Exhibit A

Consent Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,	
Plaintiff,	
and	
STATE OF WEST VIRGINIA,	
Intervenor-Plaintiff,	**Civil Action No. 1: 08CV124**
v.	
EXXON MOBIL CORPORATION,	
Defendant, and	
VERTELLUS SPECIALTIES INC. and CBS CORPORATION,	
Intervenor-Defendants.	

CONSENT DECREE

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I. BACKGROUND

This Background Section constitutes a brief overview of the Big John's Salvage – Hoult Road Superfund Site ("BJS Site") solely for context and is not intended to be a comprehensive description of the case history.

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

B. The United States in its complaint seeks:

1. Reimbursement of response costs incurred by the United States, together with accrued Interest, in connection with the BJS Site located in Fairmont, West Virginia; and

2. Performance and funding of removal activities as set forth in the Action Memorandum by Defendants at the BJS Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f) of CERCLA, 42 U.S.C. § 9621(f), EPA coordinated investigations and response action planning, and notified the State of West Virginia ("State") of negotiations with Defendant and Intervenor-Defendants regarding the implementation of the response actions at the BJS Site. EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. Defendant Exxon Mobil Corporation ("ExxonMobil") and Intervenor-Defendants Vertellus Specialties Inc. ("Vertellus") and CBS Corporation ("CBS") ("Settling Defendants") that have entered into this Consent Decree do not admit any liability to Plaintiffs

arising out of the transactions or occurrences alleged in the complaint and Section I of the Consent Decree, nor do they acknowledge that the release or threatened release of hazardous substances at or from the BJS Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. The BJS Site, as further defined herein, is located along Hoult Road on the east side of the city of Fairmont, Marion County, West Virginia. The BJS Site includes property historically used in the operation of a coal tar refining facility, and for salvage operations and for waste disposal, and includes land previously and currently owned by several parties. To the southeast of the BJS Site lies the Sharon Steel/Fairmont Coke Works Property, as further defined herein.

F. Reilly Tar and Chemical Corporation ("Reilly") owned a portion of the BJS Site, and operated a coal tar processing plant there from at least 1933 to 1973. Vertellus is a successor-in-interest to Reilly with respect to the BJS Site. Reilly received and processed crude coal tar from outside sources.

G. In January 1973, Reilly sold its property to Big John Salvage, Inc. ("Big John Salvage"), which operated a salvage facility at the BJS Site from approximately 1974 to 1984. During its operation, Big John Salvage accepted various scrap and salvageable materials, in addition to waste materials that contained hazardous and non-hazardous substances, including glass cullet (crushed non-saleable fluorescent light bulbs), lead dust, oil containing mercury, and drummed liquid wastes, and other wastes allegedly from the Westinghouse Electric Corporation's light bulb manufacturing plant located across the street from the BJS Site. CBS is a successor-in-interest to Westinghouse with respect to the BJS Site. Big John Salvage filed for bankruptcy under Chapter 11 in May 1984.

H. Between 1920 and 1948 ExxonMobil's predecessor, Domestic Coke Corporation, operated a facility that produced coke and coke products on the Sharon Steel/Fairmont Coke Works Property. Sharon Steel Corporation acquired the production facility and property in 1948 and continued to operate it until 1979. Both Domestic Coke and Sharon Steel Corporation sold crude coal tar to Reilly. Domestic Coke, and then Sharon Steel Corporation, owned a railroad right of way that traversed a portion of the edge of the uplands portion of the BJS Site.

I. The BJS Site has been subject to environmental regulatory interest since at least the late 1930's when it had first been investigated by the State. Over the years the State has had concerns regarding liquid wastes containing tar being discharged into an onsite tributary. The State has continued to be involved with the BJS Site.

J. EPA conducted an assessment in August 1981 which included sampling of various media. This assessment led EPA to initiate removal activities in July 1983. Since that time and continuing to the present, EPA and potentially responsible parties ("PRPs") have conducted various removal activities at the BJS Site.

K. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the BJS Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 27, 2000, 65 Fed. Reg. 46096.

L. On June 4, 2002, EPA sent special notice letters to certain PRPs requesting a meeting to start negotiations for performance of the Remedial Investigation and Feasibility Study ("RI/FS"). The recipients of the special notice letters declined EPA's request to perform the RI/FS. EPA initiated a fund-lead RI in 2005. The RI included both human health and ecological risk assessments. The Final RI was completed in April 2009.

M. EPA determined that a non-time critical removal action was a more appropriate course of action for the BJS Site prompting EPA to conduct an Engineering Evaluation/Cost Analysis ("EE/CA") as required by the NCP. On October 2, 2009, EPA published a notice of the availability of the proposed EE/CA and the supporting administrative record file in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public. EPA held a public meeting on the proposed EE/CA on October 22, 2009. A transcript of the public meeting is available to the public as part of the administrative record upon which the Division Director of the Hazardous Site Cleanup Division, EPA Region III, based the selection of the response action.

N. The decision by EPA on the response action to be implemented at the BJS Site is embodied in a final Action Memorandum ("Action Memo"), concurred upon by the State and executed by EPA on September 30, 2010 (Appendix A). The Action Memo includes a responsiveness summary in which public comments have been addressed. Based on currently available information, no materials to be managed in performance of the Work are listed hazardous wastes under 40 CFR Part 261, Subpart D, including, but not limited to, K147 and K148 wastes. Notwithstanding the foregoing, nothing in this Consent Decree limits EPA's authorities based upon development of new information.

O. The Sharon Steel/Fairmont Coke Works Property is included within the Sharon Steel/Fairmont Coke Works Superfund Site ("FCW Site"). The FCW Site, adjacent to the BJS Site, encompasses approximately 97 acres located along Hoult Road on the east side of the city of Fairmont in West Virginia. EPA placed the FCW Site on the NPL on December 23, 1996 (61 Fed. Reg. 67656). A tributary flows between the BJS Site and FCW Site and empties into the Monongahela River. Facilities previously on the BJS Site and FCW Site operated alongside

one another for almost fifty years and contributed significant amounts of hazardous substances, pollutants or contaminants to the Monongahela River by way of the tributary. Comingled wastes from the BJS Site and FCW Site which have come to be located in Unnamed Tributary #1 and a hot spot area located within the Monongahela River will be addressed in accordance with the Action Memo.

P. The FCW Site is being addressed by ExxonMobil under an Administrative Order and Project XL Agreement executed on or about May 24, 1999. Subsequent to the ongoing response activity, EPA will issue a Record of Decision that will document the selected remedy for the FCW Site.

Q. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by Performing Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the response activities set forth in the Action Memo and the Work to be performed by Performing Defendant shall constitute response activities taken or ordered by the President for which judicial review shall be limited to the administrative record.

S. The Parties recognize that additional work may be required under future EPA decision documents.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying 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, the State of West Virginia, 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. Performing Defendant 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 any Settling Defendant with respect to the BJS 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. Performing Defendant 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. Performing Defendant 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 Performing Defendant 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:

"Action Memorandum" or "Action Memo" shall mean the EPA Action Memorandum relating to the BJS Site signed on September 30, 2010 by the Division Director of the Hazardous Site Cleanup Division, EPA Region III, and all attachments thereto. The Action Memorandum is attached as Appendix A.

"Big John's Salvage – Hoult Road Superfund Site" or "BJS Site" shall mean the property located along Hoult Road on the east side of the city of Fairmont, Marion County, West Virginia historically used in the operation of a coal tar refining facility and for salvage operations and waste disposal by Big John Salvage, and surrounding areas where contamination from such operations has come to be located, including the Unnamed Tributary #1 and Surrounding Area, Unnamed Tributary #2, the Monongahela River hot spot area and groundwater affected by the release of Waste Material from the BJS Site (as depicted generally on Appendix B).

"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 XXVI). 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.

"EE/CA" shall mean the September 2010 Engineering Evaluation/Cost Analysis prepared for the BJS Site by TetraTech NUS, Inc. on behalf of the United States Environmental Protection Agency and is an attachment to Appendix A.

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs pursuant to this Consent Decree after August 9, 2011. Future Response Costs shall also include (a) all interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607 during the period from the Effective Date to the date of payment and (b) Department of Justice Costs incurred after February 27, 2010.

"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.

"Non-Performing Defendants" shall mean Exxon Mobil Corporation, ExxonMobil Environmental Services Company, ExxonMobil Oil Corporation, and CBS Corporation, and with regard to each, its predecessors and successors.

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

"Parties" shall mean the United States, the State of West Virginia, and Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred or paid at or in connection with the BJS Site prior to August 9, 2011. Past Response Costs shall not include Department of Justice costs after February 27, 2010.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Removal Action, set forth in the Action Memo and those that are developed by Performing Defendant and approved by EPA in the Removal Design.

"Performing Defendant" shall mean Vertellus Specialties Inc. and its predecessors and successors.

"Plaintiffs" shall mean the United States and State, as defined below.

"Post-Removal Site Controls" shall mean legal instruments, engineering controls and/or other monitoring and maintenance activities necessary to sustain the effectiveness of the Removal Action as defined by the Consent Decree.

"QSF Trust" shall mean the Trust and Qualified Settlement Fund established by Performing Defendant pursuant to the terms of the Trust and Qualified Settlement Fund Agreement approved by the Court pursuant to this Consent Decree, in a form attached hereto as Appendix D. The QSF Trust was established as a trust under the laws of the State of West Virginia and is designed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and the Code Regulations thereunder.

"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).

"Removal Action" shall mean those activities undertaken to implement the response action set forth in the Action Memorandum (Appendix A) in accordance with the final Removal Design Work Plan, Response Action Plan, and other plans approved by EPA.

"Response Action Plan" or "RAP" shall mean the document developed pursuant to Paragraph 10.e. of this Consent Decree and approved by EPA, and any amendments thereto.

"River Removal Action" shall mean the removal action set forth in the Action Memorandum to address the black semi-solid deposits (BSD) and visibly stained sediment deposits (SSD) in the Monongahela River near the confluence with the Unnamed Tributary #1.

"River Removal Action Work" shall mean that portion of the Work relating to the River Removal Action.

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

"Settling Defendants" shall mean:

i. CBS Corporation and its predecessors and successors;

ii. Vertellus Specialties Inc. and its predecessors and successors; and,

iii. Exxon Mobil Corporation, including ExxonMobil Environmental Services Company and ExxonMobil Oil Corporation, and their predecessors and successors.

"Sharon Steel/Fairmont Coke Works Property," for purposes of this Consent Decree, refers to that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0001.0000, 24-06-2-0013.0000, 24-06-3-0031.0000, 24.06-3-0079.0000, 24-06-3-0086.0000, 24-06-3-0087.0000, 24-06-3-0088.0000, 24-06-3-0089.0000, 24-06-4-0001.0000, 24-06-4-0001.0001, 24-06-5-0002.0001, and 24.06-500-0012.0000, except those portions of these tax parcels that are within the areas that are defined in this Consent Decree as the Unnamed Tributary #1 and Surrounding Area and the strip of property denoted "Domestic Coal & Coke RR 33' R-O-W" on Appendix B.

"Sharon Steel/Fairmont Coke Works Superfund Site" or "FCW Site" shall mean the former coke plant property owned and operated by ExxonMobil's predecessor (Domestic Coke) from 1920 to 1948 and Sharon Steel Corporation from 1948 to 1979. The FCW Site encompasses approximately 97 acres located along Hoult Road on the east side of the city of Fairmont in West Virginia, where coke plant operations, waste treatment and disposal operations were located. EPA placed the FCW Site on the NPL on December 23, 1996. (61 Fed. Reg., 67656). The FCW Site includes that real property that is identified by the Marion County Tax Assessors Office as tax parcels 24-06-2-0001.0000, 24-06-2-0013.0000, 24-06-3-0031.0000, 24.06-3-0079.0000, 24-06-3-0086.0000, 24-06-3-0087.0000, 24-06-3-0088.0000, 24-06-3-0089.0000, 24-06-4-0001.0000, 24-06-4-0001.0001, 24-06-5-0002.0001, and 24.06-

500-0012.0000, the Unnamed Tributary #1 as well as areas where FCW Site contamination has come to be located (Monongahela River). In accordance with the terms of this Consent Decree, as of the Effective Date, the Unnamed Tributary #1 and Surrounding Area and the strip of property denoted "Domestic Coal & Coke RR 33' R-O-W" on Appendix B, will be addressed solely as part of the BJS Site.

"State" shall mean the State of West Virginia.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and attorneys fees as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), CERCLA Section 107(a), 42 U.S.C. § 9607(a), that are incurred pursuant to this Consent Decree associated with the BJS Site after the Effective Date.

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

"Unnamed Tributary #1" shall mean the network of intermittent streams draining the eastern portion of the BJS Site and which received drainage and discharge from the BJS Site and the Sharon Steel/Fairmont Coke Works Property. The Unnamed Tributary #1 discharges to the Monongahela River.

"Unnamed Tributary #1 and Surrounding Area" shall mean the area between the Big John's Salvage property boundary and the surveyed "release line" south of the watercourse denoted "Northern Drainage Way" and "Unnamed Tributary No. 1," all as depicted on the "Big John Salvage - Hoult Road Site" map attached as Appendix B. The release line extends from the point labeled "Point 1" to the point labeled "Point 44" on Appendix B. This area includes all portions of the watercourses west and north of the release line, but no portion of the Monongahela River.

"Unnamed Tributary #2" shall mean the drainage area commencing in the northwestern portion of the BJS Site, running west along the northern boundary of the Site and continuing approximately 600 feet northwest along Hoult Road to the point that the drainage ditch intersects with subsurface pipe(s) flowing south beneath the Church of the Everlasting Covenant. Unnamed Tributary #2 includes the subsurface pipes to the point that the discharge enters the Monongahela River, but no portion of the Monongahela River. Unnamed Tributary #2 does not include the drainage ditch extending further northwest beyond the point that it intersects with the subsurface pipes described above.

"Uplands Area" shall mean all portions of the BJS Site, excluding any portion of the Monongahela River. For the avoidance of doubt, the Uplands Area includes, the Unnamed Tributary #1 and Surrounding Area, Unnamed Tributary #2, groundwater affected by the release of Waste Material from the BJS Site, and areas where BJS contamination has come to be located, other than the Monongahela River.

"Uplands Area Work" shall mean that portion of the Work relating to the Uplands Area. The Uplands Area Work does not include the River Removal Action.

"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 required to be performed under this Consent Decree, except those required by Section XXII (Retention of Records).

"WVDEP" shall mean the West Virginia Department of Environmental Protection and any successor departments or agencies of the State.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the BJS Site by the design and implementation of response actions at the BJS Site and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Performing Defendant (Vertellus) shall perform the Work in accordance with this Consent Decree, the Action Memorandum, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Defendant and approved by EPA pursuant to this Consent Decree.

b. Non-Performing Defendants shall provide funds, as more specifically set forth in Paragraph 39 below, in support of Performing Defendant's obligations under this Consent Decree.

7. Compliance with Other Laws. All activities undertaken by Performing Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Action Memorandum. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), 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, Performing Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Performing Defendant may seek relief under the provisions of Section XV (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, provided that they have submitted timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

VI. PERFORMANCE OF THE WORK

9. Designation of Contractors and Project Coordinators.

a. Performing Defendant shall retain one or more Supervising Contractor(s) to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 20 days after the lodging of this Consent Decree. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002, March 2001, reissued May 2006), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from EPA's Project Coordinator to the BJS Site file. Performing Defendant shall

also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 14 days prior to the commencement of such Work, unless circumstances require that the Work be commenced less than 14 days after the notice is provided. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Performing Defendant. If EPA disapproves of a selected contractor, Performing Defendant shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 21 days of receipt of EPA's disapproval. Performing Defendant must obtain notice of acceptance of the new contractor from EPA before that new contractor performs, directs or supervises any Work under this Consent Decree.

b. Within 5 days after the lodging of this Consent Decree, Performing Defendant shall designate a Project Coordinator who shall be responsible for the administration of all actions by Performing Defendant required by this Consent Decree and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent reasonably possible, the Project Coordinator shall be present onsite or readily available during BJS Site work. EPA retains the right to disapprove of the selection of the designated Project Coordinator. If EPA disapproves of the selection of the designated Project Coordinator, Performing Defendant shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 20 days following receipt of EPA's disapproval. Receipt by Performing Defendant's Project Coordinator of any notice or communication from EPA relating to this Consent Decree shall constitute receipt by Performing Defendant. All of the foregoing notices and communications from EPA will also be sent to the individuals identified in Section XXIII (Notices and

Submissions) for Performing Defendant at the same time that they are sent to Performing Defendant's Project Coordinator.

c. EPA has designated Eric Newman of EPA Region III's Hazardous Site Cleanup Division as its Remedial Project Manager ("RPM") and Project Coordinator with regard to the Work. Performing Defendant shall direct 2 copies of all submissions required by this Consent Decree to Mr. Newman at the following address:

Eric Newman
Hazardous Site Cleanup Division
US Environmental Protection Agency, Region III
1650 Arch Street (3HS23)
Philadelphia, PA 19103
Telephone 215-814-3237
Facsimile 215-814-3002
newman.eric@epa.gov

d. WVDEP has designated Thomas L. Bass as its Project Coordinator with regard to the Work. Performing Defendant shall direct 2 copies of all submissions required by this Consent Decree to Mr. Bass at the following address:

Thomas L. Bass
West Virginia Department of Environmental Protection
Division of Land Restoration
Office of Environmental Remediation
601 57th Street, SE
Charleston, WV 25304-2345
Telephone 304-926-0499 (ext 1274)
Facsimile 304-926-0457
Thomas.l.bass@wv.gov

e. EPA, the WVDEP, and Performing Defendant each shall have the right, subject to Paragraph 9.b. above, to change its designated Project Coordinator. Performing Defendant shall notify EPA at least 5 days before such a change is made. The initial notification may be orally made, but it shall be promptly followed by a written notice.

