ROSE HILL REGIONAL LANDFILL SUPERFUND SITE
SOUTH KINGSTOWN, RHODE ISLAND

TOWN OF SOUTH KINGSTOWN, R.I.

AND

TOWN OF NARRAGANSETT, R.I.

SETTLING PARTIES

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND
CIVIL ACTION NO.

CONSENT DECREE
UNDER CERCLA SECTIONS 106 AND 107

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EXHIBIT LIST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and THE STATE OF RHODE ISLAND Plaintiffs, v. THE TOWN OF SOUTH KINGSTOWN, R.I. and THE TOWN OF NARRAGANSETT, R.I. Defendants.	Civil Action No. _____ Judge _____

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint against the defendants in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken for Operable Unit 1 at or in connection with the release or threatened release of hazardous substances at the Rose Hill Regional Landfill

Superfund Site in South Kingstown, Washington County, Rhode Island ("the Site"). The Operable Unit 1 source control remedy was selected by EPA in the Record of Decision for the Rose Hill Landfill Site, dated December 20, 1999.

B. The State of Rhode Island and Providence Plantations (the "State") also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and R.I.G.L. Chapter 23-18.9 and 23-19.1. The State in its complaint seeks injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken for Operable Unit 1 at or in connection with the release or threatened release of hazardous substances at the Rose Hill Regional Landfill.

C. In accordance with Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Department of the Interior and the Department of Commerce - National Oceanographic and Atmospheric Administration on August 10, 2000 of negotiations with Settling Defendants regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the Trustee(s) to participate in the negotiation of this Consent Decree.

D. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

E. The United States, the State, and Settling Defendants contemplate that the State shall implement the remedial design, remedial action, and operation and maintenance of the Operable Unit 1 Source Control Remedy at the Rose Hill Regional Landfill, and that Settling Defendants shall make payments and perform various items of work pertaining to Operable Unit 1 as

provided herein;

F. The United States, the State, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

b. The State and Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant or the State with respect to the Site or the Work and shall condition all contracts entered into hereunder upon the performance of the Work in

conformity with the terms of the Consent Decree. The State or its contractors and Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The State and Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

IV. DEFINITIONS

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

a. "Additional U.S. RD/RA Response Costs" shall mean any costs, including direct and indirect costs, that EPA incurs and pays at or in connection with the Site for Operable Unit 1 remedial design/remedial action activities that exceed $8,500,000 (fifty percent of the estimated cost of Operable Unit 1 remedial design/remedial action activities at the Site).

b. "Arbitrator," for purposes of Sections XVI, XVII and XXII (Paragraph 75) of the Consent Decree, shall mean the RIDEM Administrative Adjudication Division hearing officer.

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

d. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent

Decree shall control.

e. "Cooperative Agreement" shall mean the Cooperative Agreement, Rose Hill Regional Landfill Superfund Site, dated September 25, 2001, for the remedial design for the Operable Unit 1 Source Control Remedy, a copy of which, including the Remedial Design Scope of Work, is attached as Appendix E.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

h. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

i. "Effective date" of this Consent Decree shall mean the date on which it is entered by the Court.

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

k. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "Expected Life" means the period of time the cap remains in place and the period of time necessary for all monitoring and/or other measures to achieve and maintain cleanup goals established in the ROD.

m. "Federal Natural Resource Trustees" shall mean the National Oceanic and

Atmospheric Administration (NOAA) of the United States Department of Commerce and the United States Department of the Interior (DOI) and any successor departments, agencies or instrumentalities of the United States.

n. "Final Approval of the Consent Decree," for purposes of Paragraph 6 and Paragraph 11 of the Consent Decree, shall mean the earliest date on which all of the following have occurred: (1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

o. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs at or in connection with the Site for Operable Unit 1, beginning October 1, 2000, except for any Additional U.S. RD/RA Response Costs. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Costs that has accrued during the period from October 1, 2000, to the date of entry of this Consent Decree.

p. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between October 1, 2000, and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

q. "Interest" shall mean interest at the rate specified for interest on investments of

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

r. "Municipal sewage sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

s. "Municipal solid waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, and glass) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

t. "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 101(16) and includes the costs of natural resource damage assessment and restoration actions.

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

v. "Operable Unit 1" or "Operable Unit 1 Source Control Remedy" shall mean

all work that is to be performed to implement the Record of Decision for the First Operable Unit–Source Control at the Site, signed by the Director of the Office of Site Remediation and Restoration, EPA New England, on December 20, 1999. Operable Unit 1, the first operable unit of a phased approach to cleanup of the Site, generally includes source control through excavation, consolidation and capping of the waste, treatment of the landfill gas, institutional controls, and monitoring and data collection which will inform the future decision regarding management of the migration of contaminants to ground and surface waters. The Operable Unit 1 Source Control Remedy includes, without limitation, remedial design, remedial action, and operation and maintenance of the remedy.

w. "Operation and Maintenance" or "O&M" shall mean all activities necessary to implement the ROD after the Remedial Action has been constructed and determined to be Operational and Functional in accordance with the Remedial Action Statement of Work, including all activities required to maintain the effectiveness of the Operable Unit 1 Source Control Remedy, which are to be performed in accordance with the Operation and Maintenance Plan, Demonstration of Compliance Plan, and Long Term Monitoring Plan to be developed pursuant to this Consent Decree and the Remedial Action Statement of Work attached as Appendix F. Operation and Maintenance shall include groundwater monitoring, leachate collection (if any), and landfill gas collection and monitoring after the response actions constructed are deemed Operational and Functional by the State, with concurrence by EPA.

x. "Operational and Functional" shall have the meaning provided for under 40 C.F.R. § 300.435(f)(2).

y. "Paragraph" shall mean a portion of this Consent Decree identified by an

Arabic numeral or an upper or lower case letter.

z. "Parties" shall mean the United States, the State, and Settling Defendants.

aa. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States has paid at or in connection with the Site through September 30, 2000, plus accrued Interest on all such costs through such date.

ab. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Response Action set forth in the Record of Decision and Section IV of the Remedial Design Scope of Work.

ac. "Plaintiffs" shall mean the United States and the State of Rhode Island.

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

ae. "Record of Decision" or "ROD" shall mean the Operable Unit 1 Record of Decision for the Rose Hill Regional Landfill Superfund Site signed by EPA on December 20, 1999.

af. "Reimbursable Costs," for purposes of Section XVII of the Consent Decree, shall mean costs incurred by the State for performance of Operable Unit 1, including (1) all third party costs for design, construction, oversight, materials and other Site Work; and (2) RIDEM staff time, including payroll and fringe benefits, plus a markup at the indirect rate applied to State costs that is agreed to between EPA and the State in cooperative agreements under CERCLA. Reimbursable Costs do not include (i) any costs paid for or reimbursed by the United States; (ii) any other indirect costs the State may incur or pay; (iii) any past costs; or (iv) Natural Resource Damages. For purposes of the definition of "Reimbursable Costs," the term "third party" refers

to all persons, including but not limited to contractors hired by the State, other than the parties to this Consent Decree.

ag. "Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken to implement the ROD, which are to be performed in accordance with the final plans and specifications developed during the Remedial Design, the Remedial Action Statement of Work ("RA SOW") attached hereto as Appendix F, and the Remedial Action Work Plans developed thereunder. Remedial Action shall include groundwater monitoring, leachate collection, and gas collection and monitoring until the response actions constructed are determined to be Operational and Functional.

ah. "Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 19 of this Consent Decree and the Remedial Action Statement of Work, and any amendments thereto.

ai. "Remedial Design" shall mean those activities to be undertaken to develop the final plans and specifications for the Remedial Action specified in the ROD, which are to be performed pursuant to the Remedial Design Work Plan under the terms and conditions of the Rose Hill Regional Landfill Cooperative Agreement attached hereto as Appendix E, including its remedial design Scope of Work ("Remedial Design Scope of Work" or "RD SOW"). The Remedial Design shall include groundwater monitoring during the Remedial Design.

aj. "Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 15 of this Consent Decree and the Remedial Design Scope of Work.

ak. "Response Action" shall mean those actions implemented or to be implemented pursuant to CERCLA at the Rose Hill Regional Landfill Superfund Site under the

first operable unit Record of Decision for the Rose Hill Regional Landfill Superfund Site signed on December 20, 1999.

al. "RIDEM" shall mean the Rhode Island Department of Environmental Management, and any successor agencies, departments, or instrumentalities of the State of Rhode Island.

am. "Rose Hill Regional Landfill Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and this Consent Decree.

