UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
and ERIN M. CROTTY, AS TRUSTEE
OF THE STATE OF NEW YORK
NATURAL RESOURCES,

Plaintiffs,

CIVIL ACTION NO. _____

v.

MATTIACE INDUSTRIES, INC.,
ET AL.

Defendants.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter on _____, 2003 pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred or to be incurred by EPA and the Department of Justice for response actions at the Mattiace Petrochemical Superfund Site in the City of Glen Cove, Nassau County, New York, together with accrued interest; and (2) performance of studies and response work by the Work Settling Parties at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on July 27, 2001, of negotiations with potentially responsible parties regarding the takeover of the Site operation and maintenance, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State (including Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation, as Trustee of the State of New York Natural Resources) has joined in the United States' complaint against the defendants in this Court and has alleged that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607 for cleanup of the Site, damages to Natural Resources, and recovery of response costs incurred and to be incurred by the State at the Site, together with accrued interest.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration and the U.S. Department of Interior Fish and Wildlife Service on March 7, 2002, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the Natural Resources under Federal trusteeship and encouraged those agencies to participate in the negotiation of this Consent Decree.

F. The Settling Parties include the following classes of parties: the Work Settling Parties (comprised of TRC as hereinafter defined, and the Group A Settling Parties); the Group B Settling Parties; the Owner Settling Party; the Operator Settling Parties; the De Minimis Settling Parties; and the Ability to Pay Settling Parties. The Settling Parties do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they admit any of the allegations in said complaints, including those pertaining to their having arranged for disposal or transportation of hazardous substances to the Site, otherwise having responsibility for shipments to the Site, or in any other manner causing the past or current presence of CERCLA hazardous substances at the Mattiace Petrochemical Superfund Site. The Settling Parties do not admit that the alleged release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment, and do not admit any other issue of law or fact, except as specifically provided herein.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 30, 1989, 54 Fed. Reg. 13296. The State placed the Site on its Registry of Inactive Hazardous Waste Disposal Sites, pursuant to New York State Environmental Conservation Law Section 27-1305.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on April 24, 1989, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP. Prior to completion of the RI/FS, EPA issued a Record of Decision pertaining to a portion of the Site on September 27, 1990.

I. EPA completed a Remedial Investigation ("RI") Report on April 12, 1991, and EPA completed a Feasibility Study ("FS") Report on May 24, 1991.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 17, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on June 27, 1991, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Work Settling Parties if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

N. Each Ability to Pay Settling Party has represented to the United States that it desires to settle its potential liability at the Site, but that it is either unable to pay its full share of the Site cleanup and response costs or is unable to pay its full share of the Site cleanup and response costs except over an extended period of time, with Interest. Each Ability to Pay Settling Party was requested to provide and has provided certain financial information to the United States to substantiate its contention that it has a limited ability to pay. The United States considered and analyzed this information and has determined, based on this information, that each Ability to Pay Settling Party is unable to pay all costs incurred and to be incurred in the

future by the United States, or by others, in responding to the release or threat of release of hazardous substances at the Site. The amount required of each Ability to Pay Settling Party pursuant to this Consent Decree represents the United States' assessment of the maximum amount that each such Ability to Pay Settling Party should be required to pay to discharge its potential liability at the Site given its limited financial means.

O. The Regional Administrator of EPA Region II has made the following determinations concerning the de minimis Settling Parties ("De Minimis Settling Parties") listed in Appendix G of this Consent Decree:

1. Prompt settlement with the De Minimis Settling Parties is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

2. The payment that each De Minimis Settling Party is required to make under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is approximately $40 million; and

3. The amount of hazardous substances contributed to the Site by each De Minimis Settling Party and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Settling Party are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). After considering the statutory criteria for de minimis treatment, EPA determined, based on the Site information presently available to EPA, that the amount of hazardous substances contributed to the Site by each De Minimis Settling Party is between 0.005% and 0.25% of the hazardous substances at the Site and the hazardous substances contributed by each De Minimis Settling Party to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

P. TRC, as defined herein, has been retained by the Group A Settling Parties (the group of Settling Parties believed by EPA to have contributed relatively higher volumes of waste to the Site) to perform the Work under this Consent Decree. The Work Settling Parties have determined that TRC's performance of the Work would be best effectuated through TRC becoming a jointly and severally obligated Settling Party to this Consent Decree. To ensure the fulfillment of TRC's primary obligations under this Consent Decree, the Group A Settling Parties have paid for a policy of insurance from Commerce and Industry Insurance Company in an amount of $25,000,000, which Commerce and Industry Insurance Company shall issue upon notice of entry of this Consent Decree. While TRC may receive technical direction from EPA in TRC's performance of the Work, it is understood by the Parties to this Consent Decree that, as between TRC and the United States, this Consent Decree is not and should not be construed as a contract governed by the Federal Acquisition Regulations, 48 C.F.R. §§ 2.100, et seq.

Q. The Group B Settling Parties are parties identified by EPA as having de minimis status at the Site, but who have opted not to join the CERCLA Section 122(g) settlement in this Consent Decree. The Group B Settling Parties will not perform the Work, but will pay a sum certain for Past Response Costs, the Work, and Future Response Costs, as set forth in Paragraph 51.a. As set forth below, the Group B Settling Parties are subject to reopeners that are in addition to those to which the De Minimis Settling Parties are subject.

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. The Work Settling Parties shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the Work Settling Parties with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Work Settling Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Work Settling Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work required by this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the

Work Settling Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"Ability to Pay Settling Parties" shall mean those parties listed in Appendix F and described further in Paragraph N, above.

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

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

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

"Default" shall mean the occurrence, as determined by EPA, in its sole discretion, of one or more of the following: 1) EPA's issuance to TRC of three or more written notices stating that an instance of noncompliance by TRC with a requirement of this Consent Decree has occurred for which EPA has assessed or is assessing stipulated penalties and which constitutes a violation which could result in default; 2) implementation of the Work by TRC in a manner which may cause endangerment to human health or the environment; or 3) TRC's cessation of performance of the Work for any reason, including insolvency and/or bankruptcy.

"De Minimis Settling Parties" shall mean those parties listed in Appendix G and described further in Paragraph O, above.

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

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 118.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date of this Consent Decree in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying

the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 87 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

"Group A Settling Parties" shall mean those parties listed in Appendix D and described further in Paragraph P, above.

"Group B Settling Parties" shall mean those parties listed in Appendix E and described further in Paragraph Q, above.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, paid by the United States in connection with the Site between July 19, 2002 and the Effective Date of this Consent Decree.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Mattiace Remediation Trust" shall mean the Mattiace Petrochemical Superfund Site Remediation Trust, a non-interest bearing account established by the Group A Settling Parties and referred to in Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT).

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

"Natural Resources" shall mean "natural resources" as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

"Natural Resource Trustees" shall mean the designated Federal and State officials who may act on behalf of the public as trustees for the Natural Resources at and around the Site, namely, the National Oceanic and Atmospheric Administration and the United States Department of the Interior represented by the United States Fish and Wildlife Service as the Federal trustees for Natural Resources at and around the Site; and the Commissioner of the New York State Department of Environmental Conservation as the State trustee for Natural Resources.

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

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

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

"Operator Settling Parties" shall mean Louis J. Mattiace and William J. Mattiace, who are individuals residing in Jacksonville, Florida, and Otto P. Mattiace, who is an individual residing in East Norwich, New York.

"Owner Settling Party" shall mean Mattiace Industries, Inc., successor by name change to Mattiace Industrial Sales Co., Inc., the record owner of the Site property.

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

"Parties" shall mean the United States, the State of New York, including Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation, as Trustee of the State of New York Natural Resources, and the Settling Parties.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and/or the State paid at or in connection with the Site through July 19, 2002, plus interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the "Selected Remedy" Section of the ROD and Section II of the SOW.

"Plaintiffs" shall mean the United States and the State of New York, including Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation, as Trustee of the State of New York Natural Resources.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on June 27, 1991, by the Regional Administrator, EPA Region II, all attachments thereto, and any written modifications to the ROD subsequently made or approved by EPA. The ROD is attached as Appendix A.

"Remedial Action" shall mean the remedial action selected by EPA in the ROD.

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

"Settling Defendants" shall mean the Owner Settling Party, the Operator Settling Parties, the Group A Settling Parties, the Group B Settling Parties, the Ability to Pay Settling Parties, and the De Minimis Settling Parties.

"Settling Parties" shall mean the Settling Defendants and TRC.

"Site" shall mean the Mattiace Petrochemical Superfund Site, encompassing approximately two acres, located off Garvies Point Road in the City of Glen Cove, Nassau County, New York, but shall not mean the nearby Li Tungsten Superfund Site as defined by EPA. The Site includes, but is not limited to, the Site Property. A legal description of the Site Property and a map of the Site are attached in Appendix C.

"Site Property" shall mean the real property known and described as 16 Garvies Point Road, Glen Cove, New York and Nassau County Tax Map Section 21, Block A, Lot 595, the record owner of which is Mattiace Industrial Sales Co., Inc., predecessor by name change to Owner Settling Party Mattiace Industries, Inc.

"State" shall mean the State of New York, including its agencies.

"State Law" shall mean any statute, rule, regulation, guideline, policy, directive, order, or common law of the State of New York, including without limitation the New York Environmental Conservation Law, N.Y. Envt'l Cons. Law §§ 27-1301, et seq., and the New York Oil Spill Prevention, Control, and Compensation Act, N.Y. Nav. Law §§ 171, et seq.

"State Oversight Costs" shall mean any costs the State incurs in participating in the oversight of the Work, other than costs which are paid or reimbursed through a Cooperative Agreement between EPA and the State regarding the Site.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Operation and Maintenance at the Site, and any modifications made in accordance with this Consent Decree. The SOW is attached hereto as Appendix B.

"Supervising Contractor" shall mean the principal contractor retained by the Group A Settling Parties to supervise and direct the implementation of the Work under this Consent Decree.

"TRC" shall mean TRC Companies, Inc., a publicly-traded corporation organized and existing under the laws of the State of Delaware, and TRC Engineers, Inc., a corporation organized and existing under the laws of the State of Connecticut, and the corporate successors, if any, of these entities.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" as defined under 6 NYCRR Part 371.

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

"Work Settling Parties" shall mean TRC and the Group A Settling Parties.