10. Work to Be Performed.

a. Removal Design Work Plan. Within 30 days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 9.a., Performing Defendant shall submit to EPA and the WVDEP, for approval by EPA in consultation with WVDEP, a work plan for the design ("Removal Design Work Plan" or "RDWP") of the response action set forth in the Action Memorandum (Appendix A) and for achievement of the Performance Standards and other requirements set forth in this Consent Decree. The RDWP shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Removal Design. Upon approval of the RDWP by EPA, and submittal of the Health and Safety Plan for field activities to EPA and the WVDEP, Performing Defendant shall implement the RDWP in accordance with the schedules and methodologies contained therein. Performing Defendant shall submit to EPA and the WVDEP all plans, submittals, and other deliverables required under the approved RDWP for review and approval pursuant to Section IX (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Defendant shall not commence further removal design field activities at the BJS Site prior to approval of the RDWP. Upon its approval by EPA, the Removal Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. Removal Design Work Plan Requirements. The RDWP shall include plans, schedules, and methodologies for implementation of all removal design and pre-design tasks, including but not limited to: (i) formation of the design team; (ii) a Site Management Plan describing project approach, including response action components that will be designed/implemented independently to expedite the response; (iii) requirements for additional pre-design field data collection, including a Sampling and Analysis Plan, containing a Field

Sampling Plan and a Quality Assurance Project Plan (QAPP); and, (iv) a schedule for completion of the design(s), including plans and schedules for the preparation and submission of the preliminary, pre-final and final design submittals.

c. Preliminary Design. The preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort. The preliminary design submittal required under Paragraph 10.b., above, shall include, at a minimum, the following:

i. Design Criteria Report, including as appropriate:

a. project description;

b. design requirements and provisions;

c. preliminary process flow diagrams, as appropriate;

d. post-removal site control requirements;

ii. Basis of Design Report, including:

a. justification of design assumptions;

b. a project delivery strategy;

c. identification of permits required for off-site response actions;

d. preliminary easement/access requirements;

iii. Preliminary Drawings and Specifications, including:

a. required specifications in outline form;

b. preliminary schematics and drawings;

c. chemical and geotechnical data (including data from pre-design field sampling activities);

iv. a value engineering screen; and

v. a preliminary response action schedule.

d. Pre-final and Final Design. The pre-final and final design submittal required under Paragraph 10.b., above, shall include, at a minimum, the following plans as well as expeditious schedules and specific methodologies for implementation of these plans: (i) final plans and specifications for the response action; (ii) a response action implementation schedule; (iii) a Sampling and Analysis Plan to be used as a basis for environmental monitoring during construction activities, characterizing waste materials, and ascertaining whether Performance Standards have been met; (iv) a preliminary Construction Quality Assurance Plan ("CQAP"), which shall detail the approach to quality assurance during construction activities at the BJS Site; (v) a post-removal site control plan which shall identify necessary actions and measures necessary to maintain the effectiveness and integrity of the response action (or schedule for developing the site control plan); (vi) complete specifications for preparation of a health and safety plan for field activities required by the pre-final/final design; (vii) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials; (viii) a plan to acquire permits for off-site response actions and to meet the substantive requirements of all onsite activities which would otherwise require a permit if the actions were not to take place on a Superfund site; (ix) a plan for complying with the Off-Site Rule, 40 C.F.R. § 300.440; and (x) a response action contingency plan.

e. Response Action Plan. Upon approval, approval with conditions, or modification by EPA in consultation with WVDEP, as provided in Section IX (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final

design submittal shall serve as the Response Action Plan ("RAP") and shall be enforceable under this Consent Decree. Performing Defendant shall implement the activities required under the Response Action Plan in accordance with the schedules and methodologies contained therein. With the exception of any activities currently conducted by Performing Defendant and approved by EPA, Performing Defendant shall not commence any Work except in conformance with the terms of this Consent Decree. Unless otherwise directed by EPA or required under the Response Action Plan, Performing Defendant shall not commence physical activities at the BJS Site prior to receiving written EPA approval.

f. Health and Safety Plan. At the same time the Removal Design Work Plan is submitted, Performing Defendant shall submit to EPA and the WVDEP, for review and comment, a Health and Safety Plan ("HSP") for field design activity that ensures the protection of the public health and safety during performance of On-Site work under this Consent Decree. The HSP shall be prepared in accordance with "EPA's Standard Operating Safety Guide" (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910 and shall include, at a minimum, the following:

i. Assessment of chemical and physical hazards at all relevant locations;

ii. Identification of site control measures and required levels of protection and safety equipment;

iii. Field monitoring requirements;

iv. Equipment and personnel decontamination and residual management;

v. Training and medical monitoring requirements;

vi. Emergency planning and emergency contacts; and

vii. Contingency plan for removal design field activities.

Performing Defendant shall incorporate all changes to the HSP recommended by EPA and shall implement the HSP during the pendency of the removal action. Upon EPA approval of the Response Action Plan, the HSP shall be revised to incorporate health and safety specifications required by the final design.

g. Post-Removal Site Control. In accordance with the schedule in the RAP, or as otherwise directed by EPA in consultation with WVDEP, Performing Defendant shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Performing Defendant shall implement such controls and shall provide EPA and WVDEP with documentation of all post-removal site control arrangements.

h. Physical Construction Complete Benchmark. When Performing Defendant concludes that physical construction portion of the Uplands Area Work or the River Removal Action Work has been completed and only respective Post-Removal Site Controls remain, Performing Defendant shall notify EPA and WVDEP in writing and schedule and conduct a pre-construction complete inspection to be attended by Performing Defendant, EPA and WVDEP. EPA, in consultation with WVDEP, will develop a punch list identifying tasks remaining to be performed, if any. When EPA, in consultation with WVDEP, concludes that the respective physical construction has been substantially completed, EPA will so notify Performing Defendant in writing as soon as practicable.

11. Quality Assurance and Sampling.

a. As a component of the RDWP, Performing Defendant shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") which will describe all sampling and analysis procedures to be followed to document the type and quality of data needed to satisfy the requirements of this Consent Decree and to provide a blueprint for collecting and assessing those data which are to be collected to meet the requirements of this Consent Decree. The QAPP shall comply with the requirements of the documents entitled "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations, EPA QA/R5", (EPA/240/B-01/003, March 2001, reissued May 2006) and "Guidance for Quality Assurance Project Plans" (QA/G-5)(EPA/240/R-02/009, December 2002) and subsequent amendments to such guidance documents upon notification by EPA to Performing Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. All sampling and analyses performed pursuant to this Consent Decree shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Performing Defendant shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Performing Defendant shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Performing Defendant shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data

Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

c. Upon request by EPA, Performing Defendant shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Performing Defendant shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

d. Upon request by EPA and/or WVDEP, Performing Defendant shall allow EPA, WVDEP or its authorized representatives to take split and/or duplicate samples. Performing Defendant shall notify EPA and WVDEP not less than 30 days prior to any sample collection activity, unless shorter notice is agreed to by EPA. EPA and/or WVDEP shall have the right to take any additional samples that EPA and/or WVDEP deem(s) necessary. Upon request, EPA and WVDEP shall allow Performing Defendant to take split or duplicate samples of any samples it takes as part of its oversight of Performing Defendant's implementation of the Work.

e. Performing Defendant shall submit to EPA and the WVDEP copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Defendant with respect to the BJS Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

VII. ACCESS

12. If the BJS Site, or any other property where access and/or land use restrictions are needed to implement this Consent Decree, is owned or controlled by any of Settling Defendants, such Settling Defendants shall:

a. Commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, the State of West Virginia including WVDEP and its contractors, and Performing Defendant, and its contractors, with access at all reasonable times to the BJS Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

i. Monitoring the Work;

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

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

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the BJS Site;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

vii. Implementing the Work in accordance with this Consent Decree, including, without limitation, the conditions set forth in Paragraph 72 (Work Takeover) of this Consent Decree;

viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXI (Access to Information);

ix. Assessing Settling Defendants' compliance with this Consent Decree; and

x. Determining whether the BJS 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.

b. Commencing on the date of lodging of this Consent Decree, refrain from using the BJS Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the measures to be performed pursuant to this Consent Decree.

c. Within 30 days of the Effective Date of this Consent Decree, submit to EPA for review and approval a restrictive environmental covenant identifying land use restrictions in a format consistent with the West Virginia Uniform Environmental Covenants Act, WV Code Chapter 22, Article 22B-4 and identifying WVDEP as a holder. Within 15 days of such Settling Defendant's receipt of EPA's approval of the environmental covenant such Settling Defendant shall cause such environmental covenant to be recorded with the Recorder of Deeds office in Marion County, West Virginia. Such Settling Defendant shall submit to EPA a copy of the environmental covenant evidencing recordation within 30 days of receipt by such Settling Defendant of a copy of the recorded environmental covenant from the Recorder of Deeds office.

13. If the BJS Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of Settling Defendants, Performing Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Performing Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 12.a. of this Consent Decree;

b. an agreement, enforceable by Performing Defendant and the United States, to refrain from using the BJS Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the measures to be performed pursuant to this Consent Decree; and

c. a restrictive environmental covenant identifying land use restrictions in a format consistent with the West Virginia Uniform Environmental Covenants Act, WV Code Chapter 22, Article 22B-4.

14. For the purposes of Paragraph 13 of this Consent Decree, "best efforts" include the payment of reasonable sums of money in consideration of access, access easements and/or land/water use restrictive environmental covenants, a proprietary control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, after using their best efforts, Performing Defendant is unable to obtain the access or land/water use restriction agreements required by Paragraph 13 of this Consent Decree within 45 days of the date of entry of this Consent Decree, Performing Defendant shall promptly notify the United States in writing, and

shall include in that notification a summary of the steps that Performing Defendant has taken to attempt to comply with Paragraph 13 of this Consent Decree. The United States may, as it deems appropriate, assist Performing Defendant in obtaining access or the land/water use restrictions. Performing Defendant shall reimburse the United States in accordance with the procedures in Section XIII (Payments), for all costs incurred, direct or indirect, by the United States in obtaining such access or land/water use restrictions, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

15. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to perform the Work, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

16. 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.

VIII. REPORTING REQUIREMENTS

17. Progress Reports. Performing Defendant shall submit a written progress report to EPA's and WVDEP's Project Coordinators and the Non-Performing Defendants concerning actions undertaken pursuant to this Consent Decree every 30th day after the Effective Date and continuing until termination of this Consent Decree, unless otherwise directed in writing by EPA's Project Coordinator. These reports shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during

the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolution of past or anticipated problems.

18. Upon request by EPA, Performing Defendant shall submit all plans, reports or other submissions in electronic form.

19. Final Report. Within 30 days after completion of all Work required by this Consent Decree, Performing Defendant shall submit to EPA and WVDEP, for approval by EPA in consultation with WVDEP, a Final Report summarizing the actions taken to comply with this Consent Decree. The Final Report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The Final Report shall be certified in accordance with paragraph 36.

20. Upon the occurrence of any event during performance of the Work that Performing Defendant is required to immediately report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Performing Defendant shall, within 24 hours of it having first acquired knowledge of such event, orally notify the EPA Project Coordinator or, in the event that the EPA Project Coordinator is unavailable, the Chief of EPA Region III Hazardous Site Cleanup Division's DE, VA and WV Remedial Branch. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. In addition, if there is an occurrence requiring immediate or emergency response, Performing Defendant shall call the

West Virginia Spill Hotline (In State) 1-800-642-3074; (Out of State) 1-800-424-8802. Also, where appropriate, Performing Defendant shall call Miss Utility of West Virginia. 1-800-245-4848.

21. Within 20 days of providing the notice required by the preceding Paragraph to EPA, Performing Defendant shall furnish to Plaintiffs a written report, signed by Performing Defendant'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 referred to in the preceding Paragraph, Performing Defendant shall submit a report to EPA setting forth all actions taken in response thereto.

22. All reports and other documents submitted by Performing Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Performing Defendant's compliance with the terms of this Consent Decree shall be signed by authorized representatives of Performing Defendant.

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

23. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall, consistent with the response action selected by EPA in the Action Memorandum: (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 Performing Defendant modify the submission; or (e) any combination of the above. However, EPA may not modify a submission without first providing Performing Defendant at least one notice of deficiency and an opportunity to cure within 14 days, or such longer period of time as specified by EPA in such notice, 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.

24. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 23, Performing Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 23.c. and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

25. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 23.d., Performing Defendant shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII (Stipulated Penalties), shall accrue during the 14-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 26 and 27.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 23.d., Performing Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Defendant of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

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

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

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

X. PERFORMANCE GUARANTEE

29. In order to ensure the full and final completion of the Work, Performing Defendant shall establish and maintain a performance guarantee which shall initially be

$10,500,000.00 with respect to the Uplands Area Work and $5,056,000.00 with respect to the River Removal Action Work. The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms provided that, if Performing Defendant intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit and trust funds:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U. S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a Federal or State agency;

d. A demonstration by Performing Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of completing the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

e. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following; (i) a direct or indirect parent company of Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Performing Defendant; provided, however, that any company

providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (3) and (5) through (8) of 40 C.F.R. § 264.143(f) with respect to the estimated cost of completing the Work that it proposes to guarantee hereunder.

30. Initial Approved Forms of Performance Guarantees

a. Performing Defendant has selected, and EPA has found satisfactory, initial performance guarantees pursuant to Paragraph 29, each specific to the Uplands Area Work and the River Removal Action Work, and consisting of the following:

i. as to the Uplands Area Work, an irrevocable letter of credit in the form attached hereto as Appendix C (the "Uplands Area Work Letter of Credit") in the total dollar amount of which is initially $10,500,000.00. A qualified settlement fund trust ("QSF Trust") in the form attached hereto as Appendix D is also created and hereby approved by the Court, which, consistent with Paragraph 34.b.(1), may be used as a Performance Guarantee for the Uplands Area Work; and,

ii. as to the River Removal Action Work, a trust fund, in the amount of $5,056,000.00, ("BJS Site River Removal Action Work Trust") in the form attached hereto as Appendix E.

b. Within ten (10) days after the Effective Date, Performing Defendant shall execute, cause to be issued, or otherwise finalize the Uplands Area Work Letter of Credit and BJS Site River Removal Action Work Trust Agreement in the forms attached hereto as Appendices C and E, respectively. Within thirty (30) days of the Effective Date, Performing Defendant shall submit all executed and/or otherwise finalized instruments or other documents

required in order to make the selected performance guarantee(s) legally binding to the EPA and the United States in accordance with Section XXIII (Notices and Submissions), with a copy to the Chief, Cost Recovery Branch (3HS62) for EPA Region III.

31. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 36, Performing Defendant provides a performance guarantee for completion of the Uplands Area Work or the River Removal Action Work by means of a demonstration or guarantee pursuant to Paragraph 29.d. or 29.e., Performing Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section X, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include all dollar

amounts described in Paragraphs 1-4 of the "Sample CFO Letter" attached hereto as Appendix F; the terms "owner" and "operator" shall be deemed to refer to Performing Defendant; the terms "facility" and "hazardous waste facility" shall be deemed to include the BJS Site; and a letter required by 40 C.F.R §264.151(f) shall be deemed to refer to a letter in the form attached hereto as Appendix F.

32. In the event that EPA or Performing Defendant determines at any time that the performance guarantee for the Uplands Area Work or the River Removal Action Work is inadequate or fails to meet the requirements set forth in this Section, whether due to an increase in the estimated cost of the Work or for any other reason, Performing Defendant, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 29 that satisfies all requirements set forth in this Section X; provided, however, that if Performing Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that such Performing Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for such Performing Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Performing Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Performing Defendant shall follow the procedures set forth in Paragraph 34.b.(2). Performing

Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Performing Defendant to complete the Work in strict accordance with the terms of this Consent Decree. Notwithstanding the foregoing, EPA and Performing Defendant agree that the performance guarantee for the Uplands Area Work shall not exceed $10,500,000.00.

33. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 72 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 29.a., 29.b., 29.c., or 29.d., and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 29.d. or Paragraph 29.e.(ii), Performing Defendant (or in the case of Paragraph 29.e.(ii), the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued,

then, unless Performing Defendant provides a substitute performance guarantee mechanism in accordance with this Section X no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XIII (Payments).

34. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Performing Defendant believes that the estimated cost of completing the Work has diminished below the amounts set forth in Paragraph 29, Performing Defendant may, on any date after EPA has approved any final design submittal/Response Action Plan in accordance with Paragraph 10.e., or concurrent with the submission of such final design submittal/Response Action Plan(s), petition EPA in writing to reduce the amount of the Uplands Area Work or River Removal Action Work performance guarantees provided pursuant to this Section so that the amount of such performance guarantee is equal to the estimated cost of completing the Work. In requesting a reduction, Performing Defendant shall submit a written proposal to EPA that shall include a cost estimate consistent with the following:

i. The cost estimate must be based upon current dollars and costs that would be incurred by an independent third-party in performing the remaining portion of the Work described in the approved Response Action Plan and set forth the total cost of the remaining Work activities for the entire period this Consent Decree is effective, but not to exceed thirty (30) years, including: operation and maintenance costs; costs of performing any interim measures; any

necessary long term monitoring costs; adjustments for uncertainties; contingencies; and replacement costs. Such costs shall be adjusted to reflect the Net Present Value ("NPV"), which shall be calculated using the Treasury Constant Maturities Nominal 30-Year Rate, averaged for the previous twelve (12) months (using the average spot rate for each month). The cost estimate shall also include a schedule that documents the costs that will be spent to perform the Work during each calendar year.

ii. In seeking approval for a reduction in the amount of the performance guarantee, Performing Defendant shall follow the procedures set forth in Paragraph 34.b.(2) and (3) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 34.a. If EPA accepts Performing Defendant's proposal to reduce the amount of performance guarantee, either to the amount proposed by Performing Defendant or to some other amount selected by EPA, EPA will notify Performing Defendant of such decision in writing and the estimated cost of completing the Work shall be as set forth in EPA's written decision. Upon receiving EPA's written decision, Performing Defendant may so reduce the amount of the performance guarantee and shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 34.b.(2). In the event of a dispute, Performing Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section

XVI (Dispute Resolution).

iii. After EPA's acceptance of any revised cost estimate, the amount of the performance guarantee thereafter will be reduced each year by the amount of the estimate for the prior calendar year without need for additional EPA acceptance, provided, however, that Performing Defendant submits a signed statement that the costs incurred within the last calendar year are no greater than 5% more than the costs projected in the cost estimate for that year and projected work milestones were achieved. Performing Settling Defendant shall thereafter submit a revised performance guarantee instrument in the same form and with the same terms as the one then in effect, except that the amount will be reduced accordingly.

iv. Should Performing Defendant seek a greater or subsequent reduction in the amount of any performance guarantee, or, if an anticipated project milestone is not met, Performing Settling Defendant shall submit to EPA a revised cost estimate using the methodology in Paragraph 34.a.i. After EPA's approval of such revised cost estimate, additional reductions in the performance guarantee will be allowed at the end of each calendar year in accordance with Paragraph 34.a.iii, based on the schedule contained in the revised cost estimate. No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 30.b., 32, or 34.b.

b. Change of Form of Performance Guarantee.

(1) As of the Effective Date, Performing Defendant has established a

QSF Trust which EPA has found satisfactory as a stand-by form of performance guarantee for the Uplands Area Work in addition to or in lieu of the Uplands Area Work Letter of Credit, provided, however, that should Performing Defendant desire to use the QSF Trust as a performance guarantee, the QSF Fund shall be funded to the satisfaction of EPA pursuant to Paragraph 32 and further provided that EPA may require amendment of the QSF Trust to include a schedule of disbursement relating to Work performed.

(2) If, after the Effective Date, Performing Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Performing Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 34.b.(3).

(3) Performing Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA which shall specify, at a minimum, the estimated cost of completing the subject Work based on the methodology used in Paragraph 34.a. and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Performing Defendant shall submit such proposed revised or alternative performance guarantee to the EPA and the United States in accordance with Section XXIII (Notices and Submissions) with a copy to the Chief, Cost Recovery Branch (3HS62) for EPA Region III. EPA will notify Performing Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee

submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Performing Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Performing Defendant shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Chief, Cost Recovery Branch (3HS62) for EPA Region III within 30 days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXIII (Notices and Submissions).

35. Release of Performance Guarantee. Performing Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Performing Defendant receives written notice from EPA in accordance with Paragraph 36.b. that the Uplands Area Work or the River Removal Action Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Defendant in writing, Performing Defendant may thereafter release, cancel, or discontinue the performance guarantee(s) for the completed work provided pursuant to this Section. In the event of a dispute, Performing Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

XI. CERTIFICATION OF COMPLETION

36. Completion of the Work.

a. Within 90 days after Performing Defendant concludes that all phases of the Uplands Area Work or the River Removal Action Work have been fully performed, and the Performance Standards for such Work have been achieved, Performing Defendant shall schedule and conduct a pre-certification inspection to be attended by Performing Defendant, EPA and WVDEP. If, after the pre-certification inspection, Performing Defendant still believes that the Uplands Area Work or the River Removal Action Work has been fully performed, and the Performance Standards for such Work have been achieved, Performing Defendant shall submit a written report by a registered professional engineer and registered geologist stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree ("Request for Certification of Completion"). The Request for Certification of Completion shall contain the following statement, signed by a responsible corporate official of Performing Defendant or Performing Defendant's Project Coordinator:

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

If, after review of the Request for Certification of Completion, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work for which Performing Defendant has submitted the Request for Certification of Completion has not been completed in accordance with this Consent Decree, or that the Performance Standards for such Work have not been achieved, EPA will notify Performing Defendant in writing of the activities that must be undertaken by Performing Defendant pursuant to this Consent Decree to

complete the subject Work and achieve the pertinent Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Response Action Plan or require Performing Defendant to submit a schedule to EPA for approval pursuant to Section IX (EPA Approval of Plans and Other Submissions). Performing Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Request for Certification of Completion submitted by Performing Defendant and after a reasonable opportunity for review and comment by the State, that the Work for which Performing Defendant has submitted the Request for Certification of Completion has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing as soon as practicable. Nothing contained herein is intended as a waiver of the rights of the State of West Virginia to contest an EPA Certification in a judicial appeal based upon the failure of a remedy to meet State "applicable relevant and appropriate requirements" ("ARAR's") under CERCLA.

XII. EMERGENCY RESPONSE

37. 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 BJS Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Defendant shall, subject to Paragraph 38, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the National Response Center (800) 424-8802 and the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, the Chief of EPA Region III

Hazardous Site Cleanup Division's DE, VA & WV Remedial Branch. If neither of these persons is available, Performing Defendant shall notify the EPA Region III Hotline at 215-814-3255. Performing Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Performing Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Performing Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Payments).

38. 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 BJS 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 BJS Site, subject to Section XVIII (Covenants Not to Sue by Plaintiffs).

XIII. PAYMENTS

39. Payments by Non-Performing Defendants.

a. Within 60 days of the Effective Date, Non-Performing Defendant CBS shall pay $5,000,000.00 and Non-Performing Defendant ExxonMobil shall pay $6,000,000.00 into the QSF Trust established pursuant to Paragraph 30.a.i., such funds to be immediately accessible to Performing Defendant to meet its obligations hereunder. Such funds shall be used solely for such purposes.

b. Within 60 days of the Effective Date, Non-Performing Defendant ExxonMobil shall pay $5,000,000.00 into the BJS Site River Removal Action Work Trust established as part of the performance guarantee pursuant to Paragraph 30.a.ii.

40. Payment of Past Response Costs. Within 65 days of the Effective Date, Performing Defendant Vertellus shall pay to EPA $11,000,000.00 as full and complete payment for all Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2008v00758, EPA Site/Spill ID No. 0371, and DOJ Case Number 90-11-3-08499. Payment shall be made in accordance with instructions provided to Performing Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Performing Defendant shall send notice that such payment has been made to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, Performing Defendant shall send copies of the payment confirmation to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

41. Payments by Performing Defendant for Future Response Costs.

a. Performing Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP and any penalties required by Section XVII. On a periodic basis, EPA will send Performing Defendant a bill requiring payment that includes a cost summary

setting forth direct and indirect costs incurred by EPA, DOJ and their contractors. Performing Defendant shall make all payments within forty-five (45) days of Performing Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.a. Performing Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 0371, and DOJ case number 90-11-3-08499. Performing Defendant shall send the check(s) to the United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the United States as Specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

b. Performing Defendant shall reimburse the State, as provided below, for all State Future Response Costs incurred in a manner not inconsistent with the NCP and/or applicable state statutes and regulations. The State will periodically send the Performing Defendant a bill requiring payment of State Future Response Costs that includes a cost summary, setting forth direct and indirect costs incurred by the State. The State Future Response Costs shall be documented in accordance with the NCP and/or applicable state statutes and regulations and shall include, but not be limited to, the following documents: financial management reports, invoices, time sheets and/or travel vouchers. The State shall provide Performing Defendant one copy of all supporting documentation, exclusive of any confidential business information and Privacy Act information at the time the bill is sent.

Performing Defendant shall make all payments required by Paragraph 41.b. to the "West Virginia Department of Environmental Protection" by sending to the following address:

West Virginia Department of Environmental Protection
Office of Fiscal Services, Accounts Receivable
601 57th Street, SE
Charleston, West Virginia 25304
Payment by Performing Defendant shall be by cashiers or certified check and

Performing Defendant shall pay the total amount of the bill within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.b. The check should reference "Big John Salvage-Response Costs"

42. Work Takeover. In the event that EPA assumes the responsibility to implement the Work in accordance with Paragraph 72 (Work Takeover), Performing Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP associated with the Work, that are incurred after the date that EPA assumes responsibility for implementing the Work. In addition, all monies secured for financial assurance pursuant to Paragraph 29.b. and c. shall be transferred into the BJS Site Special Account, as identified in Paragraph 43. In that event, on a periodic basis, the United States will send to Performing Defendant a bill requiring payment which includes an EPA-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ-prepared cost summary which reflects costs incurred by DOJ and its contractors, if any. Performing Defendant shall make all payments within 30 days of Performing Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 44.a. Performing Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 0371, and DOJ case number 90-11-3-08499. Performing Defendant

shall send the check(s) to the United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the United States as specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

43. Payments to Special Account. The total amount to be paid by Performing Defendant pursuant to Paragraphs 40, 41.a. and 42 shall be deposited by EPA in the BJS Site Special Account to be retained and used to conduct or finance response activities at or in connection with the BJS Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

44. Right to Contest United States Future Response Costs or State Future Response Costs.

a. Performing Defendant may contest payment of all or any portion of Future Response Costs under Paragraphs 41.a. and 42 if it determines that the United States has made a mathematical or accounting error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of 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 XXIII (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, Performing Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 41.a. Simultaneously, Performing Defendant shall establish an interest-bearing escrow account in a

federally-insured bank duly chartered in the State of West Virginia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Performing Defendant shall send to the United States, as provided in Section XXIII (Notices and Submissions), a copy of the transmittal letter and check in the amount of the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Performing Defendant shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If the United States prevails in the dispute, within 5 working days of the final resolution of the dispute, Performing Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 41.a. If Performing Defendant prevails concerning any aspect of the contested costs, Performing Defendant shall pay that portion of the costs (plus associated accrued Interest), if any, for which they did not prevail to the United States in the manner described in Paragraph 41.a; Performing Defendant 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing Defendant's obligation to reimburse the United States for its Future Response Costs.

b. If Performing Defendant determines that the State has made an accounting error or if it alleges that the State has submitted a bill that is inconsistent with the NCP, applicable state statutes and regulations, or this Consent Decree, Performing Defendant shall file written objections to the bill of the State within thirty (30) days of receipt of the bill

specifically identifying the error or inconsistency. If the State agrees with Performing Defendant's objections it shall so inform Performing Defendant and submit a revised bill. If the State does not agree with the objections, it shall so inform Performing Defendant and the matter shall be subject to an informal negotiation period of twenty (20) days between the Director of the Division of Land Restoration of the West Virginia Department of Environmental Protection and a negotiator appointed by Performing Defendant. If after the informal negotiation period the matter is still not resolved, then the State and Performing Defendant agree that an independent mediator will be agreed upon by the State and Performing Defendant and mediation will be held within a second twenty (20) day period with each party splitting the costs of the mediation. If the mediation is unsuccessful, then the State and Performing Defendant hereby agree that either party may seek appropriate relief from this Court.

45. Interest. In the event that any payment for Past Response Costs, Future Response Costs, or State Future Response Costs required by this Section is not made by the date required, Performing Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs or on State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing Defendant'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 Performing Defendant's failure to make timely payments under this Section including, but not limited to, payment of Stipulated Penalties pursuant to Paragraphs 59 and 60.

XIV. INDEMNIFICATION AND INSURANCE

46. Performing Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Performing Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Performing Defendant 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 Performing Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Performing Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Performing Defendant 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 Performing Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their 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 Performing Defendant in carrying out activities pursuant to this Consent Decree. Neither Performing Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Performing Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 46.a. as soon as practicable, and will consult with Performing Defendant prior to settling such claim.

47. Settling Defendants covenant not to sue and agree not to assert any 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 Settling Defendants and any person for performance of Work on or relating to the BJS Site, including, but not limited to, claims on account of construction delays. In addition, Performing Defendant 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 Settling Defendant and any person for performance of Work on or relating to the BJS Site, including, but not limited to, claims on account of construction delays.

48. No later than 15 days before commencing any on-site Work, Performing Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion pursuant to Paragraph 36.b. of Section XI (Certification of Completion) comprehensive general liability insurance with limits of $5,000,000, combined single limit, and automobile liability insurance with limits of $500,000, combined single limit, naming the United States as additional insured. In addition, for the duration of this Consent Decree, Performing Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Performing Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing Defendant demonstrates by evidence

satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Defendant needs to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XV. FORCE MAJEURE

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

50. 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, Performing Defendant shall orally notify EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Site Cleanup Division, EPA Region III, within 48 hours of when Performing Defendant first knew that the event might cause a delay. Within 5 days thereafter, Performing Defendant shall provide in writing to EPA 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; Performing Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Performing Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Performing Defendant 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 Performing Defendant 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. Performing Defendant shall be deemed to know of any circumstance of which Performing Defendant, any entity controlled by Performing Defendant, or Performing Defendant's contractors knew or should have known.

51. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Performing Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Performing Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

52. If Performing Defendant elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so no later than 15 days after receipt of

EPA's notice. In any such proceeding, Performing Defendant 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 Performing Defendant complied with the requirements of Paragraphs 49 and 50, above. If Performing Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Performing Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVI. DISPUTE RESOLUTION

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

54. Unless otherwise expressly provided for in this Consent Decree, 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 a written Notice of Dispute to all of the other Parties to the dispute.

55. 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 EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation

period, the affected Settling Defendant(s) invoke(s) the formal dispute resolution procedures of this Section by serving on the United States and all other Settling Defendants 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 Settling Defendant(s). The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 56 or Paragraph 57.

b. Within 14 days after receipt of the affected Settling Defendants' Statement of Position, EPA will serve on all Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 56 or 57. Within 14 days after receipt of EPA's Statement of Position, the affected Settling Defendant(s) may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 56 or 57, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the affected Settling Defendant(s) ultimately appeal(s) 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 56 and 57.

56. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response activities 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 activities identified in the Action Memorandum includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and (2) the adequacy of the performance of response activities 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 response action selected in the Action Memorandum.

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

b. The Director of the Hazardous Site Cleanup Division, EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 56.a. This decision shall be binding upon Settling Defendant(s), subject only to the right to seek judicial review pursuant to Paragraph 56.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 56.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant(s) with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant(s') motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant(s) shall have the burden of demonstrating that the decision of the Hazardous Site

Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 56.a.

57. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response activities identified in the Action Memorandum nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 55, the Director of EPA Region III's Hazardous Site Cleanup Division, will issue a final decision resolving the dispute. The Hazardous Site Cleanup Division Director's decision shall be binding on Settling Defendant(s) unless, within 10 days of receipt of the decision, Settling Defendant(s) file with the Court and serve on the Parties 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 Settling Defendant(s') motion.

58. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 66. 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 Settling Defendant(s) does/do not

prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVII. STIPULATED PENALTIES

59. Failure to Comply with Payment Requirements

a. Each Settling Defendant shall be liable to the United States for stipulated penalties in the amount set forth below for failure to comply with the payment requirements applicable to it as set forth in Section XIII (Payments) of this Consent Decree unless excused under Section XV (Force Majeure) and in compliance with Section X (Performance Guarantee).

The following stipulated penalties shall accrue per violation per day for each and every day that payment is delayed:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 3,500.00	1st through 14th day
$ 7,000.00	15th through 30th day
$ 12,000.00	31st day and beyond

b. Stipulated Penalties due to the State. If any payment due to the State under Paragraph 41.b. of this Consent Decree is not paid by the required date, Performing Defendant shall pay the State as appropriate a stipulated penalty, in addition to the interest required under Paragraph 45. Payment of stipulated penalties shall be as follows:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 2,000.00	1st through 14th day

$ 3,000.00	15th through 30th day
$ 5,000.00	31st day and beyond

Stipulated penalties are due and payable within thirty (30) days of the date for demand for payment of stipulated penalties by the State. Performing Defendant shall make all payments required by this Paragraph 59.b. to the "West Virginia Department of Environmental Protection" at the following address:

West Virginia Department of Environmental Protection
Office of Fiscal Services, Accounts Receivable
601 57th Street, SE
Charleston, West Virginia 25304

If Performing Defendant believes that the State has made an error with respect to the imposition of stipulated penalties, then Performing Defendant may object to the imposition of such penalties in the same manner and in the same fashion as Paragraph 44.b.

Payments made under this Paragraph shall be in addition to any other remedies available to the State under the law by virtue of Performing Defendant's failure to comply with the requirements of this Consent Decree.

60. Performing Defendant shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree, unless excused under Section XV (Force Majeure). "Compliance" by Performing Defendant shall include completion of all activities required under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

Penalty Per Violation Per Day	*Period of Noncompliance*
$ 3,500.00	1st through 14th day
$ 7,000.00	15th through 30th day
$ 10,000.00	31st day and beyond

61. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 72 of Section XVIII (Covenants Not to Sue by Plaintiffs), EPA will so notify Performing Defendant in writing and Performing Defendant shall be liable for a stipulated penalty in the amount of $1,500,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraph 72 (Work Takeover).

