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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	5:97 CV00894
	)	JUDGE DOWD
CHRYSLER CORPORATION,	)	
FORD MOTOR COMPANY,	)	
KEWANEE INDUSTRIES, INC.,	)	
CHEVRON U.S.A. INC.,	)	
MINNESOTA MINING AND	)	
MANUFACTURING COMPANY,	)	
WASTE MANAGEMENT OF OHIO, INC.,	)	
THE FEDERAL METAL COMPANY, AND	)	
GENERAL MOTORS CORPORATION	)	
	)	
Defendants.	)	
	)	

PARTIAL CONSENT DECREE

(Ford Motor Company, General Motors Corporation, and Department of Defense)

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Secretary of Interior, filed a complaint in this matter on April 11, 1997, pursuant to Sections 107 and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607, 9613(f). The United States filed a First Amended Complaint in this matter on November 30, 1999. The United States filed a Second Amended Complaint on March 28, 2001. The United States is filing a Third Amended Complaint in this matter simultaneously with the lodging of this Consent Decree for the purpose of adding settling defendant General Motors Corporation as a party.

B. The United States in its Third Amended Complaint seeks, *inter alia,* reimbursement of costs incurred and to be incurred by the United States for response actions at the Krejci Dump Site (the "Site") in the Cuyahoga Valley National Park, in Summit County, Ohio, together with accrued interest.

C. The release or threatened release of hazardous substances at or from the Site has caused the United States to incur Response Costs, and further costs will be incurred. The United States has conducted a multi-phase removal at the Site, including conducting a Site Inspection and Preliminary Assessment of the Site; sampling drums and soils; identifying contaminants; segregating and staging the hazardous materials; dewatering and treating contaminants from an on-site lagoon; sampling and testing bulk waste piles and soil gas; removing contaminated bulk pile wastes and drummed wastes; characterizing, separating and removing unconsolidated wastes; and conducting a Remedial Investigation and Feasibility Study ("RI/FS") for the Site.

D. The Department of Interior ("DOI") completed a Remedial Investigation ("RI") Report on June 30, 2000, and is currently conducting a Feasibility Study ("FS") with respect to a final remedial action to be implemented at the Site

E. Defendant Ford Motor Company has filed a counterclaim against the United States in this Court alleging that the United States is liable to Ford under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 113, for response costs with respect to the Site.

F. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), DOI notified the Federal natural resource trustee in August, 2000 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

G. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint. The United States does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, DOI will publish notice of the Proposed Plan for remedial action in a major local newspaper of general circulation. DOI will provide an opportunity for written and oral comments from the public on the Proposed Plan for remedial action. A copy of the transcript of the public meeting will be made available to the

public as part of the administrative record upon which the selection of the response action will be based.

I. The decision by DOI on the CERCLA remedial action to be implemented at the Site will be embodied in a final Record of Decision ("ROD"). The ROD will include DOI's explanation for any significant differences between the selected remedial action and the Proposed Plan as well as a responsiveness summary to the public comments. Notice of the selected remedial action will be published in accordance with Section 117(b) of CERCLA.

J. Based on the information presently available to DOI, DOI believes that the Work will be properly and promptly conducted by settling defendant Ford Motor Company ("Ford") if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

L. 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. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the Third Amended Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Ford 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 Ford 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. Ford 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. Ford 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 Ford 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.

"DOD" shall mean the United States Department of Defense (including but not limited to the United States Department of the Army), which is resolving any claims which have been or could be asserted against it with regard to this Site as provided in this Consent Decree.

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

"Ford" shall mean Ford Motor Company.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 113.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs pursuant to Section XV (Emergency Response) and Paragraph 92 of Section XXI (Work Takeover).

"GM" shall mean General Motors Corporation.

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

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

"Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NPS" shall mean the United States National Park Service and any successor departments or agencies of the United States.

"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 Settling Defendants.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, including the Initial Excavation Depths set forth in Appendix C, the Remediation Goals set forth in Appendix D, and the standards set forth in Section III, Task 5.E. - G. of the SOW.

"Plaintiff" shall mean the United States.

"Private Settlement Agreement" shall mean the separate agreement between GM and Ford pursuant to which GM shall provide financial assistance to Ford for the purpose of funding performance of the Work under 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).

"Record of Decision" or "ROD" shall mean the Record of Decision relating to the Site, to be signed by the Secretary of the Interior, or his/her delegate, and all attachments thereto.

"Remedial Action" shall mean those activities to be undertaken by Ford to implement the SOW, in accordance with this Consent Decree, the ROD, the final Remedial Design and Remedial Action Work Plans, and other plans required pursuant to this Consent Decree and approved by DOI.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 18 of this Consent Decree and approved by DOI, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by Ford to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 17 of this Consent Decree and approved by DOI, and any amendments thereto.

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

"Settling Defendants" shall mean Ford and GM.

"Site" shall mean the Krejci Dump Site, encompassing approximately 47 acres, located on Hines Hill Road in Summit County, Ohio, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of Ohio.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design and Remedial Action 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 Ford to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation DOI, DOD, and any federal natural resources trustee.

"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); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are 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, welfare and the environment at the Site by the design and implementation of the Remedial Action at the Site by Ford, under the oversight of DOI, with the financial assistance of GM; to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree, including but not limited to claims for response actions, past and future response costs, and for damages for injury to, destruction of, or loss of Natural Resources; and to resolve the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site.

6. Commitments by Settling Defendants and DOD.

a. Except as provided in Paragraph 121, Ford shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Ford and reviewed and approved by DOI pursuant to this Consent Decree. GM shall help Ford to finance the Work pursuant to the terms of the Private Settlement Agreement. DOD shall reimburse DOI for past and future response costs and for damages to Natural Resources as provided in this Consent Decree.

b. The failure of either of the Settling Defendants to implement any requirement of this Consent Decree or of the Private Settlement Agreement shall not affect the obligation of the other Settling Defendant to implement or comply with any requirement applicable to it under this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Ford pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Ford must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by DOI, 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, Ford shall notify DOI prior to taking any actions to secure a permit or approval, and shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Ford shall submit timely and complete applications and take all other actions as necessary to obtain permits and approvals from any local governmental entity required for the transportation of excavated materials on Hines Hill Road. Ford's obligation to comply with the terms and conditions of any such permits shall be enforceable under this Consent Decree.

c. Ford 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.

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

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. Ford will implement the Remedial Action at the Site.

10. All debris in Operable Units 1, 5 and 6 as shown in Appendix C will be excavated in accordance with the SOW. Ford will excavate all contaminated soils exceeding the Remediation Goals ("RGs") for the Site set forth on Appendix D, subject to the Steps set forth in the SOW. Such excavation will require removal and disposal of the Pole Barn in OU-2. Such excavation will include removal of all of the PCB particulate material described in the Remedial Investigation. Initially, soils, debris, and PCB particulate material, if any, will be excavated at the locations and to the depths set forth in Appendix C, except that, subject to the debris removal requirement in the first sentence of this Paragraph, Ford may include all or part of the soils in the initial excavation or may elect to conduct characterization of part of the soils as provided in the SOW. Debris at other locations on the Site or below such depths listed in Appendix C will also be excavated.

11. Post-excavation characterization will be performed as described in the SOW to verify that remaining soils meet the RGs set forth on Appendix D. For parameters with Tier-2 RGs, up to two exceedances of Tier-1 RGs are permitted for each 1/4-acre area, so long as the

Tier-2 RGs are achieved for those parameters. For parameters without defined Tier-2 RGs, exceedance of a Tier-1 RG within any 1/4-acre area constitutes failure. In the event that a 1/4-acre verification sample fails either of these verification criteria, Ford and the NPS shall follow the procedures set forth in the SOW for resampling, evaluation of whether remaining exceedances of the RGs represent background condition, further excavation, and/or proposals for other actions regarding the 1/4-acre areas at issue. In the event that Ford and the NPS are unable to agree on whether remaining exceedances of the RGs represent background conditions, the procedures set forth in the SOW for submission of the issue to a neutral party ("Neutral") for a non-binding opinion, and for dispute resolution, shall apply.

12. All excavated materials will be profiled and sorted for off-site disposal and disposed in appropriately licensed or permitted facilities (e.g., any RCRA Subtitle C hazardous wastes will be shipped to a RCRA Subtitle C permitted Treatment, Storage or Disposal Facility) that meet the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440.

13. Ford will contour, grade and revegetate the Site in accordance with the SOW. Surface water management will be implemented, both during construction and as a part of the final configuration, to minimize the potential for erosion, to prevent ponding over large areas, and to route drainage off the plateau. Revegetation will meet the performance standards designed to ensure successful natural succession as set forth in Section III, Task 5.G. of the SOW.

14. Several small, low-quality wetlands totaling approximately 1.5 acres have been identified on the East Site. These wetlands will be impacted by the Remedial Action. Ford shall provide compensatory mitigation by creating or restoring a total of three (3) acres of Category 2 wetlands (as described in Ohio Administrative Code § 3745-1-54) at one to three Site locations acceptable to NPS.

15. Except as set forth in Paragraph 121, Ford shall complete the Remedial Action, up to and including initial reseeding of the Site as set forth in the SOW, within a three-year period after the initiation of excavation.

16. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Ford pursuant to Sections VI (Performance of the Work by Ford), 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, the selection of which shall be subject to disapproval by DOI for reasonable cause. Within 20 days after the lodging of this Consent Decree, Ford shall notify DOI in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. DOI will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Ford proposes to change a Supervising Contractor, Ford shall give such notice to DOI and must obtain an authorization to proceed from DOI before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If DOI disapproves a proposed Supervising Contractor, DOI will notify Ford in writing. Ford shall submit to DOI a list of contractors, including the qualifications of

each contractor, that would be acceptable to Ford within 30 days of receipt of DOI's disapproval of the contractor previously proposed. DOI 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. Ford may select any contractor from that list that is not disapproved and shall notify DOI of the name of the contractor selected within 21 days of DOI's authorization to proceed.

c. If DOI fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Ford from meeting one or more deadlines in a plan approved by the DOI pursuant to this Consent Decree, Ford may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

17. Remedial Design.

a. Within 90 days after DOI's issuance of an authorization to proceed pursuant to Paragraph 16, Ford shall submit to DOI a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the SOW and for achievement of the Performance Standards, in accordance with this Consent Decree and the ROD. Upon its approval by DOI, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Design Work Plan shall document the overall management strategy for performing the pre-design activities, design, construction, cleanup verification, surface water management, Hines Hill Road maintenance consistent with Paragraph 8.b, and erosion monitoring. The plan shall document the responsibility and authority of all organizations and key personnel involved with the RD/RA implementation. The plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis));(2) an intermediate design submittal; and (3) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan. If Ford anticipates conducting any work on-site during the pre-design and design phases, Ford shall submit to DOI a Health and Safety Plan (HASP) for field design activities which conforms to the applicable Occupational Safety and Health Administration and DOI requirements including, but not limited to, 29 C.F.R. Part 1910.120. This plan shall be submitted concurrently with any FSP and QAPP for the associated activities.

c. Upon approval of the Remedial Design Work Plan by DOI, and submittal of the HASP for all field activities to DOI (if any), Ford shall implement the Remedial Design Work Plan. Ford shall submit to DOI all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (DOI Approval of Plans and Other Submissions). Unless otherwise agreed to by DOI, Ford shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The intermediate design submittal shall include, at a minimum, the following: (1) draft specifications; (2) draft plans, drawings and sketches, including design

calculations and criteria; (3) results of additional field sampling and pre-design work; (4) design assumptions and parameters, including design restrictions, process performance criteria (if applicable), appropriate unit processes for the sorting and management of the waste prior to off-site disposal, and any anticipated actions necessary to comply with Applicable or Relevant and Appropriate Requirements identified in the Feasibility Study, including any treatment required to meet Land Disposal Regulations; (5) cleanup verification sampling plan including the draft FSP and QAPP; (6) draft Contingency Plan; (7) proposal regarding the required 3-acre wetlands mitigation; (8) revegetation plan, including proposed conclusions relative to any required mitigation and all relevant documentation; (9) proposed siting/locations of all construction associated facilities; (10) documentation confirming that the facility(ies) proposed to receive the waste meet the requirements of CERCLA § 121(d)(3) and the NCP at 40 CFR § 300.440; (11) other than with respect to the wetlands discussed above in this paragraph, a mitigation plan to address any other anticipated environmental impacts; (12) description of the surface water management to be implemented at the Site to control the potential for the discharge of pollutants during the removal of soils and debris on the Site, prevent ponding over large areas and route flows off the Site plateau; (13) easement and permit requirements; and (14) preliminary construction schedule.

e. The pre-final/final design submittal shall include those elements listed for the Intermediate Draft Design, as well as the following: (1) final cleanup verification plan, including the Final FSP and Final QAPP; (2) draft HASP for RA activities and Final Contingency Plan and (3) Final Project Schedule for the construction and implementation of the Remedial Action.

