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CLERK OF COURT
SOUTHERN DISTRICT OF ILLINOIS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SCHLUMBERGER INDUSTRIES, INC.,)
)
 Defendant.)
 _____)

CIVIL ACTION NO.
91-4220-JLF

CONSENT DECREE

PERSONAL RECORD 211 PAGE 957

STATE OF ILLINOIS }
WILLIAMSON COUNTY } ss. 10/81
This instrument was filed for record
this 23 day of Sept. 19 92
at 1:45 o'clock P.M. and recorded
in 111 Record 211 Page 957
Bonny R. Bonner
COUNTY CLERK & RECORDER

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CONSENT DECREE

WHEREAS, The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9605, placed the Crab Orchard National Wildlife Refuge in Williamson, Jackson, Union and Johnson Counties, Illinois, (the "Facility" as specifically defined in Paragraph 4 of this Consent Decree) on the National Priorities List, which is set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register, 52 Fed. Reg. 27620 (July 22, 1987);

In response to a release or a substantial threat of a release of a hazardous substance at or from the Facility, the federal agency operating the Facility, the U.S. Fish and Wildlife Service ("U.S. FWS"), under the authority of the U.S. Department of Interior ("U.S. DOI"), in May 1986, with assistance from Sangamo Weston, Inc. ("Sangamo"), now known as Schlumberger Industries, Inc., commenced a Remedial Investigation and Feasibility Study ("RI/FS"), pursuant to 40 CFR §300.68 and Section 120(e) of CERCLA, 42 U.S.C. §9620(e), for the Facility;

U.S. FWS and Sangamo completed the Remedial Investigation ("RI") Report in August 1988 and completed the Feasibility Study ("FS") Report in August 1989;

The FS Report contained numerous alternatives for remediation of seven study sites, which were grouped by U.S. EPA

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into two operable units at the Facility, including the PCBs Operable Unit, which this Consent Decree concerns;

In August 1989, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, published notice of the completion of the RI/FS and of the Proposed Plans for remedial action in a major local newspaper of general circulation and provided opportunity for public comment on the Proposed Plans;

Specifically for the PCBs Operable Unit, U.S. EPA provided opportunity for public comment on the Proposed Plan to be submitted in writing to U.S. EPA by September 16, 1989, subsequently extended to December 1, 1989, or orally at public meetings held in the City of Carterville, Illinois on August 30 and October 3, 1989;

U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, has kept a transcript of the public meetings and has made this transcript and other documents available to the public as part of the administrative record located at U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois and at the following local repositories:

Marion Carnegie Public Library
206 South Market Street
Marion, Illinois 62959
Contact: Mr. Ronald Reed

Crab Orchard National Wildlife Refuge
Refuge Headquarters
P.O. Box J
Carterville, Illinois 62918
Contact: Mr. Glen Smart

Southern Illinois University
Morris Library
Carbondale, Illinois 62901

Marion Federal Penitentiary
Marion, Illinois 62959

Certain persons have provided comments on U.S. EPA's Proposed Plan for remedial action at the PCBs Operable Unit within the Facility, and to such comments U.S. EPA provided a summary of responses, all of which have been included in the administrative record referred to above;

Considering the Proposed Plan for remedial action at the PCBs Operable Unit within the Facility, and the public comments received, U.S. EPA has reached a decision on a final remedial action plan for the PCBs Operable Unit, which is embodied in a document called a Record of Decision ("ROD") signed on behalf of the Regional Administrator on August 1, 1990, (attached as Appendix 1 hereto), to which U.S. DOI has given its concurrence and the State of Illinois ("State") has given its concurrence in the treatment component for contaminated soils and sediments in the selected remedy, and which includes a discussion of U.S. EPA's reasons for the final plan and for any significant changes from the proposed remedial action plan contained in the Proposed Plan;

U.S. EPA, pursuant to Section 117(b) of CERCLA, 42 U.S.C. §9617(b), has published notice in a major local newspaper of general circulation of the adoption of the final remedial action plan set forth in the ROD for the PCBs Operable Unit, and has made the ROD available to the public for review at the same locations listed above for the administrative record and at information repositories;

Under CERCLA Section 120, 42 U.S.C. §9620, and Executive Order 12580 (January 20, 1987), U.S. DOI is an operator of the Facility and has requested U.S. EPA to enter into this Consent Decree with the Settling Defendant pursuant to CERCLA Section 120(e)(6);

On or about October 25, 1990, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. §9622, notified certain parties that U.S. EPA determined each party to be a potentially responsible party ("PRP") regarding the proposed remedial action at the PCBs Operable Unit within the Facility;

In accordance with Sections 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), U.S. EPA notified the State of Illinois on or about October 25, 1990, of negotiations with the PRPs regarding the scope of the remedial design and remedial action for the PCBs Operable Unit at the Facility, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and be a party to any settlement;

U.S. DOI, as the Federal natural resources trustee and an operator of the Facility, has been on notice, as required under Section 122(j) of CERCLA, 42 U.S.C. §9622(j), of negotiations with the PRPs on the subject of addressing the release or threatened release of hazardous substances at the PCBs Operable Unit within the Facility;

Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C. §9621(d)(1), the United States and Settling Defendant ("the Parties") believe that the remedial action plan implemented by

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this Consent Decree will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release which at a minimum assures protection of human health and the environment at the PCBs Operable Unit within the Facility;

The Parties believe the remedial action plan implemented by this Consent Decree will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under Federal environmental law or State environmental or facility siting law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. §9621(d)(2), and that the remedial action plan is in accordance with Section 121 of CERCLA, 42 U.S.C. §9621, and with the National Contingency Plan ("NCP"), 40 CFR Part 300;

Settling Defendant agrees to implement the final remedial action plan adopted by U.S. EPA in the ROD and the Scope of Work ("SOW") as set forth in Appendix 1 and Appendix 2, respectively, to this Consent Decree and incorporated by reference into this Decree, and U.S. EPA has determined that the Work required under the Consent Decree will be done properly by Settling Defendant and that Settling Defendant is qualified to implement the remedial action plan contained in the ROD and the SOW;

In accordance with Section 122(j) of CERCLA, 42 U.S.C. §9622(j), U.S. DOI agrees that the actions undertaken by Settling Defendant under this Consent Decree are appropriate actions

necessary to protect and restore any natural resources damaged by releases or threatened releases at or from the areas comprising the PCBs Operable Unit at the Facility;

U.S. DOI has reviewed the data collected before and during the RI/FS and the results of a preassessment screen of natural resource damages at the Facility and believes that, even in the absence of a formal damages assessment, expeditious resolution of its potential natural resource damages claims against Settling Defendant in the manner provided by this Consent Decree is consistent with CERCLA and in the public interest;

This Consent Decree was negotiated at arm's length and executed by the Parties in good faith to avoid expensive and protracted litigation and is a settlement of disputed claims; and

The Parties recognize, and intend to further hereby, the public interest in the expedition of the cleanup of the PCBs Operable Unit within the Facility and in avoiding prolonged and complicated litigation between the Parties;

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

I. PURPOSE OF DECREE

1. The purpose of this Consent Decree is to provide for implementation by Settling Defendant of the final remedial design and remedial action for the PCBs Operable Unit of the Facility selected by U.S. EPA, as set forth in the Record of Decision attached as Appendix 1 and the SOW attached as Appendix 2, and to

provide for payment of certain response costs incurred and to be incurred by U.S. EPA and U.S. DOJ for the PCBs Operable Unit within the Facility.

II. JURISDICTION

2. For purposes of entry and enforcement of this Consent Decree, this Court has jurisdiction over the subject matter herein pursuant to 28 U.S.C. §§1331(a) and 1345, and 42 U.S.C. §§9613(b) and 9622(d)(1)(A), and over the Parties consenting hereto. The Parties hereby waive service of the Summons and Complaint and Counterclaim in this action.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the undersigned Parties and their agents, successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that Party to it. Settling Defendant shall provide a copy of this Consent Decree to the contractor(s) hired to perform the Work required by this Consent Decree and shall require the contractor(s) to provide written notice of the Decree to any subcontractor retained to perform any part of the Work.

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IV. DEFINITIONS

4. Whenever the following terms are used in this Consent Decree and the appendices attached hereto, the following definitions shall apply:

"Cleanup Standards" means the requirements respecting the degree of cleanup of groundwater, surface water, soil, air or other environmental media that must be achieved by the remedial action, as set forth in the ROD, Paragraph 12 of this Decree, and Part III of the Scope of Work.

"Consent Decree" or "Decree" means this Consent Decree and all appendices hereto. In the event of conflict between this Decree and any appendix, the Decree shall control.

