reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['S_____' or '____%' or 'the remainder'] shall be deposited in the [Insert Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the [Insert Site Name] Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.'']]

VII. Failure To Make Payment

9. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

VIII. Certification of Settling Defendant

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

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

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

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e) [insert, if applicable, "and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927"].

IX. Covenant Not To Sue by United States

11. In consideration of the payments that will be made by Settling Defendants

under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States ³ covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973,]4 relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: (a) The satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. Reservations of Rights by United States

12. The covenant not to sue by the United States set forth in Paragraph 11 does not pertain to any matters other than those expressly specified in Paragraph 11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

a. Liability for failure to meet a requirement of this Consent Decree; b. Criminal liability;

c. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; ⁵ or

⁵ The natural resource damages reservation in Paragraph 12(c) must be included unless the Federal Natural Resource Trustee[s] has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee[s] of the negotiations and d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Section I, Paragraph C(3), e.g., "Settling Defendant contributed greater than % of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site'']: or

[Note: The cost overrun reopener in Paragraph 13(b) below should only be included with respect to any settling defendant who is not paying a premium in lieu of this reopener.]

[[b. total response costs at or in connection with the Site exceed \$_____ [insert dollar amount of cost ceiling]].

[[Note: If some settling defendants are paying a premium in lieu of the cost overrun reopener and some are not, insert: "This Paragraph 13(b) shall not apply to those Settling Defendants identified [insert "in Paragraph _____" or "in Appendix "] who have elected to pay a

premium amount pursuant to Paragraphs 5 and 6.]]

XI. Covenant not to Sue by Settling Defendants

14. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of

³ If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

⁴Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

encourage the Trustee[s] to participate in the negotiations.