18. Remedial Action.

a. Within 45 days after the approval of the final design submittal, Ford shall submit to DOI a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the SOW and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by DOI. Upon its approval by DOI, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At a minimum, the Remedial Action Work Plan shall include: (1) the schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements; (4) methodology for implementation of the Contingency Plan; and (5) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of Ford's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

b. At the same time as Ford submits the Remedial Action Work Plan, Ford shall submit to DOI a Final Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and DOI requirements including, but not limited to, 29 C.F.R. Part 1910.120.

c. Upon approval of the Remedial Action Work Plan by DOI, Ford shall implement the activities required under the Remedial Action Work Plan. Ford shall submit to DOI 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 (DOI Approval of Plans and Other Submissions). Unless otherwise directed by DOI, Ford shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

19. Ford shall continue to implement the Remedial Action until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

20. Ford acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

21. a. Ford 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 DOI Project Coordinator of such shipment of Waste Material.

(1) Ford shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are 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. Ford shall notify the DOI Project Coordinator of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 21 a.(1) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Ford shall obtain a certification from the United States Environmental Protection Agency that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440, and shall submit such certification to DOI. Ford shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

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

23. Opportunity To Comment. Ford, 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 DOI pursuant to Paragraph 22, and to submit written comments for the record during the comment period.

24. Settling Defendants' Obligation To Perform Further Response Actions. If DOI selects further response actions for the Site, Ford shall undertake such further response actions to the extent that the reopener conditions in Paragraph 87 or Paragraph 88 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Ford may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) DOI's determination that the reopener conditions of Paragraph 87 or Paragraph 88 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) DOI's determination that the Remedial Action is not protective of human health and the environment, or (3) DOI's selection of the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to DOI's selection of further response actions shall be resolved pursuant to Paragraph 70 (record review).

25. Submissions of Plans. If Ford is required to perform the further response actions pursuant to Paragraph 24, it shall submit a plan for such work to DOI for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Ford) and shall implement the plan approved by DOI in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

26. Ford shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with EPA QA/R5, *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*, and subsequent amendments to such guidelines upon notification by DOI to Ford of such amendment and agreement by Ford. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling project under this Consent Decree, Ford shall submit to DOI for approval, a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP, and EPA QA/R-5 and its companion document, EPA QA/G-5. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by DOI shall be admissible as evidence, without objection, in any proceeding under this Decree. Ford shall ensure that DOI personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Ford in implementing this Consent Decree. In addition, Ford shall ensure that such laboratories shall analyze all samples submitted by DOI pursuant to the QAPP for quality assurance monitoring. Ford shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods which provide required analyte detection and required method detection limits for each analyte, as determined in the Data Quality Objectives of the QAPP. Accepted EPA methods consist of those methods which are documented in the *Test Methods for Evaluating Solid Wastes: Physical / Chemical Methods*, SW-846, Update III, USEPA/OSWER, Washington, DC, 1997, and any amendments made thereto during the course of the implementation of this Decree. Ford 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. Ford 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 DOI.

27. Upon request, Ford shall allow split or duplicate samples to be taken by DOI or its authorized representatives. Ford shall notify DOI not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by DOI. In addition, DOI shall have the right to take any additional samples that DOI deems necessary. Upon request, DOI shall allow Ford to take split or duplicate samples of any samples DOI takes as part of the Plaintiff's oversight of Ford's implementation of the Work.

28. Ford shall submit to DOI one hard copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Ford with respect to the Site and/or the implementation of this Consent Decree unless DOI agrees otherwise.

29. 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

30. The United States shall provide Ford with access to the Site for the purpose of performing the Work under this Consent Decree.

31. Ford shall not interfere with the ability of United States and its representatives, including DOI and its contractors, to have access to the Site for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

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

(4) Obtaining samples;

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

(6) Implementing the Work pursuant to the conditions set forth in Paragraph 92 of this Consent Decree (Work Takeover);

(7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Ford or its agents, consistent with Section XXIV (Access to Information);

(8) Assessing Ford's compliance with this Consent Decree; and

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

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

X. REPORTING REQUIREMENTS

33. In addition to any other requirement of this Consent Decree, Ford shall submit to DOI one hard copy 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 Ford 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 month 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 Ford has proposed to DOI or that have been approved by DOI; (g) describe all public involvement activities undertaken by Ford in support of DOI's community relations activities during the previous month and those to be undertaken in the next month; (h) include the volume of each type (i.e., hazardous waste, solid waste, liquid waste, etc.) of waste material removed from the Site during the previous month; (i) include all completed manifests received during the previous month for hazardous waste removed from the Site; and (j) include all certificates of destruction/disposal received during the previous month for hazardous waste removed from the Site. Ford shall submit these progress reports to DOI by the tenth day of every month following issuance of the ROD until DOI notifies Ford pursuant to Paragraph 52.c of Section XIV (Certification of Completion). If requested by DOI, Ford shall also provide a reasonable number of briefings for DOI to discuss the progress of the Work.

34. Ford shall notify DOI of any change in the schedule described in the monthly progress reports for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

35. Upon the occurrence of any event during performance of the Work that Ford is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Ford shall within 24 hours of the onset of such event orally notify the Office of the Superintendent, Cuyahoga Valley National Park, and either the DOI Project Coordinator or the Alternate DOI Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

36. Within 20 days of the onset of such an event, Ford shall furnish to Plaintiff a written report, signed by Ford's Project Coordinator, setting forth the events which occurred and

the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Ford shall submit a report setting forth all actions taken in response thereto.

37. Ford shall submit three (3) hard copies of all plans and reports required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to DOI in accordance with the schedules set forth in such plans. Upon request by DOI, Ford shall submit in electronic form all portions of any report or other deliverable Ford is required to submit pursuant to the provisions of this Consent Decree.

38. All reports and other documents submitted by Ford to DOI (other than the monthly progress reports referred to above) which purport to document Ford's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Ford.

XI. DOI APPROVAL OF PLANS AND OTHER SUBMISSIONS

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, DOI shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Ford modify the submission; or (e) any combination of the above. However, DOI shall not modify a submission without first providing Ford at least one notice of deficiency and an opportunity to cure within ten (10) working days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

40. In the event of approval, approval upon conditions, or modification by DOI, pursuant to Paragraph 39(a), (b), or (c), Ford shall proceed to take any action required by the plan, report, or other item, as approved or modified by DOI 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 DOI. In the event that DOI modifies the submission to cure the deficiencies pursuant to Paragraph 39(c) and the submission has a material defect, DOI retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

41. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 39(d), Ford shall, within ten (10) days or such longer time as specified by DOI in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the ten-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 42 and 43.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39(d), Ford shall proceed, at the direction of DOI, 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 Ford of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

43. If upon resubmission, a plan, report, or item is disapproved or modified by DOI due to a material defect, Ford shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Ford invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and DOI's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If DOI'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.

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

XII. PROJECT COORDINATORS

45. Within 20 days of lodging this Consent Decree, Ford and DOI 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 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Ford's Project Coordinator shall be subject to disapproval by DOI for reasonable cause and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Ford's Project Coordinator shall not be an attorney for Ford 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.

46. Plaintiff may designate other representatives, including, but not limited to, DOI employees and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. DOI'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, DOI'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.

47. DOI's Project Coordinator or Alternate Project Coordinator and Ford's Project Coordinator will meet or confer, at a minimum, on a monthly basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

48. Within 30 days of entry of this Consent Decree, Ford shall establish and maintain financial security in the amount of $27,000,000 ("the Financial Security Amount"). The Financial Security Amount may be reduced, if approved by DOI in writing, in the Agency's sole unreviewable discretion, and in accordance with Paragraph 50 of this Section. The financial security shall be maintained in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equaling or exceeding the Financial Security Amount;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Ford;

e. A demonstration that Ford satisfies the requirements of 40 C.F.R. § 264.143(f). This demonstration may be made by submission to DOI of one or more certified financial statements of Ford; or

f. Through the use of any other means deemed acceptable in writing by DOI.

49. If Ford seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48.d of this Consent Decree, Ford shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Ford seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 48.d or 48.e, it shall resubmit sworn statements or certified financial statements, as appropriate, conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that DOI determines at any time that the financial assurances provided pursuant to this Section are inadequate, Ford shall, within 30 days of receipt of notice of DOI's determination, obtain and present to DOI for approval one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. Ford's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

50. If Ford can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 48 above after entry of this Consent Decree, Ford 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. Ford shall submit a proposal for such reduction to DOI, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by DOI. In the event of a dispute, Ford may reduce the

amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

a. Within 60 days after Ford makes a preliminary determination that the Remedial Action is complete up to the initial reseeding of the entire Site, Ford shall notify DOI for the purposes of conducting a pre-final inspection. The pre-final inspection shall consist of a walk-through inspection of the entire Site with NPS. The inspection is to determine whether the materials removal and grading components of the project are complete and consistent with the Consent Decree and Record of Decision. Any outstanding construction items discovered during the inspection shall be identified and implemented by Ford as directed by DOI.

b. Within 90 days after Ford concludes that the Remedial Action has been fully performed and the revegetation performance standards have been attained, Ford shall schedule and conduct a pre-certification inspection to be attended by Ford and DOI. If, after the pre-certification inspection, Ford still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to DOI for approval, pursuant to Section XI (DOI Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, Ford's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Ford or Ford'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, DOI determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, DOI will notify Ford in writing of the activities that must be undertaken by Ford pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that DOI may only require Ford to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the SOW but are not in addition to the activities described in the SOW. DOI will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Ford to submit a schedule to DOI for approval pursuant to Section XI (DOI Approval of Plans

and Other Submissions). Ford shall perform all activities described in the notice that it is required to perform under this Paragraph 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).

c. If DOI concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, DOI will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

XV. EMERGENCY RESPONSE

53. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Ford shall, subject to Paragraph 54, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Office of the Superintendent, Cuyahoga Valley National Park, and either DOI's Project Coordinator or DOI's Alternate Project Coordinator. Ford shall take such actions in consultation with DOI's Project Coordinator or other available authorized DOI officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Ford fails to take appropriate response action as required by this Section, and the United States takes such action instead, Ford shall reimburse the United States all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

54. 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. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

55. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of DOD, shall pay to the DOI Central Hazardous Materials Fund $594,000 in reimbursement of past and future response costs, and pay to the National Park Service, DOI, $66,000 for damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. These payments shall be made pursuant to the Payment Instructions attached to this Consent Decree as Appendix E.

56. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of DOD under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that DOD obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

57. Payments for Future Response Costs. In the event that the United States incurs Future Response Costs, Ford shall reimburse the United States for all such Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Ford a bill requiring payment that includes a cost summary that itemizes the Future Costs incurred by the United States and its contractors. Ford shall make all payments within 30 days of Ford's receipt of each bill requiring payment, except as otherwise provided in Paragraph 58. Ford shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks according to instructions to be provided with the bill requiring payment and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions).

58. Ford may contest payment of any Future Response Costs under Paragraph 57 if it determines that the United States has made an accounting error or if Ford alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 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, Ford shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 57. Ford 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. Ford shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Ford shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 57. If Ford prevails concerning any aspect of the contested costs, Ford 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 57; Ford shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Ford's obligation to reimburse the United States for its Future Response Costs.

59. In the event that the payments required by Paragraph 57 are not made within 30 days of Ford's receipt of the bill, Ford 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 Ford'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 Ford's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX. Ford shall make all payments required by this Paragraph in the manner described in Paragraph 57.