"Contractor" means the entity or entities retained by or on behalf of Settling Defendant to undertake and complete the Work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained. Settling Defendant shall not assert a defense based upon CERCLA Section 107(b)(3), 42 U.S.C. §9607(b)(3), as to acts or omissions of its contractors or subcontractors.

"Days" means calendar days, unless business days are specified. Any submittal, written notice of position or written statement of dispute which, under the terms of this Decree, would be due on a Saturday, Sunday or Federal holiday shall be due on the following business day.

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"Deadlines" means schedules established pursuant to this Decree or any of its attachments. All actions or submittals subject to deadlines shall be performed or submitted, respectively, on or before the scheduled deadline.

"Facility," solely for the purposes of this Consent Decree, refers to the Crab Orchard National Wildlife Refuge which is located in Williamson, Jackson, Union and Johnson Counties, Illinois, and includes, but is not limited to, all of the areas comprising the PCBs Operable Unit shown more particularly on the figures attached as Appendix 3.

"Future liability" refers to liability arising after U.S. EPA's Certification of Completion is issued pursuant to Section XXVI hereof.

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

"Hazardous waste" shall have the meaning provided in Section 1004(5) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6903(5), and 40 CFR §261.3.

"IEPA" means the Illinois Environmental Protection Agency.

"In-situ Vitrification Demonstration Workplan" or "ISVD Workplan" means that plan required by the ROD, Section V of the Scope of Work and Paragraph 13 of this Decree to conduct treatability tests to demonstrate the performance of in-situ vitrification ("ISV").

"National Contingency Plan" or "NCP" means the term used in Section 105 of CERCLA, 42 U.S.C. §9605, and is promulgated at 40 CFR Part 300.

"On site" means on the Facility for the purposes of this Consent Decree, consistent with the NCP.

"Oversight Costs" means any costs not inconsistent with the National Contingency Plan incurred by the U.S. EPA or U.S. DOJ in monitoring the compliance of the Settling Defendant with this Consent Decree, including but not limited to payroll and other direct costs, indirect (including overhead) costs, sampling and laboratory costs, travel, contractor costs and other costs of review of the Work performed pursuant to this Consent Decree.

"Parties" means the United States of America and the Settling Defendant.

"PCBs Operable Unit" means the operable unit at the Facility which has been contaminated with polychlorinated biphenyls ("PCBs") and heavy metals and includes the following four sites within the Facility: the Job Corp Landfill, the Water Tower Landfill, the Area 9 Landfill and the Area 9 Building Complex. These sites are shown more particularly in the figures attached hereto as Appendix 3.

"RD/RA Work Plan" means the plan for the design and implementation of the remedial action for the PCBs Operable Unit of the Facility, as described below in Section VI, Paragraph 13.

"Record of Decision" or "ROD" means the administrative Record of Decision issued by U.S. EPA setting forth the remedial

action selected for the PCBs Operable Unit within the Facility, attached as Appendix 1 hereto.

"Remedial Project Manager" or "RPM" means the person designated by U.S. EPA to coordinate, monitor or direct remedial activities at the Facility pursuant to 40 CFR §300.120 and Section XII hereof.

"Response Costs" means any costs not inconsistent with the National Contingency Plan incurred pursuant to 42 U.S.C. §§9601 et seq.

"Scope of Work" or "SOW" means the plan, set forth as Appendix 2 to this Decree, for implementation of the remedial design and remedial action at the PCBs Operable Unit within the Facility in accordance with the Record of Decision, and any subsequent amendments of Appendix 2 pursuant to the provisions of this Decree.

"Settling Defendant" means Schlumberger Industries, Inc.

"Sites" means the four study sites which comprise the PCBs Operable Unit and which are delineated more fully in the ROD.

"State" means the State of Illinois.

"United States" means the United States of America, and includes all federal agencies and departments.

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

"U.S. DOI" means the United States Department of the Interior.

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

"U.S. FWS" means the United States Fish and Wildlife Service.

"Work" means the design, construction and implementation, in accordance with this Consent Decree, of the tasks described in the ROD, this Decree, the SOW, the Work Plan(s), and any other plans or schedules submitted to and approved by U.S. EPA pursuant to this Decree or the SOW.

V. GENERAL PROVISIONS

5. Commitment of Settling Defendant to Perform RD/RA.

a. Settling Defendant agrees to finance and perform the Work as defined in paragraph 4 hereof.

b. The Work shall be completed in accordance with all requirements of this Decree, the ROD, the SOW, the RD/RA Work Plan and all other plans or schedules submitted by Settling Defendant and approved by U.S. EPA under this Decree. The procedures for submission and approval of plans are set forth in Section VI below.

6. Compliance with Applicable Laws; Permits and Approvals.

a. All activities undertaken by the Settling Defendant pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable Federal and State laws, regulations and permits, as required by CERCLA.

b. Pursuant to Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no Federal, State, or local permits are required for Work conducted entirely on site. Settling Defendant

shall obtain all permits or approvals necessary for Work off the Facility under applicable Federal, State or local laws and shall submit timely applications and requests for any such permits and approvals.

c. The standards and provisions of Section XIII hereof describing Force Majeure shall govern delays in obtaining permits required for the Work and also the denial of any such permits, provided that Settling Defendant has made timely and complete application for any such permits.

d. Settling Defendant shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

e. This Consent Decree is not a permit issued pursuant to any Federal or State statute or regulation.

7. Formal Approval Required. No informal advice, guidance, suggestions or comments by representatives of the United States or the State on plans, reports or other documents submitted by the Settling Defendant shall be construed as relieving it from obtaining any formal approvals, permits or other authorizations required by law or by this Decree. Further, no advice, guidance, suggestions or comments by such government representatives with respect to any submission by the Settling Defendant shall be construed so as to relieve it of its

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obligations under this Decree or to transfer any of its liability or obligations under this Decree to any other party or person.

8. Computation of Time. Unless otherwise provided, dates and time periods specified in or under this Decree are in calendar days. If the date for submission of any item or notification required by this Decree falls upon a weekend or Federal holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday. Submission shall be deemed accomplished when the item is delivered or mailed by next day mail to the required Party or Parties.

9. Conveyance of the Facility and Institutional Controls.

a. Copy of Decree to be Recorded. Within thirty (30) days of approval by the Court of this Decree, U.S. DOI shall record a copy of this Decree with the Recorder's Office for the counties in the State of Illinois in which the sites which comprise the PCBs Operable Unit are located, in the chain of title for each parcel of the Facility property which is part of the PCBs Operable Unit.

b. Alienation of Facility. This Decree does not alter U.S. DOI's rights and obligations regarding alienation of the Facility under 40 CFR Part 373 or any other Federal or State laws or regulations which may apply to such alienation; however, at least sixty (60) days prior to the date of such alienation, U.S. DOI shall notify U.S. EPA, the Settling Defendant and the State of such proposed alienation, the name of the grantee, and a

description of U.S. DOI's obligations, if any, to be performed by such grantee. Such alienation shall not alter any of U.S. DOI's obligations under this Consent Decree without the written consent of U.S. EPA and the Settling Defendant. In the event of such alienation, all of Settling Defendant's obligations pursuant to this Decree shall continue to be met by the Settling Defendant.

c. Notice. Any contract for the sale or other transfer of the Facility shall contain the notice required under 40 CFR Part 373. Also, any deed, title or other instrument of conveyance regarding the Facility shall contain a notice that the Facility is the subject of this Consent Decree, setting forth the style of the case, case number, and Court having jurisdiction herein.

d. Institutional Controls. U.S. EPA has determined that the institutional controls set forth in Appendix 4 hereto are necessary to effectuate the remedial action for the Facility and to protect the public health or welfare or the environment. U.S. DOI shall record with the Recorder's Office for the counties in Illinois in which the sites within the PCBs Operable Unit are located a copy of the Restrictive Covenant, attached hereto as Appendix 4, barring future use of the property in any manner that may threaten the effectiveness, protectiveness or integrity of the Work performed under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Engineer and Contractor(s).

a. Remedial Design Contractor. All remedial design work to be performed by Settling Defendant pursuant to this Consent Decree shall be under the supervision of a qualified professional engineer. Selection of any such contractor or engineer is subject to approval by U.S. EPA, in consultation with U.S. DOI. As soon as possible after entry of the Decree, and at least thirty (30) days prior to the date upon which initiation of the contractor's work is required under this Decree, Settling Defendant shall notify U.S. EPA and U.S. DOI in writing of the name, title, and qualifications of the proposed engineer.

b. Remedial Action Contractor. All remedial action work to be performed by Settling Defendant pursuant to this Consent Decree shall be under the supervision of a qualified professional engineer. As soon as possible after entry of the Decree, and at least thirty (30) days prior to the date upon which initiation of the contractor's work is required under this Decree, Settling Defendant shall notify U.S. EPA and U.S. DOI in writing of the name, title, and qualifications of the proposed engineer, and the names of principal contractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree. Selection of any such engineer or contractor shall be subject to approval by the U.S. EPA, in consultation with U.S. DOI.