62. 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 IX (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Defendant of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraphs 56.b. or 57 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XVI (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.

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

64. All penalties accruing under this Section shall be due and payable to the United States within 30 days of a Settling Defendant's(s') receipt from EPA of a demand for payment of the penalties attributable to such Settling Defendant, unless such Settling Defendant or Settling Defendants invoke the Dispute Resolution procedures under Section XVI (Dispute Resolution) within the 30 day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraphs 41.a. and 42. Payment made hereunder will be deposited in the Special Account for the BJS Superfund Site.

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

66. Penalties shall continue to accrue as provided in Paragraph 62 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, such Settling Defendant shall pay all accrued penalties attributable to such Settling Defendant determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 66.c. below;

c. If the District Court's decision is appealed by any Party, each Settling Defendant shall pay all accrued penalties attributable to it and determined by the District Court to be owed 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 EPA or to each Settling Defendant to the extent that it/they prevail.

67. If a Settling Defendant fails to pay stipulated penalties attributable to it when due, that Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if the Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 66 until the date of payment; and (b) if the Settling Defendants fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 62 until the date of payment. If the Settling Defendant fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

68. 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 a Settling Defendant's violation of this Consent 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 this Consent Decree.

69. 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.

XVIII. COVENANTS NOT TO SUE BY PLAINTIFFS

70. Covenants for Settling Defendants by the United States and the State of West Virginia.

a. Covenant Not to Sue by the United States Relating to Past Response Costs. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required under Paragraph 40 of Section XIII (Payments), and any amounts due under Section XVII (Stipulated Penalties and Interest) of the Consent Decree related to such payments. This Covenant extends only to Settling Defendants and does not extend to any other person.

b. Covenant Not to Sue by the United States Concerning Non-Performing Defendants.

i. Uplands Area. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Non-Performing Defendants pursuant to Section 106 and 107(a) of CERCLA and Section 7003 of RCRA, with regard to the Uplands Area. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

ii. River Removal Action. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the United States covenants not to sue or to take administrative action against Non-Performing Defendants pursuant to Section 106 and 107(a) of CERCLA and Section 7003 of RCRA, with regard to the River Removal Action. This covenant not to sue shall not apply to additional work or any further response action in the Monongahela River that EPA may determine to be required under an EPA decision document other than the Action Memorandum. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

c. Covenant Not to Sue by the United States Concerning Performing Defendant and with Respect to Performance of the Work and Future Response Costs. In consideration of the actions that will be performed under this Consent Decree, and the payment of Future Response Costs that will be made by Performing Defendant pursuant to Paragraph 41.a., and subject to Paragraphs 71 and 72, the United States covenants not to sue or to take administrative action against Performing Defendant pursuant to Sections 106 and 107(a) of

CERCLA and Section 7003 of RCRA, for the Work identified in the Action Memorandum. With respect to future liability, these covenants shall take effect upon Certification of Completion of obligations required under this Consent Decree by EPA pursuant to Paragraph 36.b. of Section XI (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Performing Defendant of all obligations under this Consent Decree. These Covenants extend only to Performing Defendant and do not extend to any other person.

d. Covenant Not to Sue by the State of West Virginia Relating to Past Response Costs. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or to take administrative action against Settling Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to – 6), to recover response costs related to the BJS Site incurred prior to the Effective Date of this Consent Decree. This covenant not to sue shall take effect upon receipt by EPA of all payments required under Paragraph 40 of Section XIII (Payments), and any amounts due to EPA under Section XVII (Stipulated Penalties and Interest) of the Consent Decree related to such payments. This Covenant extends only to Settling Defendants and does not extend to any other person.

e. Covenant Not to Sue by the State of West Virginia Concerning Non-Performing Defendants.

i. Uplands Area. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or take

administrative action against the Non-Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), with regard to the Uplands Area. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

ii. River Removal Action. Except as specifically provided in Paragraph 71 (General Reservation of Rights), the State of West Virginia covenants not to sue or take administrative action against the Non-Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), with regard to the River Removal Action. This covenant not to sue shall not apply to additional work or any further response action in the Monongahela River that EPA may determine to be required under an EPA decision document after completion of the River Removal Action. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 39. This Covenant extends only to Non-Performing Defendants and does not extend to any other person.

f. Covenant Not to Sue by the State of West Virginia Concerning Performing Defendant and with Respect to Performance of the Work and State Future Response Costs. In consideration of the actions that will be performed under this Consent Decree, and the payment of Future Response Costs that will be made by Performing Defendant pursuant to Paragraph 41.b, and subject to Paragraphs 71 and 72, the State of West Virginia covenants not

to sue or to take administrative action against Performing Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or under the West Virginia Hazardous Waste Management Act (W. Va. Code §§ 22-18 –1 to –25) or the West Virginia Hazardous Waste Emergency Response Fund Act (W. Va. Code §§ 22-19-1 to –6), for the Work identified in the Action Memorandum. With respect to future liability related to the work enunciated in the Action Memorandum, these covenants shall take effect upon Certification of Completion of obligations required under this Consent Decree by EPA, in consultation with WVDEP, pursuant to Paragraph 36.b. of Section XI (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Performing Defendant of all obligations under this Consent Decree, including but not limited to satisfactory performance by Performing Defendant of its obligations under Paragraph 41.b. (Payments by Performing Defendant For Future Response Costs). These Covenants extend only to Performing Defendant and do not extend to any other person.

71. General Reservations of Rights. The United States and the State of West Virginia reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State of West Virginia reserve all rights against Settling Defendants as set forth below:

a. As to all Settling Defendants:

i. liability of a Settling Defendant for its failure to meet a requirement of this Consent Decree;

ii. liability for future work required in the Monongahela River identified in any future EPA decision documents issued with respect to

either the FCW Site or the BJS Site and for studies required to support such decision documents;

iii. liability for future costs including, but not limited to, direct and indirect costs, that the United States incurs in the Monongahela River that are not pursuant to this Consent Decree;

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

v. liability based on the ownership or operation of the BJS Site by any Settling Defendant when such ownership or operation commences after signature of this Consent Decree by the Settling Defendant;

vi. liability based on any Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the BJS Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA, after signature of this Consent Decree;

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

viii. criminal liability;

ix. liability for costs incurred subsequent to August 9, 2011 by the Agency for Toxic Substances and Disease Registry related to the BJS

Site that are not within the definition of Past Costs, which reservation applies only with respect to the United States.

b. In addition to the general reservations described in 71.a. above, the following reservations apply to Exxon Mobil Corporation:

i. liability for costs incurred or to be incurred with respect to the Sharon Steel/Fairmont Coke Works Property; and

ii. liability arising from the release or threat of release of hazardous substances on or under the Sharon Steel/Fairmont Coke Works Property, unless such hazardous substances are presently located on the BJS Site or, with respect to the Monongahela River, are addressed by the River Removal Action.

c. In addition to the general reservations described in 71.a. above, the following reservations apply to the Performing Defendant:

i. liability for violations of federal or state law which occur during or after implementation of the Work;

ii. liability for costs not included within the definitions of Past Response Costs or Future Response Costs; and

iii. liability for any response action that EPA determines is necessary, in addition to Work required under this Consent Decree.

72. Work Takeover.

a. In the event EPA determines that Performing Defendant (1) has ceased implementation of any portion of the Work, or (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an

endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Performing Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Defendant a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten-day notice period specified in Paragraph 72.a., Performing Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Performing Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 72.b. Funding of Work Takeover costs is addressed under Paragraphs 33 and 42.

c. Performing Defendant may invoke the procedures set forth in Paragraph 56 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 72. However, notwithstanding Performing Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 72 until the earlier of (1) the date that Performing Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 56 (Record Review) requiring EPA to terminate such Work Takeover.

73. 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.

XIX. COVENANTS BY SETTLING DEFENDANTS

74. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraphs 71 and 76, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State of West Virginia with respect to the Work, past response activities regarding the BJS Site, Past Response Costs, Future Response Costs, State Future Response Costs, and 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, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or the West Virginia Hazardous Waste Emergency Response Fund (W. Va. Code §§ 22-19-1 to –6), or any other provision of law, or any analogous State stature or regulation;

b. any claims against the United States or the State of West Virginia, including any department, agency or instrumentality of the United States or the State of West Virginia under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response activities regarding the BJS Site, Past Response Costs, Future Response Costs, State Future Response Costs, Settling Defendants' past and future response costs incurred and to be incurred in connection with BJS Site, and this Consent Decree; or

c. any claims arising out of response actions at or in connection with the BJS Site, including any claim under the United States 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.

75. Except as provided in Paragraph 83 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State of West Virginia brings a cause of action or issues an order pursuant to any of the reservations in Section XVIII (Covenants Not to Sue by Plaintiffs), other than in Paragraphs 71.a.i. (claims for failure to meet a requirement of the Decree), 71.a.iii. (criminal liability), and 71.c.i. (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants' claims arise from the same response activities identified in the Action Memorandum, response costs, or damages that the United States or the State of West Virginia is seeking pursuant to the applicable reservation.

76. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States and the State of West Virginia, subject to the provisions of Chapter 171 of Title 28 of the United States Code or its equivalent under West Virginia law, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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 or the State of West Virginia, as that term is defined in 28 U.S.C. § 2671, or its equivalent under West Virginia law while acting within the scope of his or her office or employment under circumstances where the United States or the State of West Virginia, 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, the foregoing shall not

include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities.

77. 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).

78. On or about, November 19, 1984, EPA and Vertellus' predecessor Reilly entered into a Consent Order, Docket No. III-85-2-DC, related to the BJS Site. (Appendix G). In or about September 1986, the District Court for the Northern District of West Virginia entered a Consent Decree (Appendix H) between the United States and Vertellus' predecessor Reilly, John Boyce, and Westinghouse Electric Corporation, now known as CBS, related to the payment of response costs to EPA related to the BJS Site (referred to in 1986 Consent Decree as the Hoult Road Site). Vertellus agrees that it will not assert any defense based on any provision of the 1984 Consent Order and/or the 1986 Consent Decree against the United States with respect to any claim by the United States against it for: (a) response costs not covered by this current Consent Decree or (b) additional work or further response actions EPA may determine to be necessary subsequent to completion of the River Removal Action and the Work identified in the Action Memo related to the Uplands Area.

EPA issued an Administrative Order for Removal Response Action, (AOC) Docket No. III-2000-0026-DC, to Reilly Industries Inc., (now known as Vertellus). Reilly Industries performed work under the aforementioned AOC. A dispute arose between Reilly Industries and EPA with respect to requirements for performance of certain work under the AOC. EPA agrees that it will not pursue any enforcement actions against Vertellus for civil penalties or punitive damages pursuant to Paragraph 12.5 of the AOC.

XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

79. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), 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 BJS Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree, provided, however, that nothing contained here shall prevent Settling Defendants from enforcing private agreements among themselves relating to the BJS Site, including without limitation, any side agreements executed between the Parties. The "matters addressed" in this Consent Decree as to Performing Settling Defendant and Non-Performing Settling Defendants shall have the meanings specifically stated below:

a. Performing Defendant. As to Performing Defendant, "matters addressed" in this Consent Decree shall mean Past Response Costs, Future Response Costs,

State Future Response Costs, and the Work, as defined in this Consent Decree. However, "matters addressed" do not include any response actions or response costs for which the United States has reserved its rights under Paragraph 71.

b. Non-Performing Defendants. As to Non-Performing Defendants, "matters addressed" in this Consent Decree shall mean Past Response Costs, Future Response Costs, State Future Response Costs, and the River Removal Action Work, as all are defined in this Consent Decree, and all response costs incurred and to be incurred and all response actions taken and to be taken with respect to the Uplands Area, as the Uplands Area is defined in this Consent Decree. However, "matters addressed" do not include any response actions or response costs for which the United States has reserved its rights under Paragraph 71.

81. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

82. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days of service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial.

83. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the BJS 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 XVIII (Covenants Not to Sue by Plaintiffs).

XXI. ACCESS TO INFORMATION

84. Each Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the BJS 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. Each Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

85. 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), and 40 C.F.R. § 2.203(b). All such submissions shall be handled in accordance with the provisions specified in 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records and other information requested by EPA are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Settling Defendant asserts such a privilege in lieu of providing documents, it 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 Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. 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.

86. No claim of confidentiality shall be made with respect to any Site-related data, including, but not limited to, all sampling, analytical, monitoring, hydro-geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the BJS Site.

XXII. RETENTION OF RECORDS

87. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 36.b. of Section XI (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 its potential liability under CERCLA with

respect to the BJS Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the BJS Site must retain, in addition, all documents and records that relate to the potential liability of any other person under CERCLA with respect to the BJS Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records 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, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

88. At the conclusion of this document retention period, each Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, each such Settling Defendant shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege or doctrine recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide 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 Defendant. If a claim of privilege applies only to a portion of a

Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Each Settling Defendant shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor. 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.

89. 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 BJS Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the BJS Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXIII. NOTICES AND SUBMISSIONS

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

As to EPA:

Chief, DE, VA and WV Remedial Branch
Hazardous Site Cleanup Division
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Eric Newman (3HS23)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
newman.eric@epa.gov

As to the State of West Virginia:

Mark J. Rudolph
Senior Counsel
Office of Legal Services
West Virginia Department
of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Thomas L. Bass
State Project Manager
Division of Land Restoration
West Virginia Department
of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

As to Vertellus Specialties Inc:

General Counsel
Vertellus Specialties Inc.
201. N. Illinois Street
Indianapolis, IN 46204

Glenn A. Harris, Esq.
Ballard Spahr
210 Lake Drive Easte
Suite 200
Cherry Hill, NJ 08002

As to CBS Corporation:

William D. Wall, Esq.
Vice President, Assistant General Counsel
CBS Corporation
10th Floor, 20 Stanwix Street
Pittsburgh, PA 15222-4802

As to Exxon Mobil Corporation:

Robert W. Jackmore
Superfund Area Manager
ExxonMobil Environmental Services
3225 Gallows Road
Fairfax, VA 22037-0001
robert.w.jackmore@exxonmobil.com

Mark A. Zuschek
Office of the General Counsel
Exxon Mobil Corporation
3225 Gallows Road
Fairfax, VA 22037-0001
mark.a.zuschek@exxonmobil.com

Steven M. Jawetz
Beveridge & Diamond, P.C.
1350 I Street, NW Suite 700
Washington, DC 20005
sjawetz@bdlaw.com

XXIV. EFFECTIVE DATE

91. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving this Consent Decree, the date such order is entered on the Court docket.

XXV. RETENTION OF JURISDICTION

92. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of each such Settling Defendant's compliance 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 XVI (Dispute Resolution) hereof.

XXVI. APPENDICES

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

Appendix A – September 30, 2010 Action Memorandum (including Attachments);
Appendix B– Big John's Salvage Site-Hoult Road Site Drawing
Appendix C – Uplands Area Work Letter of Credit
Appendix D – Trust and Qualified Settlement Fund Agreement
Appendix E– BJS Site River Removal Action Trust Agreement
Appendix F–Sample CFO Letter
Appendix G – Consent Order, Docket No. III-85-2-DC
Appendix H– Consent Decree (N.D. WV)

XXVII. MODIFICATION

94. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Performing Defendant. All

such modifications shall be made in writing. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Removal Design Work Plan, Response Action Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. 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, Section 7003(d) of RCRA, 2 U.S.C. §6973(d). 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. Settling Defendants consent to the entry of this Consent Decree without further notice.

97. 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.

XXIX. SIGNATORIES/SERVICE

98. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Cabinet Secretary, WVDEP, 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.

99. 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

100. 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. Each Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXX. FINAL JUDGMENT

101. 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.

102. 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 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 10th DAY OF October, 2012.

