FRESNO SANITARY LANDFILL

CONSENT DECREE

FRESNO SANITARY LANDFILL CONSENT DECREE DEADLINES

Section pp	Description	Deadline
12	Record Consent Decree	15 Days After Entry of CD
12	Record Notice of Obligation	15 Days After Entry of CD
13	Notify EPA of Supervising Contractor	10 Days After ~~Lodging of CD~~ Council Action to Select contractor
15	Submit Health Safety & Workplan for OUI	8 Weeks After Lodging CD
16	Submit RD/RA for OU2	16 Weeks After Lodging CD
25	Notice of Access Required	45 Days After Lodging CD
25	Monthly Progress Reports of Activities	10th Day of Month After Lodging CD
30	Notify EPA of Project Coordinators (PC)	20 Days After Lodging CD
	Alternate Project Coordinators (APC)	
32	Certify Financial Ability	30 Days After Entry of CD
38	Reimbursement of $454,599.15	30 Days After Effective Date of CD
OU1-12	Draft RAWP	8 Weeks After Entry of CD
	Pre-final RAWP	8 Weeks After EPA Approval of Draft
	Final RAWP	6 Weeks After EPA Approval of Pre-final
OU2-12	Draft RD/RA OU2 Report	16 Weeks After Entry of CD
OU2-12	Prefinal RD/RA OU2 Report	6 Weeks After EPA Approval
	Final RD/RA Report	3 Weeks After EPA Approval
	Pre-final Design - Phase I	13 Weeks After EPA Approval
	Final design - Phase I	6 Weeks After EPA Approval
20	Provide Periodic Review of Site	Every 5 Years
23	Sample Collection	28 Day Notice
25	Monthly Progress Reports During O & M	Annually of OU1
		Semiannually for OU2
26	Changes to Schedule	7 Day Prior Notice
26	Occurrence of Hazardous Event - Oral Notice	Notify Orally Within 24 Hours
27	Occurrence of Hazardous Event - Written Notice	20 Days After Event
27	Occurrence of Hazardous Event - Conclusion	30 Days After End of Event
29	Correct Deficiencies in Report, or Approval Item	3 Weeks After Notice
30	Replacement of PC or APC	5 Working Days Notice
33	Pre-certification Inspection	90 Days After RA Completed
34	Pre-certification Written Report	30 Days After Pre-certification Inspection
37	Release of Hazardous Material	Notify EPA Immediately
39	Contest EPA Bill - Writing	30 Days After Receipt
39	Pay all Future Uncontested Response Costs	30 Days After Receipt of Bill
39	EPA Wins Dispute - City to Pay Sum	5 Days After Resolution of Dispute
42	Self-insurance Certification	2 Weeks Prior to Commencing Work
42	Self-insurance Annual Certification	Annually
43	Project Delays - Orally	48 Hours After Event - Notify EPA Orally
43	Project Delays - Writing	5 Days Thereafter
45	Invoke Dispute Resolution Due to Delays	15 Days After Receipt of EPA Notice

ction pp	Description	Deadline
46	Dispute Resolution - Moderator	5 Days After Filing Notice
46	EPA Position Binding in Dispute-Unless	10 Days - City Invokes Formal Dispute Resolution
46	Statement of Position - EPA	2 Weeks-Serve
47	Statement of Position - City	5 Days Reply
49	City Protests to Court	10 Days of Receipt of Decision
53	Penalties Payable - Bill	30 Days After Receipt of Demand
53	Dispute Resolved by Agreement	15 Days After Receipt of EPA's Order
53	Appealed to Court-Denied	60 Days After Receipt of Order
63	Retention of Records	For 10 Years After Notification
68	CD Lodged With Court	30 Days for Public Notice

OU1/2 Deliverables

	Construction: Draft Construction Complete report	21 Months After Final RAWP Approval
	Add to Construction Schedule for Park Design	6 Weeks After Final RAWP Approval
	Final Construction Report	3-9 Months Upon EPA Approval
	Compliance Testing Periods - 2 Each	6 Weeks After Approval of Draft Activities
OU2-10	Plume migration to Residential Well	12 Months After Construction Activities
	Construction: Completion Report	5 Day Written Notice to EPA
	Phase I Evaluation Report	12 Months After EPA Approval
	Prefinal Design, Phase II	12 Months After Construction
	Final Design, Phase III	10 Weeks After EPA Approval
	Construction Activities, Phase III	6 Weeks After EPA Approval
		6 Months After EPA Approval

MLB/ems
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06/15/98

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(209) 487-5632

Attorneys for the United States

ORIGINAL
FILED
FEB 25 1998
CLERK, U.S. DIST. COURT
Eastern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF FRESNO, Defendant.	CIV F- 98 - 5195 REC SMS CIVIL ACTION NO. COMPLAINT

The United States of America, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), for its complaint against the defendants, states as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation,

for injunctive relief and the recovery of response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Fresno Sanitary Landfill Superfund Site located in Fresno County, California ("the Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9604, 9606, 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b).

DEFENDANT

4. Defendant City of Fresno ("Fresno") is a California municipality located in this Judicial District.

GENERAL ALLEGATIONS

5. The Site occupies 145 acres that are located four miles southwest of Fresno and is bounded on the north by Jensen Avenue, on the east by West Avenue, on the south by North Avenue and on the west by agricultural fields. The landfill stands approximately 60 feet above the surrounding flat grade and extends approximately 30 feet below the surrounding grade.

6. The Site was operated by the City of Fresno as a sanitary landfill, accepting municipal and industrial waste averaging 16,500 tons per month from 1937 to 1987. The approximate total waste at the Site is 4.7 million tons.

7. EPA listed the Site on the National Priorities List ("NPL"), established pursuant to Section 105 of CERCLA, 43 U.S.C. § 9605, in 1990. The City of Fresno performed comprehensive studies, known as Remedial Investigation and Feasibility Studies

("RI/FS"), of two operable units ("OU") for the Site: OU-1 which is known as the Source Control Operable Unit; and OU-2 which is known as the Groundwater Restoration Unit. These studies have been conducted under an administrative consent order with EPA, issued pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, entered on November 21, 1990 and amended on December 19, 1993.

8. The RI/FS for OU-1 was completed by Fresno in March, 1993 and a public comment period was held from March 24, 1993 to May 23, 1993. A Record of Decision ("ROD") for OU-1 was signed by EPA on September 30, 1993. The ROD for OU-1 documented the selected remedy: landfill gas extraction and treatment; landfill cover; and stormwater management.

9. A separate Feasibility Study ("FS") for OU-2 was completed by Fresno in July, 1996 and a public comment period was held from July 24, 1996 to August 23, 1996. A Record of Decision ("ROD") for OU-1 was signed by EPA on September 30, 1996. The ROD for OU-1 documented the selected remedy: phased control of groundwater by containment of contaminated water under the landfill in phase one, and prevention of the spread of the plume of contamination that has previously spread beyond the landfill in phase two. Both phases will involve pumping and treating the groundwater.

10. Site investigations have established the presence of hazardous substances at the Site. These include landfill gas in the soil at the Site, containing hazardous substances, including vinyl chloride, PCE, TCE, and Freon. Hazardous substances in the groundwater include vinyl chloride, PCE, TCE and trans 1,2 DCE.