c. Replacement of Engineer or Contractor. If at any time Settling Defendant proposes to change an engineer or contractor previously approved by U.S. EPA, it shall give written

notice to U.S. EPA and U.S. DOI of the name, title and qualifications of the proposed new engineer or contractor. Such engineer or contractor shall not perform any Work until approval by U.S. EPA, in consultation with U.S. DOI, has been given.

d. Disapproval of Engineer or Contractor. If U.S. EPA disapproves of the initial or subsequent selection of an engineer or contractor, Settling Defendant shall submit a list of alternate engineers or contractors to U.S. EPA and U.S. DOI within thirty (30) days of receipt of the notice of disapproval. Within fourteen (14) days from receipt of the list, U.S. EPA, in consultation with U.S. DOI, shall provide written notice of the names of the engineers or contractors on the list of which it approves. Settling Defendant may select any approved engineer or contractor from the list and shall notify U.S. EPA and U.S. DOI of the name of the person or entity selected within twenty-one (21) days of receipt of the list of approved names. If U.S. EPA does not approve or disapprove of any proposed engineer or contractor or any proposed list of alternate engineers or contractors within fourteen (14) days from receipt of the list, and the delay prevents or may prevent Settling Defendant from meeting one or more deadlines in a plan approved by U.S. EPA pursuant to this Decree, Settling Defendant may seek relief under the provisions of Section XIII hereof.

11. Scope of Work. Appendix 2 to this Consent Decree provides a Scope of Work ("SOW") for the completion of remedial design and remedial action within the PCBs Operable Unit at the

Facility. This Scope of Work is incorporated into and made an enforceable part of this Consent Decree.

12. Cleanup and Performance Standards. The Work performed under this Consent Decree shall meet the Performance Standards set forth in Part IV of the SOW and in Sections VIII(A)(3) and X(B) of the ROD and the Cleanup Standards set forth in Part III of the SOW and in Section VIII(B) of the ROD.

13. Work

a. Within sixty (60) days after lodging of this Consent Decree, Settling Defendant shall commence the preliminary design work for the PCBs Operable Unit by submitting the Treatability Test Work Plan and a Schedule for Treatability Testing Work. Within ninety (90) days after lodging of this Consent Decree, Settling Defendant shall submit a Pre-Design Work Plan and a Pre-Design Schedule for completion of the other preliminary design Work specified in Task 1 of Section V of the SOW to U.S. EPA, U.S. DOI and the State, which shall meet the requirements specified in the SOW. Settling Defendant shall not be required to pay any Oversight Costs for U.S. EPA's review of its Work prior to entry of the Decree under this paragraph, but following entry shall pay all such Oversight Costs that accrued prior to entry pursuant to Section XVI hereof.

b. Within thirty (30) days of the entry of this Consent Decree, or sixty (60) days after completion of the final Treatability Test Report, whichever is later, the Settling Defendant shall commence remedial design work for the PCBs

Operable Unit by submitting the RD/RA Work Plan and RD Schedule to U.S. EPA, U.S. DOI and the State, which shall meet the requirements specified in the SOW.

c. In accordance with the Schedules required by the SOW and this Consent Decree, the Settling Defendant shall submit the remaining plans needed to complete the Work. Additional Remedial Design submittals are detailed in the SOW.

d. All plans submitted shall be developed in conformance with the ROD, the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents timely provided by U.S. EPA that are in effect at the time of plan submission. If an applicable U.S. EPA guidance document is changed or is issued which requires modification of plans under development, Settling Defendant may propose that U.S. EPA adjust deadlines of such plans as necessary to incorporate such guidance into the plan being developed.

e. All plans shall be subject to review, modification and approval by U.S. EPA, in consultation with U.S. DOI and after the State has had a reasonable opportunity for review and comment, in accordance with the procedures set forth in Paragraph 14 below.

f. All approved plans shall be deemed incorporated into and made an enforceable part of this Consent Decree. All Work shall be conducted in accordance with the NCP, U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the

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requirements of this Consent Decree, including the standards, specifications and schedule contained in the Work Plans.

14. Approval Procedures for Work Plans and Other Documents.

a. Upon review of each Work Plan or other document required to be submitted and approved by U.S. EPA pursuant to this Decree, and after consultation with U.S. DOI and after the State has had a reasonable opportunity for review and comment, the U.S. EPA Remedial Project Manager (the "RPM") shall notify Settling Defendant, in writing, that a document is (1) approved, (2) disapproved, (3) modified by U.S. EPA to cure deficiencies, (4) approved upon satisfaction of specified conditions or (5) returned to Settling Defendant for modification. An explanation shall be provided for any disapproval or required modification in sufficient detail to allow Settling Defendant the opportunity to cure the deficiencies. In no case will U.S. EPA modify a document to cure deficiencies or will stipulated penalty liability arise unless the Settling Defendant has failed to address adequately the disapproval, approval upon satisfaction of specified conditions or request for modification within thirty (30) days or such other time as may be agreed to by the Parties. U.S. EPA shall generally attempt to complete its review of any submission within forty-five (45) days from receipt of the document.

b. Upon U.S. EPA's approval or modification of a submission, Settling Defendant shall proceed to implement the

Work required, except for post-certification Operation and Maintenance, which U.S. DOI will implement.

c. In the event that U.S. EPA partially disapproves the submission or requests Settling Defendant to modify a submission, Settling Defendant shall proceed to implement the Work in any approved portions of the submission that are independent of and unaffected by the portions to be modified, upon request by U.S. EPA. After U.S. EPA returns any submission to Settling Defendant for modification, Settling Defendant shall submit a revised document to U.S. EPA, U.S. DOI and the State adequately addressing the deficiencies within thirty (30) calendar days of receipt of notice from U.S. EPA or such other time as may be agreed to by the Parties.

d. Settling Defendant may submit any disapproval, modification, or conditions of approval to which it objects for dispute resolution pursuant to Section XIV hereof. The provisions of Section XIV (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of Work and accrual and payment of any stipulated penalties during dispute resolution. Implementation of non-deficient portions of the submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XVII.

VII. ADDITIONAL WORK AND MODIFICATION OF THE SOW

15. No Warranty. The provisions of the SOW attached as Appendix 2 reflect the Parties' best efforts at the time of

execution of this Decree to define the technical work required to perform the remedial action described in the ROD for the PCBs Operable Unit. The Parties acknowledge and agree that U.S. EPA's approval of the SOW or the Work Plan does not constitute a warranty or representation of any kind that the SOW or Work Plan will achieve the Cleanup and Performance Standards, and shall not foreclose the United States from seeking compliance with the applicable Cleanup and Performance Standards.

16. Modification of the Scope of Work.

a. The Parties recognize that modification of the SOW may be required at some point in the future to provide for additional Work or other modification needed to meet the Cleanup and Performance Standards specified above. In such event, the following procedures shall be followed to amend the SOW:

b. The Party that believes that additional Work or other modification of the SOW is necessary to meet the Cleanup and Performance Standards shall provide written notice of such belief to the other Parties.

c. The other Parties shall respond to such notice in writing within thirty (30) days of receipt or such other time as may be agreed to by the Parties.

17. Modification by Agreement. If the Parties agree on the modifications to the SOW, the agreement shall be in writing and shall be filed, along with the amended SOW, with the Court.

18. Dispute Resolution. If the Parties do not agree on the proposed modifications, they shall initiate dispute resolution

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pursuant to Section XIV of this Decree. The scope and standard of review set forth below in Section XIV, Paragraph 40 shall govern any judicial determination in such dispute. The amended SOW resulting from the resolution of the dispute shall be filed with the Court.

VIII. U.S. EPA PERIODIC REVIEW TO
ASSURE PROTECTION OF HUMAN
HEALTH AND THE ENVIRONMENT

19. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the PCBs Operable Unit of the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. If, upon such review, U.S. EPA determines that further response action is appropriate to protect the public health or welfare or the environment at the PCBs Operable Unit at the Facility in accordance with Section 104 or 106 of CERCLA, 42 U.S.C. §9604 or §9606, then, consistent with Section XVIII of this Consent Decree, U.S. EPA, in consultation with U.S. DOI and after the State has had a reasonable opportunity for review and comment, may take or require such action.

20. Settling Defendant shall be provided with an opportunity to confer with U.S. EPA and U.S. DOI on any response action proposed as a result of U.S. EPA's 5-year review and to submit written comments for the record. The final decision of

U.S. EPA shall be subject to judicial review pursuant to the dispute resolution provisions in Section XIV hereof, if U.S. EPA seeks to require the Settling Defendant to undertake such work.