V. GENERAL PROVISIONS

5. Objectives of the Parties.

a. The objectives of the Parties in entering into this Consent Decree are to: protect public health and welfare and the environment by providing for the implementation of Operation and Maintenance at the Site by the Work Settling Parties; reimburse Past Response Costs; provide for the payment of Future Response Costs; and resolve the claims of Plaintiffs against all Settling Parties to the extent provided in this Consent Decree.

b. The further objectives of the Plaintiffs and the De Minimis Settling Parties in entering into this Consent Decree are:

i. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows De Minimis Settling Parties to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under State Law, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

ii. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

iii. to obtain settlement with the De Minimis Settling Parties for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, by the State, and by private parties, to provide for full and complete contribution protection for De Minimis Settling Parties with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Parties.

a. **Group B Settling Parties, Ability to Pay Settling Parties, and De Minimis Settling Parties**. Each Group B Settling Party, Ability to Pay Settling Party, and De Minimis Settling Party is obligated to make the payment(s) required of it under Paragraph 51.a. below and Appendices F and G, respectively, and to comply with all other requirements which this Consent Decree assigns to them or to the "Settling Parties" as a whole.

b. **Owner Settling Party and Operator Settling Parties**. The Owner Settling Party and the Operator Settling Parties are obligated to comply with the terms set forth in Paragraphs 9 and 56, and Sections IX (ACCESS AND INSTITUTIONAL CONTROLS) and XXV (RETENTION OF RECORDS) below, and to comply with all other requirements which this Consent Decree assigns to them or to the "Settling Parties" as a whole.

c. **Work Settling Parties**.

i. The Work Settling Parties shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans,

standards, specifications, and schedules set forth herein or developed and approved pursuant to this Consent Decree. TRC and the Group A Settling Parties, respectively, are also obligated to make the payments required of them under Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT) below. Further, TRC and the Group A Settling Parties are obligated to comply with all requirements which this Consent Decree assigns to the "Settling Parties" as a whole.

ii. TRC has been retained by the Group A Settling Parties to perform the Work and satisfy other obligations of the Work Settling Parties under this Consent Decree. Notwithstanding the Group A Settling Parties' retention of TRC, the Work Settling Parties recognize that their obligations as referenced in this subparagraph c. are joint and several. Nevertheless, unless and until subparagraph c.iii. or c.viii., below, become applicable, EPA will initially seek corrective measures, in its enforcement discretion, only from TRC for noncompliance with a requirement which this Consent Decree assigns to the "Work Settling Parties" as a whole or "TRC." EPA may take such efforts to induce TRC to remedy such noncompliance, as EPA, in its sole discretion, deems appropriate. If, despite those efforts by EPA, TRC does not remedy the noncompliance, EPA may direct the Work Settling Parties to remedy the noncompliance, and their failure to do so, unless excused under Section XVIII (FORCE MAJEURE), shall make them liable for stipulated penalties under Section XX below.

iii. *Default*. If EPA determines that TRC is in Default, as that term is defined above in Section IV (DEFINITIONS), EPA may issue a written Notice of Default to the Group A Settling Parties. EPA's decision to issue a Notice of Default is in EPA's sole discretion and shall not be subject to dispute resolution. The written Notice of Default will state whether TRC may continue to perform the Work while the Group A Settling Parties replace TRC or whether a temporary contractor (not TRC) shall be retained by the Group A Settling Parties to perform the Work during the time in which the Group A Settling Parties are replacing TRC. The obligations and procedures of the Group A Settling Parties for replacing TRC pursuant to this subparagraph are as follows:

(1) Notice of Default Requiring Temporary Contractor. Within fourteen (14) days of receipt of an EPA Notice of Default requiring a temporary contractor, the Group A Settling Parties shall propose in writing, for EPA approval, a temporary contractor to perform the Work while the Group A Settling Parties are replacing TRC. In this instance, TRC shall remain subject to all requirements of this Consent Decree, including stipulated penalties for noncompliance. However, upon EPA written notification to TRC that a temporary contractor has been retained by the Group A Settling Parties and approved by EPA, additional daily stipulated penalties shall cease to accrue against TRC. Written proposals for both the temporary contractor and TRC's permanent replacement shall be in accordance with the criteria set forth in subparagraph c.v., below. The temporary contractor must begin performance of the Work within five (5) days of receipt of EPA's authorization to proceed or such other longer time period as specified in writing by EPA. The Group A Settling Parties may propose additional temporary contractors that are subject to EPA approval.

(2) Notice of Default Not Requiring a Temporary Contractor. Upon EPA's issuance of a Notice of Default not requiring a temporary contractor, TRC shall continue to perform the Work and remain subject to all requirements of this Consent Decree, including stipulated penalties for noncompliance, until TRC's permanent replacement is approved and authorized, consistent with subparagraph c.iii.(3) below, to perform the Work and does in fact commence performance of the Work.

(3) TRC's Permanent Replacement. Within sixty (60) days of receipt of the Notice of Default, the Group A Settling Parties shall submit a written proposal for EPA approval regarding TRC's permanent replacement, which may be, but need not be, a temporary contractor retained by the Group A Settling Parties under subparagraph 6.c.iii.(1) above. TRC's permanent replacement must begin performance of the Work within five (5) days of the later of: (A) receipt of EPA's authorization to proceed; and (B) approval by the Court of TRC's permanent replacement as a party to this Consent Decree.

(4) Stipulated Penalties. Failure of the Group A Settling Parties to comply with any of their obligations under this subparagraph c.iii., Default, shall cause the accrual of stipulated penalties as to them, jointly and severally. If EPA disapproves a temporary contractor or permanent replacement for TRC proposed under this subparagraph c.iii., stipulated penalties shall begin to accrue against the Group A Settling Parties on the date of the disapproval notice and such penalties shall be payable in the event that (A) the Group A Settling Parties do not identify another proposed temporary contractor or permanent replacement for TRC for EPA approval within ten (10) days of notice of such disapproval by EPA, or (B) the Group A Settling Parties do timely propose another proposed temporary contractor or permanent replacement for TRC but EPA disapproves that contractor as well. The stipulated penalties that may accrue against the Group A Settling Parties and become payable pursuant to this subparagraph are in addition to any other stipulated penalties that may accrue pursuant to Paragraphs 71-73, and any other remedy that may be available to the United States.

iv. *Replacement of TRC by the Group A Settling Parties.* In the event that the Group A Settling Parties decide to replace TRC even though EPA has not determined that TRC is in Default, they shall immediately notify EPA in writing of such decision and of their proposed permanent replacement in accordance with the criteria set forth in subparagraph c.v., below. Any proposal by the Group A Settling Parties to replace TRC shall also be a proposal to replace the Supervising Contractor under Paragraph 10, below. Any proposed permanent replacement is subject to EPA and Court approval. Performance of the Work by such replacement shall not begin until EPA has issued an authorization to proceed to such contractor and the Court has approved the contractor as TRC's permanent replacement and a party to this Consent Decree. TRC shall continue to perform the Work and shall remain subject to all requirements of this Consent Decree, including stipulated penalties for noncompliance, until EPA notifies TRC in writing that EPA and the Court have approved a permanent replacement for TRC.

v. *Criteria for a Temporary Contractor or TRC's Permanent Replacement.* When proposing to EPA either a temporary contractor or a permanent replacement pursuant to this subparagraph 6.c., the Group A Settling Parties must submit in writing the proposed contractor's qualifications and demonstrate that it has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of its Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

vi. *Notice to Proposed Replacement for TRC.* The Group A Settling Parties shall submit the following information to any potential permanent replacement for TRC: 1) a copy of this Consent Decree; 2) notice that any permanent replacement shall be subject to EPA approval; and 3) notice that any permanent replacement must voluntarily become bound by the terms of this Consent Decree and assume the obligations of TRC through execution of a signature page which shall be an addendum to this Consent Decree and which shall constitute a modification pursuant to Section XXXI (MODIFICATION) for which Court approval is required.

vii. *Stipulated Penalties During Performance of Work by Temporary Contractor.* In addition to any other stipulated penalties that may accrue against the Group A Settling Parties, the Group A Settling Parties shall be jointly and severally liable under this Consent Decree for stipulated penalties for noncompliance by a temporary contractor.

viii. *Failure of TRC's Replacement to become a Party to the Consent Decree.* If a modification to the Consent Decree which provides for TRC's replacement is disapproved by the Court, the Group A Settling Parties shall, within fourteen (14) days of such disapproval, propose to EPA a new permanent replacement for TRC.

ix. In the event that TRC is replaced in accordance with the provisions of subparagraphs c.iii., c.iv., or c.viii. above, TRC shall, thereafter, no longer be considered liable pursuant to this Consent Decree for the implementation of the Work; provided that, TRC shall continue to comply with Sections XXIV (ACCESS TO INFORMATION), XXV (RETENTION OF RECORDS) and Section XVII (INDEMNIFICATION AND INSURANCE) (to the extent that such indemnification and insurance pertains to the period when TRC was the Supervising Contractor), and shall remain responsible for the payment of Future Response Costs under Section XVI (to the extent such costs were incurred during the period before TRC was replaced) and stipulated penalties (to the extent assessed for noncompliant acts or omissions by TRC before it was replaced). Nothing herein shall be construed to release TRC from liability it may have to the Group A Settling Parties as a result of the performance of the Work prior to TRC's replacement, or any other liability TRC may have to the Group A Settling Parties under the agreement between TRC and the Group A Settling Parties.

x. EPA shall provide the State with a reasonable opportunity to review and comment on any proposed permanent replacement for TRC.

7. Compliance With Applicable Law. All activities undertaken by the Work Settling Parties pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and state laws and regulations. The Work Settling Parties must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

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

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

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

9. Notice to Successors-in-Title.

a. With respect to the Site Property, within fifteen (15) days after the entry of this Consent Decree, the Owner Settling Party shall submit to EPA for review and approval a notice to be filed with the Office of the County Clerk of Nassau County, State of New York which shall provide notice to all successors-in-title that the Site Property is part of the Site, that EPA selected a remedy for the Site on June 27, 1991, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Party shall record the notice(s) within ten (10) days of EPA's approval of the notice(s). The Owner Settling Party shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Party conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (ACCESS AND INSTITUTIONAL CONTROLS), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX. At least thirty (30) days prior to such conveyance, the Owner Settling

Party conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Party's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (ACCESS AND INSTITUTIONAL CONTROLS) of this Consent Decree, shall continue to be met by the Owner Settling Party. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Party to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee, at the grantee's expense, may perform some or all of the Work under this Consent Decree, provided that such activity shall not interfere with the activities of the Work Settling Parties.

VI. PERFORMANCE OF THE WORK BY WORK SETTLING PARTIES

10. Supervising Contractor.

All aspects of the Work to be performed pursuant to Sections VI (PERFORMANCE OF THE WORK BY WORK SETTLING PARTIES), VII (REMEDY REVIEW), VIII (QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS), and XV (EMERGENCY RESPONSE) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor. TRC has been approved by EPA as Supervising Contractor. If TRC is replaced, the replacement contractor approved by EPA pursuant to the provisions of subparagraph 6.c. above shall be the new Supervising Contractor.

