specified subsequent milestone, as set forth herein or as extended under the provisions of Paragraph XIV (Dispute Resolution) is met: Penalties for failure to meet Subparagraph A.2.c.i. above will be forgiven if the Settling Defendants commence operation of the water treatment plant under Subparagraph A.2.c.ii. above within twenty-four (24) months of the date of entry of this Consent Decree. Penalties for failure to meet Subparagraph A.2.c.iii. above will be forgiven if the Settling Defendants commence operation of the pipe and media drain collection system and the extraction well system under Subparagraph A.2.c.iv. above within twenty-seven (27) months of the date of entry of this Consent Decree. Penalties for failure to meet Subparagraph A.2.c.v. above will be forgiven if the Settling Defendants commence operation of the incinerator under Subparagraph A.2.c.vi. above within twenty-nine (29) months of the date of entry of this Consent Decree. Any penalties for the untimely submission

of plans required under Subparagraphs A.2.a through c above shall be collected as specified in Subparagraph C below, but shall be paid into an interest-bearing escrow account and shall remain there until fifty-six (56) months after the entry of this Consent Decree, unless all construction required in the RC Work Plan has been completed by that date. Any penalties for the untimely completion of any element of construction listed in Subparagraphs A.2.c.i., A.2.c.iii and A.2.c.v. above shall be collected as specified in Subparagraph C below, but shall be paid into an interest-bearing escrow account. If Settling Defendants satisfy the criterion for forgiveness of any stipulated penalty paid into an escrow account pursuant to this Subparagraph A, the parties shall instruct the escrow agent to pay the amount of each forgiven penalty, together with interest accumulated thereon, to the Trustee on behalf of the Settling Defendants. If the Settling Defendants do not satisfy the criterion for forgiveness of any stipulated penalty paid into an escrow account pursuant to this Subparagraph A, the parties shall instruct the escrow agent to pay to Plaintiffs the amount of each penalty not forgiven, together with interest accumulated thereon, within thirty (30) days. Amounts due to the United States shall be paid to the Hazardous Substance Superfund, as provided in Subparagraph C of this Paragraph. A copy of the check shall also be sent to the Department of Justice, at the address specified in Paragraph XX (Notices) below.

3. \$25,000 Per Day Cap. Stipulated penalties due under this Paragraph shall not exceed a total of \$25,000 per day.

4. Time Limitation. Stipulated penalties due hereunder shall be deemed waived if notice is not given by the United States pursuant to Subparagraph B below within one year of receipt of notice that the deadline for an action has been missed or other violation giving rise to the penalty has occurred. This limitation shall not apply if Settling Defendants have failed to report a missed deadline or other violation giving rise to a stipulated penalty in the reports submitted pursuant to paragraph XI hereof.

5. Accrual. All penalties begin to accrue on the day after the day on which complete performance is due or on the date a violation occurs, and continue to accrue until performance is completed or the violation is corrected. Except as set forth in Subparagraph A.3. above, nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree. Payment of penalties shall not alter in any way Settling Defendants' obligation to complete performance.

B. Following the OEPA's and/or U.S. EPA's determination that Settling Defendants have failed to comply with the requirements of this Decree, OEPA and/or U.S. EPA shall give Settling Defendants written notice of said violation and describe the noncompliance with specificity. This notice shall also indicate the amount of penalties due.

C. All penalties owed to the United States under this Paragraph shall be payable within thirty (30) days after receipt of the notification of noncompliance, unless the Settling Defendants invoke the dispute resolution procedures under Paragraph XIV above.

Penalties shall accrue regardless of whether the U.S. EPA and OEPA have notified the Settling Defendants of a violation. Interest shall begin to accrue on the unpaid balance at the start of the thirty (30) day period, but no interest shall be paid if payment of the penalties is made before the end of that period. Except as provided in Subparagraph A. 2. above, penalties owed to the U.S. EPA shall be paid by certified check to the "Hazardous Substance Superfund" and shall contain Settling Defendants' complete and correct address, the Facility name, and the docket number of this case. All checks to the U.S. EPA shall be mailed to U.S. Environmental Protection Agency, Region V, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. A copy of the check shall also be sent to the Department of Justice, at the address specified in Paragraph XX (Notices) below.

D. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way the Settling Defendants' obligations to complete the activities required of them under this Decree.

E. Interest shall accrue on delayed payment of stipulated penalties pursuant to this Paragraph XVII. The rate of interest shall be the annual rate provided for in § 107(a) of CERCLA, 42 U.S.C. § 9607(a), plus two (2) per cent. Such interest shall accrue and be compounded on a daily basis.

F. Notwithstanding the stipulated penalties provisions of Subparagraph A of this Paragraph, U.S. EPA may elect to assess civil penalties or the United States may elect to bring an

action in U.S. District Court pursuant to § 109 of CERCLA, as amended by SARA, to enforce the provisions of this Decree provided that Settling Defendants' total penalty exposure for violations shall be limited as provided by § 109 of CERCLA. However, U.S.EPA agrees not to seek both stipulated penalties and § 109 civil penalties for the same violation. Payment of stipulated penalties shall not preclude U.S. EPA from electing to pursue any other remedy or sanction to enforce this Decree, and nothing herein shall preclude U.S.EPA from seeking statutory penalties against Settling Defendants for violations of statutory or regulatory requirements.

G. Settling Defendants may dispute Plaintiff's right to the stated amount of penalties by invoking the dispute resolution provisions of Paragraph XIV above. Penalties shall accrue but need not be paid during the dispute resolution period. If this Court becomes involved in the resolution of such dispute, the period of dispute shall end upon the rendering of a decision by the District Court regardless of whether any party appeals such decision. Settling Defendants shall pay only such penalties as agreed to by the parties or as the Court requires.

H. No penalties shall accrue for violations of this Decree caused by events beyond the control of Settling Defendants as identified in Paragraph XIII ("Unavoidable Delay"). Settling Defendants have the burden of establishing that an event causing delay or nonperformance constitutes an "Unavoidable Delay".

XVIII.

COVENANT NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by the Settling Defendants under the terms of the Decree, and except as otherwise specifically provided in this Decree, the United States as to all Settling Defendants, and the State of Ohio with respect to the firms listed in Paragraph III, covenant not to initiate or maintain any civil judicial or administrative action or proceeding against the Settling Defendants or their successors or assigns for Covered Matters, as defined in Subparagraph B below. With respect to future liability, this covenant not to sue shall take effect upon issuance by U.S. EPA and OEPA of the Certificate of Completion of the remedial action concerning the Site and Facility. U.S. EPA and OEPA will make determinations regarding the certification of completion within one year after submission of the Notice of Completion referred to in Paragraph XXVI. The parties acknowledge and agree that the payments and undertakings made pursuant to this Decree represent a settlement and compromise of a disputed claim and that the settlement is fair, reasonable and equitable. This acknowledgement shall not diminish or affect any right of contribution or private cost recovery right that Settling Defendants may have against Non-settling PRPs.

B. Subject to the exclusions set forth in Subparagraph C below, Covered Matters shall include:

1. Any and all claims available to Plaintiffs under §§

104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607 and § 7003 of RCRA, 42 U.S.C. § 6923, relating to the Site and Facility;

2. Any and all claims available to the State under Chapters 3734, 3767 and 6111 of the Ohio Revised Code and State common law nuisance, relating to the Site and Facility; and
3. Any and all other civil claims based on the same facts, transactions or series of events described in Plaintiffs' complaints and arising prior to entry of this Decree, under common law or any federal or state statute or regulation enforced or administered by U.S. EPA or Ohio EPA.

C. "Covered Matters" does not include:

1. Liability arising from the hazardous substances removed from the Site or Facility;
2. Criminal liability;
3. Claims based on a failure by the Settling Defendants to meet the requirements of this Decree;
4. Liability for violations of Federal or State law which occur during implementation of the remedial action;
5. Liability for costs incurred pursuant to CERCLA § 104(i); or
6. Liability for any indemnification claims pursuant

to Paragraph XIX.