XVII. INDEMNIFICATION AND INSURANCE

60. Indemnification of the United States.

a. Ford shall assume liability for any and all claims or causes of action arising from, or on account of, the shipment, treatment, storage, or disposal of any soils, debris, PCB particulate material, or other Waste Materials excavated from the Site pursuant to this Consent Decree. Ford 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, the shipment, treatment, storage, or disposal of any soils, debris, PCB particulate material, or other Waste Materials excavated from the Site pursuant to this Consent Decree.

b. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Ford as DOI's authorized representatives under Section 104(e) of CERCLA. Ford 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 Ford, 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 Ford as DOI's authorized representatives under Section 104(e) of CERCLA. Further, Ford agrees to pay the United States all 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 Ford, 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 Ford in carrying out activities pursuant to this Consent Decree. Neither Ford nor any such contractor shall be considered an agent of the United States.

c. The United States shall give Ford notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 60, and shall consult with Ford prior to settling such claim.

61. Ford 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 Ford 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, Ford 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 Ford and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

62. No later than 15 days before commencing any on-site Work, Ford shall require that its Supervising Contractor secure and maintain until the first anniversary of DOI's Certification of Completion of the Remedial Action pursuant to Paragraph 52.c of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five

million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States as an additional insureds. In addition, for the duration of this Consent Decree, Ford shall ensure that its Supervising Contractor satisfies all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Ford in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Ford shall require that its Supervising Contractor provide to DOI certificates of such insurance and a copy of each insurance policy. Ford shall require that its Supervising Contractor resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Ford's Supervising Contractor maintains insurance in a lesser amount than that described above, Ford shall provide that portion of the insurance described above which is not maintained by the Supervising Contractor.

XVIII. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Ford, of any entity controlled by Ford, or of Ford's contractors, that delays or prevents the performance of any obligation of Ford under this Consent Decree despite Ford's best efforts to fulfill the obligation. The requirement that Ford 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.

64. 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, Ford shall notify orally the Office of the Superintendent, Cuyahoga Valley National Park, and either DOI's Project Coordinator or DOI's Alternate Project Coordinator, within 72 hours of when Ford first knew that the event might cause a delay. Within 5 working days thereafter, Ford shall provide in writing to DOI an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Ford'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 Ford, such event may cause or contribute to an endangerment to public health, welfare or the environment. Ford shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Ford 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. Ford shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

65. If DOI 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 DOI for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force

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

66. If Ford elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) regarding a claim of force majeure, it shall do so no later than 15 days after receipt of DOI's notice. In any such proceeding, Ford 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 Ford complied with the requirements of Paragraphs 63 and 64, above. If Ford carries this burden, the delay at issue shall be deemed not to be a violation by Ford of the affected obligation of this Consent Decree identified to DOI and the Court.

XIX. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the United States and Ford 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 Ford that have not been disputed in accordance with this Section.

68. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 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.

69. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by DOI shall be considered binding unless, within 15 working days after the conclusion of the informal negotiation period, Ford 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 Ford. The Statement of Position shall specify Ford's position as to whether formal dispute resolution should proceed under Paragraph 70 or Paragraph 71.

b. Within 20 working days after receipt of Ford's Statement of Position, DOI will serve on Ford 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 DOI. DOI's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71. Within 20 working days after receipt of DOI's Statement of Position, Ford may submit a Reply.

c. If there is disagreement between DOI and Ford as to whether dispute resolution should proceed under Paragraph 70 or 71, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by DOI to be applicable. However, if Ford 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 70 and 71.

70. 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 DOI 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 Settling Defendants regarding the validity of the ROD's provisions.

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

b. The NPS Associate Director of Park Operations and Education will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70.a. This decision shall be binding upon Ford, subject only to the right to seek judicial review pursuant to Paragraph 70.c and d.

c. Any administrative decision made by DOI pursuant to Paragraph 70.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Ford with the Court and served on the United States within 15 days of receipt of DOI'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 Ford's motion within 45 days after receipt of such motion. Ford may file a reply within 20 days after receipt of the United States' response.

d. In proceedings on any dispute governed by this Paragraph, Ford shall have the burden of demonstrating that the decision of the NPS Associate Director of Park Operations and Education is arbitrary and capricious or otherwise not in accordance with law. Judicial review of DOI's decision shall be on the administrative record compiled pursuant to Paragraph 70.a.

71. 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 Ford's Statement of Position submitted pursuant to Paragraph 69, the NPS Associate Director of Park Operations and Education will issue a final decision resolving the dispute. The Associate Director's decision shall be binding on Ford

unless, within 15 days of receipt of the decision, Ford files with the Court and serves on the United States 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 Ford's motion within 45 days after receipt of such motion. Ford may file a reply within 20 days after receipt of the United States' response.

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

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Ford under this Consent Decree, unless DOI 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 81. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Ford does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

73. Ford shall be liable for stipulated penalties in the amounts set forth in Paragraphs 74 and 75 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 Ford 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 SOW, and any plans or other documents approved by DOI pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

74. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 74.b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$3,000	15th through 30th day
$7,000	31st day and beyond

b. Compliance Milestones.

(1) RD Work Plan	Within ninety (90) days after Ford's receipt of NPS Notice of Authorization to proceed with RD

(2)	Intermediate Design (60%)	Within ninety (90) days after Ford's completion of Pre-Design Activities
(3)	Final Design (100%)	Within ninety (90) days after Ford's receipt of NPS comments on the Intermediate Design
(4)	RA Work Plan	Within forty-five (45) days after Ford's receipt of NPS approval of Final Design
(5)	Initiate Construction of RA	Within fifteen (15) days after Pre-Construction Inspection and Meeting
(6)	Completion of Construction	As approved by NPS in RA construction schedule included in RA Work Plan

75. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraph 34:

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

76. In the event that DOI assumes performance of a portion or all of the Work pursuant to Paragraph 92 of Section XXI (Covenants Not to Sue by Plaintiff), Ford shall be liable for a stipulated penalty in the amount of $1 million.

77. 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 (DOI Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after DOI's receipt of such submission until the date that DOI notifies Settling Defendants of any deficiency; (2) with respect to a decision by the NPS Associate Director of Park Operations and Education, under Paragraph 70.b or 71.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Ford's reply to DOI'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 31st day after the Court's receipt of the final

submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

78. Following DOI's determination that Ford has failed to comply with a requirement of this Consent Decree, DOI may give Ford written notification of the same and describe the noncompliance. DOI may send Ford a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether DOI has notified Ford of a violation.

79. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Ford's receipt from DOI of a demand for payment of the penalties, unless Ford invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be made in accordance with the procedures set forth in Paragraph 57.

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

81. Penalties shall continue to accrue as provided in Paragraph 77 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 DOI that is not appealed to this Court, accrued penalties determined to be owing shall be paid to DOI within 15 days of the agreement or the receipt of DOI's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Ford shall pay all accrued penalties determined by the Court to be owed to DOI within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Ford shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to DOI or to Ford to the extent that they prevail.

82. If Ford fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Ford shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 79.

83. 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 Ford'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.

84. 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 BY PLAINTIFF

85. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except as specifically provided in Paragraph 91, the United States further covenants not to sue Settling Defendants for recovery of damages, including costs of damage assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by DOI pursuant to Paragraph 52.c of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

86. In consideration of the actions that will be performed and the payments that will be made by DOD under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, DOI covenants not to take administrative action against DOD pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except as specifically provided in Paragraph 91, DOI further covenants not to take administrative action against DOD relating to any injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Except with respect to future liability, DOI's covenants shall take effect upon the receipt of all payments required by Paragraph 55 of Section XVI of this Consent Decree. With respect to future liability, DOI's covenants shall take effect upon Certification of Completion of Remedial Action by DOI pursuant to Paragraph 52.c of Section XIV (Certification of Completion). DOI's covenants are conditioned upon the satisfactory performance by DOD of its their obligations under this Consent Decree. DOI's covenants under this Paragraph extend only to DOD and do not extend to any other person.

87. 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 Settling Defendants, and DOI reserves the right to issue an administrative order seeking to compel DOD,

a. to perform further response actions relating to the Site or

b. to reimburse the United States for additional costs of response

if, prior to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to DOI, are discovered, or

(2) information, previously unknown to DOI, is received, in whole or in part,

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

88. 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 Settling Defendants, and DOI reserves the right to issue an administrative order seeking to compel DOD,

a. to perform further response actions relating to the Site or

b. to reimburse the United States for additional costs of response

if, subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to DOI, are discovered, or

(2) information, previously unknown to DOI, is received, in whole or in part,

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

89. For purposes of Paragraph 87, the information and the conditions known to DOI shall include only that information and those conditions known to DOI as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record for the Site. For purposes of Paragraph 88, the information and the conditions known to DOI shall include only that information and those conditions known to DOI as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record for the Site, the post-ROD administrative record, or in any information received by DOI pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

90. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and DOI reserves, and this Consent Decree is without prejudice to, all rights against DOD, with respect to:

a. claims based on a failure by Settling Defendants or DOD to meet a requirement of this Consent Decree;

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

c. liability based upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by DOI, after signature of this Consent Decree by the Settling Defendants;

d. liability for damages for injury to, destruction of, or loss of natural resources under the trusteeship of any entity other than DOI, and for the costs of any natural resource damage assessments performed by or on behalf of any such entity;

e. criminal liability; and

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

91. Notwithstanding any other provision of this Decree, the United States, on behalf of the Department of Interior, reserves the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of damages, including costs of damage assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI, based on (1) conditions with respect to the Site, unknown to the United States at the date of Certification of Completion of the Remedial Action, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI, or (2) information received after the date of Certification of Completion of the Remedial Action which indicates that there is injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI of a type that was unknown, or of a magnitude that was greater than was known, to the United States as of the date of lodging of the Decree.

92. Work Takeover In the event DOI determines that Ford 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, DOI may assume the performance of all or any portions of the Work as DOI determines necessary. Ford may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 70, to dispute DOI's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Ford shall pay pursuant to Section XVI (Payments for Response Costs).

93. 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 SETTLING DEFENDANTS AND DOD

94. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 95, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:,

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

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

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

Except as provided in Paragraph 104 (waiver of claim-splitting defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 87, 88, or 90(b) - (d), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Covenant by DOD. DOD hereby agrees not to assert any direct or indirect claim for reimbursement from the DOI Central Hazardous Materials Fund through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree.

96. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on DOI's selection of response actions, or the oversight or approval of the Settling Defendants' 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;

97. 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).

98. Waiver of Claims Except as provided in Paragraph 94, Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against John Krejci III and any person, other than Minnesota Mining and Manufacturing Company ("3M"), whose liability to Settling Defendants with respect to the Site is based on having arranged for the disposal, treatment, or transport for disposal or treatment, or having accepted for transport for disposal or treatment, of hazardous substances, to or at the Site, whether such claims or causes of action are asserted under CERCLA § 107(a)(3) or

(4) or any other theory of law. Settling Defendants shall execute any documents reasonably necessary to effectuate such waivers. Upon entry of this Consent Decree, Settling Defendants' cross claims against any defendant in this action other than 3M shall be dismissed with prejudice.

99. Notwithstanding Paragraph 98, Settling Defendants agree to waive all claims or causes of action that they may have against 3M, for all matters relating to the Site, including for contribution, without further action by the United States or Settling Defendants, upon entry by the Court of any consent decree resolving the liability of 3M to the United States under Section 107 of CERCLA, 42 U.S.C. § 9607, for any costs incurred by the United States relating to the Site. Settling Defendants hereby agree not to oppose entry of any such consent decree. In the absence of a consent decree between the United States and 3M entered by the Court, Settling Defendants shall retain all claims or causes of action that they may have against 3M for all matters relating to the Site, including for contribution. In the event that Ford pursues a contribution claim against 3M, Ford agrees that any net proceeds of such claim, by judgment or settlement, shall be shared with the United States on a 50/50 basis. Nothing in this Paragraph shall be construed as an agreement on the part of the United States to settle with any person or for any particular terms. Nothing in this Paragraph shall be construed to restrict in any way the United States from settling with any person at any time on any terms the United States deems appropriate. The United States shall retain its unreviewable discretion to accept or reject settlement terms offered by any person at any time. Upon entry of this Consent Decree, Settling Defendants' cross claims against 3M in this action shall be dismissed without prejudice.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

100. Except as provided in Paragraphs 98 and 99 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraphs 98 and 99 (Waiver of Claims) 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.

101. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and DOD are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this settlement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site, and damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. The "matters addressed" in this settlement do not include those response costs or response actions 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 Settling Defendants coming within the scope of such reservations.

102. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them against 3M for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

103. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 30 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 30 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

104. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, damages for injury to, destruction of, or loss of Natural Resources at the Site, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States 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 by Plaintiffs).

XXIV. ACCESS TO INFORMATION

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

106. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 40 C.F.R. § 2.203(b), and 43 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by DOI will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to DOI, or if DOI has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants 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 Settling Defendants assert such a privilege in lieu of providing

documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. 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.

107. 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

108. Until 10 years after the Settling Defendants' receipt of DOI's notification pursuant to Paragraph 52.b. of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of DOI's notification pursuant to Paragraph 52.b. of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

109. If at any time prior to the conclusion of this document retention period, the United States requests any records or documents subject to the retention requirements of Paragraph 108, Settling Defendants shall deliver any such records or documents to the United States. The Settling Defendants 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 Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. 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.

110. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all 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.

111. The United States acknowledges that DOD (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all DOI requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

XXVI. NOTICES AND SUBMISSIONS

112. 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, DOI, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-768

and

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-6-183

As to DOI:

Shawn Mulligan
Attorney Advisor
United States National Park Service
1050 Walnut Street
Suite 220
Boulder, CO 80302

Robert McCaig
DOI Project Coordinator
United States Bureau of Reclamation
Denver Federal Center
P.O. Box 25007

(D-8580)
Denver, CO 80225-0007

As to Ford:

Brian J. Bussa
Principal Facility Environmental Control Engineer
Asset Rationalization and Environmental Services
Ford Motor Land Services Corporation
550 Town Center Drive
Suite 550
Dearborn, Michigan 48126

Upon request by DOI or the State with respect to any report or other document, Ford shall provide one copy of such report or other document to the State.

XXVII. EFFECTIVE DATE

113. 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

114. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants 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

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

"Appendix A" is a map of the Site.

"Appendix B" is the SOW.

"Appendix C" is a Table showing initial excavation locations and depths.

"Appendix D" is a Table of Remediation Goals

"Appendix E" is Payment Instructions for payments made pursuant to Paragraph 55 of this Consent Decree

XXX. COMMUNITY RELATIONS

116. Ford shall propose to DOI its participation in public involvement activities. DOI will determine the appropriate role for Ford with respect to such activities. Ford shall also

cooperate with DOI in providing information regarding the Work to the public. As requested by DOI, Ford shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by DOI to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

118. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Ford, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii) may be made by written agreement between DOI and Ford.

119. 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

120. 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. Except as provided in this Paragraph, Settling Defendants consent to the entry of this Consent Decree without further notice.

121. The United States and Ford reserve the right to withdraw consent to this Consent Decree upon filing with this Court notice of such withdrawal in the event that the remedial action selected in the ROD is in any material respect inconsistent with the remedial action described in Paragraphs 10-15 of this Consent Decree and in the SOW. Specific activities selected in the ROD that are in addition to, but not inconsistent with, the remedial action described in Paragraphs 10-15 of this Consent Decree and the SOW shall not be deemed to be in any material respect inconsistent with the remedial action described in Paragraphs 10-15 of this Consent Decree and in the SOW for the purpose of this Paragraph, but Ford shall have no obligation under this Consent Decree to perform any such additional activities. DOI shall deliver a copy of the ROD to Ford by overnight delivery when issued. The right to withdraw consent as set forth in this Paragraph shall only exist for the period of time between the issuance of the ROD and the end of the thirtieth day after the issuance of the ROD, unless otherwise agreed in a joint notice filed by the United States and Ford with the Court. In the event that Ford or the United States seeks to withdraw consent to this Consent Decree pursuant to this Paragraph, the other Party may dispute the claim that the remedial action selected in the ROD is in any material respect inconsistent with the remedial action described in Paragraphs 10-15 of this Consent Decree and in the SOW. Any such dispute shall be resolved by this Court. Subject to dispute resolution

under this Paragraph, if Ford or the United States withdraws consent as set forth in this Paragraph, this Consent Decree shall be void as to all Parties.

122. 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

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

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

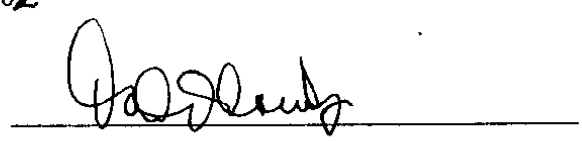
125. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants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

XXXIV. FINAL JUDGMENT

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

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

SO ORDERED THIS 22nd DAY OF April, 2002



United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corp., et al., relating to the Krejci Dump Site.

FOR THE UNITED STATES OF AMERICA

8/27/01
Date

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

9/21/01
Date

Daniel C. Beckhard, Senior Counsel
Stacey H. O'Bryan, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

9/21/01
Date

Daniel Dertke, Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

EMILY M. SWEENEY
United States Attorney
Northern District of Ohio

9/21/01
Date

Arthur I. Harris
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue
Cleveland, Ohio 44114

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corp., et al., relating to the Krejci Dump Site.

9/5/01
Date

Charles P. Raynor
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
United States Department of the Interior
1849 C Street NW - Room 6557
Washington, D.C. 20240

8/31/01
Date

Fran P. Mainella
Director
United States National Park Service
1849 C Street NW - Room 3112
Washington, D.C. 20240

8/30/2001
Date

Shawn Mulligan
Attorney Advisor
United States National Park Service
1050 Walnut Street - Suite 220
Boulder, Colorado 80302

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corp., et al., relating to the Krejci Dump Site.

FOR GENERAL MOTORS CORPORATION

9/17/01
Date

Signature: Michelle T. Fisher
Name (print): Michelle T. Fisher
Title: Attorney
Address: General Motors Corporation
300 Renaissance Center
M.C. 482-C24-D24
Detroit, MI 48243

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

Name (print): Linda L. Bentley
Title: Legal Assistant
Address: General Motors Corporation
300 Renaissance Center
M.C. 482-C24-D24
Detroit, MI 48243
Ph. Number: 313-665-4883

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chrysler Corp., et al., relating to the Krejci Dump Site.

FOR THE FORD MOTOR COMPANY

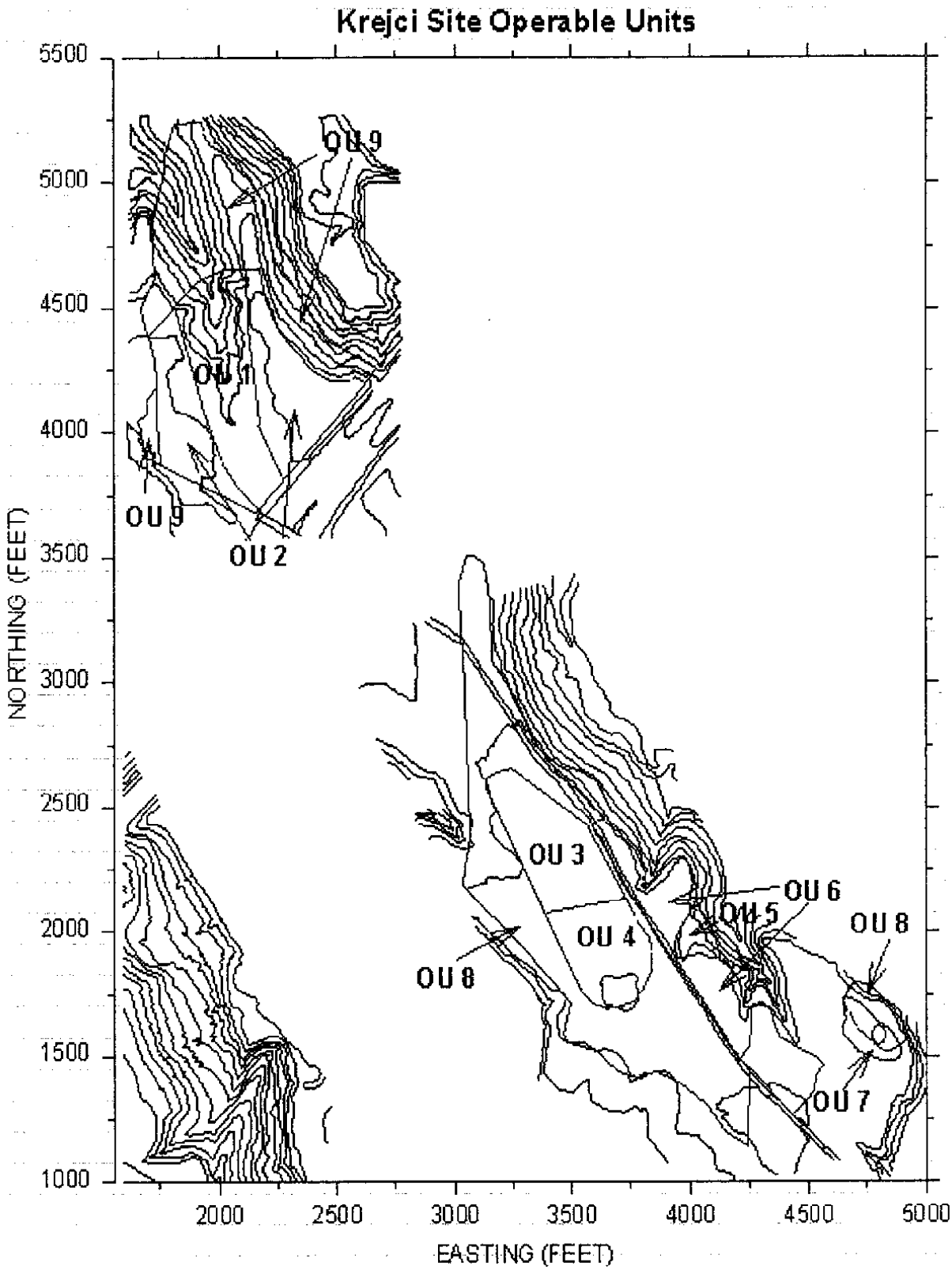
8-29-01
Date

Signature: Kathryn Lamping
Name (print): Kathryn Lamping
Title: Assistant Secretary
Address: The American Road
World Headquarters
Suite 1035
Dearborn, MI 48126-2798

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

Name (print): Kathy J. Hofer
Title: Counsel
Address: Three Parklane Blvd.
PTW 1500
Dearborn, MI 48126
Ph. Number: (313) 594-1687

Appendix A


Krejci Site Operable Units
OU 9
OU 1
OU 9
OU 2
OU 3
OU 6
OU 5
OU 8
OU 4
OU 8
OU 7
NORTHING (FEET)
EASTING (FEET)
5500
5000
4500
4000
3500
3000
2500
2000
1500
1000
2000
2500
3000
3500
4000
4500
5000

APPENDIX B

**STATEMENT OF WORK FOR
THE REMEDIAL DESIGN AND REMEDIAL ACTION
AT THE
KREJCI DUMP SITE
CUYAHOGA VALLEY NATIONAL PARK
SUMMIT COUNTY, OHIO**

I. PURPOSE

The purpose of this Statement of Work (SOW) is to set forth requirements for implementation of the Remedial Action (RA) at the Krejci Dump Site (Site) located in Cuyahoga Valley National Park (CVNP), as set forth in the Consent Decree entered into by the United States, Ford Motor Company (Ford), and General Motors Corporation relating to the Site, and to be set forth in the Record of Decision (ROD). Ford shall meet the applicable requirements of the Consent Decree, this SOW, the ROD, the approved Remedial Design (RD) Work Plan, and the approved RA Work Plan. Ford shall also follow U.S. EPA Superfund RD and RA Guidance and any additional guidance provided by the United States.

II. DESCRIPTION OF THE REMEDIAL ACTION/PERFORMANCE STANDARDS

Ford shall design and implement the RA to meet the performance standards and specifications set forth in the Consent Decree, this SOW, the ROD, the approved RD Work Plan, and the approved RA Work Plan. Performance standards shall include remediation goals, verification criteria, revegetation criteria, quality criteria and other substantive requirements, criteria or limitations including all Applicable or Relevant and Appropriate Requirements (ARARs) set forth in the ROD, this SOW, the Consent Decree, the approved RD Work Plan, and the approved RA Work Plan.