IX. QUALITY ASSURANCE

21. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and subsequent amendments to such guidelines upon U.S. EPA's timely notification to Settling Defendant of such amendments. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit a Quality Assurance Project Plan(s) ("QAPP") to U.S. EPA, U.S. DOI and the State, consistent with the SOW and applicable guidelines, in accordance with Paragraphs 13 and 14 hereof. Validated sampling data generated by Settling Defendant consistent with the QAPP(s) and reviewed and approved by U.S. EPA shall be admissible as evidence, without objection (except as to relevance), in any proceeding to enforce this Decree. Each laboratory which Settling Defendant utilizes in implementing this Consent Decree shall be subject to approval by U.S. EPA, in consultation with U.S. DOI. Settling Defendant shall assure that U.S. EPA and U.S. DOI personnel or authorized representatives are allowed access to each such laboratory. In addition, Settling Defendant shall have

its laboratory analyze samples submitted by U.S. EPA or U.S. DOI for quality assurance monitoring.

X. FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

22. Access to Facility. As of the date of lodging of this Consent Decree, the United States and Settling Defendant's contractors shall have access to the areas of the Facility to which access is necessary to effectuate the remedial design or remedial action required pursuant to this Decree. Access shall be allowed for the purposes of conducting activities related to this Decree, including but not limited to:

- a. Performing or monitoring the Work or any other activities taking place at the PCBs Operable Unit within the Facility;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the PCBs Operable Unit within the Facility;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the PCBs Operable Unit within the Facility;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Settling Defendant or its agents under this Decree and applicable law; or

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g. Assessing Settling Defendant's compliance with this Consent Decree.

23. Access to Other Property. To the extent that areas where Work is to be performed hereunder are presently owned or leased by private persons other than Settling Defendant, Settling Defendant shall use its best efforts to secure from such persons access for Settling Defendant's contractors, the United States and their authorized representatives, as necessary to effectuate this Consent Decree. If access is not obtained despite best efforts within sixty (60) days of the date of entry of this Decree, Settling Defendant shall promptly notify the United States. The United States thereafter may assist Settling Defendant in obtaining access, to the extent necessary to effectuate the remedial action for the PCBs Operable Unit within the Facility, using such means as it deems appropriate. The United States' costs in this effort, including attorney's fees and other expenses, and any just compensation that the United States may be required to pay to the property owner, shall be considered costs of response and shall be reimbursed by Settling Defendant in accordance with Section XVI of this Decree (Reimbursement).

24. Access Authority Retained. Nothing herein shall restrict in any way the 'United States' access authorities and rights under CERCLA, RCRA or any other applicable statute, regulation or permit.

25. Sampling Availability. Upon request, after quality assurance and quality control review, Settling Defendant shall make available to U.S. EPA, U.S. DOI and the State the results of all sampling and/or tests or other data generated by Settling Defendant with respect to the implementation of this Consent Decree. U.S. EPA and U.S. DOI, upon request, shall make available to Settling Defendant the results of sampling and/or tests or other data generated by U.S. EPA, U.S. DOI or their contractors.

26. Split Samples. Upon request, a Party taking samples shall allow other Parties and/or their authorized representatives to take split or duplicate samples. The Party taking samples shall give at least fourteen (14) days prior notice of sample collection activity to the other Parties.

XI. REPORTING REQUIREMENTS

27. Monthly Progress Reports. Settling Defendant shall prepare and provide to U.S. EPA, U.S. DOI and the State written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month, and attach copies of appropriate supporting documentation; (2) include all results of sampling and tests and all other data received by Settling Defendant during the course of the Work which has passed quality assurance and quality control procedures, unless previously submitted; (3) include all plans and procedures completed under

the RD/RA Work Plan during the previous month, unless previously submitted; (4) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of construction; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of RD/RA Scope of Work or Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. Progress reports are to be submitted to U.S. EPA, U.S. DOI and the State by the fifteenth day of every month following the effective date of this Consent Decree until the Certification of Completion is issued under Paragraph 85(b) of this Consent Decree.

28. Other Reporting Requirements. Settling Defendant shall submit reports, plans and data required by the SOW, the RD/RA Work Plan, the Operation and Maintenance Plan or other approved plans in accordance with the schedules set forth in such plans.

29. Reports of Releases. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center, Settling Defendant shall promptly orally notify the U.S. EPA Remedial Project Manager ("RPM") or On-Scene Coordinator ("OSC"), or in the event of the unavailability of the U.S. EPA RPM or OSC, the Emergency Response Section, Region V, U.S. EPA, in addition to the reporting required by Section 103 or any other Federal or State statute. Within twenty (20) days of

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the onset of such an event, Settling Defendant shall furnish to U.S. EPA and U.S. DOI a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto if any actions have occurred since the prior written report.

30. Annual Report. Settling Defendant shall submit each year, within thirty (30) days of the anniversary of the entry of this Consent Decree, a summary report to the Court and the Parties setting forth the status of response actions at the PCBs Operable Unit within the Facility, which shall include at a minimum a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and the schedule for implementation of the remaining Work.

XII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

31. Designation/Powers. U.S. EPA shall designate a Remedial Project Manager ("RPM") and/or an On Scene Coordinator ("OSC") and U.S. DOI shall designate a Project Coordinator for the PCBs Operable Unit within the Facility, and each may designate other representatives, including U.S. EPA and U.S. DOI employees, and contractors and consultants, to observe and monitor, not inconsistent with the National Contingency Plan, the progress of any activity undertaken pursuant to this Consent

Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan. In addition, the RPM/OSC shall have the authority to halt any Work required by this Consent Decree and to take any necessary response action when conditions within the PCBs Operable Unit at the Facility may present an imminent and substantial endangerment to public health or welfare or the environment. When such conditions are not due to any noncompliance with the Consent Decree on the part of Settling Defendant, upon application, U.S. EPA will extend the Work schedule as appropriate. Settling Defendant shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work within the PCBs Operable Unit at the Facility.

32. Communications. To the maximum extent possible, except as specifically provided in this Consent Decree, communications between Settling Defendant, U.S. EPA and U.S. DOI concerning the implementation of the Work under this Consent Decree shall be made between the Project Coordinators and the RPM/OSC.

33. Identification of Personnel. Within twenty (20) days of the effective date of this Consent Decree, Settling Defendant, U.S. EPA and U.S. DOI shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator, and the RPM/OSC and Alternate RPM/OSC. If the identity of any of these persons changes, notice shall be given to the other Parties at least five (5) business days before the changes become effective.

XIII. FORCE MAJEURE

34. Definition. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Settling Defendant which delays or prevents the performance of any obligation under this Consent Decree notwithstanding Settling Defendant's best efforts to avoid the delay. Increased costs or expenses or non-attainment of the Performance or Cleanup Standards shall not constitute "force majeure" events.

35. Notice to RPM Required. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, Settling Defendant shall promptly orally notify the RPM and the U.S. DOI Project Coordinator, or in the event of their unavailability, the Director of the Waste Management Division, Region V, U.S. EPA. Within twenty (20) days of the event which Settling Defendant contends is responsible for the delay, Settling Defendant shall supply to U.S. EPA and U.S. DOI in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendant to prevent or minimize the delay, and the timetable for implementation of such measures. Unless excused by U.S. EPA, failure to give such oral notice and written explanation to U.S. EPA in a timely manner shall constitute a waiver of a claim of "force majeure".

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36. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the SOW or RD/RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and any succeeding phase of the Work affected by such delay. However, the additional time shall not exceed the actual duration of the delay caused by the "force majeure" event except for good cause shown. Settling Defendant may propose that U.S. EPA also extend the time for the performance of any succeeding phase of the Work in light of the "force majeure" event.

37. If U.S. EPA does not agree with Settling Defendant that the reason for the delay was a "force majeure" event, that the duration of the delay is or was warranted under the circumstances, or that the length of additional time requested by Settling Defendant for completion of the delayed Work is necessary, U.S. EPA shall so notify Settling Defendant in writing in a timely manner. Settling Defendant may initiate a formal dispute resolution proceeding under Paragraph 39 below no later than fifteen (15) days after receipt of such notice. In such a proceeding, Settling Defendant has the burden of proving that the event was a "force majeure" event, that best efforts were exercised to avoid and mitigate the effects of the delay, that the duration of the delay is or was warranted, that the additional time requested for completion of the Work involved is necessary to compensate for the delay, and that the notice provisions of Paragraph 35, supra, were complied with.

XIV. DISPUTE RESOLUTION

38. Pursuant to Section 121(e)(2) of CERCLA, 42 U.S.C. §9621(e)(2), the Parties to this Consent Decree shall attempt to resolve expeditiously any disagreements concerning the meaning, application or implementation of this Consent Decree. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal discussions between the Parties to the dispute. The period for informal discussions shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one Party notifies the other Parties in writing that there is a dispute.