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

ao. "Settling Defendants" shall mean the Town of South Kingstown, Rhode Island and the Town of Narragansett, Rhode Island and are listed on Appendix A.

ap. "State Natural Resources Trustee" shall mean the Director of RIDEM, or his or her designee.

aq. "Site" shall mean the Rose Hill Regional Landfill Superfund Site, encompassing approximately 70 acres, bordered by Rose Hill Road on the west, the Saugatucket River on the east, and residential private property to the north and south in the Town of South Kingstown, Washington County, State of Rhode Island, and generally shown on the map included in Appendix B.

ar. "State" shall mean the State of Rhode Island and Providence Plantations.

as. "State Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs that the State incurs and pays at or in connection with the Site after

September 30, 2000, for response actions for Operable Unit 1, but State Future Response Costs do not include amounts paid or reimbursed to the State by EPA.

at. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

au. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Rhode Island General Laws, Chapter 23, Section 19.14-3.

av. "Work" shall mean all work required to implement the Operable Unit 1 Source Control Remedy, including remedial design, remedial action, and operation and maintenance activities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to provide for the implementation of the Operable Unit 1 Source Control Remedy and to resolve certain claims of the United States and the State against Settling Defendants, as outlined in the Covenant Not to Sue by Plaintiffs, by allowing Settling Defendants to make an up-front cash payment and a commitment to make future payments and provide in-kind services, as provided in Sections VI, VII, IX, X, XVI and XVII herein, to address their liability for Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, and Natural Resource Damages, subject to the reservations of rights included in Section XX (Reservation of Rights by Plaintiffs).

VI. ESCROW OBLIGATIONS

5. a. Prior to or within ten (10) business days after their signing of this Decree, Settling Defendants shall establish an escrow account (the Escrow) bearing interest on commercially reasonable terms in a federally chartered bank in Massachusetts, Rhode Island, or New York with assets of over $100 million (the Escrow Agent), and Settling Defendants shall cause to be paid into the Escrow the amount of $ 4,000,000, plus Interest at a rate of 3.35 percent on $4,000,000 between March 31, 2002 and the date of payment into the Escrow. The Escrow Agreement between Settling Defendants and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Rhode Island in connection with any litigation relating to the Escrow or the Escrow agreement. A copy of the Escrow Agreement is attached as Appendix C. Settling Defendants shall provide written notification to EPA and DOJ of the creation and funding of the Escrow within seven days after the payment has been made at the addresses listed in Section XXVI (Notices and Submissions).

b. All funds paid into the Escrow by Settling Defendants shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraph 6 or unless one of the following events occurs: (1) the United States or the State of Rhode Island withdraws its consent to entry of the Decree after the Decree has been lodged, pursuant to Paragraph 96; or (2) a final judicial determination is made that the Decree will not be approved and entered. If any of (1), (2) or (3) above occurs, all sums in the Escrow shall be returned to Settling Defendants. Any risk of loss of funds paid into Escrow shall be borne by Settling Defendants.

c. All interest accrued in the Escrow shall be paid to Plaintiff United States in accordance with Paragraph 6 at the time the principal payments under those paragraphs are made. Settling Defendants will be responsible for all fees, taxes, costs and charges of the Escrow, and those amounts will not be deducted from the principal or accrued interest of the escrow account to Plaintiff United States.

VII. PAYMENT REGARDING UNITED STATES' RESPONSE COSTS

6. a. Within ten (10) business days after receipt of notice of Final Approval of the Consent Decree, Settling Defendants shall cause the full amount paid into the Escrow under Paragraph 5 and all accrued interest thereon through the date of payment to be disbursed from the Escrow to the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs.

b. Payment of the amount required to be disbursed under Paragraph 6.a. shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2002V00176, EPA New England Region and Site Spill ID Number 10A5, and DOJ Case Number 90-11-3-06627. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Rhode Island following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time (Standard or Daylight Savings Time, as applicable) shall be credited on the next business day.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions).

7. The total amount to be paid pursuant to Paragraph 6 shall be deposited in the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment of Portion of Additional U.S. Response Costs. Settling Defendants shall reimburse the EPA for 30% of any Additional U.S. RD/RA Response Costs incurred not inconsistent with the National Contingency Plan. If Additional U.S. RD/RA Response Costs are incurred, EPA will send Settling Defendants one or more bills requiring payment of Settling Defendants' percentage, accompanied by an EPA-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Settling Defendants shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 9 (Resolution of Disputes Concerning Payment of Portion of Additional U.S. Response Costs). Payment to EPA shall be made by Settling Defendants by certified check or checks or cashiers' check or checks payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, Rose Hill Regional Landfill Superfund Site, EPA New England Region and Site Spill ID Number 10A5, USAO File Number 2002V00176, and DOJ Case Number 90-11-3-06627, and shall be sent to:

Region 1
U.S. Environmental Protection Agency
Attn: Hazardous Substance Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

At the time of each payment to EPA, Settling Defendants shall send notice that such payment has

been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions). Payment(s) to EPA pursuant to this Paragraph shall be deposited in the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. Resolution of Disputes Concerning Payment of Portion of Additional U.S. Response Costs.

a. Use of Dispute Resolution. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Defendants' obligation to reimburse EPA for 30% of Additional U.S. RD/RA Response Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Additional U.S. RD/RA Response Costs.

b. Standard. Settling Defendants may only contest payment of Additional U.S. RD/RA Response Costs if they determine that EPA has made an accounting error, or if they allege that a cost item that is included represents costs that are inconsistent with the National Contingency Plan.

c. Notice. Any objection to the payment of Additional U.S. RD/RA Response Costs shall be made in writing by Settling Defendants within 30 days of receipt of the bill requiring the payment and must be sent to EPA and DOJ pursuant to Section XXVI (Notices and Submissions). Any such objection (hereinafter referred to as the "Notice of Objection") shall specifically identify the contested Additional U.S. RD/RA Response Costs and the basis for objection.

d. Payment of Undisputed Amounts. In the event of an objection to some but not all Additional U.S. RD/RA Response Costs billed, Settling Defendants shall, within 30 days of receipt of the bill requiring payment, pay all uncontested amounts to EPA in accordance with the instructions in Paragraph 8.

e. Escrow for Disputed Amounts. Within 30 days of receipt of the bill requiring payment, Settling Defendants shall establish an interest-bearing escrow account in a federally chartered bank in Rhode Island, Massachusetts, or New York with assets of over $100 million, bearing interest at a commercially reasonable rate, and remit to that escrow account funds equivalent to the amount of the contested portion of the Additional U.S. RD/RA Response Costsbilled. Settling Defendants shall send to EPA and DOJ a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

f. Informal Dispute Resolution.

i. Any dispute with respect to Additional U.S. RD/RA Response Costs shall in the first instance be the subject of informal negotiations between EPA and Settling Defendants. The period for informal negotiations shall not exceed 20 days from EPA's receipt of the Notice of Objection, unless such time limit is modified by written agreement of EPA and Settling Defendants. If the dispute is resolved by informal negotiations, the agreement shall be reduced to writing, which, upon signature by EPA and Settling Defendants, shall be incorporated into and become an enforceable part of this Consent Decree. Within 10 days of the execution of the agreement, Settling Defendants shall pay to EPA from the escrow account any amount owed

to EPA pursuant to the written agreement, plus all interest on such amount that has accrued between the date that payment was due under Paragraph 8 (Payment of Portion of U.S. Additional Response Costs) through the date of payment.

g. Formal Dispute Resolution.

i. Initiation. If the dispute as to Additional U.S. RD/RA Response Costs is not resolved by informal dispute resolution, the position advanced by EPA shall be considered binding unless Settling Defendants, within 10 days after the conclusion of the informal dispute resolution period, commence formal dispute resolution by serving on the United States a Notice of Formal Dispute Resolution along with a written Statement of Position on the matter in dispute, which shall include, but not be limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants.

ii. Within 30 days after receipt of Settling Defendants Statement of Position, EPA shall serve on Settling Defendants its Statement of Position, including but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 10 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

iii. Administrative Record. Formal dispute resolution for disputes pertaining to payment of Additional U.S. RD/RA Response Costs shall be on the administrative record. EPA shall maintain an administrative record of the dispute, which shall include the disputed bill and cost summary sent by EPA to Settling Defendants, the Notice of Objection served by Settling Defendants, the Notice of Formal Dispute Resolution, the Statements of Position, including supporting documentation, and Settling Defendants' Reply, if any, submitted

pursuant to this Paragraph.

iv. Final Decision. The Director of the Office of Site Remediation and Restoration, EPA New England Region, will issue a final administrative decision resolving the dispute based upon the administrative record. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraph 9.h. below.

h. Judicial Review of Final Administrative Decision.

i. Any administrative decision made by EPA in regard to Additional U.S. RD/RA Response Costs, shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and then served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The United States may file a response to Settling Defendants' motion.

ii. In proceeding on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office Site Restoration and Remediation, EPA New England Region was arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Subparagraph 9.g.iii.

iii. If EPA prevails in the dispute, within 5 days of resolution of the dispute, Settling Defendants shall pay the amount due under the final decision plus all interest that has accrued between the date the payment was initially due under Paragraph 8 (Payment of Portion of Additional Response Costs) through the date of payment. Payment shall be made from the escrow account in accordance with the instructions in Paragraph 8. Any amounts

remaining in the escrow account after payment to EPA shall be disbursed to Settling Defendants.

iv. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants not directly in dispute, unless EPA or the Court agrees otherwise.

VIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

10. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Rose Hill Regional Landfill Special Account available for disbursement to the State for performance of Remedial Action activities under this Consent Decree. EPA shall disburse such funds to the State in accordance with the procedures and milestones for phased disbursement set forth in this Section.

a. Timing, Amount and Method of Disbursing Funds From the Rose Hill Regional Landfill Special Account. Disbursements to the State from the Rose Hill Regional Landfill Special Account shall be made in accordance with 40 C.F.R. Chapter 1, Subchapter B, through the federally established Automated Standard Application for Payments (ASAP) system, in accordance with the requirements and policies governing that program. In addition, the State agrees to the following conditions:

i. The State shall submit an Interim Financial Status Report annually within 30 days of the close of the State's fiscal year. A final Financial Status Report shall be submitted no later than 90 days after the completion of the Remedial Action.

ii. Cash draw downs shall be made only as actually needed for disbursements to perform the Remedial Action activities for Operable Unit One and shall be made by site and action code, as applicable. Over the course of a year, such cash draw downs

shall amount to approximately fifty percent of the costs of such activities.

iii. The State shall provide timely reporting of cash disbursements and balances as required by the EPA Automated Clearinghouse (ACH) User's Manual.

iv. The State will impose the same standards of time and reporting on contractors and subcontractors performing the Work as is required of the State under this paragraph.

v. In the event of any dispute between the EPA and the State as to the amount to be disbursed from the Rose Hill Regional Landfill Special Account for any reimbursement request by the State, the dispute shall be resolved in accordance with Section XV.

b. Balance of Special Account Funds. If any funds remain in the Rose Hill Regional Landfill Special Account after the Remedial Action activities are constructed and determined to be Operational and Functional, EPA may transfer such funds to the Hazardous Substance Superfund. Any such transfer shall not be subject to challenge pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

IX. FEDERAL NATURAL RESOURCE DAMAGES SETTLEMENT

11. a. Within ten (10) business days of notice of the Final Approval of the Consent Decree, Settling Defendants shall make a payment of $117,000 to NOAA for the purpose of funding the implementation and monitoring of fish passage restoration projects on the Saugatucket River, a payment of $5,000 to NOAA for reimbursement of past NOAA natural resource damage assessment costs, and a payment of $3,000 to DOI for reimbursement of past DOI natural resource damage assessment costs.

b. The payments of $117,000 and $5,000, for a total payment of $122,000, to NOAA

shall be made by certified check, payable to DOC/NOAA/NOS/OR&R, accompanied by a letter stating that the payment is for NOAA CPRD, Rose Hill case, and sent to: Kathy Salter, NOAA DARRF Manager, NOAA/NOS/OR&R, 1305 East West Highway, Building #4, Silver Spring, MD 20910. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for NOAA, DOI, and DOJ, with a copy of the check.

c. The payment of $3,000 to DOI shall be made by FedWire Electronics Funds Transfer to the U.S. Department of Justice account in accordance with electronic funds transfer procedures, referencing U.S.A.O. file number 2002V00176, DOJ case number 90-11-2-06627, and NRDAR Account Number 14X5198, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Rhode Island following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time (Standard or Daylight Savings Time, as applicable) shall be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for DOI, NOAA, and DOJ. Notice to DOI that such payment has been made shall also be sent to: Bruce Nesslage, Restoration Fund Manager, DOI NRDAR Program, Mail Stop 4449, 1849 C St. NW, Washington, D.C. 20240 and shall reference Accounting Number 14X5198 (NRDAR) and state that the payment is for reimbursement of past natural resource damage assessment costs with respect to the Rose Hill Regional Landfill Site, situated in the Town of South Kingstown, R.I. and is being paid by the Town of South Kingstown, R.I., and the Town of Narragansett, R.I.

X. STATE NATURAL RESOURCE DAMAGES SETTLEMENT

12. As settlement of the State's claims for Natural Resource Damages caused by the release

or threatened release of hazardous substances at the Rose Hill Regional Landfill Superfund Site and pursuant to the State's authority under R.I.G.L. Chapter 23-19.1 and 23-19.14-6, the Settling Defendants shall repair or reconstruct two dams in South Kingstown, Rhode Island as set forth below:

a. On or before December 31, 2003, the Settling Defendants shall complete the repair or replacement of the Indian Run Reservoir Dam in South Kingstown, Rhode Island.

b. The repair or replacement of the Indian Run Reservoir Dam shall be completed in accordance with the design plans that were reviewed by the RIDEM Office of Water Resources, Insignificant Alteration Permit No. 01-0197, in September 2001.

c. On or before December 31, 2006, the Settling Defendants shall complete the repair or replacement of the Asa Pond Dam in South Kingstown, Rhode Island.

d. The repair or replacement of the Asa Pond Dam shall be completed in accordance with the design plans that were reviewed by the RIDEM Office of Water Resources, Insignificant Alteration Permit No. 01-0198, in September 2001.

The estimated cost of the Indian Run Reservoir Dam project is $298,000 for construction, permitting and engineering. The estimated cost of the Asa Pond Dam project is $417,000 for construction, permitting and engineering.

XI. PERFORMANCE OF THE OPERABLE UNIT 1 SOURCE CONTROL REMEDY

13. The State agrees that it will assume the lead responsibility for performance of the Remedial Design and the Remedial Action for Operable Unit 1 and will assure performance of the Operation and Maintenance actions for Operable Unit 1. The State also agrees to oversee the Work to

be Performed by Settling Defendants pursuant to Section XVI of this Consent Decree.

Remedial Design.

14. The State has assumed the lead responsibility for development of the Remedial Design, in accordance with a Cooperative Agreement dated September 25, 2001 by and between the State and EPA (the "Cooperative Agreement"), a copy of which is attached hereto as Appendix E and incorporated herein by reference. In accordance therewith, the State has selected a Supervising Contractor. The State shall perform the Remedial Design in accordance with the ROD, the Cooperative Agreement, including the Remedial Design Scope of Work (the "RD SOW") attached to and incorporated in the Cooperative Agreement, and the Remedial Design Work Plan developed in accordance therewith. Within seven (7) days after the date of lodging of this Consent Decree, the State shall advertise, or have advertised, for a formal response to a Request for Proposal ("RFP") for selecting a Design Contractor to implement the Remedial Design. Within 120 days after the date of lodging of this Consent Decree, after reasonable opportunity for EPA review and comment, the State shall select or have selected a Design Contractor to conduct the Remedial Design.

15. Within 45 days after the State's selection of a Design Contractor, the State, through its Design Contractor, shall submit to EPA and RIDEM a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the Remedial Design SOW attached in Appendix E and for achievement of the Performance Standards and all other requirements set forth in the ROD, this Consent Decree and the Remedial Design SOW. Upon its approval or modification by RIDEM, after reasonable opportunity for review and comment by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this

Consent Decree. Within 45 days after the State's selection of a Remedial Design Contractor, the State, through its Remedial Design Contractor, shall submit to EPA and RIDEM a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

16. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the Remedial Design SOW, including, but not limited to, plans and schedules for completion of the following items: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section XII (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Plan; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate (30%) design submittal; (6) a pre-final (90%) submittal, and (7) a final (100%) design submittal; and may also include a treatability study. These plans and design submittals shall be subject to approval or modification by RIDEM, after review and comment by EPA. The 100% Remedial Design shall also be subject to concurrence by EPA.

17. In accordance with the Cooperative Agreement, upon approval or modification of the Remedial Design Work Plan by RIDEM, after a reasonable opportunity for review and comment by EPA, and after submittal by the Remedial Design Contractor of the Health and Safety Plan for all field activities to EPA and RIDEM, the State shall implement the Remedial Design Work Plan. The State, through its Remedial Design Contractor, shall submit to EPA and the RIDEM Project Coordinator all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule.

Remedial Action.

18. The State shall perform the Remedial Action in accordance with the ROD, the approved 100% Remedial Design, and the Remedial Action Statement of Work (the "RA SOW") attached to this Consent Decree as Appendix F and incorporated herein by reference, and in accordance with the Remedial Action Work Plan developed in accordance therewith. Within 30 days after completion of the 90% Remedial Design, the State shall select a Supervising Contractor for the Remedial Action, after a reasonable opportunity for EPA review and comment and concurrence. Within 15 days after approval of the 100% Remedial Design, the State shall advertise, or have advertised, for a formal response to a Request for Proposal ("RFP") for selecting a Construction Contractor to implement the Remedial Action. Within 100 days after approval of the 100% Remedial Design, the State shall select a Construction Contractor to implement the Remedial Action, after reasonable opportunity for EPA review and comment and concurrence. Within 135 days after approval of the 100% Remedial Design, the State shall commence performance of the Remedial Action.