Irene M. Keeley
United States District Judge

FOR THE UNITED STATES OF AMERICA:

8/9/12
Date

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

8/9/12
Date

NATHANIEL DOUGLAS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
Pennsylvania Bar # 18217
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(P)(202) 514-4628
(F)(202) 616-6584

WILLIAM J. IHLENFELD, II
United States Attorney

8-15-12
Date

HELEN CAMPBELL ALTMEYER
Assistant United States Attorney
Northern District of West Virginia
1125 Chapline Street
Wheeling, W.V.
(T)(304) 234-0100
(F)(304) 234-0112

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/11/12
Date

SHAWN GARVIN
Regional Administrator
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

5/31/2012
Date

MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

Date

BONNIE A. PUGH
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103

FOR STATE OF WEST VIRGINIA:

4/30/12
Date

RANDY HUFFMAN
Cabinet Secretary
West Virginia Department
Of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

4/30/12
Date

MARK J. RUDOLPH
Senior Counsel
Office of Legal Services
West Virginia Department
Of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

FOR VERTELLUS SPECIALTIES INC.:

MAY 4, 2012
Date

Signature: Thomas E. Mesevage
Name (print): Thomas E. Mesevage
Title: Corporate Counsel, Environmental
Address: Vertellus Specialties Inc.
900 Lanidex Plaza, Suite 250
Parsippany, NJ 07054

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

Name (print): Corporate Service Company
Title:
Address: 251 East Ohio Street, Suite 500
Indianapolis, IN 46204

Phone No.: 1-866-403-5272

FOR EXXON MOBIL CORPORATION:

April 24, 2012

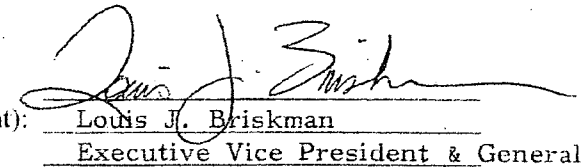
Clifford L. Pearson
Major Projects Manager
(Agent and Attorney in Fact)
ExxonMobil Environmental Services
800 Bell Street
Room 791L1
Houston, TX 77002-7497

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

Corporation Service Company
Agent for Service of Process
209 West Washington Street
Charleston, WV 25302
(304) 340-1000

FOR CBS CORPORATION:

April 30, 2012
Date

Signature: 
Name (print): Louis J. Briskman
Title: Executive Vice President & General Counsel
Address: CBS Corporation
51 W 52nd Street
New York, NY 10019

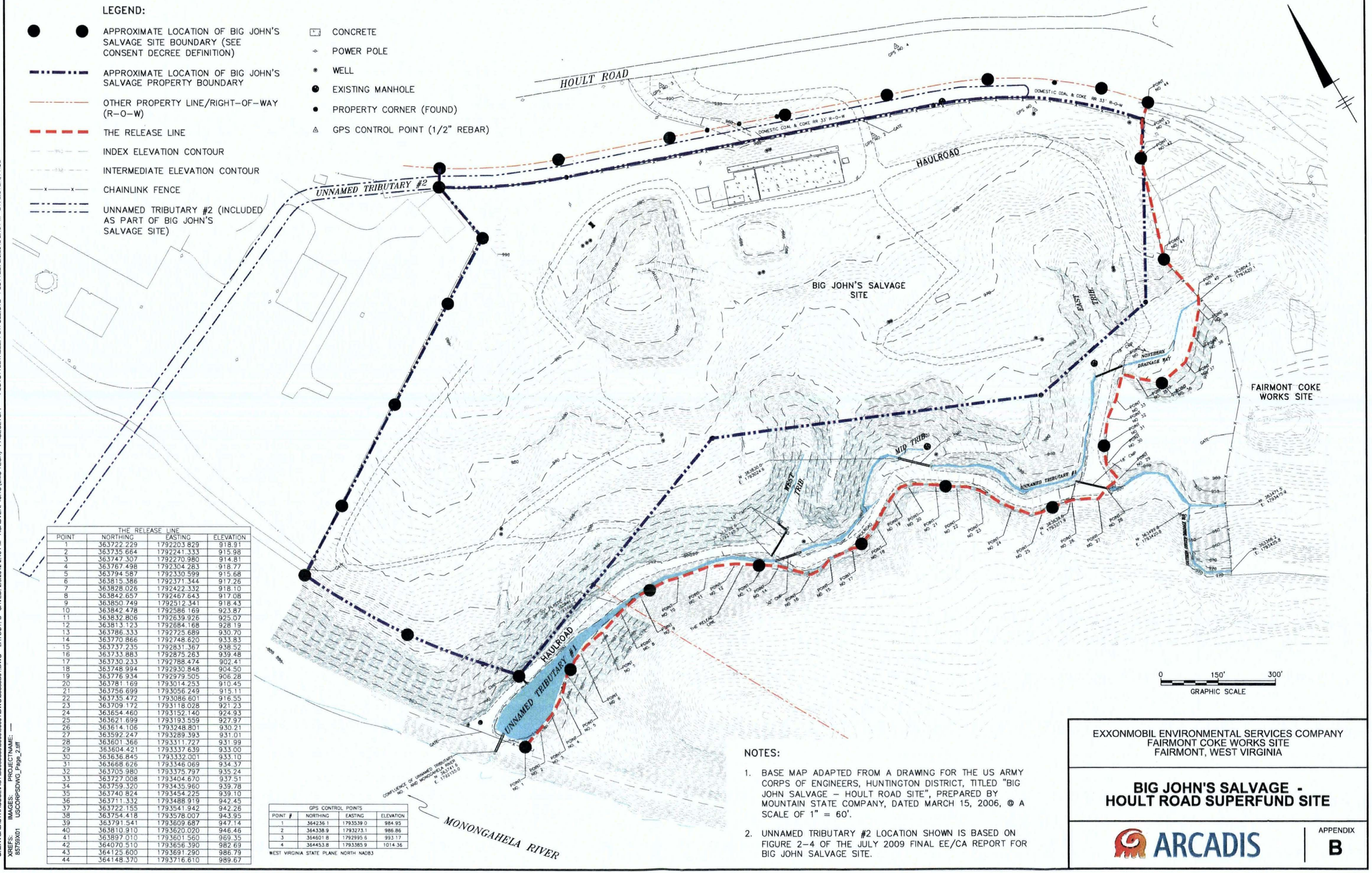
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Kevin M. Hogan
Title: Attorney for CBS Corporation
Address: Phillips Lytle, LLP
2400 HSBC Ctr.
Buffalo, NY 14222

Phone No.: 716.847.8331

LEGEND:

- APPROXIMATE LOCATION OF BIG JOHN'S SALVAGE SITE BOUNDARY (SEE CONSENT DECREE DEFINITION)
- APPROXIMATE LOCATION OF BIG JOHN'S SALVAGE PROPERTY BOUNDARY
- OTHER PROPERTY LINE/RIGHT-OF-WAY (R-O-W)
- THE RELEASE LINE
- INDEX ELEVATION CONTOUR
- INTERMEDIATE ELEVATION CONTOUR
- CHAINLINK FENCE
- UNNAMED TRIBUTARY #2 (INCLUDED AS PART OF BIG JOHN'S SALVAGE SITE)
- CONCRETE
- POWER POLE
- WELL
- EXISTING MANHOLE
- PROPERTY CORNER (FOUND)
- GPS CONTROL POINT (1/2" REBAR)



THE RELEASE LINE			
POINT	NORTHING	EASTING	ELEVATION
1	363722.229	1792203.829	918.91
2	363735.664	1792241.333	915.98
3	363747.307	1792270.980	914.81
4	363767.498	1792304.283	918.77
5	363794.587	1792330.599	915.68
6	363815.386	1792371.344	917.26
7	363828.026	1792422.332	918.10
8	363842.657	1792467.643	917.08
9	363850.749	1792512.341	918.43
10	363842.478	1792586.169	923.87
11	363832.806	1792639.926	925.07
12	363813.123	1792684.168	928.19
13	363786.333	1792725.689	930.70
14	363770.866	1792748.620	933.83
15	363737.235	1792831.367	938.52
16	363733.883	1792875.263	939.48
17	363730.233	1792788.474	902.41
18	363748.994	1792930.848	904.50
19	363776.934	1792979.505	906.28
20	363781.169	1793014.253	910.45
21	363756.699	1793056.249	915.11
22	363735.472	1793086.601	916.55
23	363709.172	1793118.028	921.23
24	363654.460	1793152.140	924.93
25	363621.699	1793193.559	927.97
26	363614.106	1793248.801	930.21
27	363592.247	1793289.393	931.01
28	363601.366	1793311.727	931.99
29	363604.421	1793337.639	933.00
30	363636.845	1793332.001	933.10
31	363668.626	1793346.069	934.37
32	363705.980	1793375.797	935.24
33	363727.008	1793404.670	937.51
34	363759.320	1793435.960	939.78
35	363740.824	1793454.225	939.10
36	363711.332	1793488.919	942.45
37	363722.155	1793541.942	942.26
38	363754.418	1793578.007	943.95
39	363791.541	1793609.687	947.14
40	363810.910	1793620.020	946.46
41	363897.010	1793601.560	969.35
42	364070.510	1793656.390	982.69
43	364125.600	1793691.290	986.79
44	364148.370	1793716.610	989.67

GPS CONTROL POINTS			
POINT #	NORTHING	EASTING	ELEVATION
1	364236.1	1793539.0	984.95
2	364338.9	1793273.1	986.86
3	364601.8	1792995.6	993.17
4	364453.8	1793385.9	1014.36

WEST VIRGINIA STATE PLANE NORTH NAD83

NOTES:

1. BASE MAP ADAPTED FROM A DRAWING FOR THE US ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT, TITLED "BIG JOHN SALVAGE – HOULT ROAD SITE", PREPARED BY MOUNTAIN STATE COMPANY, DATED MARCH 15, 2006, @ A SCALE OF 1" = 60'.
2. UNNAMED TRIBUTARY #2 LOCATION SHOWN IS BASED ON FIGURE 2-4 OF THE JULY 2009 FINAL EE/CA REPORT FOR BIG JOHN SALVAGE SITE.

EXXONMOBIL ENVIRONMENTAL SERVICES COMPANY
FAIRMONT COKE WORKS SITE
FAIRMONT, WEST VIRGINIA

BIG JOHN'S SALVAGE - HOULT ROAD SUPERFUND SITE

ARCADIS

APPENDIX B

CITY: SYRACUSE, NY DIV/GROUP: ENV/MA-DIV DB: P. LISTER PM/TM: R. PRICE TR: D. MACK LYR: ON=*;OFF=*REF; (FRZ)
G:\ENV\CAD\SYRACUSE\ACT\80085865\00000001\DWG\85758501.DWG LAYOUT: B SAVED: 2/9/2012 2:15 PM ACADVER: 18.1S (LMS TECH) PAGESETUP: --- PLOTSTYLETABLE: PLTFULL.CTB PLOTTED: 2/9/2012 2:15 PM BY: LISTER, PAUL
XREFS: IMAGES: PROJECTNAME: ---
85758X01 USCORPSDWG_Page_2.tif

Appendix C

Bank of Montreal, Chicago, Illinois

STANDBY/ LETTERS OF CREDIT
C/O 234 Simcoe Street
3rd Floor
Toronto, Ontario M5T 1T4
Canada
Tel: 1 -877-801-0414
Fax: 1-877-801-7787
SWIFT: BOFMUS4X

Irrevocable
Standby Letter of Credit No.: BMCH363688OS

Date Issued: March 20, 2012 DRAFT

Beneficiary:
U.S. Environmental Protection Agency
c/o Chief, DE, VA and WV Remedial Branch
Region III
1650 Arch Street
Philadelphia, PA 19103

Applicant:
Wind Point Partners VI, L.P.
676 N. Michigan Avenue
Suite 3700
Chicago, IL 60611

Amount: Ten Million Five Hundred Thousand and 00/100's United States Dollars (USD10,500,000.00)

Expiry Date:

Re: United States of America v. ExxonMobil Corporation, et al., Civil Action No. 1:08-CV-00124-IMK (N.D.W.V.)

We hereby establish our Irrevocable Standby Letter of Credit No. BMCH363688OS in your favor, at the request and for the account of the Applicant, Wind Point Partners VI, L.P., in the amount of exactly Ten Million Five Hundred Thousand and 00/100's United States Dollars (USD10,500,000.00) (the "Maximum Amount"). We hereby authorize you, the U.S. Environmental Protection Agency (the "Beneficiary"), to draw at sight on us, Bank of Montreal, Chicago, IL c/o Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario, Canada M5T 1T4, an aggregate amount equal to the Maximum Amount upon presentation of:

(1) your sight draft, bearing reference to this Letter of Credit No. BMCH363688OS (which may, without limitation, be presented in the form attached hereto as Exhibit A); and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to that certain Consent Decree entered in the matter United States of America v. ExxonMobil Corporation, et al., Civil Action No. 1:08-CV-00124-IMK (N.D.W.V.), with effective date of [DATE], by and among the United States of America, the State of West Virginia, Vertellus Specialties Inc., CBS Corporation and ExxonMobil Corporation, entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended."

This letter of credit is effective as of ..... and shall expire on ..... , but such expiration date shall be automatically extended for a period of one (1) year on ..... and on each successive expiration date, unless, at least one hundred twenty (120) days before the current or any successive expiration date, we notify both you and ..... by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, the date which falls ninety (90) days after the date of receipt by both you and Wind Point Partners VI, LP of our notification, as shown on signed return receipts, shall be deemed the "Draw Trigger Date." As of the Draw Trigger Date until the expiry of this Letter of Credit, any unused portion of the credit evidenced hereby shall be immediately available to you upon presentation of your sight draft (and without the need for the signed statement representing that applicant has not established a replacement financial assurance mechanism pursuant to and in accordance with the terms of the Consent Decree.)

This Letter of Credit may be cancelled prior to the expiry date upon receipt at our above-noted address of the original Letter of Credit and the Beneficiary's signed Letter addressed to us requesting cancellation of the Letter of Credit.

Multiple and partial draws on this Letter of Credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this Letter of Credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in immediately available funds directly into such account or accounts as may be specified in accordance with your instructions.

All banking and other charges under this Letter of Credit are for the account of the Applicant.

Except as otherwise stated herein, this Letter of credit is issued subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Publication No. 600.

Signing Officer

Authorized Signing Officer

THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT NO. BMCH363688OS AND MUST BE ATTACHED THERETO.

Exhibit A - Form of Sight Draft

United States Environmental Protection Agency Sight Draft

TO:
Bank of Montreal, Chicago, IL
c/o Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, Ontario, Canada M5T 1T4

RE: Letter of Credit No. BMCH336688OS

DATE: [Insert date that draw is made]
TIME: [Insert time of day that draw is made]

This draft is drawn under your Irrevocable Letter of Credit No. BMCH363688OS. Pay to the order of the United States Environmental Protection Agency, in immediately available funds, the amount of [in words] U.S. Dollars (U.S.$[_____]) or, if no amount certain is specified, the total balance remaining available under your Irrevocable Letter of Credit No. BMCH363688OS.

Pay such amount as is specified in the immediately preceding paragraph by FedWire Electronic Funds Transfer ("EFT") to the [Site name] Special Account within the EPA Hazardous Substance Superfund in accordance with current EFT procedures, referencing File Number [_____], EPA Region and Site Spill ID Number [_____], and DOJ Case Number [_____], as follows:

[Insert specific Special Account wiring instructions and information].

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of the United States Environmental Protection Agency, whose signature hereupon constitutes an endorsement.

By: _____ [signature]
_____ [name]
_____ [title]

Appendix D

TRUST AND QUALIFIED SETTLEMENT FUND AGREEMENT
Big John's Salvage – Hoult Road Superfund Site Dated: _____ __, _____

This Trust Agreement (this "Agreement") is entered into as of [date] by and between Vertellus Specialties Inc., a corporation organized and existing under the laws of the State of Indiana ("Vertellus" or "Transferor"), and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States (the "Trustee").

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States federal government, the Transferor, and others have entered into a Consent Decree in the action captioned *United States of America v. ExxonMobil Corporation*, Civil Action No. 1:08-CV-00124-IMK in the United States District Court for the Northern District of West Virginia (the "Action"), for the Big John's Salvage – Hoult Road Superfund Site (hereinafter the "Consent Decree");

Whereas, Paragraph 29 of the Consent Decree provides, *inter alia*, that the Transferor shall provide assurance that funds will be available as and when needed for performance of the Uplands Area Work required by the Consent Decree;

Whereas, in order to provide such financial assurance, Transferor has agreed to establish an Uplands Area Letter of Credit and to establish as stand-by as a future performance guarantee for the Uplands Area Work the trust created by this Agreement;

Whereas, Paragraph 39.a. of the Consent Decree provides for the payment into trust by Non-Performing Defendant CBS Corporation ("CBS") and Non-Performing Defendant Exxon Mobil Corporation ("ExxonMobil") of funds immediately accessible to Performing Defendant to meet its obligations under the Consent Decree; and

Whereas, the Transferor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder; and

Whereas, Transferor additionally wishes to establish this Agreement as a qualified settlement fund within the meaning of Section 468B of the Internal Revenue Code of 1986 as amended (the "Code") and the Treasury Regulations thereunder; and

Whereas, the Transferor anticipates that this Agreement will qualify as a QSF either (a) at such time as all the requirements of Treasury Regulation Section 1.468B-l(c) are met or (b) under Treasury Regulation Section 1.468B-l(j)(2). The Transferor anticipates that all the requirements of Treasury Regulation 1.468B-l(c) will be satisfied because (1) the Transferor anticipates that the Trust will be approved by the United States District Court for the Northern District of West Virginia and be subject to the continuing jurisdiction of that Court, (2) the Trust has

been established to resolve all CERCLA claims raised in the Action; and (3) the Trust is a trust under State law.

Now, therefore, the Transferor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) Unless otherwise defined herein, capitalized terms shall have the meaning assigned thereto in the Consent Decree.

(b) The term "Beneficiary" shall have the meaning assigned thereto in Section 3 of this Agreement.

(c) The term "Business Day" means any day, other than a Saturday or a Sunday, that banks are open for business in Morristown, New Jersey, USA.

(d) The term "Claim Certificate" shall have the meaning assigned thereto in Section 4(b) of this Agreement.

(e) The term "Fund" shall have the meaning assigned thereto in Section 3 of this Agreement.

(f) The term "Transferor" shall have the meaning assigned thereto in the first paragraph of this Agreement.

(g) The term "Objection Notice" shall have the meaning assigned thereto in Section 4(c) of this Agreement.

(h) The term "EPA Past Response Costs Settlement" shall mean the amount payable by Vertellus pursuant to Paragraph 40 of the Consent Decree.

(h) The term "Site" shall have the meaning assigned thereto in Section 2 of this Agreement.

(i) The term "Trust" shall have the meaning assigned thereto in Section 3 of this Agreement.