This RA shall include the excavation of all debris and the soils that contain contaminants exceeding remediation goals. Such excavation shall require removal of the pole barn in OU-2 and will include removal of all of the PCB particulate material described in the Remedial Investigation (RI) Report. This RA shall also include physical sorting of debris material, characterization of all excavated material for off-site disposal, and hauling the material either to an off-site landfill or a RCRA and/or TSCA disposal facility as appropriate. The entire disturbed area shall be graded and vegetated to minimize erosion.

The principal components of the RA are:

A. Excavation of Debris

All debris in OUs -1, -5 and -6 shall be excavated. Any debris found at other locations on the Site or below such depths listed in Appendix C shall also be excavated. As determined by the variety of materials expected to be encountered in the debris fills, appropriate equipment shall be

mobilized for the excavation.

1. West Site

All debris shall be excavated from the West Site. Based on the types of materials encountered in the area both during pre-RI/Feasibility Study (FS) phases of the removal action and the RI, the debris fill in the bottom of Silicon Valley is thought to primarily contain glass, wood, plastic, scrap metal, and soil. Pieces of this material could reach several feet in size, and equipment capable of excavating and transporting this material in the steeper terrain may be required. The large finger of debris that emerges from the west rim of Silicon Valley may contain significant quantities of lithified slag.

In addition, the excavation of the deep fill in Silicon Valley could potentially uncover unusual or unexpected types of materials that would require special handling, including the following:

a. Pressurized gas cylinders were occasionally encountered during pre-RI/FS phases of the removal action, and caution would be required to identify and handle cylinders.

b. Although unexpected, it is possible that buried containers with liquid waste could be encountered, and care shall be exercised to prevent any release of the liquids.

c. As discussed in Section 4.2.4 of the RI Report, magnetic survey data suggest that the upper end of Silicon Valley contains shallowly buried objects with high densities of magnetic material. The specific nature of this magnetic material is unknown, but some common magnetized metallic objects are transformer casings and cores. In addition, health and safety monitoring conducted during the RI of probe holes in this area occasionally detected explosive gas and volatile emissions. Caution shall therefore be required in exposing and excavating the material in this area.

2. East Site

All debris shall be excavated from the East Site. Based on the types of materials encountered in the area both during pre-RI/FS phases of the removal action and the RI, the deep debris fill in OU-5 is thought to primarily contain concrete, glass, wood, plastic, scrap metal, and soil. Pieces of this material, particularly the concrete, may be several feet in dimension. The deep debris fill contained in OU-5 is estimated to be up to 25 feet in depth, and the slopes around this fill area are relatively steep.

The shallow soil/debris fill in OU-6 should not present any difficulty to excavate.

B. Excavation of Soils

1. West Site

All soils and soils/debris fill that contain contaminants exceeding remediation goals shall be excavated from the West Site. Subject to the requirement in Section II.A. above regarding excavation of all debris, Ford may include all or part of the soils in the initial excavation or may elect to conduct characterization of part of the soils as part of Section III, Task 5.E., Step 2, described below. In the FS, the soils underlying the debris-containing areas of OU-1 are estimated to be contaminated to a depth of up to 18 inches. The shallow, consolidated fill in OU-2 (in Area of Concern (AOC) R2) is estimated to be 6 to 18 inches in depth and is thought to primarily contain soil including small pieces of glass, wood, plastic, and scrap metal. Soils in the remainder of OU-2 (AOC O1) are estimated to be contaminated to a depth of up to 18 inches.

Soils in OU-9 are generally estimated to be contaminated to a depth of up to 6 inches. The excavation of the soils and soils/debris on the West Site would not be expected to present any difficulty or require special equipment.

2. East Site

All soils that contain contaminants exceeding remediation goals shall be excavated from the East Site. Subject to the requirement in Section II.A. above regarding excavation of all debris, Ford may include all or part of the soils in the initial excavation or may elect to conduct characterization of part of the soils as part of Section III, Task 5.E., Step 2 described below. The soils underlying the deep debris fill in OU-5, the soils underlying the debris in OU-6, and the soils on the remainder of the East Site are generally estimated to be contaminated to a depth of 6 inches. The excavation of these soils on the East Site would not be expected to present any difficulty or require special equipment.

On both the East and West Sites, post-excavation soil characterization shall be performed to verify that the remaining soils meet remediation goals. The verification shall be performed as specified in Section III, Task 5.E. below.

C. Physical Sorting and Preparation of Debris for Removal

Once excavated, the debris shall be physically sorted and managed on-site to develop waste streams for off-site disposal. The specific process to be utilized for the sorting shall be fully identified in the RD and RA Work Plans.

D. Pole Barn Removal

The super-structure of the pole barn shall be removed and the material disposed off-site. The foundation slab shall be broken up and removed. Soils below the slab that contain contaminants exceeding remediation goals shall be excavated for disposal.

E. Disposal (off-site) of Excavated Debris and Soils

All excavated materials shall be profiled and sorted for off-site disposal and disposed in appropriately licensed or permitted facilities (e.g., any RCRA Subtitle C hazardous wastes shall be shipped to a RCRA Subtitle C permitted Treatment, Storage and Disposal Facility) that meet the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. Further profiling of the waste streams shall be performed if required by the associated treatment, storage and disposal facilities (TSDFs).

F. Grading and Revegetation

Grading shall be performed over the entire 48 acres of disturbed area to eliminate the steep excavation cuts, return the area to a more natural state, and eliminate the need for extensive post-construction surface water management. Excavated areas shall be revegetated and the vegetation shall comply with the requirements and meet the performance standards designed to ensure natural succession as specified in Section III, Task 5.G. below.

G. Surface Water Controls

Surface water management shall be implemented, both during construction and as a part of the final configuration, to minimize the potential for erosion, to prevent ponding over large areas, and to route drainage off the plateau. Surface Water Management plans for both the West Site and the East Site shall be developed in the RD as further described in Section III, Task 3.A.12. below.

H. Wetlands Restoration

Several small, low-quality wetlands totaling approximately 1.5 acres were identified on the East Site in OUs -3, -4, -6 and -8. These wetlands will be impacted by the RA, since the areas containing the wetlands will be excavated. Ford shall provide compensatory mitigation by creating or restoring a total of 3 acres of Category 2 wetlands (as described in Ohio Administrative Code Section 3745-1-54) at one to three Site locations acceptable to NPS.

I. Monitoring

Ford shall be responsible for performing all monitoring of surface water management facilities during the RA and all monitoring to detect any erosion occurring during the revegetation period. These responsibilities are further described in Section III, Tasks 3.A.12 and 5.D and G below. All other surface water and ground water monitoring shall be performed by the NPS both during and after completion of the RA.

J. Cultural Resource Assessment

Pursuant to § 106 of the National Historic Preservation Act, NPS staff will assess and identify the potential impacts of the RA on cultural resources. Any area immediately adjacent to the former site of the Krejci house which has not been grossly disturbed by Site operations may need to be inventoried by NPS for archeological and historical resources. Any such inventory shall be conducted in a manner that does not delay Ford's performance of the work. The results of any such inventory will be used to determine if actions to mitigate project impacts are required.

K. Remedial Action Completion

Ford shall complete the RA, up to and including initial reseeding of the entire Site, within a 3-year period after the initiation of excavation.

III. SCOPE OF REMEDIAL DESIGN AND REMEDIAL ACTION

The RD/RA shall consist of six tasks. All plans are subject to NPS approval.

Task 1: Remedial Design Work Plan

Ford shall submit an RD Work Plan in accordance with paragraph 17 of the Consent Decree for NPS

review and approval. The RD Work Plan shall document the overall management strategy for performing the pre-design activities, design, construction, cleanup verification, surface water management, Hines Hill Road maintenance consistent with Paragraph 8.b of the Consent Decree, and erosion monitoring. The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation and shall include a description of qualifications of key personnel directing the RD/RA, including contractor personnel. The RD Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the RD/RA. If Ford plans to perform additional characterization of Site soils during the pre-design phase or conduct any other pre-design Site investigations, this RD Work Plan shall include, as appropriate, a Field Sampling Plan (FSP), a Quality Assurance Project Plan (QAPP), a Contingency Plan, and a Health and Safety Plan (HASP) for such pre-design activities. See Section IV below regarding requirements for these plans.

NPS shall review and approve, modify, or disapprove the RD Work Plan as set out in the procedures identified in Section XI of the Consent Decree.

Task 2: Pre-Design Phase

Ford shall implement the pre-design work in accordance with the final RD Work Plan. The results of the pre-design studies shall be included with the intermediate (60%) design. As determined appropriate by Ford, Ford shall conduct any Site visits necessary to gather design data, conduct further characterization of Site soils, collect survey data, and/or collect any other data determined necessary to develop the RD. Ford shall investigate the condition of available public or private roads and clearances, restrictions, bridge-load limits, bond and permit requirements, and any other limitations that affect or may affect transportation and Site ingress and egress during the RA. As requested by NPS, Ford shall participate in any scheduled pre-RD public involvement activities.

If Ford collects data to further characterize Site soils (and for the collection of verification data as detailed in Task 5.E. below), information related to samples collected at the Krejci Site shall be maintained by Ford in a Microsoft ACCESS™ relational database[1]. All chemical concentrations shall be relative to dry mass (except water and air samples) and reported in units of µg/kg. All chemical concentration measurements shall be entered in the database, as will the information listed below in the remainder of Task 2 which also must be related to the associated chemical concentration in a manner that permits easy query and report development by a novice database user.

A. Sampling information:

---

[1]A database is a collection of information organized in such a way that a computer program can quickly select desired pieces of data. Databases are organized by fields, records, and tables. A field is a single piece of information; a record is one complete set of fields, and a table is a collection of records.

Microsoft ACCESS™ is a database management system (the word database is often used as shorthand in place of database management system). It is a collection of programs that enables the user to enter, organize, and select data in the database. Microsoft ACCESS™ is a relational database, meaning the data are organized in tables and are electronically associated.

In Microsoft ACCESS™, a join operation can be performed to select related records in two tables by matching common fields in both tables. For example, two different tables may both contain fields that store Sample ID. By "joining" Sample ID fields in the two tables, a relationship is set between the corresponding fields in the two tables. This relationship matches the information (records) in the tables that is common to the Sample ID.

The information listed below in the remainder of Task 2 shall be related to corresponding concentrations such that the complete set of information can be easily retrieved.

1. Sample Location: This is defined by the Operable Unit, the coordinates (in both the RI Site coordinate system and in corresponding state plane coordinates), and the ground surface elevation.
2. Top and Bottom Sample Depth: Depth interval represented by each sample. When a sample is a mix of soil in a depth interval, this is the top and bottom depth of the resulting composite sample.

3. Area Represented by Each Sample: Each composite sample represents an area which shall have a designation.
4. Sample Identification: This is a unique identification assigned to each sample.
5. Sample Matrix: Examples include soil, air, water, debris, etc.
6. Analyte Group: Each analyte is assigned to a unique group, e.g. semivolatile organic compounds, volatile organic compounds, etc.
7. Preservative: This is the preservative added to the sample in the field.
8. Sample Date / Time: This is the date and time the sample was obtained in the field.
9. Number of Containers: More than one container may be used to acquire a single sample.
10. Sample Type: Examples include point sample, composite sample, water content sample, QC sample reference, etc.
11. Chain of Custody Reference Number: Chain of Custody forms are used to document the custody of samples from creation to disposal. Each has a unique number.
12. Field Shipment Batch Identification: Samples are usually packed together in a cooler for shipment to the laboratory. Each batch shall have a unique identification. If each shipping container has a separate Chain of Custody form, this number could be used as the Field Shipment Batch Identification.
13. Field Log Reference: This is a reference to field logs and pages that document the collection of the sample.