11. EPA has incurred at least $909198.00 in response costs related to the Site. These costs have been incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

(INJUNCTION)

12. The United States incorporates by reference the allegations of paragraphs 1-11, above, as if fully set forth below.

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. The defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. Fresno is a present owner and operator of the Site within the meaning of Section 107 (a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Fresno owned and operated the Site at the time of the disposal of hazardous substances with the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

16. At all times relevant to this action, there were, and continue to be, releases and threatened releases of hazardous substances into the environment at the Site.

17. The Regional Administrator of EPA Region IX acting pursuant to her delegated authority, determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is entitled to such relief from the

defendants as may be necessary to abate the danger or threat to the public interest posed by the release or threatened release of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF

(RESPONSE COSTS)

19. The United States incorporates by reference paragraphs 1 through 18, above, as if fully set forth below.

20. The United States incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and as defined by Sections 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), as a result of the release or threat of release of hazardous substances from the Site.

21. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

22. The costs incurred by the United States in conducting the response actions at the Site were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

23. Defendant is liable to the United States for the payment of all costs incurred by the United States as a result of the response actions taken at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE: the United States of America requests that the court enter a judgment against the defendant as follows:

A. Enter an order granting to plaintiff appropriate injunctive relief;

B. Order defendant to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;

C. Enter a declaratory judgment pursuant to Section 113 of CERCLA, 42 U.S,C. § 9613, against the defendant on liability for response costs that will be binding on any subsequent action to recover further response costs or damages; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

LOIS J. SCHIFFER
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Environment and Natural Resources Division
U.S. Department of Justice

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OF COUNSEL:

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U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California
94105

UNITED STATES DISTRICT COURT
Eastern District of California
Office of the Clerk
650 Capitol Mall
Room 2546
Sacramento, California 95814

Jack L. Wagner
Clerk

REPLY TO:
Divisional Office
1130 "O" Street, Room 5000
Fresno, California 93721
209/498-7254

NOTICE

CASE NUMBER: CIV.F- 98-5195 REC SMS

TO COUNSEL OF RECORD OR PRO PER LITIGANT:

Please review the following documents:

1. Notice of Availability of Magistrate Judge:

2. Consent to Exercise of Jurisdiction by a U.S. Magistrate Judge and Order of Reference;

3. Notice of Availability of Voluntary Early Neutral Evaluation and Local Rule 16-271;

4. Stipulation and Order to Elect Early Neutral Evaluation;

5. Law and Motion Calendar Schedule for all judges.

NOTE: The plaintiff, or the defendant in removed actions, shall serve a copy of this packet upon all parties in an attachment to the Summons and Complaint.

NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE TO EXERCISE JURISDICTION AND APPEAL OPTION

You are hereby notified that in accordance with 28 U.S.C. 636(c), F.R.Civ.P. 73 and Local Rule 73-305, the U.S. Magistrate Judges sitting in Fresno are available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgement. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate judge may be taken directly to a district judge. Cases in which an appeal is taken to a district judge may be reviewed by the appropriate United States circuit court of appeals only by way of petition for leave to appeal.

A copy of the Form for "Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference" is attached hereto and additional forms are available from the clerk of court.

The district judges sitting in Fresno encourage the parties to consider the option of consenting to the exercise of the court's jurisdiction by a magistrate judge. The civil caseload of both district judges sitting in Fresno is currently well in excess of the national average and is increasing. Additionally the criminal caseload has and continues to increase not only in number of cases but also in complexity and number of trials. These factors have impacted the court's ability to continue to provide and hold to firm trial dates and to promptly rule on submitted matters. The magistrate judges' dockets include fewer civil cases than the district judges' and are not significantly impacted by the criminal caseload. Therefore the magistrate judges are generally able to provide firm trial dates for civil cases on their docket.

The magistrate judges in Fresno have, for the past several years, exercised this court's jurisdiction by consent in a significant number of cases and have presided over a significant percentage of the civil jury trials held in Fresno. Both are former California Superior Court Judges.

UNITED STATES DISTRICT COURT

District of

Plaintiff

v.

Defendant

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE AND ORDER OF REFERENCE

Case Number:

NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE TO EXERCISE OF JURISDICTION AND APPEAL

In accordance with the provisions of Title 28. U.S.C. 636(c), and Fed.R.Civ.P. 73, you are hereby notified that a United States magistrate judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of Reference" are available from the clerk of thc court.

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures	Party Represented	Date

Any appeal shall be taken to the United States court of appeals for this circuit, in accordance with 28 U.S.C. 636(c) and Fed.R.Civ.P. 73(c).

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to _____, United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

UNITED STATES DISTRICT COURT
Eastern District of California
Office of the Clerk
650 Capitol Mall
Sacramento, California 95814

Jack L. Wagner
Clerk

REPLY TO:
Divisional Office
1130 "O" Street
Fresno, California 93721

NOTICE OF AVAILABILITY OF VOLUNTARY EARLY NEUTRAL EVALUATION

PLEASE TAKE NOTICE that pursuant to Local Rule 16-271, all civil actions are eligible for referral to early neutral evaluation except for the following: (i) prisoner petitions and actions, (ii) actions in which one of the parties is appearing pro se, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances.

It will be the responsibility of plaintiff to provide all other parties with copies of this notice at the time service is effected or, for parties already served, no more than ten (10) days after plaintiff receives this notice from the Court. After the filing of the original complaint or a removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of this notice on the new party.

Parties may elect early neutral evaluation by filing a stipulation with the Court indicating that all parties to the action agree to submit the action to early neutral evaluation pursuant to Local Rule 16-271. Actions may not be assigned to early neutral evaluation over the objection of a party. At the time of filing, a copy of the stipulation shall be provided to the ENE Program Administrator designated below:

Judge Coyle:	*Judge Wanger:*	*Judge Ishii:*
Dorothy Gibson	*Greg Lucas*	*Harold Nazaroff*
1130 O Street,	*1130 O Street,*	*1130 O Street,*
Room 5000	*Room 5000*	*Room 5000*
Fresno, CA 93721	*Fresno, CA 93721*	*Fresno, CA 93721*
209/498-7258	*209/498-7256*	*209/498-7287*

RULE 16-271

VOLUNTARY EARLY NEUTRAL EVALUATION

(a) **Scope and Purpose of Rule.** In recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full, formal litigation, this Rule governs the voluntary referral of certain actions to early neutral evaluation at the election of the parties. As used in this Rule only, the term "Clerk" means the Clerk of the Court or any other person designated by the Clerk to engage in the administration of activities under this Rule.

(b) **Actions Subject to this Rule.** All civil actions are eligible for referral to early neutral evaluation under this Rule except for the following: (i) prisoner petitions and actions, (ii) actions in which one of the parties is appearing pro se, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances.

(c) **Notice of Availability.** The Clerk shall provide a notice of the availability of early neutral evaluation with a citation to this Rule to all plaintiffs upon the filing of the complaint or a removal action. The notice will order the plaintiff to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than ten (10) days after plaintiff receives the notice from the Court. After the filing of the original complaint or a removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

(d) **Referral to Early Neutral Evaluation.**

(1) **Election by the Parties.** Parties may elect early neutral evaluation by filing with the Court a stipulation indicating that all parties to the action agree to submit the action to early neutral evaluation pursuant to this Rule. A copy of the stipulation shall be provided to the Clerk at the time of filing. See L.R. 83-141.