(j) The term "Trustee" shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement, but in no event shall any such Trustee or successor Trustee be a "related person" as defined in Treasury Regulation Section 1.468B-1(d)(2).

(k) The term "Uplands Area Work" shall have the meaning assigned thereto in the Consent Decree.

(l) The term "Qualified Settlement Fund" or "QSF" shall mean a fund that is intended to satisfy the requirements of Treasury Regulation Section 1.468B-l(c).

Section 2. Identification of Facilities and Costs. This Agreement pertains to costs relating to the EPA Past Response Costs Settlement and for Uplands Area Work required at the Big John's Salvage – Hoult Road Superfund Site in Marion County, West Virginia (the "Site"), pursuant to the above-referenced Consent Decree.

Section 3. Establishment of Trust Fund. The Transferor and the Trustee hereby establish a trust (the "Trust"), to receive payments by Non-Performing Defendants CBS and ExxonMobil on behalf of Transferor for disbursement to EPA pursuant to Paragraphs 39 and 40 of the Consent

Decree. The Trust is also established as stand-by at the election of Transferor and for the benefit of EPA (the "Beneficiary"), to assure that funds are available to pay for performance of the Uplands Area Work in the event that Transferor fails to conduct or complete the Uplands Area Work required by, and in accordance with the terms of, the Consent Decree. The Transferor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of funds in the amount of Eleven Million U.S. Dollars ($11,000,000.00). Such funds, along with any other monies and/or other property hereafter deposited into the Trust by or on behalf of the Transferor, and together with all earnings and profits thereon, are referred to herein collectively as the "Fund." The Trustee may accept additional deposits to the Fund as instructed in writing by the Transferor. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Transferor, any payments necessary to discharge any liabilities of the Transferor owed to the United States.

Section 4. Payment of EPA Past Cost Settlement and for Uplands Area Work Required Under the Consent Decree. The Trustee shall make payments from the Fund in accordance with the following procedures.

(a) As directed by Transferor and consistent with Paragraph 40 of the Consent Decree, the Trustee shall make payment to EPA of the EPA Past Cost Settlement. Any disbursement under this section 4(a) shall be paid by the Trustee to EPA within 5 days of receipt by the Trustee of a written direction of the Transferor stating that the request for funds is made pursuant to this Section 4(a) and is consistent with paragraph 40 of the Consent Decree.

(b) Upon election by Transferor to use this Trust as a performance guarantee for the Uplands Area Work and subject to Section 4(c) below, from time to time, the Transferor and/or its representatives or contractors may request that the Trustee make payment from the Fund to pay for Uplands Area Work performed under the Consent Decree by delivering to the Trustee and EPA a written invoice and certificate (together, a "Claim Certificate") signed by an officer or authorized representative of the Transferor (as evidenced in an Incumbency Certificate delivered to Trustee) and certifying:

(i) that the invoice is for Uplands Area Work performed at the Site in accordance with the Consent Decree;

(ii) a description of the Uplands Area Work that has been performed, the amount of the claim, and the identity of the payee(s);

(iii) that the Transferor has sent a copy of such Claim Certificate to EPA, both to the EPA attorney and the EPA RPM at their respective addresses shown in this Agreement, the date on which such copy was sent, and the date on which such copy was received by EPA as evidenced by a return receipt (which return receipt may be written, as in the case of overnight delivery, certified mail, or other similar delivery methods, or electronic, as in the case of e-mail, facsimile, or other similar delivery methods); and

(iv) that the Claim Certificate is being presented pursuant to this Section 4(b).

(c) EPA may object to any payment requested in a Claim Certificate submitted by the Transferor, in whole or in part, by delivering to the Trustee a written notice (an "Objection Notice') within thirty

(30) days after the date of EPA's receipt of the Claim Certificate as shown on the relevant return receipt. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that the requested payment is either (x) not for the costs of Uplands Area Work under the Consent Decree or (y) otherwise inconsistent with the terms and conditions of the Consent Decree or this Agreement, or z) EPA reasonably believes that the remaining balance of funds in the Trust is not sufficient to pay for the remaining cost of the Uplands Area Work. In the event that EPA objects in accordance with provision 4(c)(z), payment can be made only after the amount of the performance guarantee is increased or EPA otherwise withdraws its objection. Any dispute between EPA and Vertellus regarding the amount of the performance guarantee shall be resolved pursuant to Section X (Performance Guarantee) and Section XVI (Dispute Resolution) of the Consent Decree.

(d) If the Trustee receives a Claim Certificate and does not receive an Objection Notice from EPA within the time period specified in Section 4(c) above, the Trustee shall, after the expiration of such time period, promptly make the payment from the Fund requested in such Claim Certificate.

(e) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(c) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, after the expiration of such time period, promptly make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund for the portion of the requested payment to which EPA has objected in its Objection Notice.

(f) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(c) above, which Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate.

(g) If, at any time during the term of this Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Consent Decree with respect to Uplands Area Work and intends to direct payment of monies from the Fund to pay for performance of Uplands Area Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Sections 4(b)-(f) above shall immediately be suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the Fund at the request of the Transferor, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Sections 4(b)-(f) above shall be reinstated.

(h) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement. The Trustee may rely on any statement made by the Transferor with regard to any request for payment in compliance with and made under this Section 4 and shall have no responsibility to investigate or confirm the statements made in such request.

Section 5. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with directions which the Transferor may communicate in writing to the Trustee from time to time, except that:

(a) securities, notes, and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the U.S. federal government or any U.S. state government or as otherwise permitted in writing by the EPA;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the U.S. federal or any U.S. state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment. The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein. The Trustee is authorized to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 7. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. federal government or any U.S. state government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the U.S. federal government.

(d) The Trustee is prohibited from challenging EPA's determination under Section 4(c) of this agreement.

Section 8. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Transferor. The Trustee is authorized in its absolute discretion to appoint from time to time and Agent or Agents for the purpose of performing any act which the Trustee is authorized, empowered or directed under this Trust Agreement to perform, and said Agent's fees and expenses shall be paid as herein provided.

Section 9. Annual Valuation. The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish to the Transferor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as EPA may request from time to time.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Transferor under this Trust Agreement.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Transferor and as notified in writing to the Beneficiary.

Section 12. Trustee and Successor Trustee. The Trustee and any replacement Trustee must be approved in writing by EPA and must not be affiliated with the Transferor or be a "related person" as defined in Treasury Regulation Section 1.468B-l(d)(2). The Trustee may resign or the Transferor may replace the Trustee, but such resignation or replacement shall not be effective until the Transferor has appointed a successor trustee approved in writing by EPA and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Transferor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to EPA or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Transferor, the Beneficiary, and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 13. Instructions to the Trustee. All instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity giving such

instructions. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended only by an instrument in writing executed by the Transferor and the Trustee, and with the prior written consent of EPA.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of the Transferor to terminate following written notification to Transferor by EPA of its acceptance of Transferor's certification of completion for the Uplands Area Work, or (b) upon written agreement of the Transferor, the Trustee and the EPA, if the Transferor ceases to exist. Upon termination of the Trust pursuant to Section 15(a), all remaining trust property (if any), less final trust administration expenses, shall be delivered to a charity to be selected by the Transferor or as otherwise ordered by the Court. If such Funds are to be paid to a charity selected by the Transferor, pursuant to Section 15(a) herein, the Transferor shall provide the Trustee with a written direction regarding the charity selected. The Trustee shall have no further responsibility other than to comply with such written instruction of the Transferor with regard to payment to such charity.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Transferor or the EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Transferor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, other than any liability arising from a criminal proceeding wherein the Trustee had reasonable cause to believe that the conduct in question was unlawful, including all expenses reasonably incurred in its defense in the event the Transferor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of West Virginia.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 19. Notices. All notices and other communications given under this agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) If to the Transferor, to

Vertellus Specialties Inc.
201 North Illinois Street, Suite 1800
Indianapolis, IN 46204
Attn: General Counsel

With copy to:

Glenn Harris, Esq.
Ballard Spahr Andrews & Ingersoll LLP
210 Lake Drive East, Suite 200
Cherry Hill, New Jersey 08002-1163.

(b) If to the Trustee, to [_____].

(c) If to EPA, to [EPA Region ___, Remedial Project Manager for the Site] and [EPA Region ___, Office of Regional Counsel contact for the Site], at [_____].

Section 20. Entire Agreement. This Trust Agreement constitutes the entire the entire agreement between the parties relating to the holding and disbursement of the Funds and sets forth in their entirety the obligations and duties of Trustee with respect to the Trust.

Section 21. Patriot Act Disclosure. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity the Trustee will ask for documentation to verify its formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation

Section 22 Method of Execution. This Trust Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Remainder of page left blank intentionally.]

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

VERTELLUS SPECIALTIES INC.

[Signature of Transferor]
[Name and Title]

State of _____ County
of _____

On this [date], before me personally came [name of Transferor official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

TRUSTEE

[Signature of Trustee] [Name
and Title]

State of _____ County
of _____

On this [date], before me personally came [name of Trustee official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

Appendix E

BJS Site River Removal Action Trust Agreement
Big John's Salvage - Hoult Road Superfund Site ("BJS Site")
Dated: _____ __, _____

This Trust Agreement (this "Agreement") is entered into as of [date] by and among Exxon Mobil Corporation ("ExxonMobil"), a corporation organized and existing under the laws of the State of _____, Vertellus Specialties Inc. ("Vertellus" or "Grantor"), a corporation organized and existing under the laws of the State of Indiana, and U.S. Bank National Association, a national banking association organized and existing under the laws of the State of United States (the "Trustee").

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States federal government, ExxonMobil, Vertellus, and another entity have entered into a Consent Decree, *United States of America v. ExxonMobil Corporation, et al.*, Civil Action No. 1:08-CV-00124-IMK in the United States District Court for the Northern District of West Virginia, for the BJS Site (hereinafter the "Consent Decree");

Whereas, Paragraph 29 of the Consent Decree provides, *inter alia*, that Vertellus will establish a trust fund in the amount of $5,056,000.00 to provide assurance that funds will be available as and when needed for performance of the Work required by the Consent Decree relating solely to the River Removal Action (the "River Removal Action Work"), as further defined below;

Whereas, Paragraph 39(b) of the Consent Decree provides that ExxonMobil shall pay $5,000,000.00 into the trust fund required to be established for the River Removal Action Work;

Whereas, Vertellus will pay $56,000.00 into the trust fund;

Whereas, the September 2010 Engineering Evaluation/Cost Analysis ("EE/CA") prepared for the BJS Site by TetraTech NUS, Inc. on behalf of the United States Environmental Protection Agency estimated that the costs of the River Removal Action Work will be $5,056,000.00 (present valued), as further described in EE/CA Appendix C "River Sediment Alternative 2 – Excavation and off-site disposal/treatment – Option B (BSD/SSD);"

Whereas, in order to provide such financial assurance, Grantor has agreed to establish and fund the trust created by this Agreement; and

Whereas, the Grantor and ExxonMobil, acting through their duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Grantor, ExxonMobil, and the Trustee agree as follows:

***Section 1. Definitions. As used in this Agreement*:**

(a) Unless otherwise defined herein, capitalized terms shall have the meaning assigned thereto in the Consent Decree.

(b) The term "Beneficiar(ies)" shall have the meaning assigned thereto in Section 3 of this Agreement.

(c) The term "Business Day" means any day, other than a Saturday or a Sunday, that banks are open for business in Morristown, New Jersey USA.

(d) The term "Claim Certificate" shall have the meaning assigned thereto in Section 4(a) of this Agreement.

(e) The term "Fund" shall have the meaning assigned thereto in Section 3 of this Agreement.

(f) The term "Grantor" shall mean Vertellus Specialties Inc.

(g) The term "Objection Notice" shall have the meaning assigned thereto in Section 4(b) of this Agreement.

(h) The term "Site" shall have the meaning assigned thereto in Section 2 of this Agreement.

(i) The term "Trust" shall have the meaning assigned thereto in Section 3 of this Agreement.

(j) The term "Trustee" shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.

(k) The term "River Removal Action Work" shall have the meaning assigned thereto in the Consent Decree.

Section 2. Identification of Facilities and Costs. This Agreement pertains to costs for the River Removal Action Work required at the Big John's Salvage – Hoult Road Superfund Site in Marion County, West Virginia (the "Site"), pursuant to the above referenced Consent Decree.

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust (the "Trust"), for the benefit of EPA (the "Beneficiary"), to assure that funds are available to pay for performance of the River Removal Action Work in the event that Grantor fails to conduct or complete the Work required by, and in accordance with the terms of, the Consent Decree. The Grantor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of funds in the amount of Five Million Fifty-Six Thousand U.S. Dollars ($5,056,000.00) contributed by Vertellus directly in the amount of Fifty-Six Thousand U.S. Dollars ($56,000.00) and by ExxonMobil on behalf of Vertellus in the amount of Five Million U.S. Dollars ($5,000,000.00). Such funds, along with any other monies and/or other property hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the "Fund." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor owed to the United States.

Section 4. Payment for River Removal Action Work Required Under the Consent Decree. The Trustee shall make payments from the Fund in accordance with the following procedures.

(a) Upon delivery of a Claim Certificate (as defined below), payments (or partial payments thereof) shall be made based on the schedule contained on Appendix A (the "Payment Trigger"). From time to time, the Grantor may request that the Trustee make payment from the Fund for River Removal Action Work performed under the Consent Decree by delivering to the Trustee, ExxonMobil, and EPA a written invoice and certificate (together, a "Claim Certificate") signed by two authorized representatives of the Grantor (such authorized representatives as identified in an Incumbency Certificate) and certifying under penalty of perjury:

(i) that the invoice is for River Removal Action Work performed at the Site in accordance with the Consent Decree;

(ii) a description of the River Removal Action Work that has been performed, the amount of the claim, and the identity of the payee(s);

(iii) a statement regarding whether the payment requested (or portion thereof) is greater or less than the amount estimated with respect to the River Action Removal Work Milestone (as set forth in Appendix A) to which such payment request relates and the reasons for such overage or underage; and

(iv) that the Grantor has sent a copy of such Claim Certificate to ExxonMobil and a copy to EPA, both to the EPA attorney and the EPA RPM at their respective addresses shown in this Agreement, the date on which such copy was sent, and the date on which such copy was received by EPA as evidenced by a return receipt (which return receipt may be written, as in the case of overnight delivery, certified mail, or other similar delivery methods, or electronic, as in the case of e-mail, facsimile, or other similar delivery methods).

(b) EPA may object to any payment requested in a Claim Certificate submitted by the Grantor (or its authorized representatives), in whole or in part, by delivering to the Trustee a written notice (an "Objection Notice") within thirty (30) days after the date of EPA's receipt of the Claim Certificate as shown on the relevant return receipt. An Objection Notice sent by EPA shall state (i) whether EPA objects to all or only part of the payment requested in the relevant Claim Certificate; (ii) the basis for such objection, (iii) that EPA has sent a copy of such Objection Notice to the Grantor and the date on which such copy was sent; and (iv) the portion of the payment requested in the Claim Certificate, if any, which is not objected to by EPA, which undisputed portion the Trustee shall proceed to distribute in accordance with Section 4(d) below. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that (x) EPA reasonably believes that the remaining balance of funds in the Trust is not sufficient to pay for the remaining cost of the Work or (y) that the request for payment in a Claim Certificate is otherwise inconsistent with the terms and conditions of the Consent Decree or this Agreement. In the event that EPA objects in accordance with provision 4.b.x., payment can be made only after the amount of the performance guarantee is increased or EPA otherwise withdraws its objection. Any dispute between EPA and Vertellus regarding the amount of the performance guarantee shall be resolved pursuant to Section X (Performance Guarantee) and Section XVI (Dispute Resolution) of the Consent Decree.

(c) If the Trustee receives a Claim Certificate and does not receive an Objection Notice from EPA within the time period specified in Section 4(b) above, the Trustee shall, after the expiration of such time period, promptly make the payment from the Fund requested in such Claim Certificate.

(d) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, after the expiration of such time period, promptly make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund for the portion of the requested payment to which EPA has objected in its Objection Notice.

(e) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, which Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate.

(f) If, at any time during the term of this Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Consent Decree and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Sections 4(a)-(e) above shall immediately be suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of River Removal Action Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the Fund at the request of the Grantor, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Sections 4(a)-(e) above shall be reinstated.

(g) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement.

(h) The Trustee shall be under no obligation to determine the Grantor's compliance with, or to confirm any amount, with regard to the attached Appendix A. The Trustee shall solely and conclusively rely on the statements of the Grantor, as identified in 4(a)(i), (ii), (iii), and (iv) above, with regard to any Claim Certificate delivered to the Trustee as evidence of compliance with this section.

Section 5. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund solely in U.S. dollar denominated obligations of the U.S. Government or federal agencies, each with a tenure of no longer than three months or when funds are expected to be required, whichever is shorter, and shall keep the Fund invested as a single fund, without

distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time, except that:

(a) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the U.S. federal or any U.S. state government;

(b) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon; and

Section 6. Commingling and Investment. The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein. The Trustee is authorized to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 7. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. federal government or any U.S. state government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the U.S. federal government.

(d) The Trustee is prohibited from challenging EPA's determination under Section 4 of this agreement.

Section 8. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by

the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Grantor.

Section 9. Annual Valuation. The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish to the Grantor, to ExxonMobil, and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as Grantor, EPA, or ExxonMobil may request from time to time.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Grantor under this Trust Agreement.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor and as notified in writing to the Beneficiary.