B. Laboratory information:

1. Name of Analytical Laboratory: If more than one lab is to be used, each laboratory shall have a unique name.
2. Laboratory Sample Identification Number: Laboratories traditionally give each sample they receive a unique identification. This Laboratory Sample Identification Number is related to the Sample Identification number.
3. Date Received: The date the sample is received in the laboratory.
4. Laboratory Batch Identification Number: Laboratories perform a procedure on batches of samples for efficiency. Each batch has a unique identifier.
5. Analyte Group: Each analyte is assigned to a unique group, e.g. semivolatile organic compounds, volatile organic compounds, etc.
6. Water Content: The measured water content of the sample.
7. Extraction Method: The sample extraction method.
8. Date of Extraction: The date the sample was extracted
9. Analysis Method: The extract analysis method.
10. Date of Analysis: The date the extract was analyzed.
11. Dilution Factor: The extract dilution ratio.
12. Chemical Name: The analyte chemical name shall be identified with preference given to the name used in the RI.
13. Chemical CAS Registration Number: The Chemical Abstracts Service is an organization that indexes information published in *Chemical Abstracts* by the American Chemical Society and provides index guides by which information about particular

substances may be located in the abstracts. The unique CAS number is a concise, unique means of material identification.
14. Method Detection Limit: The batch's analyte method detection limit.
15. Laboratory Report Reference: All data is presented in hard copy from laboratories. This is a unique reference to the associated report.
16. Laboratory Report Date: Date of laboratory report.

C. QC information:

1. Duplicate or Replicate Field Sample: Identification of associated duplicate or replicate sample. Created in the field for QC purposes.
2. Certified Reference Standards: Certified reference standards are soils containing known concentrations of chemicals and are submitted blind to the laboratory by the field. These are uniquely identified by a Certificate of Authenticity.
3. Equipment Rinse: Decontamination of equipment is checked by analysis of rinse water.
4. Field Blank Sample: QC sample submitted with a shipment to a laboratory.
5. Field Split Sample: QC sample that may be analyzed by independent laboratories.
6. Field Spiked Sample: QC sample that is spiked with a surrogate chemical in the field and submitted blind to the laboratory.
7. Duplicate Lab Sample: Identification of associated duplicate sample created in the laboratory for QC purposes.
8. Laboratory Data Qualifiers: Qualifiers are added to data during the laboratory data validation process. Related to Laboratory Sample Number or Laboratory Batch Identification Number.
9. Independent Laboratory Verification Sample: Related to Sample Identification, Laboratory Sample Number or Laboratory Batch Identification Number.
10. Overall Sample Data Qualifiers: Qualifiers are added to data during the data validation process.
11. Data Validation Report Reference: The report documenting the selection of a data qualifier.
12. Data Validation Report Date: Date of validation report.
13. QC File Reference: Documents relating quality laboratory and field control information to a concentration measurement are typically retained in uniquely identified files.

The data base shall be documented. The data base structure shall be presented in the RD Work Plan using the "Documenter" analysis tool in ACCESS™.

Hard copies of all references cited in the database will be submitted to NPS.

Ford shall create a process that allows NPS to design, run and print the results of queries and reports from either a database provided by Ford to NPS or from a remote location without downloading the database. The copy of the database used shall have secured access and shall be updated at least monthly by Ford while changes are occurring. The updates shall include validated field and laboratory measurements and associated information.

Task 3: Remedial Design Phase

Ford shall prepare construction plans and specifications to implement the RA at the Site as described in the Consent Decree, ROD and this SOW. The construction plans and specifications shall be prepared under the supervision of a professional engineer registered in the State of Ohio, and shall be submitted in accordance with the schedule set forth in Section V below. Subject to approval by NPS, Ford may submit more than one set of design submittals reflecting different components of the RA. All plans and specifications shall be developed in accordance with U.S. EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A) and shall demonstrate that the RA shall meet all objectives of the ROD, the Consent Decree and this SOW, including all Performance Standards. Ford shall meet or confer regularly with NPS to discuss design issues.

A. Intermediate Draft Design (60%)

Ford shall submit the Intermediate Draft Design when the design effort is approximately 60% complete in accord with Paragraph 17 of the Consent Decree and Section V of this SOW. The Intermediate Draft Design submittal shall include, at a minimum, the following:

1. Draft specifications;
2. Draft plans, drawings, and sketches, including design calculations and criteria;
3. Results of additional field sampling;
4. Design assumptions and parameters, including design restrictions, process performance criteria (if applicable), appropriate unit processes for the sorting and management of the waste prior to off-site disposal, and any anticipated actions necessary to comply with ARARs identified in the FS, including any treatment required to meet Land Disposal Regulations;
5. Cleanup Verification Sampling Plan including the draft FSP and QAPP. See Section IV below regarding requirements for the FSP and QAPP;
6. Draft Contingency Plan. See Section IV below regarding requirements for the Contingency Plan;
7. Proposal regarding the required wetlands mitigation;
8. Revegetation plan that will achieve the performance standards identified in this SOW;
9. Proposed siting/locations of all construction-associated facilities (sorting processes, waste storage areas, fuel storage areas, tanks, decontamination areas, personnel facilities, access points, etc.). The presence of the existing ground water wells and the need to maintain access to, and the function of, these wells shall be considered in Ford's planning;
10. A certification from U.S. EPA sufficient for NPS to determine that the proposed receiving facility for Site hazardous substances, pollutants, or contaminants is operating in compliance with the requirements of CERCLA § 121(d)(3) and 40 CFR § 300.440;
11. Other than with respect to the wetlands discussed in No. 7 of this paragraph above, a Mitigation Plan to address any other environmental impacts resulting from implementation of the remedy;
12. Surface water management plans detailing how, both during construction and as a part of the final configuration, the potential for erosion will be minimized, ponding will be prevented over large areas, and drainage will be routed off the Site plateau. Surface water management plans shall be prepared for both the West Site and the East Site. In a narrative form, the plans shall include:
    a. Description of Drainage Areas
        A description of the drainage, including:
        (1). A map of each significant surface water drainage area and surface water body.
        (2). A prediction of the direction and destination of flow of surface water discharge.
    b. Measures and Controls
        (1). A description of the surface water management controls that are to be

implemented at the Site during the anticipated remedial activities.
(2). A description of the inspection program that will be implemented to observe the condition and performance of installed surface water management facilities.
(3). A summary of good housekeeping measures that will be implemented to assure orderly storage and handling of materials and equipment brought to the Site.
(4). A description of the preventive maintenance program to be implemented that will address any problems identified by the inspection program. The program shall be designed to implement responsive action within 45 days of receiving any report of a problem with the surface water management facilities.
(5). A description of the record keeping and internal reporting system to be implemented to document the inspections and the responses to any identified problems with the surface water management facilities, or any releases resulting from Site activities.
(6). A description of the employee training program designed to inform personnel at all levels of responsibility for the components and goals of the plans;

13. Any easement and/or permit requirements and the plan for obtaining any such easement or permit. Where permits are not required for on-site activities due to CERCLA exemptions, the substantive requirements of the permit(s) that would otherwise be required must be detailed;
14. Preliminary construction schedule, including contracting strategy.

NPS shall review and approve, modify, or disapprove the Intermediate Draft Design as set out in the procedures identified in Section XI of the Consent Decree. Such approval does not imply an assumption of NPS responsibility for any design deficiencies, errors or omissions.

B. Pre-Final/Final Design (100%)

Ford shall submit the Pre-Final Design when the design effort is 100% complete in accord with Paragraph 17 of the Consent Decree and Section V of this SOW. The Pre-Final Design shall be approved by the professional engineer that supervised the preparation of the design, fully address all comments made to the draft (60%) Design and shall include reproducible drawings and specifications.

The Pre-Final Design submittals shall include those elements listed for the Intermediate Draft Design, as well as the following:

1. Final Cleanup Verification Plan, including the Final FSP and Final QAPP;
2. Draft HASP (See Section IV below regarding requirements for the HASP) and Final Contingency Plan;
3. Final Project Schedule for the construction and implementation of the RA which identifies timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones.

NPS shall review and approve, modify, or disapprove the Pre-Final Design as set out in the procedures identified in Section XI of the Consent Decree. If the design is approved in whole or in part or subject to specified conditions, the portion approved shall then become the Final Design. Such approval does not imply an assumption of NPS responsibility for any design deficiencies, errors or omissions.

Task 4: Remedial Action Work Plan

Ford shall submit an RA Work Plan which includes a detailed description of the remediation and construction activities. The RA Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the RA. A Final HASP shall be submitted concurrently with the RA Work Plan. Ford shall submit an RA Work Plan in accordance with Paragraph 18 of the Consent Decree.

NPS shall review and approve, modify, or disapprove the RA Work Plan as set out in the procedures identified in Section XI of the Consent Decree. Such approval does not imply an assumption of NPS responsibility for any deficiencies, errors or omissions.

Task 5: Remedial Action Construction

Ford shall implement the RA as detailed in the approved Final Design. The following activities shall be completed in constructing the RA.

A. Pre-construction inspection and meeting

Ford shall participate with NPS in a pre-construction inspection and meeting to:

1. Review methods for documenting and reporting inspection data;
2. Review methods for distributing and storing documents and reports;
3. Review work area security and safety protocol;
4. Conduct a Site walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations; and,
5. Conduct a review of planned activities at the Site with local emergency responders.
6. As requested by NPS, participate in any scheduled pre-RA public involvement activities.

The findings of the pre-construction inspection and meeting shall be documented by Ford and a copy provided to NPS.

B. Site Security

Ford is responsible for providing site security, including during all non-work hours and, unless all equipment and support facilities are demobilized, during any periods of inactivity at the Site.

C. Road Maintenance

The section of Hines Hill Road from the Site to State Highway 8 is not designed for heavy truck traffic. Consistent with Paragraph 8(b) of the Consent Decree, during and at the conclusion of the RA, Ford shall comply with the terms and conditions of any permits and approvals from the relevant local authorities required for the transportation of excavated materials on Hines Hill Road.

D. Monitoring During the RA

As discussed further in Section III, Task 3.A.12. above, Ford shall perform monitoring to observe the condition of all surface water management facilities and to assure that such facilities are working as intended.

All other surface water and ground water monitoring shall be performed by NPS during the RA. A monitoring plan shall be provided to Ford by NPS prior to the pre-construction inspection. The monitoring plan shall include a description of the planned monitoring tasks and a schedule of monitoring frequency. Ford shall anticipate the performance of these monitoring activities and not obstruct access to the Site for their completion. NPS shall provide 14 days advance notice to Ford prior to each monitoring episode.

E. Verification Procedures

To verify that remediation goals defined for the Site have been achieved by the RA, the following procedures shall be performed:

Step 1. Initially, soils, debris and PCB particulate material, if any, will be excavated at the locations and to the depths set forth in Appendix C, except that, subject to the requirement in Section II.A. above regarding excavation of all debris, Ford may include all or part of the soils in the initial excavation or may elect to conduct characterization of part of the soils as part of Step 2 described below. Any debris found at other locations or below such depths listed in Appendix C will also be excavated.

Step 2. Post-excavation characterization will be performed to verify that remaining soils meet the Remediation Goals (RGs) set forth in Appendix D. As shown in Appendix D, the RGs for some parameters are organized into two Tiers. One composite sample comprising 40 specimens collected on a grid pattern within each 1/4-acre will be analyzed for all parameters shown in Appendix D that are associated with the area, except for dioxin/furan (which is described in Step 7 below) and benzene. (Verification samples submitted for benzene analysis will be discrete point samples. One sample from each 1/4-acre area will be analyzed. The sample will be selected using field screening procedures and will be the sample from the composite grid point with the highest photo-ionization detector reading, using the bulb for such detector that is most sensitive for benzene.) The following verification criteria shall apply. For parameters with Tier-2 RGs, up to two exceedances of Tier-1 RGs are permitted for each 1/4-acre area, so long as the Tier-2 RGs are achieved for those parameters. For parameters without defined Tier-2 RGs, exceedance of a Tier-1 RG within any 1/4-acre area constitutes failure. In the event that a 1/4-acre verification sample fails either of these verification criteria, Ford may collect a resample from a multi-point grid with similar point spacing used in the original sample, offset to a new origin. The resample would be analyzed for each parameter group that had an exceedance. For example, if there is an exceedance for one metal parameter, all metals would be analyzed on the resample. The parameter groups are: (1) metals; (2) volatile organic compounds; (3) polyaromatic hydrocarbons; (4) pesticides and PCBs; (5) phthalate esters; and (6) dioxin/furan. The relevant parameter group for each parameter is shown in Appendix D. If the resample results satisfy the verification criteria for all parameters in the parameter group, the 1/4-acre area will be deemed to have achieved the RGs for all contaminants except dioxin/furan. (See Step 7 regarding dioxin/furan.)