(2) **Authority of Assigned Judge and Magistrate Judge.** As part of a status or scheduling conference or otherwise, the assigned Judge or Magistrate Judge may inform the parties of the availability of early neutral evaluation. See L.R. 16-240(b)(16). Actions may not be assigned to early neutral evaluation over the objection of a party. Nevertheless, when complex actions including counterclaims, cross-actions or third-party actions are pending, the Court may assign discrete sub-parts of the complex action if all parties to the sub-part elect early neutral evaluation and the party objecting to early neutral evaluation is not a party to the sub-part of the complaint, counterclaim, cross-action or third-party action to be assigned to early neutral evaluation.

(e) **Selection of Evaluator.**

(1) **Selection by the Parties or Randomly by the Clerk.** Upon the filing of a stipulation for or assignment to early neutral evaluation, the assigned Judge or Magistrate Judge or the Clerk may assign an evaluator, or the Clerk may supply to the parties a list of not more than three (3) potential evaluators, from which list the parties shall agree upon one. If the identity of the evaluator is by selection of the parties, counsel for the party first asserting jurisdiction in the Court shall report the selection, in writing, to the Clerk within ten (10) days following service of the list by the Clerk. If the parties are unable to agree upon an evaluator or fail to communicate their agreement to the Clerk, the Clerk may designate an evaluator drawn randomly from the panel of evaluators to be the evaluator assigned to the action and shall notify the parties and the evaluator of that designation. If the evaluator so selected is unable or unwilling to serve, the Clerk shall select and notify another evaluator. When an evaluator has agreed to serve, the Clerk shall send notice to the evaluator and the parties of the selection.

(2) **Neutrality of the Evaluator.** No person may serve as an evaluator in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist. If a circumstance specified in 28 U.S.C. § 455 exists, including the fact that the evaluator's law firm represents or has represented one of the parties or that one of the lawyers who would appear before the evaluator is involved in litigation in another action with the evaluator, the evaluator shall promptly disclose the circumstance to all parties in writing. A party who believes that an assigned evaluator has a conflict of interest shall bring the concern to the attention of the Clerk within ten (10) days after learning of the conflict or shall be deemed to have waived any objection based on that conflict.

(3) **Maintenance of the Panel of Evaluators.** The Clerk shall maintain a panel of evaluators, initially consisting of the evaluators who were selected to participate as evaluators in the early neutral evaluation pilot project. Evaluators may request that their names be dropped from the panel for specified periods of time or permanently. Additional names may be added to the panel by the Chief Judge, with the consent of the individuals to be named. The panel shall consist of experienced civil litigators who are familiar with practice in federal court.

(f) **Evaluation Proceedings.** Once an evaluator has been selected, the assigned Judge or Magistrate Judge, or the Clerk, or the evaluator, shall fix the date of the early neutral evaluation session after conferring with the parties. The session shall be held as soon as reasonably possible but in no event more than ninety (90) days after the evaluator is selected, unless otherwise ordered by the Court.

(1) **Written Evaluation Statements.** At least seven (7) days prior to the evaluation session, each party shall submit to the evaluator and serve on all other parties a written evaluation statement not to exceed ten (10) pages. Statements shall not be filed

(ii) assist the parties to identify areas of agreement and, when appropriate, to enter into stipulations,

(iii) assess and assist the parties in assessing the strengths and weaknesses of their contentions and evidence, their chance of success on important issues, the consequences of an unfavorable verdict on each important issue, the number of witnesses to be deposed regarding that issue and the costs and fees associated with proving that issue,

(iv) determine the settlement offers that parties are willing to make and whether offers may be communicated to the opposing parties,

(v) estimate when feasible the likelihood of liability and the dollar range of damages or other relief, and

(vi) undertake such other efforts at resolution of the action, of issues in the action, or of procedural steps to be taken in the action as may be appropriate.

(6) **Follow-Up Sessions.** If the action is not resolved at the initial session, the evaluator shall determine whether to schedule any follow-up sessions or procedures.

(7) **Report to the Court.** Within thirty (30) days following the early neutral evaluation session, the evaluator shall advise the Clerk by letter whether the action has settled and, if not, whether any follow-up sessions or procedures remain to be completed. The evaluator shall not report any of the substantive matters discussed in the evaluation nor the evaluator's substantive views of the merits of any party's position.

(g) **Confidentiality.** All written and oral communications made during any early neutral evaluation session shall be treated as absolutely confidential by the Court and the evaluator. The Court extends to all such communications all the protections federal courts and Federal Rule of Evidence 408 give to communications made in settlement negotiations or to offers of compromise. In addition, no communication made during any session may be disclosed by the parties, their counsel or the evaluator or used for any purpose (including impeachment or to prove bias or prejudice of a witness) in any pending or future proceeding in this Court. The privileged and confidential status afforded to communications made during any session is extended to include the evaluator's comments, assessments, evaluations and recommendations as to development of the action, discovery or motions.

(h) **Scope and Limitations on Powers of Evaluators.** Evaluators have authority to structure and conduct evaluation sessions and to fix their time and place. Evaluators shall promptly report violations of the requirements of this Rule, including failure to submit timely statements or to comply with attendance requirements, to the Magistrate Judge assigned to the action. Evaluators have no authority to order parties or counsel to take

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

_____, Plaintiff(s), vs. _____, Defendant(s).	No. CIV-F-_____ STIPULATION AND ORDER TO ELECT REFERRAL OF ACTION TO EARLY NEUTRAL EVALUATION PURSUANT TO LOCAL RULE 16-271

Pursuant to Local Rule 16-271, the parties hereby agree to submit the above-entitled action to early neutral evaluation.

DATED: _____

_____
Attorney for Plaintiff(s)

_____
Attorney for Defendant(s)

IT IS SO ORDERED.

DATED: _____

_____
U.S. DISTRICT COURT JUDGE

cdc.sc1p/04/97

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA AT FRESNO
1130 O Street, Room 5000
Fresno, CA 93721
209/498-7483

LAW AND MOTION CALENDAR SCHEDULE*

Effective January 5, 1998

ROBERT E. COYLE (REC) Senior U.S. District Judge Courtroom One/Fifth Floor	**Clerk: Dorothy Gibson - 209/498-7258 Fax:209/494-3916** Civil Motions: Mondays/1:30 p.m. Criminal Motions: Mondays/10:00 a.m. (All Motions heard on Tuesday when Monday is a holiday)
OLIVER W. WANGER (OWW) U.S. District Judge Courtroom Two/Fifth Floor	**Clerk: Greg Lucas - 209/498-7256 Fax: 209/494-3912** Civil Motions: Mondays/10:00 a.m. Criminal Motions: Mondays/1:30 p.m. (Criminal Motions heard on Tuesday, Civil Motions heard the following Monday when Monday is a holiday)
ANTHONY W. ISHII (AWI) U.S. District Judge Courtroom Three/Fifth Floor	**Clerk: Harold Nazaroff - 209/498-7287 Fax: 209/494-3911** Civil Motions: Mondays/1:30 p.m. Criminal Motions: Mondays/9:00 a.m. (All Motions heard on Tuesday when Monday is a holiday)
M.D. CROCKER (MDC) Senior U.S. District Judge Courtroom One/Fifth Floor	**Clerk: Linda Lucas - 209/498-7491 Fax: 209/494-3914** Civil & Criminal Motions: Mondays/9:00 a.m. (All Motions heard the following Monday when Monday is a holiday)
DENNIS L. BECK (DLB) U.S. Magistrate Judge Courtroom Five/Third Floor	**Clerk: Dyana Dailey - 209/498-7374 Fax: 209/494-3919** Civil Motions: Mondays/9:00 a.m. (All Motions heard on Tuesday when Monday is a holiday)
SANDRA M. SNYDER (SMS) U.S. Magistrate Judge Courtroom Four/Third Floor	**Clerk: Harriet Herman - 209/498-7252 Fax: 209/494-3920** Civil Motions: Mondays/10:00 a.m. (All Motions heard on Tuesday when Monday is a holiday)
TO RESERVE A SPECIFIC HEARING DATE OR TO SCHEDULE PROCEEDINGS NOT LISTED ABOVE, CONTACT THE JUDGE'S CLERK. FOR GENERAL INFORMATION, CONTACT THE CLERK'S OFFICE AT 209/498-7483.	