D. Notwithstanding any other provision in this Decree, (1) the United States, and the State to the extent permitted under Paragraph III above, reserve the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the Settling Defendants to perform any additional response work at or necessitated by a release emanating from the Site or Facility, and (2) the United States, and the State to the extent permitted under Paragraph III above, reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States for response costs and to reimburse the State for its costs, including its matching share of any response action undertaken by the Plaintiffs under CERCLA, relating to the Site or Facility, if:

1. for proceedings prior to U.S. EPA and OEPA certification of completion of the remedial action which Settling Defendants are required to perform under this Decree concerning the Site or Facility,
 - a. conditions at the Site or Facility, previously unknown to the United States and the State, are discovered after the entry of this Decree;
 - or
 - b. information is received, in whole or in part, after the entry of this Decree;and these previously unknown conditions or this information indicates that the remedial action

required under this Consent Decree is not protective of human health and the environment and;

2. for proceedings subsequent to U.S. EPA and OEPA certification of completion of the remedial action concerning the Site or Facility,

a. conditions at the Site or Facility, previously unknown to the United States and the State, are discovered after the certification of completion by U.S. EPA and OEPA; or

b. information is received, in whole or in part, after the certification of completion by U.S. EPA, and OEPA;

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

E. Notwithstanding any other provision in this Decree, the covenant not to sue in this Paragraph XVIII shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Decree and its Appendices, which are incorporated herein, and the United States, and the State to the extent permitted by Paragraph III above, reserve their rights to take response actions at the Site or Facility in the event of a breach of the terms of this Decree and to seek recovery of costs incurred after entry of the Decree: 1)

resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States or the State; or 3) incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Site caused by releases or threatened releases of hazardous substances, pollutants, or contaminants at or from the Facility.

F. In consideration of U.S. EPA's agreement to undertake negotiations for a separate resolution of claims against De Minimis Settlers, the Settling Defendants covenant not to initiate or maintain any action asserting any claim for contribution with respect to matters addressed in this Consent Decree against any De Minimis Settler which resolves its liability to the U.S. EPA in accordance with the terms of the agreement resolving such liability referred to in Paragraph IV.C.

G. Nothing in this Decree shall constitute or be construed as a release of any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity which is not a signatory to this Consent Decree. Except as provided in Subparagraph F, nothing in this Consent Decree shall be construed as a covenant not to sue any person or entity not a signatory to this Decree for any liability it may have arising out of or relating to the Site or Facility. Plaintiffs expressly reserve the right to continue to sue any person, other than the Settling Defendants, in connection with the Site or Facility.

H. This Consent Decree was negotiated and executed by the parties in good faith to avoid expensive and protracted litigation

and is a settlement of claims which were vigorously contested, denied and disputed as to validity and amount. The execution of this Decree is not an admission of any fact or liability on any issue dealt with in this Decree, except in an action to enforce this Decree brought by the Plaintiffs, wherein Settling Defendants agree not to contest either the entry of the Decree, their liability with respect to the matters covered in the Decree or, except as provided in Paragraph XIV regarding dispute resolution, any factual matter or finding or any conclusion of law set forth in this Decree. Accordingly, with the exception of this proceeding and any other proceeding to enforce this Decree, this Consent Decree shall not be admissible in any judicial or administrative proceeding, except that it may be admissible in a judicial or administrative proceeding between Settling Defendants and their respective insurers, or any other person or entity in an action for private cost recovery, contribution or indemnification.

XIX.

OTHER CLAIMS

A. Settling Defendants agree to indemnify, save and hold harmless U.S. EPA, the State and/or their representatives from any and all claims or causes of action for any injuries or damages to persons or property arising from acts or omissions of Settling Defendants and/or their representatives in carrying out the activities pursuant to this Decree. Settling Defendants do not agree to indemnify either Plaintiff or its respective departments, employees, agents, contractors or subcontractors for that portion

of any claim or cause of action attributable to the negligent acts or omissions of such Plaintiff or its representatives at the Site or Facility or in connection with this Consent Decree.

The indemnification and hold harmless agreement between the Settling Defendants and the U.S. EPA shall not apply to claims or causes of action for any injuries or damages to persons or property arising out of actions which the Settling Defendants are directed to take or refrain from taking by the RPM or the OSC, to the extent that the actions directed by the RPM or the OSC are not contemplated in or are materially different from the Work required in the SOW, and prior to performing the actions directed by the RPM or the OSC, the Settling Defendants advise the RPM or the OSC that such actions present an unreasonable risk of injury to persons or property.