11. Operation & Maintenance.

a. No later than fifteen days after entry of this Consent Decree, the Work Settling Parties shall submit to EPA and the State a work plan ("O & M Work Plan") that is consistent with the SOW and that incorporates and provides for the continued implementation of the EPA's Long-Term Remedial Action Operations and Maintenance Manual (December 1999) for the Site, and EPA's Long-Term Remedial Action Work Plan (November 1999) for the Site. Upon its approval by EPA, the O & M Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. No later than fifteen days after entry of this Consent Decree, the Work Settling Parties shall submit to EPA and the State a Health and Safety Plan, consistent with the SOW, for all field activities to be conducted pursuant to the O & M Work Plan. The Health and Safety Plan shall conform to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to, 29 C.F.R. § 1910.120.

c. Within five (5) days of approval of the O & M Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, the Work Settling Parties shall implement the requirements of the O & M Work Plan. The Work Settling Parties shall submit to

EPA and the State, for review and approval pursuant to Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS), all plans, submittals and other deliverables required under the approved O & M Work Plan in accordance with the schedule set forth in the SOW. Unless otherwise directed by EPA, the Work Settling Parties shall not commence Operation & Maintenance activities at the Site prior to approval of the O & M Work Plan.

12. The Work Settling Parties shall continue to implement the Operation and Maintenance until the United States determines that the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW, O & M Work Plan, and/or in work plans developed thereunder is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD. In making a determination under this Paragraph, EPA shall consult with the State.

b. For the purposes of this paragraph and Paragraphs 46 and 47 only, the "scope of the remedy selected in the ROD" is:

i. in situ vacuum extraction of volatile organic contaminants from soil in the general Site area;

ii. groundwater extraction and treatment via air stripping and carbon adsorption, followed by reinjection;

iii. operation and maintenance of the groundwater and soil gas (i.e., soil vapor extraction) treatment facility at the Site until all performance standards are achieved;

iv. performance of an EPA-approved long-term monitoring program to measure the progress of the soil and groundwater cleanup, including monitoring of surface water and sediments in Glen Cove Creek;

v. excavation of pesticide "hot spots" with off-Site treatment and disposal;

vi. demolition, removal, and landfill disposal of Site structures, above- and below-ground storage tanks, and concrete and asphalt debris;

vii. decommissioning the treatment facility and restoration of the Site after satisfactory completion of the O & M period; and

viii. implementation of institutional controls to prohibit the installation and use of groundwater wells at the Site for drinking water purposes until groundwater cleanup standards are achieved.

c. EPA and the State acknowledge that certain elements of the scope of the remedy as set forth above have been completed at the Site and that operation of the groundwater and soil vapor extraction treatment facilities at the Site is currently being performed.

d. If the Work Settling Parties object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (DISPUTE RESOLUTION), Paragraph 67 (Record Review). The SOW, O & M Work Plan, and/or related work plans shall be modified in accordance with final resolution of the dispute.

e. The Work Settling Parties shall implement any work required by any modifications incorporated in the SOW, O & M Work Plan, and/or in work plans developed thereunder in accordance with this Paragraph.

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

14. The Work Settling Parties acknowledge and agree that nothing in this Consent Decree, the SOW, or the O & M Work Plan constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the O & M Work Plan will achieve the Performance Standards.

15. a. The Work Settling Parties shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. The Work Settling Parties shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Work Settling Parties shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, the Work Settling Parties shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. Part 300.440. The Work Settling Parties shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

16. Periodic Review. The Work Settling Parties shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the

Remedial Action is protective of human health and the environment at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

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

VIII. Quality Assurance, Sampling, and Data Analysis

18. The Work Settling Parties shall use quality assurance, quality control, and chain of custody procedures for all samples taken, in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to the Work Settling Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Work Settling Parties shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Work Settling Parties shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Work Settling Parties in implementing this Consent Decree. In addition, the Work Settling Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Work Settling Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the Contract Lab Program Statement of Work for Organic Analysis (OLM04.2) or the latest revision, and the Contract Lab Program Statement of Work for Inorganic Analysis (ILM04.0) or the latest revision, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Work Settling Parties may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. The Work Settling Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Work Settling Parties shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. The Work Settling Parties shall

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

19. Upon request, the Work Settling Parties shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. The Work Settling Parties shall notify EPA and the State not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by the Parties. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Work Settling Parties to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Work Settling Parties' implementation of the Work. Upon a request by the Work Settling Parties, EPA and the State shall provide their final analytical data for any split sample taken by EPA or the State.

20. The Work Settling Parties shall submit to EPA and the State two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Work Settling Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

22. The Owner Settling Party, with the assistance of the Operator Settling Parties, shall:

a. commencing on the date of lodging of this Consent Decree, provide the Work Settling Parties, the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site Property for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

i. monitoring the Work;

ii. verifying any data or information submitted to the United States or the State;

iii. conducting investigations relating to contamination at or near the Site;

iv. obtaining samples;

v. assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

vii. implementing the Work pursuant to the conditions set forth in Paragraph 87 of this Consent Decree;

viii. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Work Settling Parties or their agents, consistent with Section XXIV (ACCESS TO INFORMATION);

ix. assessing the Work Settling Parties' compliance with this Consent Decree; and

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

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed or operated and maintained pursuant to this Consent Decree. Such restrictions include, but are not limited to:

i. the prohibition of extraction of groundwater at the Site for any purpose other than to implement the Remedial Action and Operation and Maintenance pursuant to this Consent Decree;

ii. the prohibition of digging, excavation, construction or other activity that could or would interfere with, or adversely affect, the integrity of any engineering control implemented as part of the Remedial Action at the Site; and

iii. any other land/water use restrictions set forth in the approved O & M Work Plan; and

c. execute and record, at the sole expense of the Owner Settling Party and Operator Settling Parties, in the Office of the County Clerk of Nassau County, State of New York, an easement, running with the land, that: (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in subparagraph 22.a. of this Consent Decree; and (ii) grants the right to enforce the land/water use restrictions listed in subparagraph 22.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed or operated and maintained pursuant to this Consent Decree. As determined by EPA, the access rights and/or rights to enforce land/water use restrictions shall be granted to: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) one or more of the Work Settling Parties and their representatives; and/or (iv) other appropriate grantees. Within forty-five (45) days of the entry of this Consent Decree, the Owner Settling Party and Operator Settling Parties shall submit to EPA for review and approval with respect to the Site Property:

i. a draft easement, in substantially the form attached hereto as Appendix H, that is enforceable under the laws of the State of New York, and

ii. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, such Owner and Operator Settling Parties are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, the Owner Settling Party and Operator Settling Parties shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Office the County Clerk of Nassau County. Within thirty (30) days of recording the easement, such Settling Parties shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001 (http://www.usdoj.gov/enrd/title.htm), and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

23. If any other property where access and/or land/water use restrictions are needed to implement this Consent Decree is owned or controlled by persons other than any of the Settling Parties, TRC shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the Work Settling Parties as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the activities listed in subparagraph 22.a. of this Consent Decree;

b. an agreement, enforceable by the Work Settling Parties and the United States, to refrain from using such property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed or operated and maintained pursuant to this Consent Decree. Such restrictions include, but are not limited to, those listed in subparagraph 22.b. above; and

c. if EPA so requests, the execution and recordation in the Office of the County Clerk of Nassau County, New York, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in subparagraph 22.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in subparagraph 22.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed or operated and maintained pursuant to this Consent Decree. As determined by EPA, the access rights and/or rights to enforce land/water use restrictions shall be granted to: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii)

one or more of the Work Settling Parties and their representatives; and/or (iv) other appropriate grantees. Within forty-five (45) days of EPA's request, TRC shall submit to EPA for review and approval with respect to such property:

i. a draft easement, in substantially the form attached hereto as Appendix H, that is enforceable under the laws of the State of New York, and;

ii. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite its best efforts, TRC is unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, TRC shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Office of the County Clerk of Nassau County. Within thirty (30) days of the recording of the easement, TRC shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001 (http://www.usdoj.gov/enrd/title.htm), and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

24. For purposes of Paragraphs 22 and 23 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration for access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If: (a) any access or land/water use restriction agreements required by subparagraphs 23.a. or 23.b. of this Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent Decree; (b) any access easements or restrictive easements required by subparagraph 23.c. of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of EPA's request therefor; (c) the Owner Settling Party and Operator Settling Parties are unable to obtain an agreement pursuant to subparagraph 22.c.ii. within forty-five (45) days of the entry of this Consent Decree from the holder of a prior lien or encumbrance, to release or subordinate such lien or encumbrance to the easement being created pursuant to subparagraph 22.c.; or (d) TRC is unable to obtain an agreement pursuant to subparagraph 23.c.ii., within forty-five (45) days of EPA's request for an easement, from the holder of a prior lien or encumbrance, to release or subordinate such lien or encumbrance to the easement being created pursuant to subparagraph 23.c., the Owner Settling Party and Operator Settling Parties (in the case of Paragraph 22) and TRC (in the case of Paragraph 23) shall promptly notify the United States in writing, and shall include in that notification a summary of the steps they have taken to attempt to comply with Paragraphs 22 or 23 (as the case may be) of this Consent Decree. The United States may, as it deems appropriate, assist the Owner Settling Party, Operator Settling Parties, and TRC (or the other Work Settling Parties) in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of

easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. In accordance with Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT), the Owner Settling Party and Operator Settling Parties (regarding the Site Property) and TRC (regarding any other property where access and/or land/water use restrictions are needed to implement this Consent Decree) shall reimburse the United States for all direct and indirect costs incurred by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

25. If EPA determines that land/water use restrictions in the form of State or local laws, regulations, ordinances, or other governmental controls are needed to implement or operate and maintain the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Owner Settling Party, Operator Settling Parties, and Work Settling Parties shall cooperate with EPA and the State in their efforts to secure such governmental controls.

26. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations with respect to the Site.

X. REPORTING REQUIREMENTS

27. In addition to any other requirement of this Consent Decree, the Work Settling Parties shall submit to EPA and the State two (2) copies of written monthly progress reports that:

a. describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;

b. include a summary of all results of sampling and tests and all other data received or generated by the Work Settling Parties or their contractors or agents in the previous month;

c. identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month;

d. describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six (6) weeks and provide other information relating to the progress of construction (if any), including, but not limited to, critical path diagrams, Gantt charts and Pert charts;

e. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and

f. include any modifications to a work plan or schedule that the Work Settling Parties have proposed to EPA or that have been approved by EPA.