Revised 1/98

**Unless otherwise set by the assigned Judge or Magistrate Judge*

FILED
FEB 25 10 21 AM '98
CLERK
EASTERN
BY
DEPUTY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

USA

Plaintiff(s),

v.

City of Fresno

Defendant(s).

/

CIV F- 98-5195 REC SMS
No.

ORDER SETTING MANDATORY SCHEDULING CONFERENCE

DATE: MAY 27, 1998

TIME: 9:15 AM

CTRM: #4 (3rd Floor)

SANDRA M. SNYDER
U.S. MAGISTRATE JUDGE

Rule 16, F.R.Civ.P., requires the Court to enter a Scheduling Conference Order within 120 days of the date of the Complaint being served upon the defendant. Counsel are referred to F.R.Civ.P., Rule 4(a) regarding the requirement of timely service of the complaint. Therefore, it is ordered that you appear for a formal Scheduling Conference (formerly called Status Conference) before the Assigned Magistrate Judge at the United States Courthouse, 1130 "O" Street, Fresno, California, 93721.

Because of the mandates of Rule 16, *supra*, this Order may be served upon counsel for the plaintiff(s) before appearances of defendant(s) are due. It is the obligation of counsel for the plaintiff(s) to serve a copy of this Order on the defendant(s), or, if identified, on their counsel, **promptly** upon receipt of this

Order, and to file an appropriate proof of such service with the Court, in compliance with Rule 5-135(a) of the Local Rules of Practice for the Eastern District of California.

Attendance at the Scheduling Conference is *mandatory* upon each party not represented by counsel or, alternatively, by retained counsel. Only counsel who are thoroughly familiar with the facts and law of the instant case, and who have full authority to bind his or her client, shall appear. ~~Trial counsel should~~ participate in this Scheduling Conference whenever possible. It may be necessary for counsel to spend as much as 45 minutes in this Conference.

A Joint Scheduling Report, (formerly known as a Joint Status Report), carefully prepared and executed by all counsel, shall be filed with the Clerk of the Court, in full compliance with the requirements as set forth in Exhibit "A" attached hereto, **one (1) full week prior to the Scheduling Conference, and shall be accompanied with an additional copy of the Joint Scheduling Report, on a 3½" computer disc, formatted for WordPerfect 6.1 preferably.** The computer disc will not be returned unless the parties so request, and a self-addressed stamped mailing container or envelope is provided.

For reference purposes, the Court requires that counsels' Joint Scheduling Report indicate the date, time, and courtroom of the Scheduling Conference opposite the caption on the first page of the Report.

Among other things, counsel will be expected to discuss the possibility of settlement. Counsel are to thoroughly discuss

settlement with each other before undertaking the preparation of the Joint Scheduling Report and engaging in extensive discovery. However, even if settlement negotiations are progressing, counsel are expected to comply with the requirements of this Order unless otherwise excused by the Court. If the case is settled, please promptly inform the Court, and counsels' presence, as well as the Joint Scheduling Report, will not be required.

Counsel, whose office is ~~more than fifty (50)~~ miles from the Courthouse, may request that their attendance be by telephonic conference. If two or more parties wish to appear telephonically, counsel shall decide which will be responsible for making prior arrangements for the conference call with the AT&T operator (if counsel do not have conference call capabilities on their telephone systems), and shall initiate the call at the above-designated time. After all parties are on the line, the call should then be placed to Judge Snyder's chambers at (209) 498-7325. Additionally, counsel are directed to indicate on the face page of their Joint Scheduling Report that the conference will be telephonic.

UNITED STATES MAGISTRATE JUDGE

SANDRA M. SNYDER

EXHIBIT "A"

At least twenty (20) days prior to the Mandatory Scheduling Conference, the actual trial counsel for all parties shall conduct and conclude a conference at a time and place arranged by counsel for the plaintiff(s). This conference shall preferably be a personal conference between counsel but, due to the distances involved in this District, a telephonic conference call involving all counsel is permissible. The Joint Scheduling Report shall respond to the following items by corresponding numbered paragraphs:

1. Summary of the factual and legal contentions set forth in the pleadings of each party, including the relief sought by any party presently before the Court.

2. Any proposed amendment to the pleadings presently on file shall be filed by its proponent contemporaneously with the Scheduling Conference Report. If the matter cannot be resolved at the Scheduling Conference, the matter will be set as a Motion to Amend in accordance with the Rules of Practice of the Eastern District of California.

3. A summary detailing the uncontested and contested facts.

4. A summary of the legal issues as to which there is no dispute, i.e., jurisdiction, venue, applicable federal or state law, etc., as well as a summary of the disputed legal issues.

5. The status of all matters which are presently set before the Court, i.e., hearing all motions, etc.

6. A complete and detailed discovery plan, including a firm cut-off date for discovery, as outlined in the Federal Rules of Civil Procedure, Rule 26(f)(2), and a proposed date for disclosure of expert witnesses.

7. Dates agreed to by all counsel for:

   (a) Filing pre-trial motions, with the understanding that motions will not be entertained after the agreed upon date. (No later than 45 days prior to the proposed Pre-Trial Conference date.)
   (b). Pre-Trial Conference date.
   (c) Trial date.

   All of these dates should be considered firm dates. Dates should be set to allow the Court to decide any matters under submission before the Pre-Trial Conference is set.

8. At the conference referred to above, counsel are encouraged to discuss settlement, and the Court will expect a statement in the Joint Scheduling Report as to the possibility of settlement. Counsel shall indicate whether they feel a settlement conference is desired, and when it should occur, i.e., before further discover, after discovery, after pre-trial motions, etc.

9. A statement as to whether the case is a jury or non-jury case.

10. An estimate of the number of trial days required. When counsel cannot agree, each party shall give his or her best estimate.

11. Whether either party requests bifurcation of trial or has any other suggestion for shortening trial. It should be noted that all federal tort claim cases are bifurcated as a matter of course.

12. Whether this matter is related to any matter pending in this court or any other court, including any bankruptcy court.

13. Joint Scheduling Reports are to be submitted with an additional copy, on a 3 ½" computer disc, formatted for WordPerfect 6.1 preferably.