U.S. EPA and the State shall notify Settling Defendants of any such claims or actions within sixty (60) working days of receiving notice that such a claim or action is anticipated or has been filed, unless such action or claim has also been filed against the Settling Defendants. U.S. EPA and the State agree not to act with respect to any such claim or action without first providing Settling Defendants an opportunity to participate to the extent permitted.

B. U.S. EPA and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out the activities pursuant to this Decree. The proper completion of the Work under this Decree

is solely the responsibility of Settling Defendants.

C. Settling Defendants waive their rights to assert any claims against the Hazardous Substance Superfund under CERCLA that are related to any past costs or costs incurred in the Work performed pursuant to this Decree, and nothing in this Decree shall be construed as U.S. EPA's preauthorization of a claim against the Hazardous Substance Superfund.

D. The State of Ohio expressly waives its rights pursuant to § 107(f) of CERCLA, 42 U.S.C. § 9607(f), to seek damages for natural resources at this Site or Facility and, pursuant to Federal Rule of Civil Procedure 41(a), with the stipulation of the Settling Defendants, dismisses its claim, without prejudice, for such natural resource damages at the Site but expressly reserves its right to seek recovery of natural resource damages from Non-settling PRPs or other potentially responsible parties subsequently identified.

XX.

NOTICES

Whenever, under the terms of this Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Paragraph XIV hereof, such correspondence shall be directed to the following individuals or their designated successors, at the addresses specified below:

As to the United States or
U.S. EPA:

As to the State of Ohio:

- | | |
|---|---|
| <p>a. Regional Counsel
Attn: Jon McPhee (5CS)
U.S. Environmental Protection
Agency
230 S. Dearborn Street
Chicago, Illinois 60604</p> | <p>a. Director, State
Ohio Environmental Protection
Agency
Attn: Supervisor, Office
of Corrective Action
1800 Water Mark Drive
Columbus, Ohio 43266-0149</p> |
| <p>b. Director, Waste Management
Division
Attn:

Remedial Project Manager
U.S. Environmental Protection
Agency
230 S. Dearborn Street
Chicago, Illinois 60604</p> | <p>b. Attorney General-State
of Ohio
Attn: Charles Dyas, Jr.
Environmental Enforcement
Section
Attn: Charles Dyas, Jr.
30 East Broad Street
Columbus, Ohio 43266-0410</p> |
| <p>c. Assistant Attorney General
Land & Natural Resources
Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530</p> | |

As to Settling Defendants:

William Falsgraf, Esq.
Baker & Hostetler
3200 National City Center
Cleveland, Ohio 44114

Thomas T. Terp, Esq.
Taft, Stettinius & Hollister
1800 First National Bank Center
Cincinnati, Ohio 45202

XXI.

CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

The United States and the State agree that the Work, if properly performed as set forth in Paragraphs VI and VII hereof, is consistent with the provisions of the National Contingency Plan established pursuant to 42 U.S.C. § 9605.

XXII.

RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. § 9604, or

to alter the applicable legal principles governing the judicial review of U.S. EPA's selection or adequacy of remedial action at the Facility.

XXIII.

MODIFICATION

Except as provided for herein, any modification of this Consent Decree shall be by order of the Court.

XXIV.

PUBLIC PARTICIPATION

A. Pursuant to § 117(c) of CERCLA, the United States shall publish a notice of this Decree's availability for review and comment upon its lodging with the United States District Court as a proposed settlement in this matter. The United States will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during a thirty (30) day period following such notice. In addition, the United States intends to hold a public meeting in Deerfield, Ohio during this period to receive either written or oral comments. The United States will file with the Court a copy of any comments received and the responses of the United States to such comments.

B. After the closing of the public comment period, the United States will review such comments and determine whether the comments disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate, and that the consent should therefore be withdrawn. Should consent be withdrawn, the United States shall inform the other parties as to

the basis for the withdrawal and any modifications necessary for consent to a settlement.

XXV.

COMMUNITY RELATIONS

Settling Defendants shall cooperate with U.S. EPA and the State in providing information to the public. As requested by U.S. EPA or the State, Settling Defendants shall participate in the preparation of and provide technical information to be disseminated to the public or to be used in public meetings that may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Site or Facility. Settling Defendants may take part in such public meetings.