39. In the event that the Parties cannot resolve a dispute by informal discussions under the preceding paragraph, any Party may initiate formal dispute resolution by giving a written "Formal Notice of Dispute" to the other Parties no later than the 15th day following the conclusion of the informal dispute resolution period. A Party may seek formal dispute resolution prior to the expiration of the informal discussion period where the circumstances require prompt resolution.

40. Formal dispute resolution for disputes pertaining to the selection or adequacy of the response action (including the selection and adequacy of any plans which are required to be submitted for government approval under this Decree and the

adequacy of Work performed) shall be conducted according to the following procedures:

a. Within ten (10) days of the service of the Formal Notice of Dispute pursuant to the preceding paragraph, or such other time as may be agreed to by the Parties, the Party who gave the notice shall serve on the other Parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position (hereinafter the "Statement of Position"), and shall provide copies of all supporting documentation on which such Party relies.

b. Opposing Parties shall serve their Statements of Position and copies of supporting documentation within fourteen (14) days after receipt of the complaining Party's Statement of Position or such other time as may be agreed to by the Parties.

c. U.S. EPA shall maintain an administrative record of any dispute governed by this paragraph. The record shall include the Formal Notice of Dispute, the Statements of Position, all supporting documentation submitted by the Parties, and any other material which the U.S. EPA decisionmaker considers in making the administrative decision provided for below. The record shall be available for inspection and copying by all Parties. The record shall be closed no less than five (5) days before the administrative decision is made, and U.S. EPA shall give all Parties prior notice of the date on which the record will close.

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d. Upon review of the administrative record, the Director of the Waste Management Division, Region V, U.S. EPA shall issue a final decision and order resolving the dispute.

e. Any decision and order of U.S. EPA pursuant to subparagraph (d) above shall be reviewable by this Court, provided that a Notice of Judicial Appeal is filed within ten (10) days of receipt of U.S. EPA's decision and order. Judicial review of disputes governed by this Paragraph 40 will be conducted on the administrative record and U.S. EPA's decision shall be upheld unless it is demonstrated to be arbitrary and capricious or otherwise not in accordance with law.

f. Notwithstanding the provisions in Paragraph 40(e) above, if Federal legislation establishes or provides for a different standard of review with respect to U.S. EPA's decisionmaking pertaining to the selection or adequacy of response action(s), and that standard applies to this Consent Decree, any Party may move the Court to modify Paragraph 40(e) to conform to such standard of review.

41. Judicial dispute resolution for any issues not governed by the preceding paragraph may be initiated by petition to the Court after compliance with Paragraphs 38 and 39, supra, and shall be governed by the Federal Rules of Civil Procedure. Except as specifically provided in other provisions of this Decree, e.g., Section XIII, this Decree does not establish procedures or burdens of proof for such dispute resolution proceedings.

42. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendant's obligations under this Consent Decree with respect to the disputed issue unless and until U.S. EPA agrees otherwise. U.S. EPA's position on an issue in dispute shall control until such time as the Court orders otherwise in accordance with the provisions of this Section.

43. Any applicable Stipulated Penalties continue to accrue during dispute resolution, as provided in Section XVII hereof.

44. Upon the conclusion of any formal or informal dispute resolution under this Section which has the effect of nullifying or altering any provision of the RD/RA Work Plan or any other plan or document submitted and approved pursuant to this Decree, Settling Defendant shall submit an amended plan or document, in accordance with the decision, to U.S. EPA within thirty (30) days of receipt of the written final order or decision. Amendments of the SOW as a result of dispute resolution proceedings are governed by Section VII above. Amendments of a plan or other document as a result of dispute resolution shall not alter any dates for performance unless such dates have been specifically changed by the order or decision or the Parties so agree. Extension of one or more dates of performance in the order or decision does not extend subsequent dates of performance for related or unrelated items of Work unless the order or decision expressly so provides or the Parties so agree.

XV. RETENTION AND AVAILABILITY OF INFORMATION

45. Settling Defendant shall retain and make available to U.S. EPA and U.S. DOI the following documents until ten (10) years following the Certification of Completion under Paragraph 85(b) of this Decree: all records and documents in its possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Settling Defendant, or on its behalf, with respect to the PCBs Operable Unit within the Facility and all documents, except those obtained from the United States, pertaining to its own or to any other person's liability for response action or costs under CERCLA. After this period of document retention, Settling Defendant shall notify U.S. EPA, U.S. DOJ and U.S. DOI at least ninety (90) days prior to the destruction of any such documents, and upon request by U.S. EPA, U.S. DOJ or U.S. DOI, Settling Defendant shall relinquish custody of the documents to U.S. EPA, U.S. DOJ or U.S. DOI.

46. Settling Defendant may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and pursuant to 40 CFR §2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B and, if determined to be

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

47. Information acquired or generated by Settling Defendant in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F), shall not be claimed as confidential by Settling Defendant.

48. In the event that Settling Defendant's obligation to produce documents under this Section includes documents which are privileged from disclosure under the attorney-client privilege, the work product doctrine or any other privilege recognized by law, Settling Defendant may seek to withhold production of such documents to avoid improper disclosure. At the time production is requested, Settling Defendant must provide the United States all information necessary to determine whether the document is privileged, including such information as is generally required under the Federal Rules of Civil Procedure. If the United States does not agree with the Settling Defendant's claim of privilege, Settling Defendant may seek protection of the documents from the Court. Settling Defendant shall not withhold as privileged any information or documents that are created, generated or collected pursuant to the requirements of this Decree, regardless of whether the document has been generated in the form of an attorney-client communication or other generally

privileged manner. Settling Defendant may not withhold as privileged any documents that are subject to the public disclosure provision of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F).

XVI. REIMBURSEMENT AND DAMAGES

49. a. Within forty-five (45) days of the entry of this Consent Decree, Settling Defendant shall pay two hundred and twenty thousand dollars (\$220,000.00) to the U.S. EPA Hazardous Substances Superfund, delivered to the U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 in the form of a certified or cashier check payable to "U.S. EPA Hazardous Substances Superfund," and referencing CERCLA Number P2 and DOJ Case Number 90-11-3-643. A copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region V and to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, at the addresses provided below in Section XXI (Notices). This payment is for reimbursement of past costs claimed by the U.S. EPA in this action through December 31, 1990, excluding costs incurred by U.S. DOJ the claim to which will be presented pursuant to Paragraph 50 of this Decree, relating to the PCBs Operable Unit within the Facility.

b. Settling Defendant agrees to pay to U.S. DOI, as the trustee for natural resources on, over, and under the Facility, the sum of \$2.5 million in settlement of any and all

claims of U.S. DOI against Settling Defendant for injury to or destruction or loss of natural resources resulting from releases of hazardous substances at or from the PCBs Operable Unit on the Facility. Settling Defendant shall deliver a certified or cashier's check for this amount, payable to the "U.S. Fish and Wildlife Service," within thirty (30) days after entry of this Consent Decree. The check will identify the funds as being for natural resource damages relating to the Crab Orchard National Wildlife Refuge PCBs Operable Unit. Settling Defendant's name and address should also be specified on the check. The check shall be delivered to: The Regional Director of the U.S. Fish and Wildlife Service, Region III, Federal Building--Fort Snelling, Twin Cities, Minnesota 55111. A copy of the check shall be provided to: The Director of Environmental Contaminants, U.S. Fish and Wildlife Service, Arlington, Virginia 22203; and the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, at the address provided below in Section XXI (Notices).

50. Settling Defendant shall pay all response costs not inconsistent with the NCP incurred by U.S. EPA relating to the PCBs Operable Unit within the Facility after the date set forth in the preceding paragraph, and shall pay all response costs not inconsistent with the NCP incurred by U.S. DOJ, (hereinafter referred to collectively as "Future Response Costs"), including all Oversight Costs, all costs of access required to be paid

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pursuant to Section X hereof, and all costs incurred in enforcing this Consent Decree.

51. U.S. EPA and U.S. DOJ shall submit their claims for Future Response Costs incurred up to the date of entry of the Decree as soon as practicable after entry of this Decree. U.S. EPA shall submit its claims for Future Costs periodically, and shall attempt to submit its claims at least annually, as practicable. Settling Defendant shall pay all portions of such claims which it does not dispute as provided below in this Paragraph. Payments shall be made according to the procedures set forth in Paragraph 49(a) above, within forty-five (45) days of the receipt of the claims. U.S. EPA and U.S. DOJ will provide itemized cost summaries or similar documents to Settling Defendant, who may inspect supporting cost documentation, to the extent it exists, upon request to the United States. If Settling Defendant believes that U.S. EPA or U.S. DOJ has made an accounting error or that a cost item that is included represents costs that are inconsistent with the NCP, Settling Defendant may, on or before the date payment is due, initiate the dispute resolution procedures set forth in Section XIV of this Decree.