The Work Settling Parties shall submit these progress reports to EPA and the State by the tenth (10th) day of every month following entry of this Consent Decree until EPA notifies the Work Settling Parties pursuant to subparagraph 47.b. of Section XIV (CERTIFICATION OF COMPLETION) that the Work has been completed. If requested by EPA or the State, after entry of this Consent Decree the Work Settling Parties shall also provide briefings for EPA and the State to discuss the progress of the Work.

28. The Work Settling Parties shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of any work plan, no later than seven days prior to the performance of the activity.

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

30. Within twenty (20) days of the onset of such an event, the Work Settling Parties shall furnish to Plaintiffs a written report, signed by the Work Settling Parties' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, the Work Settling Parties shall submit a report setting forth all actions taken in response thereto.

31. The Work Settling Parties shall submit two (2) copies of all plans, reports, and data required by the SOW or the approved O & M Work Plan to EPA in accordance with the schedules set forth therein. The Work Settling Parties shall simultaneously submit one (1) copy of all such plans, reports, and data to the State. Upon request by EPA, the Work Settling Parties shall submit in electronic form all portions of any report or other deliverable the Work Settling Parties are required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

33. After review of the O & M Work Plan or any other plan, report, or item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall:

a. approve, in whole or in part, the submission;

b. approve the submission upon specified conditions;

c. modify the submission to cure the deficiencies;

d. disapprove, in whole or in part, the submission, directing that the Work Settling Parties modify the submission; or

e. any combination of the above.

However, EPA shall not modify a submission without first providing the Work Settling Parties at least one notice of deficiency and an opportunity to cure within ten (10) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

34. In the event of approval, approval upon conditions, or modification by EPA, pursuant to subparagraphs 33.a., b., or c., the Work Settling Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (DISPUTE RESOLUTION) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to subparagraph 33.c. and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (STIPULATED PENALTIES).

35. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to subparagraph 33.d., the Work Settling Parties shall, within ten (10) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the ten (10) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 33 and 34.

b. Notwithstanding the receipt of a notice of disapproval pursuant to subparagraph 33.d., the Work Settling Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Work Settling Parties of any liability for stipulated penalties under Section XX (STIPULATED PENALTIES).

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

37. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Work Settling Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Work Settling Parties invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (DISPUTE RESOLUTION) and Section XX (STIPULATED PENALTIES) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

38. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree subject to Paragraph 34 above. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

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

40. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and Federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

41. EPA's Project Coordinator and the Work Settling Parties' Project Coordinator will meet on an "as needed" basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

42. The Work Settling Parties shall maintain financial security as required by the United States and the State in one or more of the following forms, in order to secure the full and final completion of Work by the Work Settling Parties:

a. a surety bond unconditionally guaranteeing performance of the Work;

b. one or more irrevocable letters of credit, payable into a standby trust fund at the direction of EPA, in the aggregate amount of $15 million, issued by a financial institution or institutions acceptable in all respects to the United States;

c. a trust fund in the amount of $15 million, administered by a trustee acceptable in all respects to the United States;

d. a corporate guarantee to perform the Work by one or more of the Work Settling Parties, including a demonstration that it (or they) satisfy(ies) the financial test requirements of 40 C.F.R. Part 264.143(f);

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of the Work Settling Parties, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Work Settling Parties, including a demonstration that it satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a policy of insurance by an insurance carrier acceptable in all respects to the United States and the State, which ensures the payment and/or performance of the Work.

EPA has reviewed a policy of insurance in the amount of $25,000,000, which is to be issued by Commerce and Industry Insurance Company (Policy #EPP 5292701) upon notice of entry of this Consent Decree, provided in advance by the Work Settling Parties. EPA has reviewed the policy solely for the purpose of determining its adequacy as financial assurance, and has concluded that this policy of insurance constitutes adequate financial assurance for the Work Settling Parties as required by this Paragraph; provided that, if at any time EPA notifies the Work Settling Parties that the anticipated cost of completing the Work has increased above $25,000,000, then, within thirty (30) days of such notification, TRC and, failing that, the Group A Settling Parties shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section XIII) that reflects such cost increase; provided, further, that nothing in such policy shall override the terms of this Consent Decree. Any and all financial assurance instruments provided pursuant to this Section XIII shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Work Settling Parties shall, within thirty (30) days of receipt of notice of EPA's determination, obtain, and present to EPA for approval one of the other forms of financial assurance listed in this Paragraph. The Work Settling Parties' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Consent Decree.

43. If the Work Settling Parties seek to ensure completion of the Work through a guarantee pursuant to subparagraphs 42.d. or 42.e. of this Consent Decree, the Work Settling Parties shall: (i) demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to the United States at the addresses provided in Section XXVI (NOTICES AND SUBMISSIONS). For the purposes of this Consent Decree, wherever 40 C.F.R. Part 264.143 (f) references "current closure and post-closure cost estimates and current plugging and abandonment cost estimates," the current cost estimate of $15 million for Operation and Maintenance at the Site shall be used in the relevant financial test calculations, unless EPA notifies the Work Settling Parties of a new cost estimate for the Operation and Maintenance.

44. If the Work Settling Parties can demonstrate after entry of this Consent Decree that the estimated cost to complete the remaining Work has diminished below the amount estimated prior to the entry of this Consent Decree, the Work Settling Parties may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Operation and Maintenance to be performed. The Work Settling Parties shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, the Work Settling Parties may reduce the amount of the security only in accordance with the final administrative or judicial decision resolving the dispute.

45. The Work Settling Parties may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Work Settling Parties may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

46. Completion of the Remedial Action.

a. Within ninety (90) days after the Work Settling Parties conclude that the Performance Standards have been attained, they shall schedule and conduct a pre-certification inspection to be attended by EPA, the State, and the Work Settling Parties. If, after the pre-certification inspection, the Work Settling Parties still believe that the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Work Settling Parties' Project Coordinator shall state that the Performance Standards have been attained. The written report shall include all appropriate data relating to the Remedial Action, including the annual data summaries for the Operation and Maintenance. The report shall contain the following statement, signed by a responsible corporate official of a Work Settling Party or the Work Settling Parties' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Performance Standards have not been achieved, EPA will notify the Work Settling Parties in writing of the activities that must be undertaken by pursuant to this Consent Decree to achieve the Performance Standards, provided, however, that EPA may only require the Work Settling Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Work Settling Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS). The Work Settling Parties shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Performance Standards have been achieved, EPA will so certify in writing to the Work Settling Parties. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (COVENANTS NOT TO SUE BY PLAINTIFFS). Certification of Completion of the Remedial Action shall not affect the Work Settling Parties' obligations under this Consent Decree.

47. Completion of the Work.

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

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

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Work Settling Parties in writing of the activities that must be undertaken by the Work Settling Parties pursuant to this Consent Decree to complete the Work; provided, however, that EPA may only require the Work Settling Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in subparagraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Work Settling Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS). The Work Settling Parties shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION).

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

XV. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Work Settling Parties shall, subject to Paragraph 49, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Work Settling Parties shall notify the Emergency and Remedial Response Division, Response and Prevention Branch, EPA Region II. The Work Settling Parties shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Work Settling Parties fail to take appropriate response action as required by this Section, and EPA takes such action instead, the Work Settling Parties shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State:

a. to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or

b. to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (COVENANTS NOT TO SUE BY PLAINTIFFS).

XVI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT

50. Payments by Group A Settling Parties. The Group A Settling Parties shall jointly and severally pay to EPA $49,577 in reimbursement of Past Response Costs relating to the Site. The Group A Settling Parties shall also transfer to EPA and the State, as set forth below, all of the monies paid by the De Minimis and Group B Settling Parties pursuant to subparagraphs 51.a. and b. below (hereinafter, the "De Minimis/Group B Proceeds"), subject to subparagraph 50.b. below. In addition, the Group A Settling Parties shall transfer to NOAA, DOI, and the State, as set forth below, the settlement amount negotiated with NOAA, DOI, and the State for Natural Resource Damages relating to the Site. Such payments by the Group A Settling Parties shall be made in accordance with the following payment schedule:

a. Within fifteen (15) days of the date of lodging of this Consent Decree, the Group A Settling Parties shall deposit $246,577 into the Mattiace Remediation Trust if United Air Lines is not a Settling Party, or $249,577 into the Mattiace Remediation Trust if United Air Lines is a Settling Party. The costs of establishing and maintaining the Mattiace Remediation Trust and the risk of loss as to any of the principal shall be borne by the Group A Settling Parties.

b. Within seven (7) days of receiving notice from the United States or the Court of the entry of this Consent Decree, the Group A Settling Parties shall:

i. direct the Trustee of the Mattiace Remediation Trust (hereinafter the "Trustee") to pay $49,577 to the United States within twenty (20) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree;

ii. subject to subparagraph b.iii. below, direct the Trustee to pay to the State, within forty (40) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree, $50,000 of the De Minimis/Group B Proceeds, and to pay to the United States, within forty (40) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree, the entire remaining portion, if any, of the De Minimis/Group B Proceeds, less $230,120 ($230,120 shall be transferred by the Trustee according to instructions provided to it by the Group A Settling Parties) ;

iii. if United Air Lines, Inc. is a Settling Party, then subparagraph b.ii. above shall not apply and the Group A Settling Parties shall instead direct the Trustee to pay to the State, within forty (40) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree, $57,272 of the De Minimis/Group B Proceeds and to pay to the United

States, within forty (40) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree, the entire remaining portion, if any, of the De Minimis/Group B Proceeds; and

iv. direct the Trustee to pay (1) $5,843.53 to DOI, in reimbursement of costs incurred by DOI in assessing Natural Resource Damages pertaining to the Site, and (2) $191,156.47 to DOI on behalf of the Natural Resources Trustees for Natural Resources Damages at the Site, within twenty (20) days of the Group A Settling Parties' receipt of notice of entry of this Consent Decree, unless United Air Lines is a Settling Party, in which case the Trustee shall pay $194,156.47 to DOI on behalf of the Natural Resources Trustees for Natural Resources Damages at the Site, within twenty (20) days of the Group A Settling Parties' receipt of notice of entry of this Consent Decree.