Section 12. Trustee and Successor Trustee. The Trustee and any replacement Trustee must be approved in writing by EPA and must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee approved in writing by EPA and ExxonMobil and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to EPA or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary, ExxonMobil, and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 13. Instructions to the Trustee. All instructions to the Trustee shall be in writing, and, with respect to instructions from the Grantor, signed by two authorized representatives empowered to act on behalf of the Grantor as evidenced in an Incumbency Certificate delivered to the Trustee. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended only by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of EPA and ExxonMobil.

Section 15. Irrevocability and Termination. This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of the Grantor to terminate following issuance of a certification of completion of the River Removal Action by EPA, or (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to EPA, ExxonMobil, and the Grantor. Upon termination of the Trust pursuant to Section 15(a), any remaining trust property will be distributed as follows: a) if the total amount of payments made pursuant to Claims Certificates exceeds $5 million, then to Vertellus, less final trust administration expenses; b) if the total amount of payments made pursuant to Claims Certificates is less than $5 million, then, with respect to any such amount, seventy percent (70%) of remaining trust property shall be delivered to ExxonMobil and thirty percent (30%) of any such sums shall be delivered to Vertellus, less final trust administration expenses.

The Grantor and ExxonMobil shall provide a joint written direction to the Trustee, upon the termination of the Trustee pursuant to 15(a) above, which written direction shall include instructions as to the amount, payee, and payment instructions with regard to all funds to be released.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor, ExxonMobil or the EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of West Virginia.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 19. Notices. All notices and other communications given under this agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) If to the Grantor, to [_____].

(b) If to ExxonMobil, to [ ].

(c) If to the Trustee, to [_____].

(d) If to EPA, to [EPA Region ___, Remedial Project Manager for the Site] and [EPA Region ___, Office of Regional Counsel contact for the Site], at [_____].

Section 20. Entire Agreement. This Trust Agreement constitutes the entire the entire agreement between the parties relating to the holding and disbursement of the Funds and sets forth in their entirety the obligations and duties of Trustee with respect to the Trust.

Section 21. Patriot Act Disclosure. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity the Trustee will ask for documentation to verify its formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation

Section 22 Method of Execution. This Trust Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Remainder of page left blank intentionally.]

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

VERTLLUS SPECIALTIES INC.

[Signature] [Name and Title]

State of _____
County of _____

On this [date], before me personally came [name of Grantor official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of Vertellus Specialties Inc., the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

EXXON MOBIL CORPORATION

[Signature] [Name and Title]

State of _____
County of _____

On this [date], before me personally came [ ], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of ExxonMobil Corporation, the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

TRUSTEE

[Signature of Trustee] [Name
and Title]

State of _____
County of _____

On this [date], before me personally came [name of Trustee official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

Appendix A

Terms used in Appendix A have the same meaning as the terms used in EE/CA Appendix C "River Sediment Alternative 2 – Excavation and off-site disposal/treatment – Option B (BSD/SSD) and the Consent Decree.

	River Removal Action Work Milestone		Estimated Amount		Payment Trigger
1	Selection of the Supervising Contractor for River Removal Action		$ 75,000.00		Upon EPA approval of the Supervising Contractor pursuant to Para. 9.a
2	Remedial design, additional sampling for delineation, project management and construction		$ 700,698.00		Upon EPA approval of the River Removal Action Response Action Plan identified in Para. 10.e of the Consent Decree
3	Completion of Dredging		$ 1,445,000.00		Upon notice to EPA that River Removal Action dredging work is complete
4	Completion of Sediment Disposition		$ 1,659,153.00		Upon notice that River Removal Action sediment removal work is complete
5	Attainment Sampling Study		$ 60,000.00		Upon notice to EPA that River Removal Action attainment sampling study work is complete
6	Demobilization and Completion Report		$ 500,000.00		Upon notice to EPA per Para. 10.h of the Consent Decree that River Removal Action physical construction work is complete
7	1st Annual Sampling Report		$ 150,000.00		Upon notice to EPA that such sampling report work is complete
8	2nd Annual Sampling Report		$ 150,000.00		Upon notice to EPA that such sampling report work is complete
9	3rd Annual Sampling Report		$ 150,000.00		Upon notice to EPA that such sampling report work is complete
10	4th Annual Sampling Report		$ 150,000.00		Upon notice to EPA that such sampling report work is complete
11	Final Annual Sampling Report		$ 150,000.00		Upon issuance by EPA of it acceptance of the Certification of Completion relating to the River Removal Action per Para. 36.b of the Consent Decree

Appendix F

CERCLA Financial Assurance Financial Test:
Sample CFO Letter (for Test Alternative 1)

[PRP Letterhead]

[Address Block] [Date]

_____
_____
_____

Dear [_____]:

I am the chief financial officer of [name and address of PRP] (the "Company"). This letter is in support of the Company's use of a financial test to demonstrate financial assurance for the obligations of the Company under that certain [Consent Decree (the "Consent Decree")], dated _____ ___, _____, Docket No. [_____], between the PRP and EPA, entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. ("CERCLA"). This letter confirms the Company's satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to utilize the financial test as financial assurance under the Consent Decree.

[*Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write "None" in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.*]

1. The dollar amount of financial assurance required by Paragraph [___] of the Consent Decree and covered by the Company's use of the financial test is [$_____].

2. The Company is a signatory to the following CERCLA settlements (other than the Consent Decree) under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [$_____], and is shown for each such settlement as follows:

3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance through a financial test, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by

a financial test is equal, in the aggregate, to [$_____], and is shown for each such facility as follows:

4. The Company guarantees the CERCLA settlement obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties. The total dollar amount of such CERCLA settlement and regulated facility obligations so guaranteed is equal, in the aggregate, to [$_____], and is shown for each such settlement and/or facility as follows:

5. The Company [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission ("SEC") for the Company's latest fiscal year.

6. The Company's fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company's independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:

A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [$____].

*B. Company's total liabilities equal [if any portion of the aggregate dollar amount from line A is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines C and D]: [$____]

*C. Company's tangible net worth equals: [$____]

*D. Company's net worth equals: [$____]

*E. Company's current assets equal: [$____]

*F. Company's current liabilities equal: [$____]

G. Company's net working capital [line E minus line F] equals: [$____]

*H. Sum of Company's net income plus depreciation, depletion, and amortization equals: [$____]

*I. Company's total assets in the U.S. equal (required only if less than 90% of Company's assets are located in the U.S.): [$____]

J. Is line C at least $10 million? (Yes/No): [____]

K. Is line C at least 6 times line A? (Yes/No): [____]

L. Is line G at least 6 times line A? (Yes/No): [____]

*M. Are at least 90% of Company's assets located in the U.S.? (Yes/No): [____]
If "No," complete line N.

N. Is line I at least 6 times line A? (Yes/No): [____]

O. Is line B divided by line D less than 2.0? (Yes/No): [____]

P. Is line H divided by line B greater than 0.1? (Yes/No): [____]

Q. Is line E divided by line F greater than 1.5? (Yes/No): [____]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter 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.

_____ [Signature]

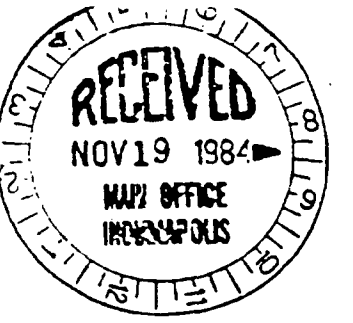
_____ [Name]

_____ [Title]

_____ [Date]

[NOTARY BLOCK]

Appendix G



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	:	
BIG JOHN'S SALVAGE, INC. Hoult Road Fairmont, West Virginia 26554	:	Docket No. III-85-2-DC
PROCEEDING UNDER SECTION 106(a) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 (40 U.S.C. SECTION 9606(a))	:	CONSENT ORDER

A. AUTHORITY

This Consent Order ("Order") is issued by the Environmental Protection Agency ("EPA") to Reilly Tar and Chemical Corporation ("Reilly") pursuant to §106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), by authority delegated to the undersigned by the Administrator of EPA. Notice of the issuance of this Order has been given to the State of West Virginia.

B. PARTIES

The parties to this Order are the United States of America, by the U. S. Environmental Protection Agency and Reilly Tar and Chemical Corporation, an Indiana corporation.

This Order shall apply to and be binding upon both parties hereto, including their officers, directors, employees, agents, servants, receivers, trustees,

Order. The parties recognize that, in consenting to the issuance of this Order, Respondent Reilly Tar and Chemical Corporation does not admit or concede and specifically denies the determinations set forth above and any of the allegations of fact or conclusions of law herein and does not concede that any actions taken to date or ordered herein to be taken at the Hoult Road site are authorized or required by CERCLA, its implementing regulations, or any other federal statutory or common law. Reilly specifically reserves the right to contest the Determinations, Findings of Fact and Conclusions of Law contained herein. Reilly further specifically denies any fault or liability under CERCLA or any other Federal statutory or common law and any responsibility for response costs thereunder.

The United States agrees that it shall not use this Order as the basis for the institution of any judicial or administrative proceedings, or as the basis of any defense, jurisdictional or otherwise, except to enforce the terms of this Order. However, the EPA reserves the right to use all information, studies, and data referenced in this Order in any proceeding which could be brought by EPA.

NOW, THEREFORE, without admission or adjudication of any issue of fact or law herein, and without this Consent Order constituting any evidence of liability or fault by any party hereto with respect to any allegations of fact or conclusions of law made herein, and upon consent of the parties hereto, this Order is hereby issued.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Big John's Salvage, Inc., is and has been since January of 1973, the owner of that real estate designated as plot 04-02 on Marion County, West Virginia tax maps (the "Hoult Road site").

2. Big John's Salvage, Inc., is engaged in the business of salvaging scrap metal and glass cullet at the Hoult Road site.

3. Respondent, Reilly Tar and Chemical Corporation owned and operated the Hoult Road site from 1932 to January of 1973. During that time, tar wastes which may have contained the substances listed in paragraph nine below were disposed of at the Hoult Road site.

4. Respondent, Reilly Tar and Chemical Corporation sold or otherwise transferred or conveyed the Hoult Road site to Big John's Salvage, Inc. in January of 1973.

5. The Hoult Road site and certain adjacent land as depicted on the attached map constitute a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

6. During July and August of 1983 and January of 1984, authorized representatives of EPA conducted a multimedia sampling and analytical program at the Hoult Road site pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

7. Pursuant to this program, sixty-eight soil, fourteen water, ten sediment, twelve biological and two waste samples were taken by representatives of EPA. In addition, three bioassays were performed

on the unnamed tributary flowing near the southeast border of the facility and eight bioassays were performed on each of the water samples taken in January 1984.

8. As a result of the inspection and sampling program, tar was discovered on the Hoult Road site in the drainage ditch and the unnamed tributary.

9. Analyses of samples taken of the tar revealed the presence of the following substances at the maximum concentrations listed below:

Substance	Concentration in parts per million
Acenaphthene	11,040
Fluoranthene	38,640
Naphthalene	30,360
Benzo (k) Fluoranthene	19,320
Chrysene	10,626
Acenaphthylene	1,048
Benzo (g, h, i) Perylene	4,002
Fluorene	16,560
Phenanthrene	55,200
Dibenzo (a, h) Anthracene	1,656
Indeno (1, 2, 3-cd) Pyrene	3,312
Pyrene	41,400

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and are subject to the terms and provisions of the Act.

10. Analyses of samples taken from an oil/water separator located on the Hoult Road site revealed the following substances at the maximum concentrations listed below:

Substance	Concentration in parts per million
2, 4-Dimethylphenol	329
Phenol	324
Acenaphthene	6,180
Fluoranthene	9,785
Naphthalene	41,500
Benzo (a) Anthracene	2,781
Benzo (a) Pyrene	1,699
Benzo (k) Fluoranthene	3,193
Chrysene	2,420
Fluorene	8,240
Phenanthrene	18,025
Pyrene	14,000

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and are subject to the terms and provisions of the Act.

11. Discharges from the oil/water separator flow into an unnamed tributary which flows into the Monongahela River.

12. Analyses of samples taken from soil in the area of the tar deposits and oil/water separator demonstrate the presence of the following substances at the maximum concentrations listed below:

Substance	Concentration in parts per million
Naphthalene	4,200
Acenapthylene	370
Acenaphthene	2,400
Fluorene	3,900
Phenanthrene	11,000
Fluoranthene	4,600
Pyrene	4,200
Chrysene	700
Benzo (k) Fluoranthene	120
Indeno (1, 2, 3-cd) Pyrene	110
Benzo (g, h, i) Perylene	82
Ethyl Benzene	15,000
1, 1, 1-Trichloroethane	6,600
Methylene Chloride	8,800

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and are subject to the terms and provisions of the Act.

13. The topography of the Hoult Road site is such that runoff from the site can flow towards an unnamed tributary of the Monongahela River. The unnamed tributary flows into the Monongahela River.

14. Analyses of samples taken of sediment collected in the unnamed tributary demonstrate the presence of the following substances at the maximum concentrations listed below:

Substance	Concentration in parts per million
Naphthalene	180
Acenaphthylene	220
Fluorene	310
Phenanthrene	1,500
Anthracene	1,050
Fluoranthene	1,360
Pyrene	1,160
Chrysene	500

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and are subject to the terms and provisions of the Act.

15. Analysis of a sample taken of sediment collected in the unnamed tributary upstream of the Hoult Road site did not show the substances listed in paragraph fourteen above.

16. Analysis of a sample taken of sediment at the confluence of the tributary and the Monongahela River demonstrated the presence of the following substances at the concentrations listed below:

Substance	Concentration in parts per million
Acenaphthylene	2.1
Chrysene	4.0
Fluoranthene	7.6
Phenanthrene	10.3

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA 42 U.S.C. §9601(14), and are subject to the terms and provisions of the Act.

17. Analysis of water from the unnamed tributary at the railroad berm slightly upstream of the confluence with the Monongahela River demonstrated the presence of the following substances at the concentrations listed below:

Substance	Concentration in parts per million
Fluoranthene	74
Benzo (a) Anthracene	37
Benzo (a) Pyrene	45
Benzo (k) Fluoranthene	17
Chrysene	29
Fluorene	26
Phenanthrene	88
Pyrene	130

These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9604(14), and are subject to the terms and provisions of the Act.

18. Chrysene, Indeno (1, 2, 3-cd) Pyrene, Benzo (a) Anthracene, Benzo (a) Pyrene, and cadmium are known human and animal carcinogens.

19. Acenaphthene, Benzo (k) Fluroanthene, Phenanthrene, Pyrene, and lead are known animal carcinogens.

II. TASKS

Respondent Reilly Tar and Chemical Corporation shall:

1. Clean out the oil/water separator and remove visibly contaminated soils, tar, and oil from the drainage areas around the oil/water separator (See Area 1 on map, attached hereto and made a part hereof), within twelve (12) weeks of the effective date of this Order.

2. Excavate all visibly contaminated soils, tar, and oil in the following areas:

   a. The drainage ditch from the oil/water separator to its confluence with the unnamed tributary (See Area 2 on map), within twelve (12) weeks of the effective date of this Order.

   b. The sedimentation area at the outfall of the unnamed tributary to the Monongahela River (See Area 3 on map), within twelve (12) weeks of the effective date of this Order.

   c. The tar pits and the surrounding visibly contaminated seepage area (See Area 4 on map), within twelve (12) weeks of the effective date of this Order.

3. Backfill all excavated portions with clean fill where necessary to maintain drainage patterns, restore to original grade, and provide appropriate restoration for areas affected by site activities, within twelve (12) weeks of the effective date of this Order.

4. Dispose, store and treat, all excavated materials at sites that have Interim Status or a permit under Section 3005 of the Resource Conservation and Recovery Act; storage and treatment at the facility being excepted.

5. Excavate contaminated material to a depth determined by visual observation and approved by the OSC (On-scene Co-ordinator) or his designee. The OSC or his designee will conduct a final inspection of each area after excavation and will give approval prior to any backfilling. Such approval shall not be unreasonably withheld.

6. If either party (including any contractor or consultant thereof) is prevented from carrying out the provisions of this Order by reason of war; revolution; riots; strikes; lockouts, work stoppages or other labor dispute (provided no party or contractor, or consultant thereof shall be required to settle a labor dispute against its own best judgment); explosions; plant accidents; fire; flood; storm damage; weather conditions; compliance with any law or regulation; transportation delays or embargoes; shortage of fuel, power, labor, materials, containers, supplies, or transportation equipment; Acts of God; or other causes beyond its control, it shall be excused from performance hereunder to the extent of such interference.

In the case of such event, the party claiming applicability hereunder shall give written notice to the other, giving the reasons therefor and anticipated time of delay. All timetables for completion of tasks in this Order shall be suspended during an event under this provision. Prompt notice shall be given at the conclusion of any applicable event.

7. At the conclusion of the tasks enumerated in this Order, the OSC shall make a final review and inspection and upon his certification, EPA shall issue to Reilly a written acknowledgement of complete compliance with this Order.

III. ADDITIONAL ACTIONS

1. All actions performed by Respondent pursuant to this Order shall be in compliance with all applicable laws and regulations and conform to the reasonable requirements of the OSC.

2. Respondent shall submit to EPA monthly reports of progress toward implementation of the activities described in this Order. Except as otherwise directed by EPA, such reports shall be due on the third business day following the month for which the report is issued and shall be sent to the addressee indicated in Paragraph 4 of this section. The first such report shall be due on the third business day following the month of the effective date of this Order.