SHOULD COUNSEL FAIL TO APPEAR AT THE MANDATORY SCHEDULING CONFERENCE, OR FAIL TO COMPLY WITH THE DIRECTIONS AS SET FORTH ABOVE, AN EX PARTE HEARING MAY BE HELD AND JUDGMENT OF DISMISSAL, DEFAULT, OR OTHER APPROPRIATE JUDGMENT MAY BE ENTERED, OR SANCTIONS, INCLUDING CONTEMPT OF COURT, MAY BE IMPOSED AND/OR ORDERED.

Revised 5/9/97

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

CITY OF FRESNO

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PAUL L. SEAVE, UNITED STATES ATTORNEY
E. ROBERT WRIGHT, ASSISTANT U.S. ATTORNEY
1130 "O" STREET, ROOM 3654
FRESNO, CA 93721

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action for response costs under CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ [illegible] Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Other

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☒ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $ All response costs

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
2/25/98

SIGNATURE OF ATTORNEY OF RECORD
E. Robert Wright

UNITED STATES DISTRICT COURT

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Attorney for the City of Fresno

LODGED

FEB 25 1998

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF FRESNO, Defendant.	CIVIL NO. CIV F- 98 - 5195 REC SMS

CONSENT DECREE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. CITY OF FRESNO, Defendant	CIVIL ACTION NO.

CONSENT DECREE

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I. BACKGROUND

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

A. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Fresno Sanitary Landfill Superfund Site in Fresno, California, together with accrued interest; and (2) performance of response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

B. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California (the "State") on April 10, 1997, of negotiations with potentially responsible parties regarding the implementation of the remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

[C. RESERVED.]

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior, Regional Environmental Officer, the natural resource damage trustee for this Site on April 1, 1997, of negotiations with the City 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.

E. The Defendant, the City of Fresno ("City"), in entering into this Consent Decree, neither admits any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does the City acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41020.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, on September 21, 1990, pursuant to 40 C.F.R. 300.430, the City commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site.

H. The City issued a Feasibility Study ("FS") Report in September 1992 for Operable Unit 1 ("OU1") which pertains to the containment of the trash prism. The City completed a Remedial Investigation ("RI") Report in May 1994 and issued an FS Report in July 1996 for Operable Unit 2 ("OU2") which pertains to the cleanup of the groundwater impacted by the landfill contaminants.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for the remedial action for OU1 in March 1993 and published notice of the completion of the FS and of the proposed plan for

the remedial action for OU2 in July 1996. Both notices were published in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plans for the remedial actions for OU1 and OU2. A copy of the transcript of the public meetings is available to the public as part of the administrative records upon which the Regional Administrator based the selection of the response actions.

J. The decision by EPA on the remedial actions to be implemented at the Site is embodied in two final Records of Decision ("ROD"). The ROD for OU1 was executed on September 30, 1993, and the ROD for OU2 was executed on September 30, 1996. The State has given its concurrence on these two RODs. The RODs include a responsiveness summary to the public comments. Notice of the final plans were published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work for OU1 and OU2 will be properly and promptly conducted by the City if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the remedial actions selected by the RODs and the Work to be performed by the City shall constitute response actions taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and

will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the City. Solely for the purposes of this Consent Decree and the underlying complaint, the City waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The City shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the City and its assigns. Any change in ownership or corporate status of the City, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the City's responsibilities under this Consent Decree.

3. The City shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the City with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work

in conformity with the terms of this Consent Decree. The City or its 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 City shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the City within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

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

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between January 1, 1996 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.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the

U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Municipal Solid Waste" shall mean all waste materials generated by households, including single- and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

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

"Operation and Maintenance" or "O & M" shall mean all

activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

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

"Parties" shall mean the United States and the City.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through December 31, 1995, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Actions, set forth in Sections 9 and 10 of the September 30, 1993 ROD, Section 10 of the September 30, 1996 ROD, Section 7.0 of the SOW for Operable Unit One, and Section 7.0 of the SOW for Operable Unit Two.

"Plaintiff" shall mean the United States.

"Project Coordinator" for the City shall mean the City's designated representative who shall have the authority, duties, and responsibilities for overseeing the implementation of this Consent Decree.

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

"Records of Decision" or "RODs" shall mean the EPA Records of Decision relating to the two Operable Units at the Site: for

OU1 signed on September 30, 1993, by the Regional Administrator, EPA Region 9, or his/her delegate, and all attachments thereto; for OU2 signed on September 30, 1996, by the Regional Administrator, EPA Region 9 or his/her delegate, and all attachments thereto. The RODs are attached as Appendix A and are hereby incorporated by reference into this Decree.

"Remedial Actions" shall mean those activities, except for Operation and Maintenance, to be undertaken by the City to implement the RODs, in accordance with the SOW, the final Remedial Action Work Plan for OU1, the Remedial Design and Remedial Action Report for OU2, and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the documents developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design/Remedial Action Report" shall mean the documents developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Site" shall mean the Fresno Sanitary Landfill Superfund Site, encompassing approximately 145 acres, that is located four miles southwest of the City of Fresno, bounded on the north by Jensen Avenue, on the east by West Avenue, on the south by North Avenue and on the west by agricultural fields, in Fresno County, California, and depicted generally on the map attached as Appendix C.

"State" shall mean the State of California, its employees and authorized representatives represented by the Department of Toxic Substances and Control (DTSC) as the lead agency.

"Statement of Work" or "SOW" shall mean the statement of

work for implementation of the Remedial Designs, Remedial Actions, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the City to supervise and direct the implementation of the Work on either of the two operable units under this Consent Decree.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); [(3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

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

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site expeditiously by agreeing upon the design and implementation of response actions at the Site by the City, to reimburse Interim and Future Response Costs of the Plaintiff, and to resolve the claims of Plaintiff including claims for past costs against the City as provided in this Consent Decree.

6. Commitments by the City

The City shall finance and perform the Work in accordance with this Consent Decree, the RODs, the SOWs, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by the City and approved by EPA pursuant to this Consent Decree. The City shall also reimburse the United States for Interim and Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by the City pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The City must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the RODs and the SOWs. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

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

b. The City may seek relief under the provisions of

Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. Notice of Obligations to Successors-in-Title

a. Within fifteen (15) days after the entry of this Consent Decree, the City shall record a certified copy of this Consent Decree with the Recorder's Office or Registry of Deeds or other appropriate office in Fresno County, State of California. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the City with respect to the provision of access under and the implementation of institutional controls under Section IX (Access) shall be binding upon the City and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within fifteen (15) days after the entry of this Consent Decree, the City shall record at the Recorder's Office, or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property owned by the City which is included in the Site a notice of obligation to

provide access under Section IX (Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The City and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the City's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section IX, shall continue to be met by the City. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the City to comply with the Consent Decree, without prior EPA approval.

VI. PERFORMANCE OF THE WORK BY THE CITY

10. Selection of Supervising Contractor

a. All aspects of the Work to be performed by the City pursuant to Sections VI (Performance of the Work by the City), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor for each operable unit, the selection of which shall be subject to disapproval by EPA. Within ten (10)

days after the bid approval by the City Council, the City shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. EPA shall not withhold approval of the City's Supervising Contractor unreasonably. If EPA disapproves the City's Supervising Contractor, EPA shall state the grounds for its disapproval. If at any time thereafter, the City proposes to change a Supervising Contractor, the City shall give such notice to EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the City in writing. The City shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The City may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty one (21) days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the City from meeting one or

more deadlines in a plan approved by the EPA pursuant to this Consent Decree, the City may seek relief under the provisions of Section XVIII (Force Majeure) herein.