19. Within 135 days after the State's approval or modification of the final design submittal, the State, through its Construction Contractor, shall submit to EPA and RIDEM a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the Remedial Action SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by the State. Upon its approval or modification by the State, after reasonable opportunity for EPA review and comment, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time

as the Remedial Action Work Plan is submitted, the State, through its Construction Contractor, shall submit to EPA and RIDEM a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

20. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) groundwater monitoring plan; (4) methods for satisfying permitting requirements; (5) methodology for implementation of the Operation and Maintenance Plan; (6) methodology for implementation of the Contingency Plan; (7) tentative formulation of the Remedial Action team; (8) construction quality control plan (by constructor); and (9) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the States's Remedial Action Project Team.

21. Upon approval of the Remedial Action Work Plan by the RIDEM, after a reasonable opportunity for EPA review and comment, the State shall implement the activities required under the Remedial Action Work Plan in accordance with the approved schedule. The State, through its Construction Contractor, shall submit to EPA and RIDEM all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule.

22. Following completion of construction of Remedial Action components, the State shall implement the OU1 Operation and Maintenance activities, through its personnel and/or contractors

and/or by arrangement with Settling Defendants, in accordance with the ROD and the Operation and Maintenance Plan developed in accordance with the RA SOW.

23. The State shall continue to implement the Operable Unit 1 Source Control Remedy until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

General State Responsibilities

24. The State shall be responsible for 50% of the total cost of the OU1 Source Control Remedy, as set forth in the Record of Decision, until such time that the Remedy is determined to be "Operational and Functional" by the EPA and the State. The State shall receive reimbursement of 30% of such costs, in monetary payments and/or as in-kind services from Settling Defendants in accordance with Section XVII of this Consent Decree.

25. The State shall be responsible for 100% of the cost of the Operation and Maintenance of the implemented Remedial Action for the Expected Life of the Remedial Action and assure the implementation of the Operation and Maintenance activities. The State shall receive reimbursement of 30% of O&M costs, in monetary payments and/or as in-kind services, from Settling Defendants in accordance with Section XVII of this Consent Decree.

26. During the implementation of the Operable Unit 1 Source Control Remedy, the State and, as to any work they perform pursuant to Section XVI of this Consent Decree, Settling Defendants shall satisfy applicable Federal, State, and local requirements necessary for implementing activities addressed in this Consent Decree, in conformance with 40 C.F.R. § 35.6105, including the requirements specified in Section XII (Quality Assurance, Sampling, and Data Analysis) and within this Paragraph. The State and, as to any work they perform pursuant to Section XVI of this Consent

Decree, Settling Defendants shall also comply with all applicable and relevant and appropriate requirements of all Federal and State environmental laws, as set forth in the ROD and the RD SOW and RA SOW. The State shall post a sign at the Site that will include appropriate contacts for obtaining information on activities being conducted at the Site and for reporting suspected criminal activities. The State shall ensure that the Site is properly posted and secured throughout the duration of the Operable Unit 1 work. The State shall assure that, before field work is started, its contractors develop site-specific health and safety plan(s) in accordance with OSHA 29 C.F.R. 1910.120, which shall be submitted to EPA for review and concurrence. The State, in coordination with Settling Defendants, shall develop a re-use plan and assessment as further described in Appendix H to this Consent Decree.

27. It shall be the sole responsibility of the State to secure any necessary Federal, State and local permits pertaining to off-Site treatment, storage, or disposition of hazardous substances from the Site or any other permits that are necessary to complete satisfactorily the Response Action described in the ROD and the RD SOW and RA SOW, except it shall also be the responsibility of Settling Defendants to assure that the State is provided with any such permits that are within their control. If the State acquires property rights or participation therein related to this Site or Consent Decree, the State assures that the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. section 4601-4655, and the EPA regulation promulgated thereunder, 49 C.F.R. Part 24, if applicable, shall be observed. No property acquisitions shall be made by the State in relation to the Site response actions without prior EPA concurrence.

28. If the Remedial Design, the Remedial Action, or Operation and Maintenance results in any off-site storage, destruction, treatment, or disposal of hazardous waste, in accordance with

CERCLA §§ 104(c)(3)(B) and 121(d)(3) and 40 C.F.R. § 300.510(d), the State hereby provides its assurance on the availability of a hazardous waste disposal facility that is in compliance with CERCLA § 121(d)(3) and is acceptable to EPA.

29. By entering into this Consent Decree, the State hereby assures EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with Subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes generated within the State during the 20-year period following the date of this Consent Decree, pursuant to CERCLA §§104(c)(3) and (c)(9), 42 U.S.C. §§ 9604(c)(3) and (c)(9), and 40 C.F.R. § 300.510(e).

30. a. Prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Manager of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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

another state.

(2) The identity of the receiving facility and state will be determined by the State following the award of the contract for Remedial Action construction. The State shall provide the information required by this Paragraph 30.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

31. The EPA and the State anticipate that hazardous substances may have to be stored on-site prior to ultimate treatment or disposal of these hazardous substances. The costs of such storage during the period of Operation and Maintenance (e.g., security, monitoring and analysis, etc.) shall be paid by the State.

32. In accordance with Section XXIII of this Consent Decree, Settling Defendants shall provide to the State and EPA and their representatives and contractors access, including all right(s)-of-way and easement(s), to property owned or controlled by any of the Settling Defendants and to the property known as the "Frisella property," necessary to complete the response actions. Settling Defendants shall use best efforts to acquire title to the "Frisella property," which is described in Appendix I, attached hereto and incorporated herein by reference. To the extent such access is not provided to the State and EPA by Settling Defendants, the State shall assist Settling Defendants to

obtain such access. Any easement or other property acquisition shall comply with provisions of 49 CFR Part 24. Access to the Site by EPA and State employees, or their assigns, shall be granted at all reasonable times.

33. In performing the Site remedy, the State agrees to allow Settling Defendants to review and comment on any of the State's remedial design and remedial action submittals. The State shall in good faith consider and, when the State and EPA determines reasonable and consistent with the requirements of the ROD, Consent Decree, the RD SOW, the RA SOW, and work plans developed thereunder, the State may incorporate Settling Defendants' comments and suggestions into the various decisions the State makes in the RD/RA process. To the extent permitted under State purchasing guidelines, the State will specifically consider input from Settling Defendants in the selection of all outside contractors.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

34. a. The State shall comply with quality assurance requirements described in 40 CFR 31.45. Any other quality assurance plans required shall be submitted to EPA before the applicable field work. The State has developed and shall implement an ongoing quality system (quality assurance program). The State has documented this quality system in a Quality Management Plan (QMP) in accordance with "EPA Requirements for Quality Management Plans" (QA/R-2, 11-99), which has been approved by EPA.

b. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance

Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to the State of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

c. Forty-five days prior to the commencement of any monitoring project under this Consent Decree, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall submit to EPA, at the address stated in Section XXVI (Notices and Submissions), with a copy to the Regional Quality Assurance Manager, U.S. Environmental Protection Agency, 11 Technology Drive, North Chelmsford, MA 01863-2431, for review and comment, a Quality Assurance Project Plan ("QAPP") that is consistent with the Remedial Design and Remedial Action SOWs, the NCP, and applicable guidance documents.

d. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

e. The State shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, in implementing this Consent Decree. In addition, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring.

35. a. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall insure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods and the Region I, EPA-New England Compendium of Quality Assurance Project Plan Requirements and Guidance, October 1999, and the national QAPP requirements specified in "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations", EPA QA/R-5, October 1998, or most recent revision, and the "EPA Quality Manual for Environmental Programs", 5360, July 1998. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, the State may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as

determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

36. Upon request, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall allow split or duplicate samples to be taken by EPA or its authorized representatives. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems appropriate. Upon request, EPA shall allow the State to take split or duplicate samples of any samples it takes as part of its evaluation of the State's implementation of the Work.

37. The State shall assure that all groundwater sampling performed for Operable Unit 1 work shall be conducted using low-flow methods. Any split samples shall be obtained as described in Section 104(e)(4)(B) of CERCLA, as amended.

38. The State, through its personnel, its contractors, and/or through Settling Defendants, shall submit to EPA a copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of State with respect to the Site and/or the implementation of this Consent Decree unless

EPA agrees otherwise.

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

XIII. REPORTING REQUIREMENTS

40. In addition to any other requirement of this Consent Decree, the State shall submit to EPA two copies of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by the State or its contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six months and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the State has approved or is considering; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next six months. The State shall submit these progress reports to EPA by the twentieth day of the month following each quarter after the lodging of this Consent Decree until the Operable Unit 1 Source Control Remedy is completed. If requested by EPA,

the State shall also provide briefings for EPA to discuss the progress of the Work.