52. Settling Defendant and U.S. DOI have apportioned responsibility for the payments and actions required under this Consent Decree as set forth in Appendix 5 to this Decree, and shall otherwise carry out and comply with the terms of Appendix 5. However, Settling Defendant remains liable to finance and perform the Work as set forth in Paragraph 5 of this Decree. The

Parties recognize that appropriated funding is necessary for U.S. DOI to meet its undertakings pursuant to this Consent Decree. No provision of this Consent Decree shall be interpreted as a commitment or requirement that U.S. DOI obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341. Interest shall begin to accrue on the unpaid amounts due Settling Defendant on the day following the date payment is due at a rate established by the Department of Treasury under 31 U.S.C. §3717.

XVII. STIPULATED PENALTIES

53. Settling Defendant shall pay daily stipulated penalties in the amounts set forth below to U.S. EPA for each failure to complete any of the following requirements of this Consent Decree in an acceptable manner and within the time schedules specified in the SOW, the RD/RA Work Plan or in other plans submitted and approved under this Consent Decree unless excused by "force majeure" as defined in Paragraph 34 above or otherwise forgiven under this Section. For any submittal or work which is scheduled prior to the entry date of this Consent Decree, stipulated penalties, if any, shall accrue from the date of entry of the Decree.

DAILY PENALTY

	<u>1 - 30</u> <u>DAYS</u>	<u>31 - 60</u> <u>DAYS</u>	<u>OVER 60</u> <u>DAYS</u>
Failure to submit progress reports:			
Monthly	\$ 150	\$ 300	\$ 600
O & M Oversight Report	\$ 300	\$ 600	\$ 1000
Annual Court Report	\$ 300	\$ 600	\$ 1000
 Failure to submit the following plans, documents or reports (draft or final):			
Treatability Test Work Plan	\$ 1000	\$ 2500	\$ 5000
Treatability Test Report	\$ 1000	\$ 2500	\$ 5000
Pre-Design Work Plan	\$ 1000	\$ 2500	\$ 5000
Pre-Design Results	\$ 1000	\$ 2500	\$ 5000
RD/RA Work Plan	\$ 1500	\$ 3000	\$ 6000
Design Plans and Specifications			
Preliminary (30%)	\$ 1000	\$ 2500	\$ 5000
Intermediate (60%)	\$ 1000	\$ 2500	\$ 5000
Pre-Final (95%)	\$ 1500	\$ 3000	\$ 6000
Final (100%)	\$ 2000	\$ 4000	\$ 8000
Operation and Maintenance Plan	\$ 750	\$ 1500	\$ 3000
Construction QAPP	\$ 1000	\$ 2500	\$ 5000
Schedules required under Section V, Task 4.B of the SOW			
Treatability Test Schedule	\$ 750	\$ 1500	\$ 3000
Pre-Design Schedule	\$ 750	\$ 1500	\$ 3000
RD Schedule	\$ 750	\$ 1500	\$ 3000
RA Schedule	\$ 1000	\$ 2500	\$ 5000

Penalties for the untimely submission of plans, documents or reports noted above will be forgiven if the Settling Defendant begins implementation of the remedial action in accordance with

the SOW within twenty-four (24) months after entry of this Decree.

Failure to complete any of the following major components of the Work according to the applicable schedule:

Treatability Test	\$ 1500	\$ 3000	\$ 6000
Delineation of the extent of contamination	\$ 750	\$ 1500	\$ 3000
Landfill siting assessments	\$ 1000	\$ 2500	\$ 5000
Excavation of contaminated soil and sediment	\$ 750	\$ 1500	\$ 3000
Incinerator trial burn (if applicable)	\$ 1500	\$ 3000	\$ 6000
Treatment by incineration or vitrification of the PCB contaminated material	\$ 2000	\$ 4000	\$ 8000
Treatment by stabilization/fixation of the metal-bearing, RCRA characteristic waste	\$ 1500	\$ 3000	\$ 6000
Construction of the landfill liner	\$ 1000	\$ 2500	\$ 5000
Construction of the cap over the landfill or vitrified area	\$ 1000	\$ 2500	\$ 5000
Closure of the excavated areas	\$ 750	\$ 1500	\$ 3000
Short-term Sampling (Pre-Certification)	\$ 300	\$ 600	\$ 3000

Penalties for the untimely completion of the major components of the Work noted above will be forgiven if Settling Defendant completes all remedial construction activities required under the SOW (including demobilization of the remedial construction

contractors) within twenty-four (24) months after commencement of remedial action.

Failure to comply with any of the notice requirements of this Decree	\$ 250	\$ 500	\$ 1000
Failure to take appropriate action to abate an endangerment under Section XXIII of this Decree (until appropriate action is taken or is no longer necessary)	\$ 5000	\$ 7500	\$10000

Such penalties that accrue under this Section which are subject to the forgiveness provisions of this Paragraph noted above shall be paid into an interest-bearing escrow account. If Settling Defendant does not satisfy the criteria of this Paragraph for forgiveness of any stipulated penalty paid into the escrow account, the United States may instruct the escrow agent to pay to the Hazardous Substance Superfund the amount of each penalty not forgiven, together with interest accumulated thereon, at any time following sixty (60) days after the beginning of implementation of the remedial action or sixty (60) days after remedial construction activities are completed, whichever is the date that triggers the forgiveness provision of this Paragraph with respect to the specific penalty.

54. All penalties begin to accrue on the day after complete performance is due or the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance or completion of performance. Any modifications of the time for performance shall be in writing and approved by U.S. EPA.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

55. Following U.S. EPA's determination that Settling Defendant has failed to comply with the requirements of this Consent Decree, U.S. EPA shall give Settling Defendant written notification of the same and describe the noncompliance. This notice shall also indicate the amount of penalties due, if any. However, penalties shall accrue as provided in the preceding paragraph regardless of whether U.S. EPA has notified Settling Defendant of the violation.

56. All penalties owed to U.S. EPA under this Section shall be payable within thirty (30) days of receipt of the notification of noncompliance, unless Settling Defendant invokes the dispute resolution procedures under Section XIV.

57. Settling Defendant may dispute U.S. EPA's right to the stated amount of penalties on the grounds that the violation did not occur, that it is excused by the Force Majeure provisions of Section XIII or that there was an accounting error in the calculation of the stated amount of penalties. The dispute resolution procedures under Section XIV shall be followed for such a dispute.

58. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendant's obligation to continue and complete the performance required hereunder.

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59. Penalties shall continue to accrue as provided in Paragraph 54 during the dispute resolution period, but need not be paid until the following events occur:

a. If the dispute is resolved by agreement or by decision or order of U.S. EPA which is not appealed to this Court, accrued penalties shall be paid to U.S. EPA within thirty (30) days of the agreement or the receipt of U.S. EPA's decision or order;

b. If the dispute is appealed to this Court, accrued penalties shall be paid to U.S. EPA within thirty (30) days of receipt of the Court's decision or order, except as provided in subparagraph (c) below;

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties into an interest-bearing escrow account within thirty (30) days of receipt of the District Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the Appellate Court decision, the escrow agent shall pay the balance of the account to U.S. EPA and/or to Settling Defendant to the extent that it prevails, as determined pursuant to the following paragraph.

60. Settling Defendant shall not owe stipulated penalties for any items upon which it prevails in dispute resolution. Should dispute resolution reach the judicial level, Settling Defendant shall request a specific determination from the Court

as to the issues and items upon which it has prevailed and as to the amount of any stipulated penalties owed.

61. Notwithstanding the above provisions, Settling Defendant shall have the right to petition the Court or U.S. EPA (according to the level of dispute resolution reached) for forgiveness of stipulated penalties that accrue during dispute resolution for items upon which it did not prevail, based on a finding (1) that the delay in work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding; (2) that Settling Defendant's position regarding the dispute had substantial support in law and fact and had a reasonable possibility of prevailing, considering the applicable standard of review; and (3) that Settling Defendant sought dispute resolution at the earliest practicable time and took all other appropriate steps to avoid any delay in remedial action work as a result of the dispute. If the Court or U.S. EPA so finds, they may grant an appropriate reduction in the stipulated penalties that accrued during the dispute resolution period. Settling Defendant shall have the burdens of proof and persuasion on any petition submitted under this Paragraph.

62. Interest shall begin to accrue on the unpaid balance of stipulated penalties on the day following the date payment is due. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling

charge will be assessed at the end of each thirty-day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within ninety (90) days of the due date. Penalties shall be paid to U.S. EPA as specified in Paragraph 49 of this Decree.