c. If by the time of the payments by the Trustee to the State and the United States pursuant to subparagraph b.ii. or b.iii. above, a Group B Settling Party or a De Minimis Settling Party has failed to make its required payment under subparagraph 51.a or b., respectively, and if such Group B Settling Party or De Minimis Settling Party subsequently does make any or all of such payment, then the Group A Settling Parties shall direct the Trustee to pay any such monies (hereinafter, "Late Proceeds") to the United States by the last Working Day of each month; provided that if the De Minimis/Group B Proceeds received by the Mattiace Remediation Trust were not sufficient, within forty (40) days of the Group A Settling Parties' receipt of notice of the entry of this Consent Decree, to enable the Trustee to make the payment of $57,272 to the State required by subparagraph b.iii. above or (if subparagraph b.ii. above is applicable) the payments to the State and the entity designated by the Group A Settling Parties to receive the $230,120 required by subparagraph b.ii. above, then the Group A Settling Parties shall direct the Trustee to:

i. first pay to the State and/or the entity designated by the Group A Settling Parties to receive the $230,120, as the case may be, by the last Working Day of each month, that portion of the Late Proceeds which is needed to ensure that the State, and (if subparagraph b.ii. above is applicable) the entity designated by the Group A Settling Parties to receive the $230,120, receive the full amounts due to them, respectively, under subparagraphs b.ii. and b.iii. above, and

ii. then pay to the United States the entire remaining balance of the Late Proceeds by the last Working Day of each month.

d. Payments to the United States or to DOI under subparagraphs 50.b. and c. above shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2000V02370, EPA Region II and Site/Spill ID 02-2B, and DOJ case number 90-11-3-07234 (and for the payments made to DOI under subparagraph 50.b.iv. above, shall also reference NRDAR account number 14X5198). Such payments shall be made in accordance with instructions provided to the Group A Settling Parties by the Financial

Litigation Unit of the United States Attorney's Office for the Eastern District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Upon the making of each such payment to the United States (except for the payments under subparagraph 50.b.iv.), the Group A Settling Parties shall send notice that such payment has been made to the United States as specified in Section XXVI (NOTICES AND SUBMISSIONS) and to:

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

The total amounts to be paid to the United States pursuant to subparagraphs 50.b.i, b.ii, b.iii., and c. shall be deposited in the Mattiace Petrochemical Superfund Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. Notice that the payments required by subparagraph 50.b.iv. above have been made shall be sent by the Group A Settling Parties to the NOAA, DOI, and State representatives as specified in Section XXVI (NOTICES AND SUBMISSIONS) and to:

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

and shall: reference NRDAR Account Number 14X5198; state that the payments are, respectively, for reimbursement of past assessment costs for natural resource damage assessment with respect to the Mattiace Petrochemical Superfund Site situated in Glen Cove, New York, and for Natural Resource Damages at the Site; and indicate that such payments are being made pursuant to this Consent Decree.

The jurisdiction, trusteeships, and restoration goals of NOAA, DOI, and the State as Natural Resource Trustees over injured natural resources overlap. Accordingly, the monies paid jointly to the Natural Resource Trustees pursuant to subparagraph 50.b.iv. above, shall be held by DOI in its Natural Resource Damage Assessment and Restoration Fund, and said monies shall only be spent for restoration, restoration planning, implementation oversight, and monitoring, and pursuant to a Memorandum of Agreement ("MOA") to be entered into between NOAA, DOI, and the State, which MOA shall require unanimous trustee decision making.

Costs incurred by the State at or in connection with the Site; (3) projected Future Response Costs to be incurred at or in connection with the Site; and (4) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which De Minimis Settling Parties' payments are based.

c. Ability To Pay Settling Parties.

i. Within fifteen (15) days of the date of receiving notice from the United States or the Court of entry of this Consent Decree, each Ability to Pay Settling Party shall pay to EPA the amount set forth for such party in Column 2 of Appendix F hereto. In addition, by the first anniversary of the date of entry of this Consent Decree, each Ability to Pay Settling Party shall pay to EPA the amount set forth for such party in Column 3 of Appendix F hereto. Where applicable (as shown on Appendix F hereto), certain of the Ability to Pay Settling Parties shall also, by the second and third anniversaries of the date of entry of this Consent Decree, pay to EPA the amounts set forth for such party in Columns 4 and 5, respectively, of Appendix F hereto. Each payment by an Ability to Pay Settling Party shall be made by EFT to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2000V02370, EPA Region II and Site/Spill ID 02-2B, and DOJ case number 90-11-3-07234. Such payments shall be made in accordance with instructions provided to Ability to Pay Settling Parties by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Each Ability to Pay Settling Party shall send notice that each of its payments has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

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

ii. The total amount to be paid to the United States by the Ability to Pay Settling Parties pursuant to subparagraph 51.c.i. shall be deposited in the Mattiace Petrochemical Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

52. Payments of Future Response Costs. TRC shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs that are not inconsistent with the National Contingency Plan, except that the Owner Settling Party and Operator Settling Parties shall reimburse the EPA Hazardous Substance Superfund for all costs incurred by the United States pursuant to Paragraph 24 above in obtaining access, land/water use restrictions and/or the release/subordination of prior liens or encumbrances, with respect to the Site Property. In the

f. Payments to the State under subparagraphs 50.b. and c. above shall be made by certified or cashier's check, made payable to the State of New York, and sent to:

Robert Emmet Hernan, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, NY 10271-0332

51. Payments by Group B Settling Parties, De Minimis Settling Parties, and Ability To Pay Settling Parties

a. Group B Settling Parties. Within fifteen (15) days of the date of entry of this Consent Decree, each Group B Settling Party shall pay to the Mattiace Remediation Trust the sum of $40,071. Each payment under this subparagraph shall be made payable to the Mattiace Petrochemical Superfund Site Remediation Trust, and be made as follows:

by mailing to:
Mellon Financial
Room 1320
Attn: Jon Bangor
One Mellon Center
Pittsburgh, PA 15258-0001

or by wiring to:
Federal Reserve Bank Boston
ABA# 011001234
Boston Safe Deposit
Credit: DDA # 048771
Mattiace Petrochemical Superfund Site Remediation Trust
Acct Number: MPSF 1855392

Each Group B Settling Party shall send notice to the United States, as specified in Section XXVI (NOTICES AND SUBMISSIONS), that its payment has been made to the Mattiace Remediation Trust.

b. De Minimis Settling Parties.

i. Within fifteen (15) days of the date of entry of this Consent Decree, each De Minimis Settling Party shall pay to the Mattiace Remediation Trust the amount set forth for such party in Appendix G to this Consent Decree. Each payment under this subparagraph shall be made using the payment procedures set forth in subparagraph 51.a. above. Each De Minimis Settling Party shall also send notice to the United States, as specified in Section XXVI (NOTICES AND SUBMISSIONS), that its payment has been made to the Mattiace Remediation Trust.

ii. Each De Minimis Settling Party's payment includes an amount for: (1) Past Response Costs incurred by EPA at or in connection with the Site; (2) Past Response

event that TRC fails to timely reimburse Future Response Costs in accordance with Paragraphs 53 or 54, the other Work Settling Parties shall become jointly and severally responsible along with TRC for the reimbursement of such Future Response Costs in accordance with the payment procedures set forth in Paragraph 53.

53. a. EPA Future Response Costs. The United States will periodically send TRC billings for Future Response Costs. Each billing will be accompanied by a printout of cost data in EPA's financial management system that reflects the response costs incurred by EPA that pertain to that billing. TRC shall make all payments required by Paragraph 52 within thirty (30) days of the date of each bill requiring payment, except as otherwise provided in Paragraph 54. TRC shall make all payments via EFT to EPA at Mellon Bank, Pittsburgh, Pennsylvania, as set forth below. To make payment via EFT, TRC shall provide the following information to its bank:

i. Amount of payment

ii. Title of Mellon Bank account to receive the payment: EPA

iii. Account code for Mellon Bank account receiving the payment: 9108544

iv. Mellon Bank ABA Routing Number: 043000261

v. Name(s) of Party(ies) making the payment

vi. Civil action number of this case

vii. Site/spill identifier: 02-2B

Along with this information, TRC shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that TRC's payment is properly recorded, TRC shall send a letter to the United States within one (1) week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the civil action number of this case, and the paying party's or parties' name(s) and address(es). Such letter shall be sent to the United States as provided in Section XXVI (NOTICES AND SUBMISSIONS), and to:

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

b. State Oversight Costs.

i. Within forty-five (45) days after receipt of an itemized invoice from NYSDEC, TRC shall pay to NYSDEC a sum of money which shall represent reimbursement for State Oversight Costs, that are incurred after the Effective Date of this Consent Decree, for Work performed at or in connection with the Site.

ii. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. NYSDEC shall not be required to provide any other documentation of costs, provided however, that NYSDEC's records shall be available consistent with, and in accordance with, Article 6 of the New York Public Officers Law.

iii. Such invoice shall be sent to TRC at the address given in Section XXVI (NOTICES AND SUBMISSIONS) below.

iv. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7010.

54. a. TRC may contest payment of any Future Response Costs under subparagraph 53.a. if it determines that the United States has made a mathematical error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or outside the scope of Future Response Costs. Such objection shall be made in writing within thirty (30) days of the date of the bill and must be sent to the United States pursuant to Section XXVI (NOTICES AND SUBMISSIONS). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, TRC shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in subparagraph 53.a. Simultaneously, TRC shall establish an interest-bearing escrow account in a Federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. TRC shall send to the United States, as provided in Section XXVI (NOTICES AND SUBMISSIONS), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, TRC shall initiate the Dispute Resolution procedures in Section XIX (DISPUTE RESOLUTION). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, TRC shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in subparagraph 53.a. If TRC prevails concerning any aspect of the contested costs, TRC shall pay that portion of the costs for which it did not prevail, plus associated accrued interest (as shown by a bank statement,

a copy of which shall be submitted with the payment), to the United States in the manner described in subparagraph 53.a.; TRC shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (DISPUTE RESOLUTION) shall be the exclusive mechanisms for resolving disputes regarding TRC's obligation to reimburse the United States for its Future Response Costs.

b. i. TRC may contest, in writing, costs invoiced to it by the State if it believes that: (1) the cost documentation contains clerical, mathematical, or accounting errors; (2) the costs are not related to the State's activities with respect to the Work; or (3) NYSDEC is not otherwise legally entitled to such costs. If TRC objects to an invoiced cost, TRC shall pay all costs not objected to within the time frame set forth in subparagraph 53.b. above, and shall, within thirty (30) days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the Director of the NYSDEC Bureau of Program Management, Division of Environmental Remediation ("BPM Director"). The BPM Director or the BPM Director's designee shall have the authority to relieve TRC of the obligation to pay invalid costs. Within forty-five (45) days after the date of NYSDEC's determination of the objection, TRC shall either pay to NYSDEC the amount which the BPM Director or the BPM Director's designee determines TRC is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

ii. In the event any instrument for the payment of any money due to the State under subparagraph 53.b. above, fails of collection, such failure of collection shall constitute a violation of this Consent Decree, provided that: (1) NYSDEC gives TRC written notice of such failure of collection; and (2) NYSDEC does not receive from TRC a certified check or bank check in the amount of the uncollected funds within fourteen (14) days after the date of NYSDEC's written notification.