41. The State, through its contractors, shall also provide copies of its contractors' monthly progress reports to EPA on a monthly basis.

42. The State shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

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

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

45. The State, through its personnel, through its contractors, and/or through Settling Defendants for work performed pursuant to Section XVI of this Consent Decree, shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans or deliverables to EPA in accordance with

the schedules set forth in such plans. Upon request by EPA, the State, through its personnel, through its contractors, and/or through Settling Defendants for any work performed pursuant to Paragraph XVI of this Consent Decree, shall submit in electronic form all portions of any report or other deliverable the State is required to submit pursuant to the provisions of this Consent Decree.

XIV. EMERGENCY RESPONSE

46. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the State shall, subject to the following Paragraph, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Manager, or, if the Project Manager is unavailable, EPA's Alternate Project Manager. If neither of these persons is available, Settling Defendants shall notify the Emergency Response Section, Region I, United States Environmental Protection Agency. The State shall take such actions in consultation with EPA's Project Manager or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the RD and RA SOWs.

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

(Covenants Not to Sue by Plaintiffs).

XV. DISPUTE RESOLUTION BETWEEN UNITED STATES AND STATE

48. In the event of a disagreement between United States and the State regarding performance of the response actions required under this Consent Decree and or any other issue under this Consent Decree, unless otherwise provided, the following dispute resolution procedures shall be followed:

a. Either the United States, through the EPA, or the State, through RIDEM, may initiate this dispute resolution process by providing written notice to the other party's Project Managers/Coordinator, identifying the matter(s) in dispute and requesting that this process be initiated. In the event of such notice, the parties will attempt to resolve the disagreement(s) through informal discussions at the staff level (i.e., between the EPA Project Managers and the RIDEM Project Coordinator), within five (5) working days after receipt of such notice.

b. If the discussion referred to in the preceding paragraph is unsuccessful, the EPA Project Managers and the RIDEM Project Coordinator will immediately obtain the assistance of their respective immediate supervisors, and with such assistance shall attempt to resolve the disagreement(s) within 10 working days of receipt of notice of the dispute.

c. If the immediate supervisors are unable to resolve the dispute within the 10 working day period, the disagreement(s) will be referred to RIDEM's Chief of the Office of Waste Management and EPA Region I's Director of the Office of Site Remediation and Restoration (jointly, the Directors). Upon such referral, which shall be made within 10 working days of the end of the dispute resolution period in subparagraph b, the United States and the State shall each submit to the other a written summary of the matter in dispute and a statement of their position on that matter (Statement of Position), including any data, analysis, or opinion supporting that position and all

supporting documentation relied upon.

d. Within 10 working days of referral by the immediate supervisors, the Directors shall confer and attempt to resolve the dispute. If after the 10 working day period there is no resolution, the EPA shall compile an administrative record consisting of all documents submitted by either party pursuant to the preceding subparagraph c. Based upon that record, EPA's Office of Site Remediation and Restoration Director (EPA's Director) will issue a written decision and will send the decision to RIDEM's Chief of the Office of Waste Management within 30 working days.

e. The State may file a petition with the Court seeking expedited review of the dispute within 20 days after receipt of the decision of the EPA's Director. If the State does not file a petition, the decision of the EPA's Director shall be final, and the State shall proceed accordingly. The United States may file a petition with the Court seeking enforcement of the requirements of this Consent Decree.

f. The United States and the State agree that the Court's review of the dispute shall be resolved in accordance with applicable law. Where such dispute challenges an EPA action or determination that, under applicable principles of administrative law, is to be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," that standard shall be applied in the dispute resolution proceeding before the Court. Nothing in this Consent Decree shall be construed to allow any dispute or judicial review regarding the ROD's provisions.

g. Time periods for the resolution of disputes between the United States and the State concerning this Consent Decree may be extended or shortened by mutual agreement of the United States and the State. The United States and the State agree to use their best efforts to resolve all disputes at the earliest possible time and lowest management level, taking into consideration the

primary objective of protecting the public health, welfare, safety and the environment.

XVI. WORK TO BE PERFORMED BY SETTLING DEFENDANTS

49. Settling Defendants shall perform, in accordance with the requirements of the ROD and the RA SOW, at least the following Work in connection with the implementation of the OU1 Source Control Remedy at the Site:

- Obtain the institutional controls as required under Section XXIII of this Consent Decree, including the controls needed to implement and maintain the Operable Unit 1 Source Control Remedy at the Site, ensure non-interference with the remedial measures to be performed at the Site, and ensure placement of easements or restrictions to prevent land uses that would adversely affect the protectiveness of the remedial measures to be performed at the Site.
- Conduct community relation activities in cooperation with RIDEM and EPA as required under Section XXVII to keep the public informed about key developments at the Site.
- Following completion of construction of the cap at the Site, conduct routine inspection and monitoring of the cap and the fence periodically and provide for mowing of the grassed areas covering the cap, as needed, but, at a minimum, twice a year.
- Perform regular maintenance to the surface of the landfill cap as needed to address soil erosion resulting from rain, snow, wind, and other natural forces.
- Regrade areas of the storm drainage system where water is ponding to promote positive drainage.

- Maintain the storm drainage system and repair as soon as possible any damage to the storm water control structures due to subsidence, settlement, or erosion.
- Fill and compact any potholes or ruts that develop in the site access roads or access ramp within the designated specifications.
- Reseed and/or replant areas where vegetation has not been properly established, damaged turf areas and bare spots in the cap and areas of the Site which have been or will be impacted by Remedial Investigation, Remedial Design, and/or Remedial Action activities.
- Remove tree limbs or other debris that fall on the landfill surface and address any subsidence or settlement features that appear on the landfill surface or which may affect adequate drainage.
- Inspect gas vents and repair broken or damaged gas vents as soon as possible.
- Inspect groundwater monitoring wells and notify RIDEM and EPA of any damage to groundwater monitoring wells.
- Inspect perimeter fence and attached signs and replace or repair as needed.
- Inspect cover and perimeter plantings, drainage conduit and swales, subsidence/settlement features, and severe storm event damage, and replace or repair damaged elements as needed.

50. Following completion of construction of the cap at the Site, the Settling Defendants shall conduct routine inspection and monitoring of the items specified in the previous Paragraph (and the following two Paragraphs to the extent applicable) at least four times each year after the cap is deemed Operational and Functional, as well as inspections after severe storms. The frequency of the

routine inspections may be reduced to semi-annually after the first year if requested in writing by the Settling Defendants and approved by the State. Approximately three months in advance thereof, the State, with coordination from the Settling Defendants, will notify EPA of the date that 75% of the actual construction of the cap is expected to be completed, and the Settling Defendants shall submit an Operation and Maintenance Plan for the activities specified in the previous Paragraph (and the following two Paragraphs to the extent applicable), by that projected date to the State and to EPA, for review and approval or modification by the State, after reasonable opportunity for EPA to review and concur. The Settling Defendants shall inform EPA and the State of the results of the inspection, monitoring, maintenance, and repair work by sending a notice to the addressees in Section XXVI.

51. a. After the response actions that have been constructed have been determined to be Operational and Functional by the State, with EPA concurrence, if the Settling Defendants seek to perform groundwater monitoring requirements and/or landfill gas monitoring requirements and the State approves, with EPA concurrence, the Settling Defendants shall perform specified groundwater monitoring requirements and/or landfill gas monitoring requirements in accordance with the current Project Operations Plan and submit monitoring reports to EPA and the State. The State shall remain responsible to the United States for assurance that all groundwater monitoring requirements and landfill gas monitoring requirements are fully performed.

b. After the response actions that have been constructed have been determined to be Operational and Functional by the State, with EPA concurrence, if the Settling Defendants seek to replace or repair any groundwater monitoring wells that are noted during inspections to be damaged or otherwise not in working order and the State approves, with EPA concurrence, the Settling Defendants shall replace and repair the specified groundwater monitoring wells.

c. The Settling Defendants may also propose to perform other items that form part of the Remedial Action or Operation and Maintenance work and, if the State approves, with EPA concurrence, such proposals, the Settling Defendants shall perform those items of the Remedial Action or Operation and Maintenance work in accordance with all applicable plans and requirements.

52. a. As part of any proposals to perform Work under Paragraph 51.a., b., or c. above, the Settling Defendants shall fully state how the Work would be performed and the amount of the credit under Section XVII of the Consent Decree that the Settling Defendants would request for each item of Work proposed.

b. The State shall remain responsible to the United States to ensure that all items of the Work are fully performed, including the Work the Settling Defendants are required to perform pursuant to Paragraphs 49-51 of this Consent Decree.