XXVI.

EFFECTIVE AND TERMINATION DATES

A. This Decree shall be effective upon the date of its entry by the Court.

B. When Settling Defendants determine that they have completed the Work, other than operation and maintenance activities required after completion of all remedial construction, and determine that they have achieved the Performance Standards and engineering performance specifications and standards required under Paragraph VI, they shall submit to U.S. EPA and OEPA a Notice of Completion of Remedial Action and a final report as required by the RC Work Plan. The final report must summarize the Work performed, any modification to the Work Plan as agreed to by U.S. EPA and OEPA, and the Performance Standards and engineering performance

specifications and standards achieved. The summary shall include or reference any supporting documentation.

Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA and the State shall review the accompanying report and any other supporting documentation and the remedial action taken. U.S. EPA and OEPA shall issue a Certification of Completion upon their determination that Settling Defendants have satisfactorily completed the Work and are achieving Performance Standards and engineering performance specifications and standards of performance required under this Decree. After submittal of a Notice of Completion, but prior to the issuance of any Certification of Completion, U.S. EPA and OEPA shall undertake a review of the remedial action under Paragraph VIII. The Certification shall be issued only if U.S. EPA and OEPA determine that no corrective action under Paragraph VIII is necessary. U.S. EPA and OEPA shall not unreasonably delay issuance of the Certificate of Completion.

C. Upon receipt of the Certification from U.S. EPA and OEPA, and a showing that all amounts required to be paid pursuant to this Consent Decree have been paid in full, this Consent Decree may be terminated on the motion of either party. However, Settling Defendants' responsibility to perform the following obligations, shall survive the termination of the Consent Decree, and shall be enforceable by the United States against the Settling Defendants, and by the State against the Settling Defendants listed in Paragraph III, by re-institution of this action or by institution of a new action:

1. All operation and maintenance requirements set forth in the approved operation and maintenance plan, including the requirements listed below in this Subparagraph C, except to the extent that such plan expressly provides for expiration or termination of particular operation and maintenance requirements, and the conditions for expiration or termination of such requirements occur prior to termination of the Decree in accordance with the preceding paragraph.

- a. Operation and maintenance of the groundwater collection and pumping systems, including the pipe and media drain and all groundwater extraction wells.
- b. Operation and maintenance of the groundwater treatment system wastewater treatment plant.
- c. Maintenance and repair of the fence.
- d. Maintenance and repair of the cap.
- e. Maintenance and repair of any landfill cell installed on the Site to contain wastes generated during the remedial action, including incinerator ash.
- f. Maintenance and repair of all groundwater monitoring wells.

2. Groundwater, surface water and air monitoring as required by the SOW and RC Work Plan.

3. Reporting requirements set forth in Paragraph XII.

4. The provisions of Paragraph III (Parties Bound),

Paragraph V with respect to maintenance of and payment into the Summit National Facility Trust Fund, Paragraph VI (Performance of the Work By Settling Defendants), Paragraphs VII (Modification Of The SOW), VIII (Periodic Review), IX (Quality Assurance), XI (Reporting Requirements), XIV (Dispute Resolution), XV (Retention and Availability of Information), XVI (Reimbursement), XVII (Stipulated Penalties), XVIII (Covenant Not To Sue), XIX (Other Claims), XX (Notices), XXII (Response Authority) and XXV (Community Relations) shall also survive the termination of the Consent Decree.

ENTERED this ____ day of _____, 1988.

District Judge

By the Signatures below each Parties' name, Consent to this Decree is hereby given. Consent of the United States is subject to the public participation requirements of Section 122 of CERCLA, 42 U.S.C. § 9622; 40 CFR Part 300; and 28 CFR 50.7:

UNITED STATES OF AMERICA

By: _____

Land & Natural Resources
Division
U.S. Department of Justice
Washington, D. C. 20530

By: _____

Thomas L. Adams
Assistant Administrator
for Enforcement and
Compliance Monitoring
U.S. EPA

OTHER SIGNATORIES:

William J. Edwards
Acting U.S. Attorney
Northern District of Ohio

BY: _____
Assistant U.S. Attorney

Valdas V. Adamkus
Regional Administrator
U.S. EPA, Region V

Bertram C. Frey
Acting Regional Counsel
U.S. EPA, Region V

Steven J. Willey
Environmental Enforcement
Section
U.S. Department of Justice
Washington, D.C. 20530