55. In the event that a payment required by any of Paragraphs 50-54 is not made by the due date for such payment, the Settling Party or Parties responsible under this Section for making the given payment shall pay Interest on the unpaid balance. Such Interest shall begin to accrue on the first day that such payment is overdue. The Interest shall accrue through the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States or State by virtue of the respective Settling Parties' failure to make timely payments under this Section. All Interest payments required by this Paragraph shall be remitted to EPA or the State in accordance with the payment procedures described in Paragraph 53.

56. Confession of Judgment. The Owner Settling Party and Operator Settling Parties by their entry into this Consent Decree, expressly consent to and agree, inter alia, that a Confession of Judgment in a form that: a. is enforceable in the State of New York; b. is signed by Operator Settling Party Louis J. Mattiace on behalf of Mattiace Industries, Inc.; and c. cites to this Consent Decree, shall be filed by the Owner Settling Party and Operator Settling Parties within sixty (60) days of the Effective Date of this Consent Decree in the Office of the County Clerk of Nassau County, New York as a judgment lien upon the Site Property and upon rights to

the Site Property to secure the interests of the United States and the State in receiving reimbursement of costs incurred, and to be incurred, by the United States and the State in their response actions at the Site. Within thirty (30) days of filing the Confession of Judgment, the Owner Settling Party and Operator Settling Parties shall provide EPA with a certified copy of said document that shows the Clerk's recording stamps. Furthermore, by their entry into this Consent Decree, Owner Settling Party and Operator Settling Parties hereby expressly waive any claim they may have, in whole or in part, to any proceeds from any future sale of the Site Property.

XVII. INDEMNIFICATION AND INSURANCE

57. Work Settling Parties' Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of the Work Settling Parties as EPA's authorized representatives under Section 104(e) of CERCLA. The Work Settling Parties shall indemnify, save, and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Work Settling Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Work Settling Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Further, and consistent with the provisions of Paragraph 6 (Commitments by Settling Parties), the Work Settling Parties agree to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of the Work Settling Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the Work Settling Parties in carrying out activities pursuant to this Consent Decree. Neither the Work Settling Parties nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give the Work Settling Parties notice of any claim for which the United States or the State plans to seek indemnification pursuant to subparagraph 57.a, and shall consult with the Work Settling Parties prior to settling such claim.

58. The Work Settling Parties waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of the Work Settling Parties and any person for performance of Operation and Maintenance or other Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Work Settling Parties shall indemnify

and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Work Settling Parties and any person for performance of Operation and Maintenance or other Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

59. No later than fifteen (15) days before commencing any on-site Work, the Work Settling Parties shall secure, and shall maintain, comprehensive general liability insurance with limits of $10 million, combined single limit, and automobile liability insurance with limits of $2 million, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, the Work Settling Parties shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Work Settling Parties in furtherance of this Consent Decree. Prior to commencement of the Operation and Maintenance under this Consent Decree, the Work Settling Parties shall provide to EPA certificates of such insurance and a copy of each insurance policy. The Work Settling Parties shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If the Work Settling Parties demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Work Settling Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Work Settling Parties shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, within forty-eight (48) hours of when the Work Settling Parties first knew that the event might cause a delay. Within seven (7) days thereafter, the Work Settling Parties shall provide in writing to EPA and to the State: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or

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

62. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will provide written notification of its decision to the Settling Parties who submitted notice to EPA under Paragraph 61. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify such Work Settling Parties in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If the Work Settling Parties elect to invoke the dispute resolution procedures set forth in Section XIX (DISPUTE RESOLUTION), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, the Work Settling Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Work Settling Parties complied with the requirements of Paragraphs 60 and 61, above. If the Work Settling Parties carry this burden, the delay at issue shall be deemed not to be a violation by such Work Settling Parties of the affected obligation of this Consent Decree identified to EPA or the Court.

XIX. DISPUTE RESOLUTION

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

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

66. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiation period, the disputing Work Settling Parties invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Work Settling Parties. The Statement of Position shall specify the disputing Work Settling Parties' position as to whether formal dispute resolution should proceed under Paragraphs 67 or 68.

b. Within fourteen (14) days after receipt of the disputing Work Settling Parties' Statement of Position, EPA will serve on them its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraphs 67 or 68. Within seven (7) days after receipt of EPA's Statement of Position, the disputing Work Settling Parties may submit a reply.

c. If there is disagreement between EPA and the disputing Work Settling Parties as to whether dispute resolution should proceed under Paragraphs 67 or 68, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the disputing Work Settling Parties ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 67 or 68.

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

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant

to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the ERRD, EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 67.a. This decision shall be binding upon the Settling Parties, subject only to the right to seek judicial review pursuant to subparagraphs 67.c. and 67.d.

c. Any administrative decision made by EPA pursuant to subparagraph 67.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the disputing Settling Parties with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to such motion.

d. In proceedings on any dispute governed by this Paragraph, the disputing Work Settling Parties shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to subparagraph 67.a.

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

a. Following receipt of the disputing Work Settling Parties' Statement of Position submitted pursuant to Paragraph 66, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding unless, within ten (10) days of receipt of the decision, the disputing Work Settling Parties file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the motion.

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

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Parties under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 78. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the disputing Work Settling Parties do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as

provided in Section XX (STIPULATED PENALTIES). In the event the disputing Work Settling Parties prevail on the disputed issue, and such disputed issue constituted an instance of noncompliance by TRC identified by EPA through written notice as a violation which could result in default, in accordance with Section IV (DEFINITIONS), such written notice thereafter shall be void.

XX. STIPULATED PENALTIES

70. The Settling Parties shall be liable for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (FORCE MAJEURE). "Compliance" by TRC and the Group A Settling Parties shall include performance and completion of the activities, tasks, and requirements identified below in accordance with the deadlines set forth in or approved by EPA under this Consent Decree and in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree; provided, however, that the liability of the Group A Settling Parties for any noncompliance with a requirement which this Consent Decree assigns to the "Work Settling Parties" as a whole or to "TRC" shall be subject to the provisions of subparagraph 6.c. above. "Compliance" by each De Minimis Settling Party, Group B Settling Party, and Ability to Pay Settling Party shall mean timely submission of the payment(s) required of such party pursuant to Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT). "Compliance" by the Owner Settling Party and Operator Settling Parties shall include performance and completion of the activities, tasks, and requirements pursuant to Paragraph 9 (Notice to Successors-in-Title), Section IX (ACCESS AND INSTITUTIONAL CONTROLS), and Paragraph 56 above (Confession of Judgment). Neither TRC nor the Group A Settling Parties shall be liable for stipulated penalties for any inability to perform work attributable solely to the failure of the Owner Settling Party and Operator Settling Parties to comply with their obligations to provide the access necessary to perform the Work under Paragraph 22 of this Consent Decree.

71. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue against TRC and, consistent with subparagraph 6.c. above, the Group A Settling Parties per violation per day for any noncompliance with the requirements identified in subparagraph 71.b.:

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

b. Requirements.

i. timely implementation of the O & M and other work required by the SOW, in accordance with the ROD, the approved O & M Work Plan, and this Consent Decree;

ii. timely submission and, if necessary, revision and resubmission of the O & M Work Plan and all other plans and reports required to be submitted pursuant to the SOW (and any submittal or deliverable required under any of those plans and reports), with the exception of those submissions listed in subparagraph 72.c. of this Section;

iii. modifications of the SOW or related work plans pursuant to Paragraph 13, and timely implementation of the work called for by such modifications in accordance with the modified SOW or work plan;

iv. timely performance of studies and investigations pursuant to Section VII;

v. obligations imposed by Section XV (EMERGENCY RESPONSE);

vi. obligations imposed by Section IX (ACCESS AND INSTITUTIONAL CONTROLS) with the exception of those requirements which are applicable only to the Owner Settling Party and Operator Settling Parties; and

vii. requirements regarding replacement of TRC and all other obligations imposed on the Group A Settling Parties under subparagraphs 6.c.iii.-viii. above (this subparagraph 71.b.vii. applies only to the Group A Settling Parties).

72. Other Stipulated Penalties.

a. The stipulated penalty amounts set forth in subparagraph b. below shall accrue against TRC, the Group A Settling Parties, the Group B Settling Parties, the De Minimis Settling Parties, and the Ability to Pay Settling Parties, respectively, for any failure by them to timely pay the amount or amounts that they are, respectively, obligated to pay under Section XVI above. The stipulated penalty amounts set forth in subparagraph b. below shall also accrue against the Owner Settling Party and the Operator Settling Parties for any noncompliance with the requirements placed on them by Paragraph 9 (Notice to Successors-in-Title), Section IX (ACCESS AND INSTITUTIONAL CONTROLS) and Paragraph 56 above (Confession of Judgment). Finally, the stipulated penalty amounts set forth in subparagraph b. below shall accrue against TRC and, consistent with subparagraph 6.c. above, the Group A Settling Parties for any noncompliance with the requirements identified in subparagraph 72.c.

b. Stipulated Penalty Amounts

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day
$1,500	15th through 30th day
$3,000	31st day and beyond

c. Requirements.

i. Financial Assurance requirements pursuant to Section XIII;

ii. timely submission of the name, title, and qualifications of proposed Supervising Contractor pursuant to Paragraph 10;

iii. timely submission of written notification of any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 15;

iv. timely submission of the name of the Project Coordinator pursuant to Section XII;

v. Certification of Completion requirements set forth in Section XIV;

vi. timely submission of written notification regarding delays or anticipated delays, consistent with Paragraph 61;

vii. indemnification and insurance requirements set forth in Section XVII;

viii. quality assurance, sampling, data analysis, and other requirements set forth in Section VIII;

ix. reporting requirements set forth in Section X; and

x. submission of documents and other information in accordance with Section XXIV (ACCESS TO INFORMATION).

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (COVENANTS NOT TO SUE BY PLAINTIFFS), in the instance where an approved replacement contractor is in Default, as that term is defined in Section IV (DEFINITIONS) above, or where the Work Settling Parties fail to obtain an approved replacement contractor pursuant to Paragraph 6 and stipulated penalties have become due and payable as a result of such failure, the Work Settling Parties shall be liable for a stipulated penalty in the amount of $250,000, in addition to any other stipulated penalties for which they are liable under this Section.