11. Remedial Action for OU1

a. The City agreed to perform remedial design for OU1 pursuant to Administrative Order on Consent ("AOC"), U.S. EPA Docket No. 94-07, effective December 1993. EPA and the United States hereby agree that the requirements of the approved Remedial Design, which is appended to said AOC, will become an enforceable part of this Consent Decree on the effective date of this Consent Decree, and that all other requirements of said AOC will be superseded by the requirements of this Consent Decree, as of the effective date of this Consent Decree. The Remedial Design for OU1 has been completed by the City and approved by EPA.

b. Within eight weeks after the lodging of this Consent Decree, the City shall submit to EPA and the State, a Work Plan for the performance of the Remedial Action for OU1 (hereinafter referred to as "Remedial Action Work Plan."). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the OU1 ROD, and achievement of the Performance Standards, in accordance with this Consent Decree, the OU1 ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design for OU1 approved by EPA. Upon approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submits the Remedial Action Work Plan, the City shall submit to

EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 CFR 1910.120.

c. The Remedial Action Work Plan shall include those activities and deliverables identified in the SOW for OU1 and upon approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.

d. The comprehensive schedule for the entire project identified in the Remedial Action Work Plan and approved by EPA becomes enforceable under this Consent Decree.

e. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, the City shall implement the activities required under the Remedial Action Work Plan. The City shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA approval of Plans and Other Submissions). Unless otherwise approved by EPA, the City shall not commence physical Remedial Action activities at OU1 prior to approval of the Remedial Action Work Plan.

12. Remedial Design/ Remedial Action for OU2

a. Within twelve weeks after the lodging of this Consent Decree, the City shall submit to EPA and the State, a Work Plan for the performance of the Remedial Design and Remedial Action for OU2 (hereinafter referred to as "Remedial Design/Remedial Action Report"). The Remedial Design/Remedial

Action Report shall provide for the design elements and construction and implementation of the remedy set forth in the OU2 ROD and achievement of the Performance Standard, in accordance with this Consent Decree, the OU2 ROD, and the SOW for OU2. Upon approval by EPA, the Remedial Design/Remedial Action Report shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Design/Remedial Action Report shall include the activities and deliverables identified in the SOW for OU2 and upon approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.

c. The comprehensive schedule for the entire project identified in the Remedial Design/Remedial Action Report for OU2 and approved by EPA becomes enforceable under this Decree.

d. Upon approval of the Remedial Design/Remedial Action Report by EPA, after a reasonable opportunity for review and comment by the State, the City shall implement the activities required under the Remedial Design Report. The City shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Design Report in accordance with the approved schedule for review and approval pursuant to Section XI (EPA approval of Plans and Other Submissions). Unless otherwise approved by EPA, the City shall not commence physical Remedial Action activities at OU2 prior to approval of the Remedial Design Report. Such approval shall not be unreasonably withheld by EPA.

13. The City shall continue to implement the Remedial Actions and O&M for OU1 and OU2 until the Performance Standards

are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOWs and/or in work plans developed pursuant to the SOWs is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the RODs, EPA may require that such modification be incorporated in the SOWs and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs.

b. For the purposes of this Paragraph 14 and Paragraphs 48 and 49 only, the "scope of the remedy selected in the RODs" are: for OU1: containing subsurface migration, surface emissions of landfill gas, leachate generation and migration, and erosion and transport of waste materials; for OU2: phased remediation of the contaminated groundwater, with phase one containing the contaminated groundwater underneath the landfill by installing pumping wells along the perimeter of the landfill, phase two preventing the spread of the groundwater plume into the clean portions of the aquifer, and phase three reducing the contaminant levels at the contained groundwater plume to maximum contaminant levels ("MCLs") by pump and treat, unless shown to be technically impracticable.

c. If the City objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution),

Paragraph 65 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. The City shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOWs in accordance with this Paragraph. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. The City acknowledges and agrees that nothing in this Consent Decree, the SOWs, or the Remedial Actions Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOWs and the Work Plans will achieve the Performance Standards.

16. The City shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The City 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 City shall

notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the City following the award of the contract for Remedial Action construction. The City shall provide the information required by Paragraph 16(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. At least every five years as required by Section 121(c) of CERCLA and any applicable regulations, the City shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Actions are protective of human health and the environment.

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

19. Opportunity To Comment. The City and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. The City's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the City shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (United States' reservations of liability based on unknown conditions or new information) are satisfied. The City may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff[s]) are satisfied, (2) EPA's determination that the Remedial Actions are not protective of human health and the environment, or (3) EPA's selection of further response actions. Disputes pertaining to whether the Remedial Actions are protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 65 (record review).

21. Submissions of Plans. If the City is required to perform further response actions pursuant to Paragraph 20, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by the City) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. The City 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 for

Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to the City of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the City shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOWs, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP, and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The City shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the City in implementing this Consent Decree. In addition, the City shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The City shall ensure that the laboratories, which it utilizes for the analysis of samples taken pursuant to this Decree, perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for 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. The City 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 City 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.

23. Upon request, the City shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. The City shall notify EPA and the State not fewer than twenty eight (28) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the City to take split or duplicate samples of any samples they take as part of the Plaintiff's oversight of the City 's implementation of the Work.

24. The City shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the City with respect to the Site and/or the implementation of this Consent Decree, unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Commencing upon the date of lodging of this Consent Decree, the City agrees to provide the United States and the

State and their representatives, including EPA and its contractors, upon reasonable notice, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by the City, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

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

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

d. Obtaining samples;

e. Assessing the need for, planning of, or implementation of additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the City or its agents, consistent with Section XXIV; and

g. Assessing the City's compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than the City, the City shall use best efforts to secure from such persons access for the City, as well as for the United States and the State and their representatives, including, but not limited to, its contractors, as necessary to effectuate this Consent Decree. For

purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. If, after best efforts by the City, any access required to complete the Work is not obtained within forty five (45) days of the date of lodging of this Consent Decree, or within forty five (45) days of the date EPA notifies the City in writing that additional access beyond that previously secured is necessary, the City shall promptly notify the United States in writing, and shall include in that notification a summary of the steps the City has taken to attempt to obtain access. The United States or the State may, as it deems appropriate, assist the City in obtaining access. The City shall reimburse the United States or the State in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

29. In addition to any other requirement of this Consent Decree, the City shall submit to EPA and the State two copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by the City or its contractors or agents in the previous month; (c) identify all work plans, plans and other

deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the City has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. The City shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the City pursuant to Paragraph 49.b of Section XIV (Certification of Completion). During Operation and Maintenance, the City shall submit progress reports annually for OU1 and semi-annually for OU2. If requested by EPA or the State, the City shall also provide briefings for EPA to discuss the progress of the Work.

30. The City shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior

to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that the City 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 City shall within twenty four (24) hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

33. The City shall submit two copies of all plans, reports, and data required by the SOWs, the Remedial Actions Work Plans, or any other approved plans to EPA in accordance with the schedules set forth in such plans.