Step 3. If the post-excavation verification described in Step 2 reveals that a 1/4-acre area exceeds the verification criteria, the 1/4-acre section will be identified as potentially requiring

additional soil removal. When all verification on either the East Site or the West Site is completed, all areas of verification criterion exceedance will be collectively evaluated. If the exceeding 1/4-acre areas are cumulatively greater than 20% of the area of the East or West Site, as the case may be, then Site conditions will be re-evaluated to ensure that increasing soil removal volume will address disposal-related impacts rather than background conditions, pursuant to the procedures described in Step 4. If the exceeding areas are less than or equal to 20% of the area of the East or West Site, respectively, then the next 6 inches of soil in such areas will be excavated and handled pursuant to Section II.E. above. Verification sampling for the relevant parameter(s) after the second and any subsequent iteration(s) of soil removal will be conducted as described in Step 2 with respect to the parameter(s) that caused the additional soil removal. If such verification sampling reveals no further exceedances with respect to parameters (exclusive of dioxin/furan) in a particular 1/4-acre section, the next step with respect to such section shall be Step 7. If such verification sampling reveals a further exceedance with respect to any parameter (exclusive of dioxin/furan) in a particular 1/4-acre section, the next step with respect to such section shall be Step 4.

Step 4. In the event that: (a) the exceeding areas after the first iteration of soil removal are greater than 20% of the area of the East or West Site, as the case may be, as described in Step 3; or (b) RG exceedances are confirmed after the second or subsequent iteration of soil removal as described in Step 3, Ford shall, at its option, (1) excavate an additional 6 inches of soil (subject to the verification sampling and resampling procedures described in Step 2); (2) conduct additional soil borings in the affected areas to further investigate and define remaining quantities of soils above RGs; and/or (3) conduct further evaluation of the exceeding areas for the purpose of determining whether the remaining exceedances reflect a background soil condition that is not represented by the existing background soil data. Such evaluation of background may include, at Ford's option and expense, a qualitative evaluation of available data and Site circumstances, and/or the collection of additional background samples only with respect to Case-1 or Case-2 parameters as listed in Appendix D or with respect to dioxin/furan pursuant to Step 7. If Ford elects to conduct such supplemental background sampling, the goal of such sampling effort shall be the collection of data of sufficient quality to permit the application of the methodology used to derive the RGs for the Case-1/ Tier-1 parameters with respect to the calculation of the background levels for the relevant parameter. Ford shall submit a sampling plan adequate for such purpose to NPS for review and approval. If Ford does not elect to conduct additional excavation as provided above, Ford shall recommend a proposal for other action regarding the 1/4-acre areas at issue for NPS review and approval. If NPS does not approve of Ford's proposal, Ford shall, at its option, either excavate an additional 6 inches of soil (subject to the verification sampling and resampling procedures described in Step 3) or shall exercise the procedures described in Step 5.

Step 5. Ford and NPS ("the Parties") agree to work in good faith to informally resolve any dispute over whether background has been achieved in any area that is subject to Step 4 or Step 7. In the event that the Parties are unable to agree on whether the exceedances of the RGs represent background conditions, Ford may, at its own option and expense, submit the issue to a neutral party ("Neutral") for a non-binding opinion as follows. After a reasonable effort to achieve informal resolution of the issue, Ford may notify the NPS in writing that informal attempts to resolve the issue have not been successful. Within ten days thereafter, the Parties shall exchange lists of five or fewer candidates for the Neutral who must have CERCLA soil removal management expertise, and knowledge of statistics as may be appropriate to the nature of the remaining dispute(s). The Parties shall attempt to select a Neutral by consensus from the combined list. In the absence of agreement, the NPS shall select the Neutral, subject to maximum of four vetoes (or one less than the number of candidates proposed by the NPS) by

Ford. Within 14 days thereafter, the Parties shall each submit position papers with backup documentation to the Neutral. Within 21 days thereafter, the Parties may submit rebuttal papers. If the Neutral desires, he or she may visit the Site and/or meet with the parties together. Within 21 days after the submission of rebuttal papers, the Neutral shall issue a written opinion on the issue of whether background has been achieved, indicating the facts and basis for his or her opinion. The schedule and procedures described in this Paragraph may be modified by mutual agreement of the Parties. Ford shall pay the Neutral's fees and costs. In order to prevent bias, the Neutral shall not be informed of the funding source.

Step 6. In the event that the NPS disagrees with the Neutral's opinion, the NPS's decision regarding the need for additional excavation to achieve the RGs shall be binding, subject to Ford's right to invoke Dispute Resolution under Paragraph 70 of the Consent Decree relating to disputes pertaining to the selection or adequacy of any response action. Ford shall have the burden of demonstrating that the decision of the NPS is arbitrary and capricious or otherwise not in accordance with law. In any Dispute Resolution invoked pursuant to this Step, Ford may not dispute the appropriateness of the methodologies used by NPS for calculating any RG set forth on Appendix D, and may not dispute any such methodologies if used by NPS for recalculating such RG in light of supplemental background sampling data collected pursuant to Step 4. In the event that the NPS agrees with the opinion of the Neutral as to a particular issue, Ford may not invoke Dispute Resolution with respect to such issue.

Step 7. Dioxin/furan sampling and analysis will be conducted as follows, unless Ford and the NPS mutually agree to a different methodology. Verification sampling for the dioxin/furan RG will be conducted in areas R1, R2, and R3 only, after RGs have been achieved in these areas for the other 38 parameters or it has been determined that no further excavation for those parameters is required, pursuant to Steps 4-6. A 4-part unbiased composite sample will be collected from 1-acre sections of these areas. The 4-part samples will be composed of equal parts of the 40-specimen composites collected from each 1/4-acre section for the remaining 38 parameters, unless this procedure would result in holding time exceedances. If this procedure would result in holding time exceedances, the 1-acre section would be sampled for dioxin/furan by collecting one 40-specimen composite from the 1-acre area. If initial dioxin/furan sampling results reveal an exceedance of the dioxin/furan RG, Ford may resample the area by collecting a 40-specimen composite from each 1/4-acre area in the original acre. If the resample results satisfy the RG for dioxin/furan, the 1/4-acre section will be deemed to have achieved that RG, and no further excavation will be required. If the resample for a 1/4-acre exceeds the RG for dioxin/furan, or if Ford declines to conduct such resampling, an additional 6 inches of soil in the relevant area will be removed. Following this soil removal, Ford will conduct verification sampling on each 1/4-acre by collecting a 40-specimen composite. If the 1/4-acre section fails to achieve the RG for dioxin/furan after the initial 6-inch dioxin/furan removal, then Ford may elect to excavate 6 additional inches of soil (subject to the verification sampling procedures described above in this Step), or may perform a more detailed delineation of dioxin/furan levels for the purpose of refining the estimate of the quantity of soil remaining above the RG. Ford may also perform supplemental background sampling with the goal of collecting data of sufficient quality to permit the application of Case-1/Tier-1 methodology with respect to the calculation of the background levels for dioxin/furan, as described above in Step 4. Ford will advise the NPS of the delineation results and will recommend a proposal for additional work for NPS review and approval. If NPS does not approve of Ford's proposal, Ford shall, at its option, either excavate an additional 6 inches of soil (subject to the verification sampling procedures described above in this Step) or shall exercise the procedures described in Steps 5 and 6.

F. Final Grading Plan

Once the verification sampling program has confirmed that the remediation goals have been achieved throughout the Site, Ford shall provide NPS a final grading plan which shows how surface water management to minimize the potential for erosion, prevent ponding over large areas, route drainage off the Site plateau, and provide a stable final topography shall be achieved. Following NPS approval, the grading plan shall be implemented by Ford.

G. Revegetation Performance Standards

Ford shall establish a diverse, effective, and permanent vegetation cover over the entire 48-acre disturbed area. Seeding and planting of the disturbed area shall stabilize the soil surface to prevent erosion. The specified seedmix shall meet the Specifications on file with the Ohio Department of Agriculture at the time of seeding as to percentage purity, weed, seed, and germination. All seed shall meet the requirements specified below.

The following seedmix, or a different commercially available seedmix approved by NPS if the following seedmix is not commercially available, shall be sown at the indicated rate:

Switchgrass (Panicum virgatum) @ 20 lbs. Pure Live Seed per acre
Deertongue (Panicum dichethelium) @ 20 lbs. Pure Live Seed per acre
Chewings Fescue (Festuca rubra var. commutata) @ 10 lbs. Pure Live Seed per acre
Annual Ryegrass (Lolium multiflorum) @ 5 lbs. Pure Live Seed per acre

In addition, a shrub seedmix, or a different commercially available shrub seedmix approved by NPS if the following seedmix is not commercially available, shall be added using four species from the following group:

Common Elder (Sambucus Canadensis) @ 1 oz. Pure Live Seed per acre
Chokeberry (Pyrus melanocarpa) @ 2 oz. Pure Live Seed per acre
Gray Dogwook (Cornus racemosa) @ 2 oz. Pure Live Seed per acre
Hawthorne (Crataegus coccinea) @ 2 oz. Pure Live Seed per acre
Smooth Sumac (Rhus glabra) @ 2 oz. Pure Live Seed per acre

Determination of application seeding rate:

Application Rate x Percent Purity x Percent Germination = Pure Live Seed

Example:

Assume seed has purity of 98%, germination of 75% (as indicated on tag), and the requirement is to achieve a seeding rate of 10 pounds of Pure Live Seed per acre.

Then: Application Rate = (10 lbs. Pure Live Seed/acre)/(0.98)(0.75)

= 13.6 lbs. per acre

The planting of the grasses and legumes shall be deemed successful if the planted species meet the following revegetation performance standards as measured one year from the date of completion of the seeding:

Coverage Class	% Vegetation	Standards
Good	76 to 100	At least 90% of the project area must fall in this class
Fair	50 to 75	Maximum of 10% of project area may fall in this class
Poor	less than 50	Any areas falling in this class will not be acceptable

The vegetation will be quantified under the following procedures: As determined by the NPS, transects of random alignment will be laid out over any barren area suspected of failing the revegetation performance standards. A string 100 feet long having one foot graduation shall be placed along the transect line. NPS will then walk along the line counting only the markers which are in actual contact with vegetative species introduced by the reseeding. The number of count points are to be recorded as the percent vegetative cover for the transect.

During the first year evaluation period, NPS and Ford shall visually inspect the seeded area on a quarterly basis to detect the establishment of any erosion gullies. If any erosion gullies deeper than 4" are found, Ford will fill these gullies with borrow material, regrade the gully areas, and re-treat the areas with seed and mulch.

If any areas are determined to fail the revegetation performance standards at the one-year evaluation, a second evaluation of these areas will be conducted one year from the date of either such determination or completion of any additional reseeding determined advisable by Ford, whichever date is later. Such reseeding shall consist of the original seed mix. During this second one-year period, Ford will be required to correct any erosion detected in the failing areas as follows: NPS and Ford shall visually inspect the failing areas on a quarterly basis, or more frequently as determined necessary by NPS and Ford, to detect the establishment of any erosion gullies. If any erosion gullies deeper than 4" are found, Ford will fill these gullies with borrow material, regrade the gully areas, and re-treat the areas with seed and mulch.

At the conclusion of the second one-year evaluation period, the revegetation of all areas failing to meet the revegetation performance standards will be deemed unacceptable, and such areas must be replanted by Ford in a manner determined by NPS. Ford's revegetation obligations shall continue until the revegetation performance standards are met.

H. Pre-Final Inspection

Within 60 days after Ford makes a preliminary determination that the RA is complete up to the initial reseeding of the entire Site, Ford shall notify NPS for the purposes of conducting a pre-final inspection. The pre-final inspection shall consist of a walk-through inspection of the entire Site with NPS. The inspection is to determine whether the materials removal and grading components of the project are complete and consistent with the Consent Decree and Record of Decision. Any outstanding construction items discovered during the inspection shall be identified and implemented by Ford as directed by the NPS.