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies the Work Settling Parties of any deficiency; (2) with respect to a decision by the Director of the ERRD, EPA Region II, under subparagraph 67.b. or 68.a. of Section XIX (DISPUTE RESOLUTION), during the period, if any, beginning on the twenty-first (21st) day after the dispute has been fully presented to the ERRD Director consistent with Paragraphs 66-68 until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (DISPUTE RESOLUTION), during the period, if any, beginning on the thirty-first (31st) day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

75. Following the United States' determination that a Settling Party or group of Settling Parties has failed to comply with a requirement of this Consent Decree, the United States may give such Settling Party(ies) written notification of the same and describe the noncompliance. If such a notification is addressed to TRC, a copy of it will be sent to the Group A Settling Parties by the United States. The United States may send the Settling Party(ies) that failed to comply with a requirement of this Consent Decree a written demand for the payment of stipulated penalties. However, penalties shall accrue as provided in Paragraph 74 regardless of whether the United States has notified such Settling Party(ies) of a violation. Nothing in this Paragraph modifies the requirements and obligations of the parties as set forth in Paragraph 6.

76. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the date of the United States' demand for payment of the penalties; except that if the Settling Parties who receive the penalty demand invoke the Dispute Resolution procedures under Section XIX (DISPUTE RESOLUTION) with respect to the penalty demand, then such penalties shall be due and payable as provided in Paragraph 78. All payments to the United States under this Section shall be paid by EFT in accordance with the payment instructions set forth in Paragraph 53 above. To ensure that the Settling Parties' payment is properly recorded, they shall send a letter to the United States within one (1) week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the civil action number of this case, and the paying party's or parties' name(s) and address(es). Such letter shall be sent to the United States as provided in Section XXVI (NOTICES AND SUBMISSIONS), and to:

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

77. The payment of penalties shall not alter in any way any Settling Party's obligation to comply with the requirements of this Consent Decree.

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

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the disputing Work Settling Parties shall pay all accrued penalties determined by the Court to be owed to EPA within thirty (30) days of receipt of the Court's decision or order, except as provided in subparagraph c. below;

c. If the District Court's decision is appealed by any Party, the disputing Work Settling Parties shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within twenty (20) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every thirty (30) days. Within fifteen (15) days of receipt of the final appellate court

decision, the escrow agent shall pay the balance of the account to EPA or to the disputing Work Settling Parties to the extent they prevail.

79. If a Settling Party or group of Settling Parties fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Such Settling Party(ies) shall pay Interest on the unpaid balance of the stipulated penalties, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

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

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

82. Work Settling Parties. In consideration of the actions that will be performed and the payments that will be made by the Work Settling Parties under the terms of this Consent Decree, and except as specifically provided in Paragraphs 83, 84, 86, and 88 of this Section, the United States on behalf of EPA, NOAA, and DOI covenants not to sue or to take administrative action against the Work Settling Parties pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, and the State covenants not to sue or take administrative action against the Work Settling Parties pursuant to Section 107(a) of CERCLA, Section 7002 of RCRA, 42 U.S.C § 6972, and State Law, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect for the Work Settling Parties upon the receipt by EPA and the State of the payments required by Paragraph 50 of Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 46 of Section XIV (CERTIFICATION OF COMPLETION). Each of these covenants not to sue is conditioned upon the satisfactory performance by the Work Settling Parties of their obligations under this Consent Decree. The covenant not to sue the Work Settling Parties shall not be construed to be conditioned upon the performance of any obligations imposed solely upon the Owner Settling Party and the Operator Settling Parties. These covenants not to sue extend only to the Work Settling Parties and do not extend to any other person.

83. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Work Settling Parties and Group B Settling Parties to

perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part,

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

84. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Work Settling Parties and Group B Settling Parties to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, after Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part,

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

85. For purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree, including information set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision, the post-ROD administrative record as well as the information in EPA's possession pertaining to its implementation of the ROD through the date of lodging of this Consent Decree. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

86. General reservations of rights as to Work Settling Parties. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Work Settling Parties with respect to all matters not expressly included within Plaintiffs' covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against the Work Settling Parties with respect to:

a. claims based on a failure by Work Settling Parties to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Work Settling Parties' ownership or operation of the Site, or upon such Settling Parties' transportation, treatment, storage, or disposal, or arrangement for the transportation, treatment, storage, or disposal, of Waste Material at or in connection with the Site, other than as provided in the ROD, the SOW, the Operation and Maintenance Work Plan, or otherwise ordered by EPA, after signature of this Consent Decree by the Work Settling Parties;

d. criminal liability;

e. liability for violations of Federal or state law which occur during or after implementation of the Work; and

f. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans).

87. Work Takeover. In the event EPA determines that Work Settling Parties have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. The Work Settling Parties may invoke the procedures set forth in Section XIX (DISPUTE RESOLUTION), Paragraph 67, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs for purposes of Section XVI (PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES; CONFESSION OF JUDGMENT).

88. United States' and State's Reservations Concerning Natural Resource Injury. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of NOAA and DOI, and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against the Work Settling Parties, Group B Settling Parties, Owner Settling Party, and Operator Settling Parties in this action or in a new action seeking recovery of Natural Resource Damages, based on conditions with respect to the Site, unknown to NOAA or DOI or to the State at the date of lodging of this Consent Decree that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources. For purposes of this Paragraph, the information and the conditions known to NOAA and DOI and to the State shall include only that information and those conditions known to them as of the date of the lodging of this Consent Decree, including information set forth in the Record of Decision for the Site and the administrative record supporting the Record of

Decision, and the post-ROD administrative record as well as the information in EPA's possession pertaining to its implementation of the ROD through the date of lodging of this Consent Decree.

89. Group B Settling Parties. In consideration of the payments that will be made by the Group B Settling Parties under the terms of this Consent Decree, and except as specifically provided in Paragraphs 83, 84, 88, 90, and 95 of this Section, the United States on behalf of EPA, NOAA, and DOI covenants not to sue or to take administrative action against the Group B Settling Parties pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, and the State covenants not to sue or take administrative action against the Group B Settling Parties pursuant to Section 107(a) of CERCLA, Section 7002 of RCRA, 42 U.S.C § 6972, and State Law, relating to the Site. With respect to present and future liability, these covenants shall take effect as to each Group B Settling Party upon receipt by the Mattiace Remediation Trust from such Settling Party of its required payment pursuant to subparagraph 51.a. above. With respect to each Group B Settling Party, individually, these covenants not to sue are conditioned upon: a. the performance by such Group B Settling Party of all of its obligations under this Consent Decree; and b. the truthfulness of the information provided to EPA by such Group B Settling Party relating to its involvement with the Site. These covenants not to sue extend only to Group B Settling Parties and do not extend to any other person.

90. General reservations of rights as to Group B Settling Parties. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Group B Settling Parties with respect to all matters not expressly included within Plaintiffs' covenants not to sue in Paragraph 89. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against the Group B Settling Parties with respect to:

a. claims based on a failure by the Group B Settling Parties to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Group B Settling Parties' ownership or operation of the Site, or upon such Settling Parties' transportation, treatment, storage, or disposal, or arrangement for the transportation, treatment, storage, or disposal, of Waste Material at or in connection with the Site after signature of this Consent Decree by the Group B Settling Parties;

d. criminal liability; and

e. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans).

91. Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties. In consideration of the payments that will be made by the Ability to Pay Settling Parties

and the actions that will be performed by Owner Settling Party and Operator Settling Parties under the terms of this Consent Decree, and except as specifically provided in Paragraphs 88 and 92 of this Section, the United States on behalf of EPA, NOAA, and DOI covenants not to sue or to take administrative action against the Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, and the State covenants not to sue or take administrative action against such Settling Parties pursuant to Section 107(a) of CERCLA, Section 7002 of RCRA, 42 U.S.C § 6972, and State Law, relating to the Site. With respect to present and future liability, these covenants shall take effect as to each Ability to Pay Settling Party upon receipt by EPA from such Settling Party of its required payments pursuant to subparagraph 51.c. above, and as to Owner Settling Party and Operator Settling Parties, upon the receipt by EPA of certified copies showing the clerk's recording stamps of the original recorded easement as required by subparagraph 22.c. and of the Confession of Judgment required by Paragraph 56 of this Consent Decree. These covenants not to sue are conditioned upon the satisfactory performance by each Ability to Pay Settling Party and by Owner Settling Party and each Operator Settling Party of its respective obligations under this Consent Decree. These covenants not to sue are also conditioned upon the veracity and completeness of the financial information provided to EPA by each Ability to Pay Settling Party and by Owner Settling Party and each Operator Settling Party. If the financial information provided to EPA by an Ability to Pay Settling Party or by Owner Settling Party or an Operator Settling Party is subsequently determined by EPA to be false or, in any material respect, inaccurate, such Settling Party shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 106 shall be null and void as to such Settling Party. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' and the State's rights to pursue any other causes of action arising from such Settling Party's false or materially inaccurate information. These covenants not to sue extend only to Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties and do not extend to any other person.

92. General reservations of rights as to Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties with respect to all matters not expressly included within Plaintiffs' covenants not to sue in Paragraph 91. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against the Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties with respect to:

a. claims based on a failure by Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Ability to Pay Settling Parties' ownership or operation of the Site, or upon Ability to Pay Settling Parties', Owner Settling Party's, and Operator Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for

the transportation, treatment, storage, or disposal, of Waste Material at or in connection with the Site after signature of this Consent Decree by the Ability to Pay Settling Parties, Owner Settling Party, and Operator Settling Parties; and

d. criminal liability.

93. De Minimis Settling Parties: In consideration of the payments that will be made by the De Minimis Settling Parties under the terms of this Consent Decree, and except as specifically provided in Paragraphs 94 and 95 of this Section, the United States on behalf of EPA, NOAA, and DOI covenants not to sue or take administrative action against any of the De Minimis Settling Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site, and the State covenants not to sue or take administrative action against any of the De Minimis Settling Parties pursuant to Section 107(a) of CERCLA, Section 7002 of RCRA, 42 U.S.C § 6972, and State Law, relating to the Site. With respect to present and future liability, these covenants not to sue shall take effect for each De Minimis Settling Party upon receipt by the Mattiace Remediation Trust of that De Minimis Settling Party's payment as required by subparagraph 51.b. of this Consent Decree. With respect to each De Minimis Settling Party, individually, these covenants not to sue are conditioned upon: a) the performance by such De Minimis Settling Party of all of its obligations under this Consent Decree; and b) the truthfulness of the information provided to EPA by such De Minimis Settling Party relating to its involvement with the Site. These covenants not to sue extend only to the De Minimis Settling Parties and do not extend to any other person.

94. Reservations of Rights as to De Minimis Settling Parties. The covenants not to sue by the United States and the State set forth in Paragraph 93 do not pertain to any matters other than those expressly specified in Paragraph 93. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the De Minimis Settling Parties with respect to all other matters including, but not limited to, the following:

a. liability for failure to meet a requirement of this Consent Decree;

b. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree; or

c. criminal liability.

