and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

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

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

## V. Definitions

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

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

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

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

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

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

f. "Interest" shall mean interest at the current 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).<sup>2</sup>

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

h. "Parties" shall mean the United States and the Settling Defendants. i. "Response costs" shall mean all

i. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. 9601(25).

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

k. "Settling Defendants" shall mean those persons, corporations or other entities listed in Appendix A.

l. "Site" shall mean the \_\_\_\_\_\_
Superfund Site, encompassing approximately \_\_\_\_\_\_\_ acres, located at [insert address or description of location] in [insert City, County, State] and [insert either "depicted more clearly on the map attached as Appendix B" or "designated by the following property description:

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

## VI. Payment

5. Within 30 days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA Hazardous Substance Superfund [insert either "the amount set forth below" or "the amount set forth in Appendix C to this Consent Decree"].

6. Each Settling Defendant's payment includes an amount for: (a) Past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, "(c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based."]

[Note: If some settling defendants are paying a premium and some are not, Paragraph 6 will need to be redrafted to indicate that there are both premium and non-premium settling defendants.]

7. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number

[insert 4-digit number, first 2 numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and DOJ Case Number

\_\_\_\_\_ and shall be sent to: EPA Superfund.

[Insert Regional Superfund lockbox number and address]

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to: Chief, Environmental Enforcement Section, United States Department of Justice, DJ No. \_\_\_\_\_, P.O. Box 7611, Washington, D.C. 20044–7611. [Insert name and address of Regional Financial Management Officer and any other receiving officials at EPA or DOJ]

[Note on Requiring one Collective Payment: If the settlement involves a large number of settling defendants, it may be appropriate to include alternative instructions under which the settling defendants are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 7. In such event, the cost of the trust or escrow account may be funded from interest earned by the account or through other appropriate means.] [Note on use of Special Account payments: Payments made under Paragraph 7 may be placed in the Hazardous Substance Superfund to offset the United States' past response costs at the site, or may be placed in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a "reimbursable account") to be retained and used for future response action at the site. If the negotiating team believes that a site-specific special account is appropriate, the consent decree should include clear instructions indicating which portion of the payment is to be placed in the Hazardous Substance Superfund to defray the United States' past costs and which portion of the payment is to be retained in a special account for future response action at the site. The instructions must include that any funds remaining in the special account after completion of the response action will be transferred to the Hazardous Substance Superfund. Sample instructions to be included at the end of Paragraph 7 are as follows (the address for payment stated in Paragraph 7 is correct for both Trust Fund and special account payments and should not be amended):

"Of the total amount to be paid pursuant to this Consent Decree, ['\$\_\_\_\_\_' or

'\_\_\_\_%'] shall be deposited in the EPA Hazardous Substance Superfund as

<sup>&</sup>lt;sup>2</sup> The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260–6465.