53. a. Settling Defendants and the State shall, in consultation with EPA, prepare a Reuse Plan and Reuse Assessment for the Site. In the preparation of the Reuse Plan and Reuse Assessment, Settling Defendants and the State will consider the Guidelines for Reuse Plan and Reuse Assessment set forth in Appendix H, attached hereto. Settling Defendants and the State agree that they will use their best efforts to find a beneficial reuse for the Site. Any beneficial reuse selected for the Site will be subject to mutual agreement by the Settling Defendants and the State. If the Settling Defendants and the State implement a beneficial reuse that results in an income stream, they will agree on an allocation of any net income that recognizes (1) the Settling Defendants' ownership of the Site and (2) the respective amounts contributed by the Settling Defendants and the State to clean up the Site. Settling Defendants and the State will also consider non-income generating reuses for the Site, such as parks and playing fields.

b. Settling Defendants shall continue annual reporting concerning the landfill gas monitoring and alarm operation and maintenance at residential properties adjacent to the Site, in accordance with RCRA order # I-93-1055, until such time as the State, with concurrence from EPA, determines that the potential for off-site migration of landfill gases no longer poses a threat to human health or the environment or, if an alternate monitoring system is selected and approved by RIDEM and EPA that does not include monitoring at these properties, until such time as the alternate monitoring system becomes operative.

54. In the event of a dispute concerning performance of the Work required under this Section XVI, the procedures specified in Section XV (Dispute Resolution between the United States and the State) above shall be followed, except that, for disputes concerning the performance of the Work required under Section XVI only, the references to"the State" in Section XV shall be read as "the Settling Defendants and/or the State" and the references to the "Chief, Office of Waste Management" (for the State) shall be read as the "Chief, Office of Waste Management (for the State) and/or the Town Manager(s) (for the Settling Defendants)."

XVII. SETTLING DEFENDANTS' REIMBURSEMENT TO STATE

55. The Settling Defendants shall reimburse the State for 30 percent of the Reimbursable Costs the State incurs during the implementation of the Operable Unit 1 Source Control Remedy. That reimbursement by the Settling Defendants shall occur as follows:

a. **Annual Determination of State Reimbursable Costs**. On or after August 1 of each year during the implementation of the Operable Unit 1 Source Control Remedy, the State will deliver to the Settling Defendants an itemized written statement of Reimbursable Costs incurred by the State during the previous fiscal year (July 1 to June 30), along with the supporting bills, invoices

and similar statements that support each item of cost. The State will certify in writing and under oath the accuracy of this written statement. The Settling Defendants may within 30 days request additional information that relates to any of the costs identified by the State. The Settling Defendants may contest any of these costs by filing on or before September 15 a written statement explaining why the Settling Defendants contest a particular cost item or why the Settling Defendants need further information, which the State has either failed or refused to provide. If the Settling Defendants and the State cannot resolve any such contest by October 15, the matter will be determined by binding arbitration conducted by the Arbitrator. The State's Reimbursable Costs become final (1) if not challenged by the Settling Defendants, on or before September 15 or (2) if challenged, as agreed to by the Settling Defendants and the State or as determined by the Arbitrator to be fair or required as a result of applicable State purchasing processes and requirements. The State shall provide EPA with copies of the itemized statements of Reimbursable Costs, with attached documentation, required by this Section XVII at the same time they are provided to Settling Defendants, as well as a copy of the results of the resolution of any disputes between Settling Defendants and the State pursuant to this paragraph.

b. **Payment of Reimbursable Costs**. The Settling Defendants shall pay 30% of Reimbursable Costs by first making annual payments beginning in January following the third full year after the date of the Pre-final Inspection, as described in Section II.G. of the RA SOW, but in no event later than June 30, 2012. The methodology for the cost sharing arrangement between the State and the Settling Defendants is set forth on Exhibit 1 for illustrative purposes using present cost estimates for the Operable Unit 1 Source Control Remedy. The Settling Defendants and the State agree that as these costs change they will adjust the Town payments so that the relative proportion and timing of the costs borne by the Settling Defendants and the State remain approximately the same as

in the Exhibit 1 illustration. The Settling Defendants and the State agree that at some time in the future, the estimated value of the remaining O&M work at the Site may be equal to the total estimated value of the Settling Defendants' expected remaining payments to the State. On Exhibit 1 this is projected to occur in year 2022. When that occurs, if approved by the State, with concurrence by EPA, the Settling Defendants will accept responsibility for completing the O&M work and shall perform that work in full satisfaction of their obligations to make any further payments to the State for Operable Unit 1 pursuant to this Consent Decree. The State shall remain responsible to the United States for assurance that all of the remaining O&M work is fully performed in accordance with the ROD, RA SOW and plans developed thereunder, and the Consent Decree. If unexpected costs occur after the Settling Defendants assume responsibility for the O&M work, the Settling Defendants and the State agree to share those costs on a 30% - 70% basis consistent with this agreement. Any dispute regarding values, estimates, or costs will be decided by the Arbitrator at the request of one of the parties.

56. Payment to the State shall be made by Settling Defendants by certified or cashier's check(s) payable to "General Treasurer" (for deposit in the Environmental Response Fund), and shall be sent to the Office of the Director, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908. At the time of each payment to the State, Settling Defendants shall send notice that payment has been made to the State in accordance with Section XXVI (Notices and Submissions).

57. a. The State will permit the Settling Defendants to pay at least a portion of the Settling Defendants' share of Reimbursable Costs through in kind services, provided that the in kind services are properly performed. The in-kind services shall include the response activities the Town is

required to perform pursuant to Paragraph 49 above, except as provided in Paragraph 57.b., and may include, without limitation, the response activities that the Town may be performing pursuant to Paragraph 51 above. The Settling Defendants will deliver to the State an itemized written statement of costs incurred by the Settling Defendants for in-kind services performed pursuant to this Decree during the previous fiscal year (July 1 to July 30), along with the supporting bills, invoices and similar statements that support each item of cost. The Settling Defendants will certify in writing and under oath the accuracy of this written statement. The State may within 30 days request additional information that relates to any of the costs identified by the Settling Defendants. The State may contest any of these costs by filing within 30 days of receipt of the Town's written statement or, if requested, within 30 days of receipt of the additional information, a written statement explaining why the State contests a particular cost item or why the State needs further information, which the Settling Defendants have either failed or refused to provide. If the Settling Defendants and the State cannot resolve any such contest within 30 days, the matter will be determined by binding arbitration conducted by the Arbitrator. The Settling Defendants' in-kind services costs become final (1) if not timely challenged by the State or (2) if challenged, as agreed to by the Settling Defendants and the State or as determined by the Arbitrator to be correct and consistent with the ROD. The value of the Settling Defendants' in-kind services will include applicable costs associated with services performed with Town personnel (including salary, fringe benefits, and a markup at the same indirect rate as is applied to State costs that is agreed to between EPA and the State in cooperative agreements under CERCLA) and/or approved or agreed upon equipment costs. Any dispute will be resolved by the Arbitrator in the manner described in Paragraph 57.a. Any in-kind services performed by the Settling Defendants prior to the first annual payment will be credited against the initial annual

payment, and any succeeding annual payments, until the credit is exhausted. Thereafter, the value of in-kind services will be credited against the annual payment for the fiscal year in which the services are rendered. The Settling Defendants will provide the State with information requested by the State concerning any in-kind services proposed or rendered by the Settling Defendants.

b. Although the costs incurred by the Settling Defendants to obtain title to and/or provide access and institutional controls on the Frisella property pursuant to this Consent Decree may exceed $60,000, only such costs up to $30,000 shall be eligible for credit under Paragraph 57.a. of this Consent Decree. Any such costs incurred by the Towns and/or the State shall not be considered Remedial Action costs for purposes of Paragraph 10 of this Consent Decree. In the event that it is necessary for EPA to incur costs to obtain access to and/or institutional controls on the Frisella property, the Towns shall reimburse EPA for such costs, in accordance with the procedures in Paragraph 6.

XVIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

58. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraphs 5, 6, 8, 9, 11, and 55 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

59. Stipulated Penalty.

a. If any amounts due under Paragraphs 5, 6, 8, 9, 11, and 55 are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 58, for days 1 through 30, $500 per violation per day that such payment is late and, for every additional day thereafter, $1,000 per violation per day that such payment is late. Stipulated penalties for failure to comply with Paragraphs

5, 6, 8, 9, and 11 shall be paid 100% to the United States, and stipulated penalties for failure to comply with payment requirements of Paragraph 55 shall be paid 100% to the State.

b. If the Settling Defendants fail to comply with any of the requirements of Section X (State Natural Resource Damages Settlement), Section XVI (Work to be Performed by Settling Defendants), Section XXIII (Access and Institutional Controls), and Section XXVII (Community Relations), Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, for days 1 through 30, $500 per violation per day and, for every additional day thereafter, $1,000 per violation per day. Except for stipulated penalties for failure to comply with Section X, any such stipulated penalties shall be paid 50% to the United States and 50% to the State. Stipulated penalties for failure to comply with Section X shall be paid 100% to the State.

c. Stipulated penalties owed to the EPA are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, Rose Hill Regional Landfill Superfund Site, EPA New England Region and Site Spill ID Number 10A5, USAO File Number 2002V00176, and DOJ Case Number 90-11-3-06627, and shall be sent to:

Region 1
U.S. Environmental Protection Agency
Attn: Hazardous Substance Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

At the time of each payment, Settling Defendants shall send notice that such payment has been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions).

d. Stipulated penalties owed to NOAA are due and payable within 30 days of the date of the demand for payment of the penalties by NOAA. All payments to NOAA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to DOC/NOAA/NOS/OR&R, accompanied by a letter stating that the payment is for NOAA CPRD, Rose Hill case, and sent to: Kathy Salter, NOAA DARRF Manager, NOAA/NOS/OR&R, 1305 East West Highway, Building #4, Silver Spring, MD 20910. At the time of such payment, Settling Defendants shall send notice that such payment has been made to NOAA and DOJ in accordance with Section XXVI (Notices and Submissions).

e. Stipulated penalties owed to DOI are due and payable within 30 days of the date of the demand for payment of the penalties by DOI. All payments to DOI under this Paragraph shall be identified as "stipulated penalties" and shall be made in the same manner as set forth in Paragraph 11.c. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for DOI and DOJ.

f. Stipulated penalties owed to the State are due and payable within 30 days of the date of the demand for payment of the penalties by the State. All payments to the State under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "General Treasurer" (for deposit in the Environmental Response Fund), and shall be sent to the Office of the Director, RIDEM, 235 Promenade Street, Providence, Rhode Island 02908. At the time of each payment, Settling Defendants shall send a notice that such payment has been made to the State in accordance with Section XXVI (Notices and Submissions). The State shall retain and use any amount(s) paid pursuant to Paragraph 59.f. to conduct or finance response actions for Operable Unit 1 at or in connection with the Site.

g. Penalties shall accrue as provided in this Paragraph regardless of whether EPA, NOAA, DOI, or the State has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

h. This dispute resolution provision shall apply to any disputes concerning demands for stipulated penalties.

i. Any dispute concerning a demand for stipulated penalties shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

ii. In the event that the parties to the dispute cannot resolve the dispute by informal negotiations, then the position advanced by EPA, NOAA, DOI, or the State, with respect to a stipulated penalties demand by EPA, NOAA, DOI, or the State, respectively, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Subparagraph by serving on the party making the demand for stipulated penalties a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

iii. Within 30 days after receipt of Settling Defendants' Statement of Position, the party making the demand for stipulated penalties will serve on Settling Defendants its

Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by that party. Within 14 days after receipt of that Statement of Position, Settling Defendants may submit a Reply.

iv. An administrative record of the dispute shall be maintained by the party making the demand for stipulated penalties and shall contain all statements of position and supporting documentation. EPA Region I's Director of the Office of Site Remediation and Restoration, RIDEM's Chief of the Office of Waste Management, or persons designated by NOAA or DOI, shall issue a final administrative decision on any stipulated penalties demand made by EPA, RIDEM, NOAA, or DOI, respectively. The final administrative decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the party making the demand a motion for judicial review of the decision. The party making the demand may file a response to Settling Defendants' motion.

v. The parties agree that the Court's review of the dispute shall be resolved in accordance with applicable law. Where the dispute challenges a Federal or State agency determination that, under applicable principles of administrative law, is to be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," that standard shall be applied in the dispute resolution proceeding before the Court.

vi. The invocation of dispute resolution procedures under this Subparagraph shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, nor shall payment of penalties alter in any way Settling Defendants' obligation to complete any Work required of the Settling Defendants under the Consent

Decree. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a final administrative decision that is not appealed to this Court, accrued penalties determined to be owing shall be paid within 30 days of the agreement or the receipt of the final administrative decision.

B. If the dispute is appealed to this Court and the party demanding the stipulated penalties prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

C. If the District Court's decision is appealed by any party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the party making the stipulated penalties demand or to Settling Defendants to the extent they prevail.

D. If Settling Defendants fail to pay stipulated penalties when due, the party making the stipulated penalties demand may institute proceedings to collect the stipulated penalties, as well as Interest.

60. If the United States or the State brings an action to enforce this Consent Decree against the Settling Defendants and the United States or the State prevails, Settling Defendants shall

reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

61. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

62. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree and to perform the Work the Settling Defendants are to perform under this Consent Decree are joint and several. In the event of the failure of any one of the Settling Defendants to make the payments required under this Consent Decree and/or perform the Work the Settling Defendants are to perform under the Consent Decree, the remaining Settling Defendant shall be responsible for such payments and/or performance.

63. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VII, Section IX, and Section XVII or from performance of any other requirements of this Consent Decree.

XIX. COVENANT NOT TO SUE BY PLAINTIFFS

64. a. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for payment of Past Response Costs, Future Response Costs, Additional U.S. RD/RA Response Costs, and Natural Resource Damages. This covenant not to sue

shall take effect upon receipt by EPA, NOAA, and DOI of all payments required by Paragraph 6 of Section VII (Payment Regarding United States Response Costs) and Paragraph 11 of Section IX (Federal Natural Resource Damages Settlement) and any amount due under Section XVIII in regard to noncompliance with or delay in compliance with the requirements of Paragraph 6 and/or Paragraph 11. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

b. Covenant Not to Sue by the State. Except as specifically provided in Section XX (Reservation of Rights by Plaintiffs), the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and R.I.G.L. Chapters 23-18.9 and 23-19.1, for payment of State Future Response Costs and Natural Resource Damages. This covenant not to sue shall take effect upon receipt by the State of all payments required by Paragraph 55 of Section XVII (Settling Defendants' Reimbursement to State) and any amount due under Section XVIII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY PLAINTIFFS

65. General Reservations of Rights by United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 64.a. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Agreement;

b. criminal liability;

c. liability for response costs and injunctive relief or administrative order enforcement under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for response actions that are not within the definition of Operable Unit 1;

d. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs, Future Response Costs, and Additional U.S. RD/RA Response Costs;

e. liability for the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Parties, other than as provided in the ROD or otherwise ordered by EPA; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

66. Federal Reservations Concerning Natural Resource Injury. Notwithstanding any other provision of this Decree, the United States, on behalf of the Federal Natural Resource Trustees, reserve the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the United States at the date of lodging of this Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received by the United States after the date of lodging of the Consent Decree which, together with other relevant information, indicates that there is injury to,

destruction of, or loss of Natural Resources of a type that was unknown, or of a magnitude greater than was known, to the United States at the date of lodging of this Consent Decree.

67. General Reservation of Rights by the State. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in Paragraph 64.b. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Agreement;

b. criminal liability;

c. liability for response costs and injunctive relief or administrative order enforcement under Section 107 of CERCLA, 42 U.S.C. § 9607, and R.I.G.L. Chapters 23-18.9 and 23-19.1 for response actions that are not within the definition of Operable Unit 1;

d. liability for costs incurred or to be incurred by the State that are not within the definition of State Future Response Costs;

e. liability for the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Parties, other than as provided in the ROD or otherwise ordered by EPA; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

68. State Reservations Concerning Natural Resource Injury. Notwithstanding any other provision of this Decree, the State in its capacity as Natural Resource Trustee, reserves the right to

institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the State at the date of lodging of this Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received by the State after the date of lodging of the Consent Decree which, together with other relevant information, indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown, or of a magnitude greater than was known, to the State at the date of lodging of this Consent Decree.

XXI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

69. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, Operable Unit 1, Natural Resource Damages, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of Operable Unit 1 or out of the response actions for which the Past Response Costs, Future Response Costs, State Future Response Costs, and Additional U.S. RD/RA Response Costs were or will be incurred; and

c. any claim against the United States and/or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, Future Response

Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, or Natural Resource Damages.

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

71. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

a. any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and

b. any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling

Defendant.

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

72. Except as provided in Paragraph 71, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 71, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

73. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, Federal Natural Resource Damages, subject to the reservation in Paragraph 66, and State Natural Resource Damages, subject to the reservations in Paragraph 68.

74. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ and the State in writing within 10 days of service of

the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

75. If the Settling Defendants or the State pursue a contribution claim or other action against a person not party to this Consent Decree to recover Site costs, they will inform each other and offer a participation agreement that involves an equitable sharing of costs and of any net recovery. If the other party declines to participate, the prosecuting party shall pay all of the expenses and keep any recovery. Any dispute regarding the participation agreement will be resolved by the Arbitrator. The United States reserves all of its rights against persons who are not parties to this Consent Decree, and this Paragraph shall in no way affect any rights of the United States.