63. If Settling Defendant fails to pay stipulated penalties in accordance with this Section, the United States may institute proceedings to collect the penalties. In any such proceeding, penalties shall be paid as provided in Paragraph 49(a) above.

64. Notwithstanding any of the above provisions, U.S. EPA may elect to assess civil penalties and/or to bring an action in U.S. District Court pursuant to Section 109 of CERCLA, 42 U.S.C. §9609, to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude U.S. EPA from electing to pursue any other remedy or sanction to enforce this Consent Decree, and nothing shall preclude U.S. EPA from seeking statutory penalties against Settling Defendant for violations of statutory or regulatory requirements.

XVIII. COVENANT NOT TO SUE

65. Except as otherwise specifically provided in the following paragraph or elsewhere in this Decree, the United States covenants not to sue or to take administrative action against the Settling Defendant for "Covered Matters." "Covered Matters" shall mean any and all claims available to the United States under Sections 106 and 107 of CERCLA and Section 7003 of

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RCRA arising from or relating to the PCBs Operable Unit of the Facility, including claims for natural resource damages (and assessment costs). With respect to future liability, this covenant not to sue shall take effect upon certification by U.S. EPA of the completion of the remedial action concerning the PCBs Operable Unit of the Facility, pursuant to Section XXVI below.

66. "Covered Matters" does not include:

- a. Liability arising from hazardous substances removed from the Facility;
- b. Criminal liability;
- c. Claims based on a failure by the Settling Defendant to meet the requirements of this Consent Decree;
- d. Any matters for which the United States is owed indemnification under Section XIX hereof;
- e. Liability for violations of Federal or State law which occur during implementation of the remedial action; or
- f. Liability for performance of remedial design or remedial action at the Facility other than the Work required hereunder (i.e., liability regarding other sites or operable units within the Facility), or for reimbursement of the United States for any response costs other than those paid hereunder (i.e., response costs relating to other sites or operable units within the Facility).

67. Notwithstanding any other provision in this Consent Decree, (1) the United States reserves the right to institute proceedings in this action or in a new action or to issue an

Order seeking to compel the Settling Defendant to perform any additional response Work at the PCBs Operable Unit within the Facility, and (2) the United States reserves the right to institute proceedings in this action or in a new action seeking to reimburse the United States for its response costs relating to the PCBs Operable Unit within the Facility, if:

a. For proceedings prior to U.S. EPA certification of completion of the remedial action concerning the PCBs Operable Unit at the Facility:

- (i) conditions at the Facility, previously unknown to the United States, are discovered after the entry of this Consent Decree; or
- (ii) information is received, in whole or in part, after the entry of this Consent Decree;

and these previously unknown conditions or this information indicates that the remedial action for the PCBs Operable Unit is not protective of human health and the environment; and

b. For proceedings subsequent to U.S. EPA certification of completion of the remedial action concerning the PCBs Operable Unit within the Facility:

- (i) conditions at the Facility, previously unknown to the United States, are discovered after the certification of completion by U.S. EPA; or
- (ii) information is received, in whole or in part, after the certification of completion by U.S. EPA;

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

68. For purposes of subparagraph (a) of the preceding paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the ROD for the PCBs Operable Unit, attached as Appendix 1 hereto, or in documents contained in U.S. EPA's administrative record supporting the ROD. For purposes of subparagraph (b) of the preceding paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the ROD for the PCBs Operable Unit, the administrative record supporting the ROD, or in reports or other documents submitted to U.S. EPA pursuant to this Consent Decree or generated by U.S. EPA in overseeing this Consent Decree prior to certification of completion.

69. Notwithstanding any other provisions in this Consent Decree, the covenant not to sue in this Section shall not relieve Settling Defendant of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD and the SOW, which are incorporated herein, and the United States reserves its rights to take response actions at the PCBs Operable Unit within the Facility in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States or the State; or 3) incurred by the United States

or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the PCBs Operable Unit within the Facility.

70. a. Notwithstanding any other provision of this Consent Decree (including Appendix 5), the United States, on behalf of U.S. DOI as natural resource trustee, reserves the right to institute proceedings against Settling Defendant in a new action seeking recovery of natural resource damages under CERCLA arising from or relating to the PCBs Operable Unit based on injury to, destruction of, or loss of natural resources that results from conditions which were unknown to the United States as of the date of lodging of the Consent Decree. For purposes of this paragraph, the conditions known to the United States include the conditions of the PCBs Operable Unit, and of any areas on the Facility affected by PCBs or other hazardous substances, that were identified in the ROD for the PCBs Operable Unit or in the RI/FS or other documents contained in the administrative record supporting the ROD or identified in documents or other information recorded in any form in the possession of U.S. DOI as of the date of lodging of this Consent Decree. Settling Defendant expressly reserves all of its rights and defenses with respect to any action by the United States under this paragraph.

b. Except as otherwise specifically provided in this Section or elsewhere in this Decree (including Appendix 5), Settling Defendant covenants not to sue or to take administrative action against the United States for any and all claims under any

provision of Federal or State law relating to the PCBs Operable Unit of the Facility. However, Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent, reckless or willful actions taken directly by the United States (not including oversight or approval of Settling Defendant's plans or activities) that 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.

71. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Facility. The United States expressly reserves its right to continue to sue any person in connection with this Facility, and to continue to sue the Settling Defendant except in connection with the PCBs Operable Unit of the Facility as provided in Part XVIII above. Settling Defendant expressly reserves any and all rights, claims and defenses it may have with respect to any person other than Plaintiff, and expressly reserves its right to assert any claims with respect to Plaintiff except as specifically provided in this Consent Decree, including Appendix 5. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled,

as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2).

XIX. INDEMNIFICATION; OTHER CLAIMS

72. Settling Defendant agrees to indemnify, save and hold harmless the United States and/or its representatives from any and all claims or causes of action arising from the acts or omissions of Settling Defendant and/or its representatives, including contractors and subcontractors, in carrying out the activities pursuant to this Consent Decree. The United States shall notify Settling Defendant of any such claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed. This indemnity does not include any claims or causes of action arising from or on account of acts or omissions of the United States, its agencies, departments, officials or employees.

73. The United States does not assume any liability of Settling Defendant by virtue of entering into this agreement or by virtue of any designation that may be made of Settling Defendant as U.S. EPA's or U.S. DOI's representatives under Section 104(e) of CERCLA, 42 U.S.C. §9604(e), for purposes of carrying out this Consent Decree. The United States is not to be construed as a party to any contract entered into by Settling Defendant in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent

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Decree is solely the responsibility of Settling Defendant, except for post-certification operation and maintenance, which U.S. DOI has agreed to implement.

74. Settling Defendant waives its rights to assert any claims against the Hazardous Substances Superfund under CERCLA for any costs incurred pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Superfund.

XX. INSURANCE/FINANCIAL RESPONSIBILITY

75. Settling Defendant shall purchase and maintain in force, for the duration of the remedial action Work at the PCBs Operable Unit within the Facility, comprehensive general liability and automobile insurance with limits of \$1 million dollars, combined single limit. In addition, for the duration of this Consent Decree, Settling Defendant 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 Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work at the PCBs Operable Unit within the Facility, Settling Defendant shall provide U.S. EPA and U.S. DOI with a certificate of insurance and a copy of the insurance policy. If Settling Defendant demonstrates by evidence satisfactory to the United States and the State that any contractor or subcontractor maintains insurance equivalent to

that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Settling Defendant needs to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

76. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall provide financial security in the amount of \$25 million to assure completion of the Work at the PCBs Operable Unit in one of the following forms: (1) trust fund; (2) performance bond; (3) letter(s) of credit; (4) guarantee by a third party; or (5) internal financial information sufficient to demonstrate to U.S. EPA's satisfaction annually, on the anniversary of the effective date of this Consent Decree, that Settling Defendant has sufficient net assets to complete the Work. If Settling Defendant seeks to provide financial security through a guarantee by a third party, Settling Defendant shall demonstrate to U.S. EPA's satisfaction annually, on the anniversary of the effective date of this Consent Decree, that the guarantor has sufficient net assets to complete the Work. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendant shall, within forty-five (45) days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in this Paragraph. No more frequently than at six month intervals, Settling Defendant may propose to reduce the amount of

such financial security based on the receipt of bids for Work, on cost estimates for the remainder of the Work and similar information.