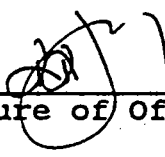
Jonathan T. McPhee
Asst. Regional Counsel
U.S. EPA, Region V

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

American Cyanamid Company
Name of Settling Defendant

One Cyanamid Plaza
Wayne, New Jersey 07470
Address

By: Darryl D. Fry
Name of Officer

 llf
Signature of Officer

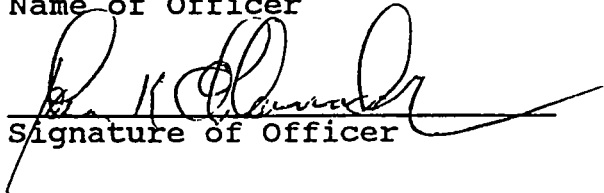
Executive Vice President
Title

3-7-91
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Bechtel-McLaughlin, Inc.
Name of Settling Defendant
3612 Milan Rd. P.O. Box 1110
Sandusky, Ohio 44870
Address

By: John K. Ohlemacher
Name of Officer


Signature of Officer

President
Title

March 18, 1991
Date

(C)
The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

The BOC Group, Inc.
Name of Settling Defendant

575 Mountain Avenue
Murray Hill, NJ 07974
Address

By: W. Dekle Rountree, Jr.
Name of Officer

W. Dekle Rountree, Jr.
Signature of Officer

Vice President
Title

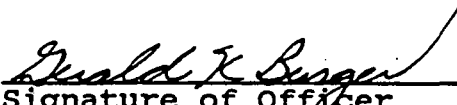
March 8, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Browning-Ferris Industries of Pennsylvania, Browning-Ferris Industries of Ohio, Inc.
Name of Settling Defendant

757 N. Eldridge, Houston, Texas 77079
Address

By: Gerald K. Burger
Name of Officer


Signature of Officer

Vice President
Title

March 26, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Canton Drop Forge, Inc.
Name of Settling Defendant

4575 Southway Street, S.W.
Canton, Ohio 44706

Address

By: Jerome P. Bressanelli
Name of Officer

Jerome P Bressanelli
Signature of Officer

President
Title

March 27, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

COLUMBIA GAS TRANSMISSION CORPORATION

Name of Settling Defendant

1700 MacCorkle Ave., S.E.
Charleston, WV 25314

Address

By: J. H. Deakin

Name of Officer


Signature of Officer

Vice President

Title

April 19, 1991

Date

APPROVED

APR 19 1991
JH Deakin
4/17/91

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Container Corporation of America
Name of Settling Defendant

8182 Maryland Ave., 11th Floor
St. Louis, Missouri 63105
Address

By: Roy C. Cobb, Jr.

Name of Officer

Roy C. Cobb, Jr.
Signature of Officer

Senior Counsel/
Environmental Counsel
Title

March 7, 1991

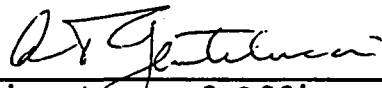
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

E. I. du Pont de Nemours & Company
Name of Settling Defendant

Wilmington, DE 19898
Address

By: A. T. Gentilucci
Name of Officer


Signature of Officer

Director of Manufacturing
Industrial Chemicals
Title

March 28, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Erieway, Inc.

Name of Settling Defendant

4200 Rockside Rd. Suite 200
Independence, Ohio 44131

Address

By: H.C. Gillette

Name of Officer



Signature of Officer

President & CEO

Title

April 16, 1991

Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Bridgestone/Firestone, Inc.
Name of Settling Defendant

1200 Firestone Parkway, Akron, OH 4431
Address

By: A. Mosby Harvey, Jr.