I. Final Certification of Completion

Within 90 days after Ford concludes that the RA has been fully performed and the revegetation performance standards have been attained, Ford shall schedule and conduct a pre-certification

inspection to be attended by Ford and NPS. If after the pre-certification inspection, Ford still believes that the RA has been fully performed and the performance standards have been attained, it shall submit a written report (see J.2. below) requesting certification to NPS for approval, pursuant to Section XI (DOI Approval of Plans and Other Submissions) of the Consent Decree within 30 days of the inspection.

J. Reports

1. Progress Reports

As required by Paragraph 33 of the Consent Decree, Ford shall submit to NPS monthly progress reports delineating the status of the Site. The progress reports shall include:

a. Description of activities conducted during the period;
b. A summary of all results of sampling and tests and all other data received or generated by Ford or its contractors or agents in the previous month;
c. Identification of all work plans, plans and other deliverables required by the Consent Decree or this SOW completed and submitted during the previous month;
d. Description of all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and/or Pert charts;
e. Information regarding percentage of completion, problems encountered during the period, 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. Any modification to the work plans or other schedules that Ford has proposed to NPS or that have been approved by NPS;
g. Description of all public involvement activities undertaken by Ford in support of NPS during the previous month and those to be undertaken in the next month;
h. A description of the volume of each type (i.e., hazardous waste, solid waste, liquid waste, etc.) of waste material removed from the Site during the previous month;
i. All completed manifests for hazardous waste removed from the Site that were received during the previous month; and,
j. All Certificates of Destruction/Disposal for hazardous waste removed from the Site that were received during the previous month.

2. Completion of Work Report

Within 30 days after Ford concludes that all phases of the RA have been fully performed and a pre-certification inspection has been completed, Ford shall submit a Completion of Work Report. In the report, Ford's Project Coordinator shall state the RA has been completed in full satisfaction of the requirements of the Consent Decree and this SOW. The report shall contain the following statement, signed by a responsible corporate official of Ford or Ford'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."

Task 6: Operation and Maintenance

All post-remedial O&M shall be the responsibility of NPS.

IV. CONTENT OF SUPPORTING PLANS

The documents listed in this section -- the Quality Assurance Project Plan, the Field Sampling Plan, the Health and Safety Plan, and the Contingency Plan -- are documents which must be prepared and submitted as outlined in Section III of this SOW. The following section describes the required contents of each of these supporting plans.

A. Quality Assurance Project Plan

Ford shall develop a Site-specific QAPP covering sample analysis and data handling for samples collected in all phases of future Site work in accord with Paragraph 26 of the Consent Decree. The QAPP shall be consistent with EPA QA/R-5, *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations* and its companion document EPA QA/G-5. The QAPP shall address the following elements:

1. Project Management
    a. Title and Approval Sheet
    b. Table of Contents
    c. Distribution List
    d. Project/Task Organization
    e. Problem Definition/Background
    f. Project/Task Description
    g. Quality Objectives and Criteria for Measurement Data
    h. Special Training/Certification
    i. Documents and Records

2. Data Generation and Acquisition
    a. Sampling Process Design
    b. Sampling Methods
    c. Sample Handling and Custody
    d. Analytical Methods
    e. Quality Control
    f. Instrument/Equipment Testing, Inspection, and Maintenance
    g. Instrument/Equipment Calibration and Frequency
    h. Inspection/Acceptance of Supplies and Consumables
    i. Non-direct Measurements
    j. Data Management

3. Assessment and Oversight
    a. Assessments and Response Actions
    b. Reports to Management

4. Data Validation and Usability

a. Data Review, Verification, and Validation
b. Verification and Validation Methods
c. Reconciliation with User Requirements

If any element is not applicable for this RA, it shall be stated in the QAPP.

B. Health and Safety Plan

Ford shall develop a HASP which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by this RA. The HASP shall develop the performance levels and criteria necessary to address the following areas:

1. Facility Description
2. Personnel
3. Levels of protection
4. Safe work practices and safeguards
5. Medical surveillance
6. Personal and environmental air monitoring
7. Personal protective equipment
8. Personal hygiene
9. Decontamination - personal and equipment
10. Site work zones
11. Contaminant control
12. Contingency and emergency planning
13. Logs, reports and record keeping

The HASP shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 CFR 1910 and 1926.

C. Contingency Plan

Ford shall develop a Contingency Plan describing procedures to be used in the event of an accident or emergency at the Site. The Contingency Plan shall include, at a minimum, the following:

1. Name of the person or entity responsible for responding in the event of an emergency incident
2. Plan and date(s) for meeting(s) with the local community, including local, State and Federal agencies involved in the cleanup, as well as local emergency squads and hospitals
3. First aid medical information
4. Air Monitoring Plan
5. Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), as specified in 40 CFR Part 109 describing measures to prevent and contingency plans for potential spills and discharges from materials handling and transportation

D. Field Sampling Plan

Ford shall develop an FSP (as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October 1988). The FSP should supplement the QAPP and

address all sample collection activities.

V. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

A summary of the project schedule and reporting requirements contained in this SOW is presented below:

Deliverable / Milestone	Due Date (calendar days)
RD Work Plan	Within ninety (90) days after Ford's receipt of NPS Notice of Authorization to proceed with RD
Monthly Progress Reports	By the tenth day of every month following the issuance of the ROD until issuance of the Certification of Completion
Supplemental Investigation / Design Investigation Plan	Within thirty (30) days after Ford's receipt of NPS approval of Pre-RD Work Plan (If Ford decides to perform such work)
Intermediate Design (60%)	Within ninety (90) days after Ford's completion of Pre-Design Activities
Final Design (100%)	Within ninety (90) days after Ford's receipt of NPS comments on the Intermediate Design
RA Work Plan	Within forty-five (45) days after Ford's receipt of NPS approval of Final Design
Award RA Contract(s)	Within seventy-five (75) days after Ford's receipt of NPS Notice of Authorization to Proceed with RA
Pre-Construction Inspection and Meeting	Within fifteen (15) days after Ford's Award of RA Contract(s)
Initiate Construction of RA	Within fifteen (15) days after Pre-Construction Inspection and Meeting
Completion of Construction	As approved by NPS in RA construction schedule included in RA Work Plan
Pre-Final Inspection	Within sixty (60) days after Ford's completion of RA up to initial reseeding of the entire Site
Pre-Certification Inspection	Within ninety (90) days after Ford's completion of work identified in pre-final inspection report and all work specified by the Consent Decree and ROD
Completion of Work Report	Within thirty (30) days after a successful pre-certification inspection

Appendix C									
	OU-1	OU-2	OU-3	OU-4	OU-5	OU-6	OU-7	OU-8	OU-9
Estimated soil volume	13,000 yd^3	9,000 yd^3	3,300 yd^3	2,600 yd^3	1,000 yd^3	3,000 yd^3	150 yd^3	13,000 yd^3	5,600 yd^3
Depth of soil excavation	18 inches [a]	18 inches	6 inches	6 inches	6 inches [b]	6 inches [c]	6 inches	6 inches	6 inches
Estimated debris volume	17,000 yd^3	None	None	None	7,000 yd^3	2,000 yd^3	None	None	None
Depth of debris excavation	Up to 20 feet	-	-	-	Up to 25 feet	Up to 5 feet	-	-	-

a) For OU-1, the 18-inch depth of soil excavation is measured from the elevation where the debris excavation is completed.

b) For OU-5, the 6-inch depth of soil excavation is measured from the elevation where the debris excavation is completed.

c) For OU-6, the 6-inch depth of soil excavation is measured from the surface, except that in locations where there is debris, the depth of soil excavation shall be 6 inches from the elevation where the debris excavation is completed.

Appendix D - Site Remediation Goals *

Analyte	Tier 1 RG ** (ppm)	Tier 2 RG ** (ppm)	Parameter Group
Case 1			
Aluminum	21000	24000	Metals
Barium	210	220	Metals
Beryllium	2.1	None	Metals
Chromium	31	35	Metals
Cobalt	21	30	Metals
Lead	100	None	Metals
Manganese	3650	None	Metals
Vanadium	37	44	Metals
Zinc	140	None	Metals
Case 2			
Antimony	1.9	2.2	Metals
Arsenic	13	30	Metals
Boron	31	35	Metals
Cadmium	0.57	1.3	Metals
Mercury	1.7	2.4	Metals
Molybdenum	14	16	Metals
Selenium	1.9	14	Metals
Case 3			
N/A			
Case 4			
4,4'DDE	0.16	None	Pesticides and PCBs
Aldrin	0.010	None	Pesticides and PCBs
gamma-Chlordane	0.083	None	Pesticides and PCBs
Benzene	0.0060	None	Volatile Organic Compounds
Benzo(a)anthracene	0.55	None	Polyaromatic Hydrocarbons
Benzo(a)pyrene	0.55	None	Polyaromatic Hydrocarbons
Benzo(b)fluoranthene	0.55	None	Polyaromatic Hydrocarbons
Benzo(k)fluoranthene	0.55	None	Polyaromatic Hydrocarbons
Chrysene	0.55	None	Polyaromatic Hydrocarbons
Dibenz(a,h)anthracene	0.55	None	Polyaromatic Hydrocarbons
Indeno(1,2,3-cd)pyrene	0.55	None	Polyaromatic Hydrocarbons
Bis(2-ethylhexyl)phthalate	0.55	None	Phthalate Esters
Aroclor 1232	0.075	None	Pesticides and PCBs
Aroclor 1242	0.075	None	Pesticides and PCBs
Aroclor 1248	0.075	None	Pesticides and PCBs
Aroclor 1254	0.075	None	Pesticides and PCBs
Aroclor 1260	0.075	None	Pesticides and PCBs
Case 5			
Copper	34	None	Metals
Nickel	190	None	Metals
Silver	17	None	Metals
alpha-BHC	0.0030	None	Pesticides and PCBs
Heptachlor Epoxide	0.011	None	Pesticides and PCBs
Case 6			
2,3,7,8-TCDD	0.0000030	None	Dioxin/Furan

* The rationale for the assignment of each RG value is based on the lower of 1) the human health risk-based goal or 2) the ecological risk-based goal, unless such goal is below the associated Site-specific background level, in which case the background level is used as the RG.

** Dry weight

Appendix E

PAYMENT INSTRUCTIONS:

A. Response Costs

As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of DOD, shall pay $594,000 to the DOI Central Hazardous Materials Fund. Payment shall be made using the Online Payment and Collection (OPAC) System, using the following information:

Party Name:	U.S. Department of Defense
Site Name:	Krejci Dump Site, Cuyahoga Valley National Park
NPS Contact:	Shawn P. Mulligan, 303-415-9014
Agency Location Code:	14-11-0008
Fund Symbol:	14X1121
Fund Code:	255.e
Program Code:	2645RD
Project Code:	HZMT
NPS Alpha:	CUVA-1-WASO

Any questions regarding the OPAC transfer shall be directed to:

Department of Interior
Bureau of Land Management
Attn: Dorothy Butler
Denver Federal Center, Building 50
Mail Stop 621
Lakewood, CO 80225
303-236-6332

After payment has been made, DOD shall notify the following:

Shawn P. Mulligan
Attorney-Advisor
National Park Service
1050 Walnut Street, Suite 220
Boulder, CO 80302

Robert M. Wilson
Department of the Interior
1849 C Street, N.W.
Mail Stop 2340
Washington, DC 20240

B. Natural Resource Damages

As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of DOD, shall pay $66,000 to the DOI Natural Resource Damage Assessment and Restoration Fund. Payment shall be made using the Online Payment and Collection (OPAC) System to the Department of the Interior, Agency Location Code (ALC) 14-01-0001, using the following information:

Account Number:	14X5198 (NRDAR)
Site Name:	Krejci Dump Site, Cuyahoga Valley National Park
Party Name:	U.S. Department of Defense
NPS Contact:	Shawn P. Mulligan, 303-415-9014

Any questions regarding the OPAC transfer shall be directed to:

Bruce Nesslage
NRDAR Fund Manager
Department of Interior
1849 C Street, N.W.
Mail Stop 4449
Washington, DC 20204
202-208-4093

After payment has been made, DOD shall notify the following:

Shawn P. Mulligan
Attorney-Advisor
National Park Service
1050 Walnut Street, Suite 220
Boulder, CO 80302

Bruce Nesslage
NRDAR Fund Manager
Department of Interior
1849 C Street, N.W.
Mail Stop 4449
Washington, DC 20204