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

XXIII. ACCESS AND INSTITUTIONAL CONTROLS

77. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by any of the Settling

Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA, RIDEM, and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;

2. Verifying any data or information submitted to the United States or the State;

3. Conducting investigations relating to contamination at or near the Site;

4. Obtaining samples;

5. Assessing the need for, planning, or implementing additional response actions at or near the Site;

6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

7. Assessing Settling Defendants' compliance with this Consent Decree;

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

9. Conducting operation and maintenance activities; and

10. Conducting 5-year reviews.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or any other property, in any manner that would interfere with or adversely affect the integrity or

protectiveness of the remedial measures to be implemented at or in connection with the Site or that would result in the use, extraction, or consumption of ground water or surface water at the Site or that would result in the disturbance of the surface or subsurface of the land, other than for the purpose of conducting response activities at the Site; and

c. execute and record in the Town Clerk's Office, Town of South Kingstown, Washington County, State of Rhode Island, an easement, running with the land, that (i) grants a right of access for the purpose of conducting response activities, operation and maintenance, and 5-year reviews at the Site, and (ii) grants the right to enforce the land/water use restrictions referred to in Paragraph 77.b. of this Consent Decree and the Record of Decision for Operable Unit 1, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Site. Such Settling Defendant(s) shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, and (ii) the State and its representatives. Such Settling Defendant(s) shall, within 45 days of entry of this Consent Decree, submit to EPA and the State for review and approval with respect to such property:

1. a draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of Rhode Island, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"). Within 15 days of EPA's approval and acceptance

of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Town Clerk, Town of South Kingstown, Washington County, Rhode Island. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

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

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 77.a of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants, the State, and, if requested by the United States, the United States, to abide by the obligations and restrictions established by Paragraph 77 of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. at EPA's request, the execution and recordation in the Town Clerk's Office, Town of South Kingstown, Washington County, State of Rhode Island, of an easement, running with the land, that (1) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 77.a of this Consent Decree,

and (ii) grants the right to enforce the land/water use restrictions referred to in Paragraph 77.b of this Consent Decree and the Record of Decision for Operable Unit 1, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request, Settling Defendants shall submit to EPA and the State for review and approval with respect to such property:

1. a draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the State of Rhode Island, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

2. a current title commitment or report prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"). Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Town Clerk, Town of South Kingstown, Washington County, Rhode Island. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

79. For purposes of Paragraph 78 of this Consent Decree, "best efforts" includes the payment

of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 78.a or 78.b of this Consent Decree are not obtained within 45 days of EPA's request, or any access easements or restrictive easements required by Paragraph 78.c of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's request, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 78 of this Consent Decree. The State shall assist the Settling Defendants, and the United States may, as it deems appropriate, assist Settling Defendants and/or the State, in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States or the State, as applicable, in accordance with the procedures in Paragraph 6 of Section VII (Payment Regarding United States' Response Costs) or Paragraph 56 of Section XVII (Settling Defendants' Reimbursement to the State), for all costs incurred, directly or indirectly, by the United States or the State, as applicable, in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. The State agrees, pursuant to Section 104(j) of CERCLA, to accept title to any and all real property relating to the Site or the Consent Decree transferred to it by the United States.

80. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

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

XXIV. ACCESS TO INFORMATION

82. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

83. Confidential Business Information and Privileged Documents.

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

b. Settling Defendants may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling

Defendants assert such a privilege in lieu of providing documents or information, they shall provide Plaintiffs with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

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

XXV. RETENTION OF RECORDS

85. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

86. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and the State at least 90 days prior to the destruction of any such

documents or information, and, upon request by EPA or the State, Settling Defendants shall deliver any such documents or information to EPA or the State. Settling Defendants may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiffs in redacted form to mask the privileged portion only. Settling Defendants shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

87. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XXVI. NOTICES AND SUBMISSIONS

88. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and Settling Defendants, respectively.

As to the United States:

the addressees and addresses for DOJ, EPA, NOAA, and DOI below

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-06627)
P.O. Box 7611
Washington, D.C. 20044-7611

Michael P. Iannotti
Assistant United States Attorney
District of Rhode Island
Fleet Center
50 Kennedy Plaza
Providence, RI 02903

As to EPA:

David J. Newton, EPA Project Manager
Office of Site Remediation and Restoration
United States Environmental Protection Agency
New England Region (HBO)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Regional Financial Manager
Office of Finance and Cost Recovery
United States Environmental Protection Agency
New England Region (MFC)
One Congress Street, Suite 1100
Boston, MA 02114-2023

As to NOAA:

Gwendolyn A. Wilkie
United States Department of Commerce
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Division
Gloucester, MA 01930-2298

As to DOI:

Mark Barash
U.S. Department of the Interior
Office of the Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02158

As to the State:

Gary Jablonski, State Project Coordinator
RI Department of Environmental Management
Office of Waste Management
235 Promenade Street
Providence, RI 02908

As to Settling Defendants:

Town Manager
Town of South Kingstown
180 High Street
Wakefield, RI 02879

Town Manager
Town of Narragansett
25 Fifth Avenue
Narragansett, RI 02882-0777

XXVII. COMMUNITY RELATIONS

89. Settling Defendants shall cooperate with and provide support to the community relations efforts of EPA and the State relating to Operable Unit 1, including the provision of information regarding the Operable Unit 1 Work to the public. As requested by EPA and the State, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA and the State to explain activities at or relating to the Site. This support may include (i) the provision of presentations, logistical support, visual aids and equipment, (ii) publication and copying of fact sheets or updates, (iii) assistance in placing EPA and State public notices in print, and (iv) assistance in development of a Community Relations Plan.

XXVIII. MODIFICATION

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

91. No material modifications shall be made to the Remedial Design SOW or the Remedial Action SOW without written notification to and written approval of the United States, the State, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within

the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Modifications to the RD SOW or the RA SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between the EPA and the State.

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

XXIX. RETENTION OF JURISDICTION

93. This Court shall retain jurisdiction over this matter over both the subject matter of this Consent Decree and the Parties to this Consent Decree for the purpose of interpretation of the Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with the dispute resolution provisions of the Consent Decree.

XXX. INTEGRATION/APPENDICES

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

"Appendix A" is the List of Settling Defendants.

"Appendix B" is the Map of Rose Hill Regional Landfill Site.

"Appendix C" is the Escrow Agreement.

"Appendix D" is the Record of Decision for the Operable Unit 1 Source Control Remedy.

"Appendix E" is the Cooperative Agreement for the OU1 Remedial Design,

including the OU1 Remedial Design Scope of Work.

"Appendix F" is the OU1 Remedial Action Statement of Work.

"Appendix G" is the draft access and institutional control instrument.

"Appendix H" is the Guidelines for Reuse Plan and Assessment.

"Appendix I" is the description and site plan for the Frisella property.

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

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXII. EFFECTIVE DATE

98. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXXIV. SIGNATORIES/SERVICE

99. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and the Commissioner of the Department of Environmental Management of the State of Rhode Island certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Settling Defendants, the United States, and the State of Rhode Island, respectively, to this document.

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

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

SO ORDERED THIS ___ DAY OF _____.

_____

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 11-29-02

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 11/15/02

Henry S. Friedman
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Margaret Curran
United States Attorney

Date: 12-19-02 By:

Michael P. Iannotti
Assistant United States Attorney
District of Rhode Island
Fleet Center
50 Kennedy Plaza
Providence, RI 02903

Date: 9-30-02

Robert W. Varney
Regional Administrator
Region I
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

Date: 9/30/02

Amelia Welt Katzen
Senior Enforcement Counsel
Region I
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I. , relating to the Rose Hill Regional Landfill Superfund Site.

FOR THE STATE OF RHODE ISLAND

Date: 9/30/02

Jan Reitsma
Director
Department of Environmental Management
235 Promenade Street
Providence, Rhode Island 02908

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR DEFENDANT TOWN OF SOUTH KINGSTOWN, R.I.

Date: 10/16/2002

Name: Stephen A. Alfred
Title: Town Manager
Address: 180 High Street
Wakefield, RI 02879

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Stephen A. Alfred

Title: Town Manager

Address: 180 High Street
Wakefield, RI 02879

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Rhode Island v. Town of South Kingstown, R.I. and Town of Narragansett, R.I., relating to the Rose Hill Regional Landfill Superfund Site.

FOR DEFENDANT TOWN OF NARRAGANSETT, R.I.

Date: 10.09.02

Name: Maurice J. Loontjens, Jr.
Title: Town Manager
Address: Town of Narragansett
25 Fifth Avenue
Narragansett, RI 02882

Town Council Authorized October 7, 2002
Agenda Item 2002-10-335

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jeffry Ceasrine, P.E.

Title: Town Engineer

Address: Town of Narragansett
25 Fifth Avenue
Narragansett, RI 02882