Name of Officer


Signature of Officer

General Counsel
Title

April 2, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

General Motors Corporation

Name of Settling Defendant

P.O. Box 33122

Detroit MI. 48232

Address

By: Michelle T. Fisher

Name of Officer

Michelle T. Fisher

Signature of Officer

Attorney

Title

4-26-91


Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

GenCorp Inc.
Name of Settling Defendant

175 Ghent Road
Fairlawn, Ohio
Address

By: James S. Marlen
Name of Officer


Signature of Officer

Vice President
Title

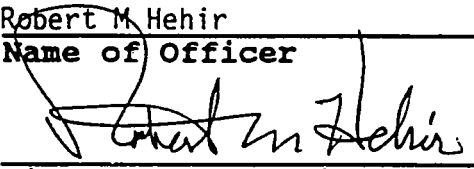
March 15, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

THE GOODYEAR TIRE & RUBBER COMPANY
Name of Settling Defendant

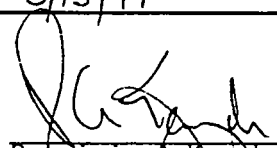
1144 East Market St - Akron, Oh 44316-0001
Address

By: Robert M. Hehir
Name of Officer


Signature of Officer

Title Vice President

3/13/91
Date

Attest: 
Patricia A. Kemp
Assistant Secretary

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.


GOULD INC.

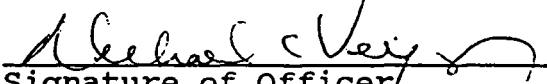
Name of Settling Defendant

35129 CURTIS BOULEVARD
EASTLAKE, OHIO 44095

Address

By:


MICHAEL C. VEYSEY
Name of Officer


Signature of Officer

VICE PRESIDENT - GENERAL COUNSEL AND SECRETARY
Title


19 APRIL 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Mobil Oil Corporation
Name of Settling Defendant

Fairfax, VA
Address

By: Robert J. Brenner
Name of Officer


Signature of Officer

Manager, Superfund Response Group
Title

March 7, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Morgan Adhesives Company
Name of Settling Defendant

4560 Darrow Road
Stow, Ohio 44224
Address

By: Robert F. Mlnarik
Name of Officer


Signature of Officer

President
Title

April 19, 1991
Date

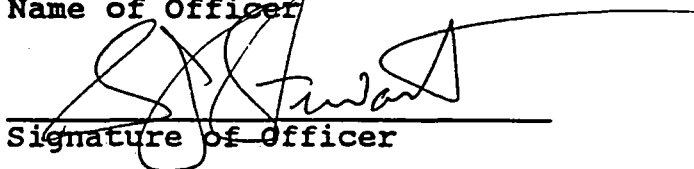
The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Morton International, Inc.
Name of Settling Defendant

100 North Riverside Plaza
Address

By: S. J. Stewart

Name of Officer


Signature of Officer

Chief Operating Officer
Title

3/12/91
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Occidental Chemical Corporation
Name of Settling Defendant

5005 LBJ Freeway; Dallas, Texas
Address

By: M. J. Rudick
Name of Officer

M. J. Rudick mjr
Signature of Officer

Vice President & General Counsel
Title

March 8, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Olin Corporation
Name of Settling Defendant

120 Long Ridge Road, Stamford, CT
Address

By: Charles W. Newton, III
Name of Officer

DN C. W. Newton, III
Signature of Officer

Vice President - Environment,
Title Health & Toxicology

March 20, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

PACKAGING CORPORATION OF AMERICA


Name of Settling Defendant

1603 Orrington Avenue
Evanston, Illinois 60204

Address

By: L. A. McVicker

Name of Officer


Signature of Officer

Vice President

Title

April 1, 1991

Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Parker-Norris Corp.
Name of Settling Defendant
17325 Euclid Ave.
Cleveland, Ohio 44112
Address

By: Christopher H. Morgan
Name of Officer

Christopher H. Morgan
Signature of Officer

Senior Counsel
Title

March 7, 1991
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Reynolds Metals Company
Name of Settling Defendant

6601 West Broad Street
Richmond, VA 23230
Address

By: Rodney E. Hanneman
Name of Officer

Rodney E. Hanneman
Signature of Officer

Vice President, Corporate Quality Assurance & Technology Operations
Title

3/11/91
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et al. and State of Ohio v. Donald Georgeoff, et al.

