[i. The total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.]

## VI. Order

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby agreed to and ordered:

## VII. Payment

- 15. Within 30 days of the effective date of this Consent Order, each Respondent 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 Order"].
- 16. Each Respondent'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 Respondents' payments are based."

[Note: If some respondents are paying a premium and some are not, Paragraph 16 will need to be redrafted to indicate that there are both premium and non-premium settling respondents.]

17. 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 the EPA docket number for this action, and shall be sent to:

**EPA** Superfund

[Insert Regional Superfund lockbox number and address]

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

[Insert name and address of Regional Attorney and/or Remedial Project Manager]

[Note on Requiring One Collective Payment: If the settlement involves a large number of respondents, it may be appropriate to include alternative instructions under which the respondents 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 17. In such event, the cost or 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 17 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 order 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 17 are as follows (the address for payment stated in Paragraph 17 is correct for both Hazardous Substance Superfund and special account payments and should not be amended):

"Of the total amount to be paid pursuant to this Consent Order, ['\$\_ %'] shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['\$\_ ' 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.'

## VIII. Failure to Make Payment

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent 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.

- IX. Certification of Respondent
- 20. By signing this Consent Order, each Respondent 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"].
- X. Covenant Not to Sue by United States
- 21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States 2 covenants not to sue or take administrative action against any of the Respondents 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,] <sup>3</sup> relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by Respondent of all obligations under this Consent

<sup>&</sup>lt;sup>2</sup> 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.

<sup>&</sup>lt;sup>3</sup> Note 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.