34. All reports and other documents submitted by the City to EPA (other than the monthly progress reports referred to above) which purport to document the City's compliance with the

terms of this Consent Decree shall be signed by an authorized representative of the City, who shall be designated in writing by the City's governing body.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; modify the submission to cure the deficiencies; or (d) disapprove, in whole or in part, the submission, directing that the City modify the submission. However, EPA shall not modify a submission without first providing the City at least one notice of deficiency and an opportunity to cure within three weeks, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35(a), (b), or (c), the City shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies a submission to cure deficiencies in the original submission by following the procedure set forth in Paragraph

35(c), if the original submission had a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), the City shall, within three weeks or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the three-week period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), the City shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the City of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

39. If upon resubmission, a plan, report, or item is

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

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

XII. PROJECT COORDINATORS

41. Within twenty (20) days of lodging this Consent Decree, the City and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later

than the actual day the change is made. The City's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to oversee all aspects of the Work adequately. The City's Project Coordinator shall not be an attorney for the City in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

43. EPA's Project Coordinator and the City's Project Coordinator will confer, at a minimum, on a monthly basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

44. Within thirty (30) days of entry of this Consent Decree, the City shall certify that it has the financial ability to complete the total estimated cost of the Work remaining to be performed by demonstrating that the City satisfies the requirements of 40 C.F. R. Part 254.143)f), or in one or more of the following forms:

a. Internal financial information to allow EPA to determine that the City has sufficient assets available to perform the work;

b. A surety bond guaranteeing performance of the Work;

c. One or more irrevocable letters of credit equal to the total estimated cost of the Work;

d. A trust fund;

45. If the City can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, the City may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. The City shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, the City may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

47. The City shall resubmit sworn statements certifying assurance of ability to complete the Work annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, the City shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval another form or forms of financial assurance required by EPA. The City's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XIV. CERTIFICATION OF COMPLETION

48. Completion of the Remedial Action

a. Within ninety (90) days after the City concludes that the Remedial Actions have been fully performed and the Performance Standards have been attained, the City shall schedule and conduct a pre-certification inspection to be attended by the City, EPA and the State. If, after the pre-certification inspection, the City still believes that the Remedial Actions have been fully performed and the Performance Standards have been attained, it shall submit a written report requesting

certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the City's Project Coordinator shall state that the Remedial Actions have been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official who shall be designated in writing by the governing body of the City, or the City's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Actions or any portion thereof have not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify the City in writing of the activities that must be undertaken by the City pursuant to this Consent Decree to complete the Remedial Actions and achieve the Performance Standards. Provided, however, that EPA may only require the City to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that term is defined in Paragraph 14.b. EPA

will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOWs or require the City to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The City shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion that the Remedial Actions have been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA, within a reasonable time, will so certify in writing to the City. Certification of Completion for OU2 shall constitute the Certification of Completion of the Remedial Actions for this Site for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Actions shall not affect the City's obligations under this Consent Decree.

49. Completion of the Work

a. Within ninety (90) days after the City concludes that all phases of the Work (including O & M), have been fully performed, the City shall schedule and conduct a pre-certification inspection to be attended by the City, EPA and the State. If, after the pre-certification inspection, the City still believes that the Work has been fully performed, the City

shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible official who shall be designated in writing by the governing body of the City, or the City's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the City in writing of the activities that must be undertaken by the City pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require the City to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOWs or require the City to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The City shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

50. In the event any action or occurrence arising out of the performance of the Work 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 City shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the City shall notify the EPA Emergency Response Unit, Region 9. The City shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOWs. In the event that the City fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, the City shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. REIMBURSEMENT OF RESPONSE COSTS

52. The City shall:

a. Within thrity (30) days of the effective date of this Consent Decree, Reimburse the EPA Hazardous Substance Superfund for all Past Response Cost in the amount of Four Hundred Fifty Four Thousand Five Hundred Ninety Nine Dollars and fifteen cents ($454,599.15)

b. Reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send the City a bill, on an annual basis, requiring payment. The bill shall include a Summary of Cost Information or an equivalent summary, which includes direct and indirect costs incurred by EPA, DOJ and EPA's contractors. The City shall make all payments within twelve weeks of the City's receipt of each bill requiring payment, except as otherwise provided in Paragraph 53.

c. The City shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks

made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #09-H7, the DOJ case number 90-11-2-1203 and the name and address of the party making payment. The City shall send the check(s) to:

United States Environmental Protection Agency
Region IX
Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251
Attn: Collection Officer for Superfund

The City shall send copies of the check(s) to the United States and to the EPA Project Coordinator as specified in Section XXVI (Notices and Submissions).

53. The City may contest payment of any Future Response Costs under Paragraph 52 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the City shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 52. The City shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs. Simultaneously, the City shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution) for the contested Future Response Costs. If

the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the City shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the City prevails concerning any aspect of the contested costs, the City shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 53. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the City's obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by Paragraph 52 are not made within twelve weeks of the City's receipt of the bill, the City shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the City's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the City's failure to make timely payments under this Section. The City shall make all payments required by this Paragraph in the manner described in Paragraph 52.

XVII. INDEMNIFICATION AND INSURANCE

55. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the City as EPA's authorized representatives under Section 104(e) of CERCLA. The City shall indemnify, save and hold harmless the

United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the City, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the City as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the City agrees to pay the United States all reasonable costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the City, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the City in carrying out activities pursuant to this Consent Decree. Neither the City nor any such contractor shall be considered an agent of the United States.

b. The United States shall give the City notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 55.a., and shall consult with the City prior to settling such claim.

56. The City waives all claims against the United States for damages or reimbursement, or for set-off of any payments made

or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the City shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

57. No later than two weeks before commencing any on-site Work, the City shall certify to EPA of its ability and practice to act as its self-insurer, and provide comprehensive general liability, including automobile liability, insurance with limits of up to two and one-half million dollars, naming the United States as an additional insured. The City shall make this certification of self-insurance annually, until the first anniversary of EPA's Certification of Completion of the Remedial Actions pursuant to Paragraph 48.b. of Section XIV (Certification of Completion) In addition, for the duration of this Consent Decree, the City shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the City in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the City shall provide to EPA certificates of such insurance and a copy of each insurance policy. The City shall resubmit such certificates

and copies of policies each year on the anniversary of the effective date of this Consent Decree. If the City demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the City need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's

Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region IX, within forty-eight (48) hours of when the City first knew that the event might cause a delay. Within five (5) days thereafter, the City shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the estimated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, in and of itself, extend the time for

performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the City in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If the City elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 58 and 59, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

disputed in accordance with this Section.

63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. Within five (5) days of the filing of an informal notice of dispute, either party may opt for the assistance of a neutral moderator to resolve the dispute. Unless the parties agree otherwise, mediation shall not last longer than thirty (30) days. Mediation expenses shall be borne by the City. In the absence of a request for mediation, the period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures of this Section by serving on the United States 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 City. The Statement of Position shall specify the City's position as to whether formal dispute resolution should proceed under Paragraph 65 or Paragraph 66.

b. Within two weeks after receipt of the City's Statement of Position, EPA will serve on the City its Statement

of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or 66. Within five (5) days after receipt of EPA's Statement of Position, the City may submit a Reply.

c. If there is disagreement between EPA and the City as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the City ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 65 and 66.

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

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 9, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 65.a. This decision shall be binding upon the City , subject only to the right to seek judicial review pursuant to Paragraph 65.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 65.b. shall be subject to review by this Court, provided that a motion for judicial review of the decision is filed by the City with the Court and served on EPA within three weeks of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the City's motion.

d. In proceedings on any dispute governed by this Paragraph, the City shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 65.a.