Safety Kleen Envirosystems Company
(formerly McKesson Envirosystems
Company, formerly Inland Chemical
Corporation)

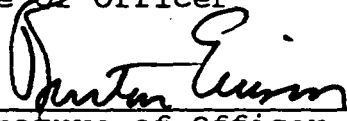
Name of Settling Defendant

777 Big Timber Road
Elgin, Illinois 60123

Address

By: Burton Ericson

Name of Officer



Signature of Officer

Vice President

Title

April 3, 1991

Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

John Vasi
Name of Settling Defendant

6775 Mayfield, Mayfield Heights
Address Ohio 44124

By: _____
Name of Officer

Signature of Officer

Title

3-18-91
Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

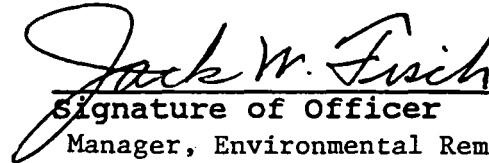
Westinghouse Electric Corporation
Name of Settling Defendant

11 Stanwix Street
Pittsburgh, PA 15222

Address

By: J. W. Fisch

Name of Officer


Signature of Officer

Manager, Environmental Remediation,
Industrial Hygiene and Safety

Title

3/12/91

Date

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. John Vasi, et. al. and State of Ohio v. Donald Georgeoff, et. al.

Divested Aerospace Corporation,
as successor in interest to
Goodyear Aerospace Corporation,
for itself, and on behalf of,
Loral Corporation, K&F
Industries Inc. and Aircraft
Braking Systems Corporation
Name of Settling Defendant

1210 Massillon Road
Akron, Ohio 44315
Address

By:


Signature of Officer

Attorney-in-Fact
(See attached Power of Attorney)
Title

April 26, 1991
Date

May 29, 1990

POWER OF ATTORNEY

WHEREAS, as of January 12, 1987, Goodyear Aerospace Corporation ("GAC"), The Goodyear Tire & Rubber Company ("Goodyear") and Loral Corporation ("Loral") entered into a certain Amended and Restated Agreement for the Purchase and Sale of Assets (the "Sales Agreement") whereunder GAC and Goodyear, sold to Loral substantially all the properties, assets and business of GAC in accordance with the terms and conditions of the Sales Agreement; and

WHEREAS, on December 22, 1987, GAC was merged into Divested Aerospace Corporation ("DAC"), an Arizona corporation, whereby DAC is the successor corporation; and

WHEREAS, in a Letter Agreement dated March 13, 1987, Loral agreed to purchase from Goodyear, in accordance with the provisions of said Letter Agreement, all the issued and outstanding capital stock of GAC and pursuant to a Letter Agreement dated May 18, 1988, Loral accepted delivery from Goodyear of all the issued and outstanding common stock of DAC in substitution for said stock of GAC; and

WHEREAS, Loral is now the sole stockholder of DAC;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the undersigned DAC hereby authorizes and appoints

Bertram Bell

as its true and lawful attorney with authority to execute in the name of GAC and/or DAC, the following documents:

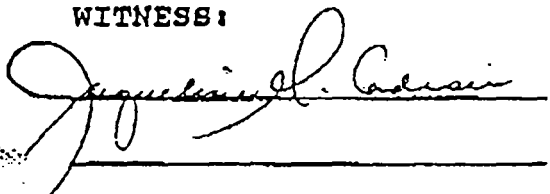
Certifications, assignments, waivers, releases, verifications, reports, registrations, any documents involving litigation by or against GAC or DAC and any other necessary documents involving the operation or business of GAC or DAC;

provided such documents have been routed and approved in accordance with applicable company policies and procedures.

This Power of Attorney shall be in force and effect from this date to and including December 31, 1991 unless theretofore revoked.

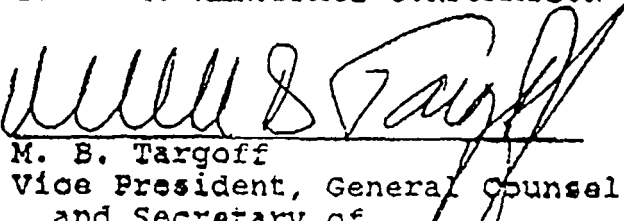
IN WITNESS WHEREOF, I have hereunto set my hand as of the date first above written.

WITNESS:



DIVESTED AEROSPACE CORPORATION

By:



M. B. Targoff
Vice President, General Counsel
and Secretary of
Loral Corporation, Shareholder