95. Notwithstanding any other provision in this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settling Party or Group B Settling Party in this action or in a new action or to issue an administrative order to any individual De Minimis Settling Party or Group B Settling Party seeking to compel that individual De Minimis Settling Party or Group B Settling Party to perform response actions relating to the Site, and/or to reimburse the United States or the State for additional costs of response, if information is discovered which indicates that such Settling Party contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Party no longer qualifies as a de minimis party at the Site because such Settling Party contributed

greater than 0.25% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

96. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING PARTIES

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

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

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

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

98. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties), Paragraph 103 (Waiver of Claims Against De Minimis Parties), Paragraph 104, and Paragraph 109 (Waiver of Claim-Splitting Defenses), these covenants not to sue by a given Settling Party(ies) shall not apply as against the United States in the event that the United States brings a cause of action against or issues an order to such Settling Party(ies) pursuant to one or more of the reservations set forth in Paragraphs 83, 84, 86.b., c., and f., 88, 90.b., c., and e., 92.b. and c., and 94.b., but only to the extent that such Settling Party's or Parties' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation. Likewise, except as provided in Paragraphs 101, 103, 104, and 109, these covenants not to sue by a given Settling Party(ies) shall not apply as against the State in the event that the State brings a cause of action against or issues an order to such Settling Party(ies) pursuant to one or more of the reservations set forth in Paragraphs 86.b., c., and f., 88, 90.b., c., and e., 92.b. and c., and 94.b., but only to the extent that such Settling Party's or Parties' claims arise from the same response action, response costs, or damages that the State is seeking pursuant to the applicable reservation.

99. The Work Settling Parties reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death

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

100. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

101. The Work Settling Parties agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to the Work Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances was less than 0.005% of the total volume of waste at the Site, based on the Site information presently available to EPA.

102. The waiver in Paragraph 101, above, shall not apply to any claim or cause of action against any person meeting the criteria contained therein if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Work Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Work Settling Party.

103. The Work Settling Parties also agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any Group B Setting Party and any person that has entered into a final CERCLA Section 122(g) de minimis settlement with EPA, including each De Minimis Settling Party, with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Work Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Work Settling Party.

104. The Group B Settling Parties, De Minimis Settling Parties, Owner Settling Party, Operator Settling Parties, and Ability to Pay Settling Parties agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Group B Settling Party, De Minimis Settling Party, Owner Settling Party, Operator Settling Party, or Ability to Pay Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Group B

Settling Party, De Minimis Settling Party, Owner Settling Party, Operator Settling Party, or Ability to Pay Settling Party.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

105. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties), Paragraph 103 (Waiver of Claims Against De Minimis Parties), and Paragraph 104, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 101, Paragraph 103, and Paragraph 104, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

106. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The Parties also agree, and by entering this Consent Decree this Court finds, that the De Minimis Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 122(g)(5), 42 U.S.C. § 9622(g)(5), for matters addressed in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the State, or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Parties coming within the scope of such reservations.

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

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

109. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United

States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (COVENANTS NOT TO SUE BY PLAINTIFFS).

110. Future Cost Recovery

a. Subject to subparagraph c. below, the United States, the State, and the Settling Parties agree that if after the Parties sign this Consent Decree, any person or entity not a Party to this Consent Decree (other than United Air Lines, Inc. unless United Air Lines is a Settling Party under this Consent Decree) agrees, or is ordered by a court, to contribute toward the reimbursement or payment of any Past or Future Response Costs with respect to the Site, the funds so contributed (hereinafter, "Future Proceeds") shall be distributed as follows. First, the Work Settling Parties shall recover from the Future Proceeds an amount equal to two times the total amount (not including interest) required to be paid to the United States by the Ability to Pay Settling Parties pursuant to Paragraph 51.c. Thereafter, any Future Proceeds shall be shared by the United States and the Work Settling Parties on a 33.3%–66.7% basis. The United States' share of such Future Proceeds shall be applied toward Past Response Costs. The Work Settling Parties' share of the Future Proceeds shall be distributed among the Work Settling Parties according to the terms of a separate contractual arrangement among these parties. If United Air Lines, Inc. is not a Settling Party to this Consent Decree, then any funds paid by or on behalf of United Air Lines, Inc. to the United States in connection with the Site, pursuant to any future settlement, order or judgment, and any monies received by EPA through the resolution of the United States' setoff rights against amounts potentially owed by the United States to United Air Lines, Inc. and its affiliated companies in two actions pending before the United States Tax Court (Docket Nos. 18573-98 and 15931-99) shall be retained in their entirety by the United States, and applied to Past Response Costs.

b. The term "Future Proceeds" in subparagraph a. above, does not include any civil penalties and punitive damages which any person or entity not a Party to this Consent Decree agrees, or is ordered by a court, to pay with respect to the Site. Any such penalties or damages sought by the United States shall not be shared with any of the Settling Parties.

c. If upon any sale of the Site Property or any portion thereof by an entity which has foreclosed on its lien or liens against the Site Property or has obtained title by deed in lieu of foreclosure, there are any surplus proceeds from any such sale, such proceeds shall be shared by the United States and the Group A Settling Parties on a 50%–50% basis. "Surplus proceeds" shall mean the proceeds of any such sale that the Owner Settling Party, but for Paragraph 56 above, would be entitled to under the laws of New York State and Nassau County, New York.

d. The United States, the State, and Work Settling Parties shall each notify the other of any negotiations with any person or entity not a Party to this Consent Decree (other than United Air Lines, Inc. unless United Air Lines is a Settling Party under this Consent Decree) regarding the reimbursement or payment of any Past or Future Response Costs with respect to the Site, and each shall give the other advance notice of any proposed settlements with such a person or entity.

e. Nothing in this Paragraph shall be construed as an agreement on the part of the United States to settle with any person or entity for any particular terms. Nothing in this Paragraph shall be construed to restrict in any way the United States from settling with any person or entity at any time on any terms the United States deems appropriate. The United States shall retain its unreviewable discretion to accept or reject settlement terms offered by any person at any time.

XXIV. ACCESS TO INFORMATION

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

112. Business Confidential and Privileged Documents.

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

b. The Work Settling Parties may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Work Settling Parties assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by the Work Settling Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXV. RETENTION OF RECORDS

114. Until ten (10) years after the Work Settling Parties' receipt of EPA's notification pursuant to Paragraph 47.b. of Section XIV (CERTIFICATION OF COMPLETION OF THE WORK), each Work Settling Party, Owner Settling Party, and Operator Settling Party shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site. The Work Settling Parties must also retain, and instruct their contractors and agents (including the Supervising Contractor and the Project Coordinator) to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in their possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each of the Work Settling Parties (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

115. At the conclusion of this document retention period, the Work Settling Parties, Owner Settling Party, and Operator Settling Parties shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the Work Settling Parties, Owner Settling Party, and Operator Settling Parties shall deliver any such records or documents to EPA or the State. The Work Settling Parties, Owner Settling Party, or Operator Settling Parties may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Work Settling Parties, Owner Settling Party, or Operator Settling Parties assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Parties. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

b. Certification of Financial Information. Each Ability to Pay Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has

submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that these circumstances have not materially changed between the time the financial information was submitted to EPA and the time such Ability to Pay Settling Party executes this Consent Decree.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-3-07234

and

U.S. Attorney's Office for the Eastern
District of New York
One Pierrepont Plaza, Fourteenth Floor
147 Pierrepont Street
Brooklyn, NY 11201
Re: U.S.A.O. # 2000V02370

As to EPA:

Chief, New York Remediation Branch
Emergency and Remedial Response Division
United States Environmental Protection
Agency Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attn: Mattiace Petrochemical Superfund Site
Project Manager

and

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

As to NOAA (regarding Natural Resource Damages): Jason Smith Forman, Esq.
NOAA Office of General Counsel
1315 East West Highway, Suite 15132
Silver Spring, MD 20910

As to DOI (regarding Natural Resource Damages): Mark Barash, Esq.
U.S. Department of the Interior
Office of the Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02158

As to the State: Robert Emmet Hernan, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, NY 10271-0332

As to TRC: Edward Malley
TRC Companies, Inc.
1200 Wall Street West
Lyndhurst, NJ 07071

As to the Group A Settling Parties: Written notices will be sent to the parties or their representatives listed in Appendix D.

As to the Group B Settling Parties: Written notices will be sent to the parties or their representatives listed in Appendix E.

As to the Ability to Pay Settling Parties: Written notices will be sent to the parties or their representatives listed in Appendix F.

As to the De Minimis Settling Parties: Written notices will be sent to the parties or their representatives listed in Appendix G.

As to the Owner Settling Party and
Operator Settling Parties:

Jacob Bernstein, Esq.
Marino & Bernstein, P.C.
P.O. Box 180
Oyster Bay, NY 11771

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

"Appendix D" is the complete list of Group A Settling Parties.

"Appendix E" is the complete list of Group B Settling Parties.

"Appendix F" is the complete list of Ability to Pay Settling Parties, including settlement payment amounts.

"Appendix G" is the complete list of De Minimis Settling Parties, including settlement payment amounts.

"Appendix H" is the Draft Easement referred to in subparagraphs 22.c. and 23.c.

XXX. COMMUNITY RELATIONS

121. The Work Settling Parties shall propose to EPA their participation in the community relations plan that EPA developed for the Site. EPA will determine the appropriate role for the Work Settling Parties under the Plan. The Work Settling Parties shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA or the State, the Work Settling Parties shall participate in the preparation of such information for

dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

123. Except as provided in Paragraph 13 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States or the Work Settling Parties, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Work Settling Parties.

124. In the event TRC is replaced pursuant to the provisions of Paragraph 6 above, the permanent replacement shall execute a signature page to this Consent Decree, which shall constitute a modification pursuant to this Section. Following execution of the signature page by the permanent replacement, the United States and the Group A Settling Parties shall petition the Court to approve the modification. Upon Court approval, the permanent replacement shall be bound by, obligated to, and subject to the terms and conditions of this Consent Decree that are applicable to TRC.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. SIGNATORIES/SERVICE

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

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

130. Each Settling Party shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Parties hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that the Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

131. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

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

SO ORDERED THIS ____ DAY OF _____, 2003.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al. v. Mattiace Industries, Inc., et al., relating to the Mattiace Petrochemical Superfund Site.

FOR THE UNITED STATES OF AMERICA

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York
Attorney for Plaintiff United States of America
One Pierrepont Plaza, 14th Floor
Brooklyn, New York 11201

_____ By: _____
Date

STANLEY N. ALPERT
Assistant United States Attorney
(718) 254-6023/7000

_____ _____
Date

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530