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

a. Following receipt of the City's Statement of Position submitted pursuant to Paragraph 64, the Director of the Superfund Division, EPA Region 9, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the City unless, within three weeks of receipt of the decision, the City files with the Court and serves on EPA a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the City's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

67. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the City under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable

provision of this Consent Decree. Only in the event that the City does not prevail on the disputed issue shall stipulated penalties be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

68. The City shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69, 70 and 71 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by the City shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOWs, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. a. The following stipulated penalties shall accrue per violation per day for any failure(s) to submit timely and adequate reports identified in Subparagraphs b or c, or for any failure to timely perform the work identified and scheduled in those reports:

Penalty Per Violation Per Day	Period of Noncompliance Number of Days
$5,000	1 through 7
$10,000	8 through 14
$15,000	15 and beyond

b. Reports for OU1:

i. Draft Remedial Action Work Plan

ii. Prefinal Remedial Action Work Plan

iii. Final Remedial Action Work Plan

iv. Construction Complete Report

v. Yearly Status Reports

c. Reports for OU2:

i. Draft Remedial Design/Remedial Action Report

ii. Prefinal Remedial Design/Remedial Action Report

iii. Final Remedial Design/Remedial Action Report

iv. Construction Completion Report - Phase I

v. Evaluation of Phase I Report

vi. Construction Completion Report - Phase II

vii. Evaluation of Phase II Report

viii. Construction Completion Report - Phase III

ix. Evaluation of Phase III Report

x. Yearly Status Reports

70. For failure to submit timely or adequate reports or documents required by this Consent Decree, other than those identified in subparagraph 69(b) and (c), the following stipulated penalties shall accrue per violation per day:

Penalty Per Violation Per Day	Period of Noncompliance Number of Days
$1,500	1 through 7
$3,000	8 and beyond

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiffs), the City shall be liable

for a stipulated penalty in the amount of $1 million or the amount of stipulated penalties otherwise due for the City's failure to comply with the requirements of this Decree, whichever is greater.

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 15th day after EPA's receipt of such submission until the date that EPA notifies the City of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 65.b. or 66.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 11th day after the date that the City replies to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 15th day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that the City has failed to comply with a requirement of this Consent Decree, EPA may

give the City written notification of the same and describe the noncompliance. EPA shall send the City a written demand for the payment of the penalties.

74. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the City's receipt from EPA of a demand for payment of the penalties, unless the City invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be paid in the manner directed in paragraph 52 of this Consent Decree and shall also indicate that the payment is for stipulated penalties.

75. The payment of penalties shall not alter in any way the City's obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (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, the City shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as it continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the City to the extent that it prevail.

77. a. If the City fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. The City shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73.

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

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

this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

79. In consideration of the actions that will be performed and the payments that will be made by the City under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 83 of this Section, the United States covenants not to sue or to take administrative action against the City pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 48.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by the City of its obligations under this Consent Decree. These covenants not to sue extend only to the City and do not extend to any other person.

80. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the City (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Actions:

(I) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Actions are not protective of human health or the environment.

81. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the City (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Actions:

(I) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received,

in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Actions are not protective of human health or the environment.

82. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the dates the RODs were

signed and set forth in the Records of Decision for the Site and the administrative records supporting the Records of Decision. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Actions and set forth in the Records of Decision, the administrative record supporting the Records of Decision, the post-RODs administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Actions.

83. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 80. The United States reserves, and this Consent Decree is without prejudice to, all rights against the City with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by the City to meet a requirement of this Consent Decree;

(2) liability for future disposal of Waste Material at the Site, other than as provided in the RODs, the Work, or otherwise ordered by EPA;

(3) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, pursuant to 107 (a)(4)(C) of CERCLA;

(4) criminal liability;

(5) liability for violations of federal or state law

which occur during or after implementation of the Remedial Actions; and

(6) liability, prior to Certification of Completion of the Remedial Actions, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOWs or Related Work Plans);

(7) liability for additional operable units at the Site;

(8) liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

84. Work Takeover In the event EPA determines that the City has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. The City may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 65, for the sole purpose of disputing EPA's determination that takeover of the Work is warranted under this Paragraph. In no event shall the dispute delay EPA's takeover of the Work. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the City shall pay pursuant to Section XVI (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY THE CITY

86. Covenant Not to Sue. Subject to the reservations in Paragraph 87, the City hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to work pertaining to the Site and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

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

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

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

87. The City reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or

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

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

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

89. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence

relating in any way to the Site against any person not a Party hereto.

90. The Parties agree, and by entering this Consent Decree this Court finds, that the City is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree.

91. The "matters addressed" in this settlement are all response actions taken or to be taken and all response costs incurred ro to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response action as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against the City coming within the scope of such reservations.

92. [RESERVED]

93. [RESERVED]

94. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the City 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not

to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

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

96. a. The City may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it are submitted to EPA, or if EPA has notified the City 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 the City.

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

97. 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

98. Until 10 years after the City's receipt of EPA's notification pursuant to Paragraph 49(b) of Section XIV (Certification of Completion of the Work), the City shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any document retention

policy to the contrary. Until ten (10) years after the City's receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion), the City shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work for a period of ten (10) years.

99. At the conclusion of this document retention period, the City shall deliver these documents to EPA. The City may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. The City hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and

that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-753

As to EPA:

Keith Takata
Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

and

Cynthia Wetmore
EPA Project Coordinator

United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

As to the City :

City Project Coordinator to be designated by the City

and

Ronald C. Anderson, Jr.
Assistant Public Utilities Director
Department of Public Utilities
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3624

and

Martin D. Koczanowicz
Deputy City Attorney
City Attorney's Office
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3602

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

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

"Appendix A" is the ROD signed September 30, 1993

"Appendix B" is the ROD signed September 30, 1996.

"Appendix C" is the SOW for Operable Unit One.

"Appendix D" is the SOW for Operable Unit Two.

XXX. COMMUNITY RELATIONS

104. The City shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the City under the Plan. The City shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, the City shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

106. Except as provided in Paragraph 14 (Modification of the SOWs or Related Work Plans), no material modifications shall be made to the SOWs without written notification to and written approval of the United States, the City, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review

and comment on the proposed modification. Modifications to the SOWs that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the City.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. SIGNATORIES/SERVICE

110. The undersigned representative of the City to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certify that he or she is fully authorized to enter into the terms and

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conditions of this Consent Decree and to execute and legally bind such Party to this document.

111. The City hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree prior to entry, unless the United States has notified the City in writing that it no longer supports entry of the Consent Decree.

112. The City shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The City hereby agrees 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 9th DAY OF June, 1992.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. the City of Fresno, relating to the Fresno Sanitary Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

_____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____

RICHARD L. BEAL
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

_____

Assistant United States Attorney
Eastern District of California
3654 Federal Building
Fresno, California 93721

_____

STEVE A. HERMAN
Assistant Administrator for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

FELICIA MARCUS
Regional Administrator, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

THELMA ESTRADA
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. the City of Fresno relating to the Fresno Sanitary Landfill Superfund Site.

FOR THE CITY OF FRESNO

JEFFREY M. REID
City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3601

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

Name: _____
[Please type]

Title: _____

Address: _____

Tel. Number: _____

APPENDIX