XXI. NOTICES

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

As to the U.S. EPA:

- a. Regional Counsel
Attn: Crab Orchard
National Wildlife
Refuge Coordinator
(5CS)
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604
- b. Director, Waste Management
Division
Attn: Crab Orchard National
Wildlife Refuge Remedial
Project Manager (5HS-11)
U.S. Environmental Protection
Agency
230 S. Dearborn Street
Chicago, Illinois 60604

As to the State of Illinois:

- a. Office of the Illinois
Attorney General
Attn: Chief, Environ-
mental Control Division
500 South Second Street
Springfield, IL 62706
- b. Director, Illinois
Environmental Protection
Agency
Attn: Crab Orchard
National Wildlife Refuge
Project Manager
Federal Site Unit
2200 Churchill Road
Springfield, IL 62794

As to the U.S. DOJ:

- a. Assistant Attorney General
Environment & Natural
Resources Division
U.S. Department of Justice

As to the U.S. DOI:

- a. Leanne Moore
U.S. Fish and Wildlife
Service
Marion Suboffice

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10th & Pennsylvania Ave.,
N.W.
Washington, D.C. 20530
Ref. D.J. # 90-11-3-643

Rural Route 3-Box 32
Marion, Illinois 62959

As to Settling Defendant
Schlumberger Industries, Inc.:

- a. Linda Jennett
Schlumberger Industries, Inc.
300 N. Main Street, Suite 200
Greenville, SC 29601

XXII. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

78. The United States agrees, and this Court so finds, that the Work and additional Work if any, if properly performed pursuant to this Consent Decree, is consistent with the provisions of the National Contingency Plan.

XXIII. ENDANGERMENT AND EMERGENCY RESPONSE

79. In the event of any action or occurrence during the performance of the Work which causes a release or a substantial threat of a release of a hazardous substance into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment, of which Settling Defendant knew or should have known, Settling Defendant shall immediately take all appropriate action, pursuant to the Health and Safety Contingency Plan, to prevent, abate, or minimize such release and endangerment, and shall immediately notify the RPM or, if the RPM is unavailable, the Emergency Response Section, Region V, U.S. EPA. In the event that Settling Defendant fails to take appropriate response action as required

by this paragraph and the United States takes such action instead, Settling Defendant shall reimburse all costs of the response action not inconsistent with the NCP. Payment of such response costs shall be made in the manner provided in Section XVI hereof.

80. Nothing in the preceding paragraph or in this Consent Decree shall be deemed to limit the response authority of the United States under CERCLA Section 104, 42 U.S.C. §9604.

XXIV. COMMUNITY RELATIONS

81. Settling Defendant shall cooperate with U.S. EPA and U.S. DOI in providing information to the public regarding the progress of remedial design and remedial action at the PCBs Operable Unit within the Facility. As reasonably requested by U.S. EPA or U.S. DOI, Settling Defendant shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or U.S. DOI to explain activities at or concerning the Facility.

XXV. RETENTION OF JURISDICTION; MODIFICATION

82. Retention of Jurisdiction. This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, or 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 XIV hereof.

83. Modification.

a. No material modification shall be made to this Consent Decree without written notification to and written approval of the Parties and the Court except as provided in this Paragraph or in Section VII (Modification of the Scope of Work; Additional Work). The notification required by this Section shall set forth the nature of and reasons for any requested modification. No oral modification of this Consent Decree shall be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

b. Modifications to previously approved Work Plans or other documents submitted pursuant to this Consent Decree or the SOW may be made by written agreement between U.S. EPA, in consultation with U.S. DOI and after the State has had a reasonable opportunity to review and comment, and the Settling Defendant, and a copy of any such modifications shall be filed with the Court. If Settling Defendant proposes a modification to a previously approved document to which U.S. EPA, in consultation with U.S. DOI and after the State has had a reasonable opportunity for review and comment, does not agree, Settling Defendant may initiate dispute resolution under Section XIV of this Decree.

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XXVI. EFFECTIVE DATE AND
CERTIFICATION OF
COMPLETION OF REMEDY

84. This Consent Decree shall be effective upon the date of its entry by the Court, except to the extent provided in Section VI, Paragraph 13 regarding the commencement of remedial design upon lodging and in Section X, Paragraph 22 regarding access to the Facility.

85. Certification of Completion of Remedial Action.

a. Application. When Settling Defendant believes that operation of the treatment technologies (incineration and stabilization or ISV) and construction of the containment system have been completed and that the demonstration of compliance with Cleanup and Performance Standards has been made in accordance with this Consent Decree, it shall submit to the United States a Notification of Completion of Remedial Action and a final report which summarizes the Work done, any modification made to the SOW or Work Plan(s) thereunder relating to the Cleanup and Performance Standards, and data demonstrating that the Cleanup and Performance Standards have been achieved. The report shall be prepared and certified as true and accurate by a registered professional engineer and the Settling Defendant's Project Coordinator, and shall include appropriate supporting documentation.

b. Certification. Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA shall timely review the final report and supporting documentation, and the remedial

actions taken. U.S. EPA shall issue a Certification of Completion of Remedial Action upon a determination that Settling Defendant has completed operation of the treatment systems and has fully constructed the containment system in accordance with the terms of this Consent Decree and demonstrated compliance with Cleanup and Performance Standards.

c. Post-Certification Obligations. Following Certification, U.S. DOI shall perform operation and maintenance of the landfill or vitrified area, as described in the SOW and the Operation and Maintenance Plan.

86. Effect of Settlement. The entry of this Consent Decree is not and shall not be construed to be an acknowledgment by the Parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Nothing in this Consent Decree, including the participation by any Party in this Consent Decree, shall be considered an admission of liability or fact for any purpose, and this Consent Decree and the fact of such participation shall not be admissible in any judicial or administrative proceeding (except a proceeding to enforce this Decree or regarding insurance coverage), as provided in Section 122(d)(1)(B) of CERCLA, 42 U.S.C. §9622(d)(1)(B). Nothing in this Consent Decree nor any performance hereunder shall create any rights on behalf of any non-Party.

ENTERED this 27th day of August, 1998.

James L. Foreman
U.S. District Judge

The Parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of Section 122(i) of CERCLA, 42 U.S.C. §9622(i), and 28 CFR §50.7.

UNITED STATES OF AMERICA

By: Barry M. Hartman
Barry M. Hartman
Acting Assistant Attorney General
General
Environment & Natural Resources
Division
U.S. Department of Justice
10th and Pennsylvania Ave., N.W.
Washington, D.C. 20530

Date: Sept. 6, 1991

By: Frank Bentkover
Frank Bentkover
Trial Attorney
Environmental Enforcement
Section
Environment & Natural
Resources Division
U.S. Department of Justice
10th and Pennsylvania
Ave., N.W.
Washington, D.C. 20530

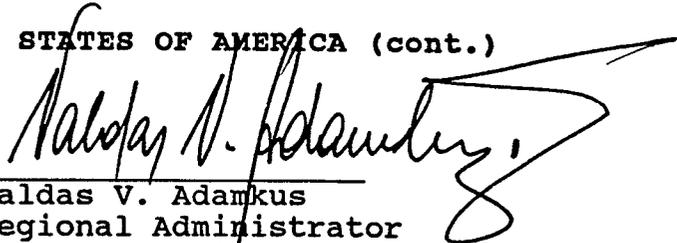
Date: July 15, 1991

By: Robert Lefevre
Robert Lefevre
Trial Attorney
Environmental Defense
Section
Environment & Natural
Resources Division
U.S. Department of
Justice
10th and Pennsylvania
Ave., N.W.
Washington, D.C. 20530

Date: July 15, 1991

UNITED STATES OF AMERICA (cont.)

By:


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

Date:

May 13th, 1991

UNITED STATES OF AMERICA (cont.)

By: _____

John D. Schrote
John D. Schrote
Acting Assistant Secretary
Policy, Management and Budget
U.S. Department of the Interior
Washington, D.C. 20240

By: _____

Thomas L. Sansone
~~Thomas L. Sansone~~
Deputy Solicitor
U.S. Department of the
Interior
Washington, D.C. 20240

Date: _____

Date: _____

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The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Schlumberger Industries, Inc., et al.

Schlumberger Industries, Inc.

By: Constance H. Cantrell
Name of Officer (Type)
Constance H. Cantrell
(Signature of officer)
Secretary
Title

Date: 4/22/91

(Place corporate seal and acknowledgment of authority of officer to sign here)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Name

Address

Prior Notice to all Parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

I hereby certify that on this 22nd day of April, 1991, there appeared before me Constance H. Cantrell, and acknowledged this instrument to be her act as Secretary of Schlumberger Industries, Inc.

Susan A. Anderson
Notary Public, Fulton Co., Georgia

MY COMMISSION EXPIRES MARCH 5, 1995

LIST OF APPENDICES

- Appendix 1 - Record of Decision
- Appendix 2 - Scope of Work
- Appendix 3 - Map of Facility
- Appendix 4 - Restrictive Covenant
- Appendix 5 - Agreement Between U.S. DOI and Schlumberger Industries, Inc.