3. All documents produced and delivered to EPA in the course of implementing this Order shall be available to the public unless identified as confidential in conformance with 40 C.F.R. Part 2. Documents so identified shall be treated as confidential only in accordance with applicable confidentiality regulations.

4. All reports submitted to EPA under the terms of this Order shall be sent by certified mail, return receipt requested, to the following address:

Dr. Walter F. Lee (3HW12)
Hazardous Waste Management Division
U. S. Environmental Protection Agency, Region 3
6th & Walnut Streets
Philadelphia, Pennsylvania 19106

5. Nothing contained in this Order shall affect any right, claim, interest, or cause of action of any party hereto with respect to third parties not parties to this Order.

IV. RESOLUTION OF DISPUTES

In the event there is a dispute between EPA and Reilly regarding the details or the implementation of this Order, the dispute shall be resolved in the following manner.

1. Reilly shall submit its position and reasons therefor in writing to EPA. EPA shall review all such submittals within fourteen (14) calendar days of receipt and notify Reilly by the fourteenth calendar day, or the first working day thereafter, of their approval or disapproval. In the event the submittal is approved, it shall be considered an integral part of this Order. In the event that the submittal is disapproved in whole or part, EPA shall notify Reilly of the specific inadequacies in writing, and shall indicate the necessary amendments or revisions.

2. Within fourteen (14) calendar days of receipt of any notice of disapproval, or on the first working day thereafter, Reilly shall submit revisions to correct inadequacies or Reilly shall state in writing the reasons why the proposal, as originally submitted, should be approved.

3. If, within fourteen (14) calendar days from the date of Reilly's submission under 2, or the first working day thereafter, the parties have not reconciled all issues in disagreement, EPA shall modify Reilly's submittal as they deem necessary. The changes shall become an integral part of this Order. The modification shall be deemed a "final Agency action" regarding this Order, and shall be subject to judicial review.

4. Failure of Reilly to comply with a modification made to the Order pursuant to this Section shall not void the entire Order. EPA may, however, apply to a court of competent jurisdiction for an Order enforcing the modification made to this Order.

V. CREATION OF DANGER

In the event EPA determines that activities in non-compliance with this Order, or activities implementing this Order which present circumstances not expected or contemplated in this Order may create an imminent or substantial endangerment to human health or welfare or to the environment, EPA may order Reilly to stop further implementation of this Order for such period of time as needed to abate the danger or may petition a court of competent jurisdiction for such an Order.

VI. ASSUMPTION OF RISK

Reilly shall assume all financial and other risks associated with the response actions performed pursuant to this Order.

In assuming these risks Reilly does not waive its right to assert that other persons are responsible for the release which is the subject of this Order, to seek indemnity or contribution from such other persons, or to interpose any defense which may be available to it under law or equity.

VII. HOLD HARMLESS AGREEMENT

Reilly agrees to indemnify and save and hold the EPA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Reilly, its officers, employees, agents, or contractors in carrying out the activities pursuant to this Order.

EPA agrees to idemnify and save and hold Reilly, its agents, employees, contractors and consultants harmless from any and all claims or causes of action arising from or on account of acts or omissions of EPA, its officials, employees, agents, contractors or consultants in carrying out its activities covered by this Order or any other Order to which Reilly is not a party.

VIII. EFFECTIVE DATE

This Consent Order is effective on the day following receipt of a finally executed copy thereof by the Respondent and all times for performance of response activities shall be calculated from that date.

IX. RELEASE AND COVENANT NOT TO SUE

1. The following studies and investigations relating to the facility have been published:

   (a) West Virginia Department of Natural Resources - Analyses of 3/23/83.

   (b) West Virginia Department of Natural Resources - Analyses of 5/10/83.

   (c) Stablex-Reuther Report SR8203, dated 5/31/83.

   (d) EPA Fund Request - 6/17/83.

   (e) NIOSH investigation - letter dated 6/22/83.

   (f) EPA Extent of Contamination Study, 8/83, with Appendices II, III; Biota Sampling; Biota Report.

   (g) EPA Analyses dated 10/14/83.

   (h) EPA Scope of Work - 10/83.

   (i) EPA Assessment of Discharge - 1/84.

2. These studies and investigations, together with any others known to or in the possession of EPA as of the effective date of this Order, and any written assessments, reports, or memoranda or other written material prepared by or for EPA on or before the effective date of this Order shall, for purposes hereof, constitute the information known to EPA.

3(A). The issuance to Reilly by EPA of the written acknowledgement of complete compliance with this Order, as required by Paragraph 7 of Section II of this Order, shall constitute a full and complete settlement, discharge, and release by EPA of Reilly, except as described in paragraph B, and the EPA covenants not to sue Reilly or to take civil or administrative action against Reilly for the following:

1. All claims for civil penalties which were or could have been raised as of the effective date of this Order based on information known to EPA;

2. All claims resulting from or relating to the generation, handling, treatment, storage, disposal or presence of, or migration or discharge or threat thereof, of coal tar, the constituents of coal tar, creosote and other chemical substances at, on or from the facility or from Reilly's former operations, which claims were or could have been raised as of the effective date of this Order based on information known to EPA.

(B). This Order does not resolve the following matters:

i. Claims by federal agencies other than EPA, including, but not limited to any claims which may be brought by or on behalf of the Department of the Interior for damages to natural resources.

ii. Liability for response costs incurred prior and subsequent to this Agreement.

iii. Criminal liability, if any, of Reilly Tar & Chemical Corp.

iv. Reilly Tar & Chemical Corporation's liability arising out of or relating to the generation, transportation, treatment, handling, disposal, storage, or releases or threatened releases of hazardous substances resulting from its performance of the requirements of this Order.

(C). Nothing in this Order shall be construed to limit the authority of EPA to undertake any action against any person, including Reilly Tar & Chemical Corporation in response to conditions created during the performance of tasks under this Order which may present an imminent and substantial endangerment to the public health, welfare or the environment or which result in a release or threatened release of hazardous substances not contemplated by this Order.

(D). No legal release or covenant not to sue is given for any release or threat of release of pollutants or hazardous substances which create an imminent and substantial endangerment to public health or the environment if the source of said pollutants or hazardous substances or the effect of said release or threat of release was not known to EPA as of the effective date of this Order.

4. Subject to the foregoing, nothing herein shall waive EPA's right to enforce this Order, to initiate federally-funded clean-up activities pursuant to §104 of CERCLA, and to pursue subsequent cost recovery under CERCLA.

5. It is further agreed that notwithstanding the above or any other provision of this Order, the United States covenants not to sue Reilly or bring any civil or administrative action against Reilly for any remedial, removal, or mitigative costs relating to the cullet, cullet pile, glass recovery activities or any other activities conducted at, on, or adjacent to the facility which were demonstrably not part of Reilly's former operations.

X. PENALTIES FOR NON-COMPLIANCE

Respondent is advised that willful violation or failure or refusal to comply with this Consent Order, or any portion thereof, may subject them, under §106(b) of CERCLA, 42 U.S.C. §9606(b), to a civil penalty of not more than $5,000 for each day in which such violation occurs or such failure to comply

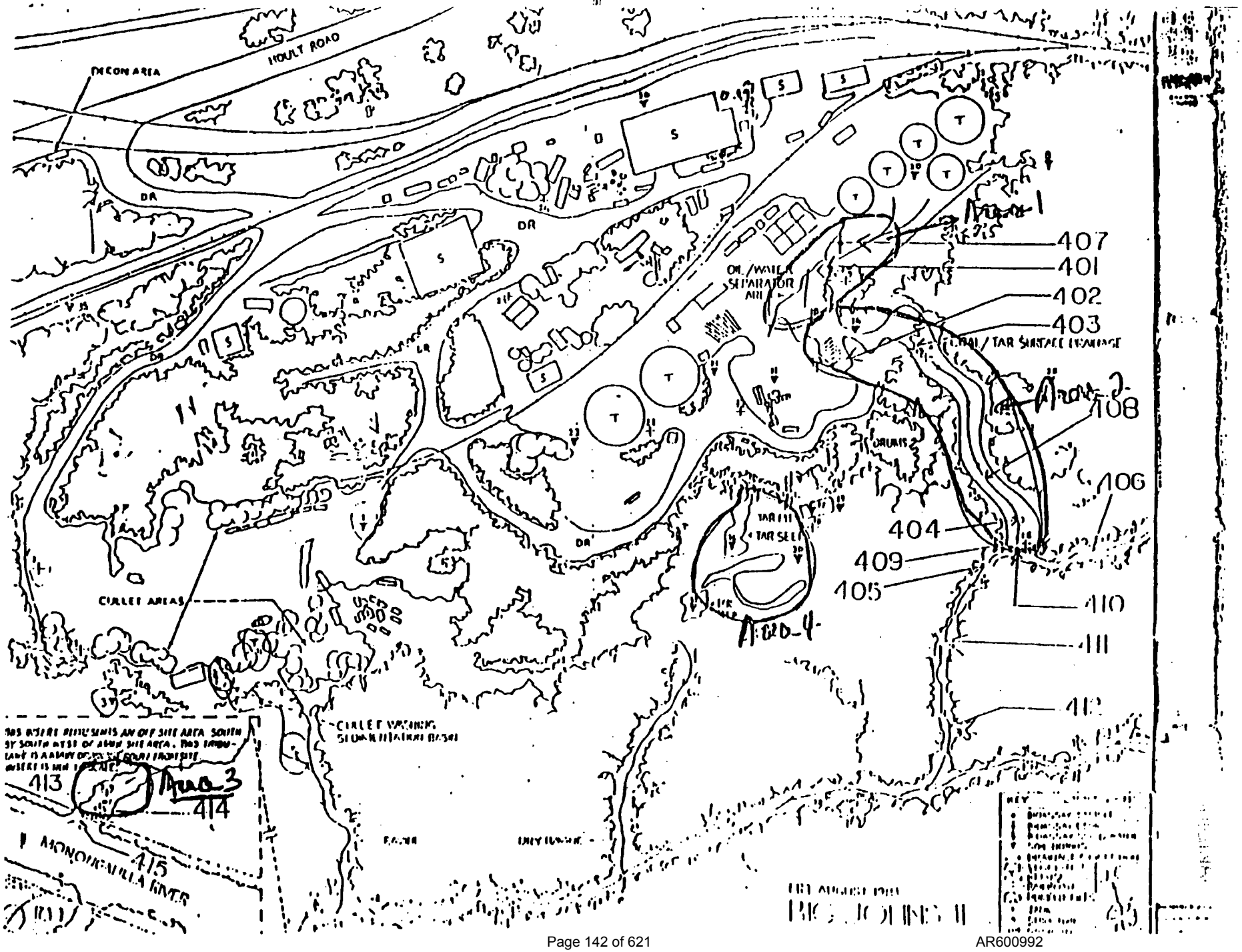
continues. Failure to comply with this Order, or any portion thereof, without sufficient cause, may subject Respondent under §107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), to liability for punitive damages in an amount up to three times the amount of any costs incurred by the government as a result of Respondent's failure to take proper action.

REILLY TAR & CHEMICAL CORPORATION

By: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____
Regional Administrator


HOULT ROAD
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DRUMS
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MONOMEMILLA RIVER

40932 M/C (Red) ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U S DISTRICT COURT
FILED AT CLARKSBURG, W. VA.

SEP 11 1986

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN BOYCE, REILLY TAR & CHEMICAL CORPORATION AND WESTINGHOUSE ELECTRIC CORPORATION,

Defendants.

CIVIL ACTION NO. 85-0244-(C)(K)

AMENDED ORDER

The Court having entered an order on July 30, 1986, dismissing and retiring from the docket of the Court the above-styled civil action for a period of ninety (90) days; further, the Court having entered a consent decree which resolves the litigation among the United States, Reilly Tar and Chemical Corporation, and Westinghouse Electric Corporation for the claims alleged in Civil Action No. 85-0244-(C)(K); and further the Court having been advised that John Boyce is not a settling defendant to the subject consent decree; NOW, THEREFORE, it is

ORDERED that, subject to the reopener provisions of the subject consent decree, and subject to a payment of $350,000 from the settling defendants to the plaintiff United States of America within thirty (30) days of entry of said

10-11-E

A

JUSTICE

3 SEP 16 1986

LANDS DIVISION
POLLUTION/ENFORCEMENT

AR600022

AR600993

ORIGINAL (Red)

consent decree, defendant Reilly Tar and Chemical Corporation and Westinghouse Electric Corporation are hereby dismissed from this action;

IT IS FURTHER ORDERED that, the Court's Order dated July 30, 1986, dismissing and retiring the above-styled civil action from this Court's docket is withdrawn.

ENTER:

Dated 9/9/86

WILLIAM M. KIDD
UNITED STATES DISTRICT JUDGE

I hereby certify that the annexed instrument is a true and correct copy of the original filed in my office.
ATTEST: [illegible]
Clerk, U. S. District Court
Northern District of West Virginia
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

United States of America, Plaintiff v. John Boyce, Reilly Tar & Chemical Corporation and Westinghouse Electric Corporation, Defendants	)	CIVIL ACTION NO. 85-0244-C(K)

CONSENT DECREE

The parties herein, the United States of America, plaintiff, and Reilly Tar & Chemical Corporation and Westinghouse Electric Corporation, defendants (hereafter referred to as the Settling Defendants), having agreed to this Consent Decree,

WHEREAS, the United States of America filed a complaint October 1, 1985, against John Boyce, Reilly Tar & Chemical Corporation and Westinghouse Electric Corporation pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607, to recover costs incurred by the United States in responding to an imminent and substantial endangerment to the public health or welfare or the environment from May, 198[illegible], to

ORIGINAL (Red)

January, 1984, at the Hoult Road site located in Fairmont, West Virginia, and owned by Big John Salvage Co., Inc., and

WHEREAS, the Settling Defendants filed Answers to the plaintiff's complaint on or about December 20, 1985, in which they denied all of the United States' claims contained in the complaint and;

WHEREAS, the United States and the Settling Defendants agree that settlement of this action and entry of this Consent Decree without further litigation and without any admission as to liability is the most appropriate means of resolving this matter and is in the public interest;

THEREFORE, it is Ordered, Adjudged and Decreed that:

I

JURISDICTION

1. This Court has jurisdiction of the subject matter for the limited purpose of this Consent Decree and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9607, 9613(b).

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II

PAYMENTS

2. Upon entry of this Consent Decree, the Settling Defendants shall pay to the United States the sum of $350,000 in satisfaction of and to settle all claims raised in this lawsuit concerning EPA's incurrence of response costs at the Hoult Road site in Fairmont, West Virginia, from May, 1983, up to the date of entry of this Consent Decree.

3. Payment shall be made by certified check made payable to the "EPA Hazardous Substances Response Trust Fund" and mailed to the United States Environmental Protection Agency, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. Each Settling Defendant shall send a photostatic copy of its check to the United States Attorney, Northern District of West Virginia, United States Post Office and Courthouse Building, 500 W. Pike Street, Clarksburg, West Virginia 26301, ATTN: David E. Godwin, Esquire, and to the Office of Regional Counsel, United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, ATTN: Martin Harrell, Esq., when payment is made.

ORIGINAL (Red)

4. Should the Settling Defendants fail to pay a total of $350,000 within 30 days from the date of entry of this Decree, the United States reserves the right to proceed against either Settling Defendant to recover any unpaid portion of the $350,000 and to collect interest on the outstanding principal at the legal rate.

5. Entry into this Consent Decree does not constitute, and shall not be construed as, any admission of liability, wrongdoing, violation of law or fault on the part of either Settling Defendant hereto, nor as an admission that any costs incurred by plaintiff were properly incurred or are recoverable pursuant to law. The Settling Defendants specifically deny any liability, wrongdoing, violation of law and fault in any respect. Payments by the Settling Defendants under the provisions of this Consent Decree are made only for the purpose of compromise and avoidance of the expense of litigation, and this Consent Decree shall not constitute or be construed as an adjudication or finding on the merits of any liability, fault, violation of law or any other wrongful conduct or practice on the part of either Settling Defendant.

III

STATUS OF THE SITE

6. The plaintiff believes that the response actions taken by the Environmental Protection Agency (EPA) and Reilly Tar & Chemical Corporation at the Hoult Road site from July, 1983, to April, 1985, have removed the imminent and substantial endangerment to the public health, welfare or the environment presented by conditions at the site. EPA is not currently aware of any imminent and substantial endangerment to the public health, welfare or the environment presented by the Hoult Road site. However, nothing in this Consent Decree limits the right of the United States to take any action authorized by law should the site later be found to present an imminent and substantial endangerment to the public health, welfare or the environment. EPA specifically notes that the removal of sedimentation basins presently used to collect run-off from the cullet pile area or failure to maintain them in proper working condition could result in an imminent and substantial endangerment to the public health, welfare or the environment.

IV

COVENANT OF THE PLAINTIFF NOT TO SUE

7. In consideration of and upon timely receipt of payment of $350,000 by the Settling Defendants, the plaintiff hereby covenants not to sue the Settling Defendants for any claims and any and all associated costs, including administrative expenses, attorneys' fees and interest, incurred by the plaintiff in connection with the response action taken at the Hoult Road site by EPA as of the date of entry of this Consent Decree.

8. This covenant not to sue extends only to the Settling Defendants.

9. In any pending or future action against non-settling parties, the Parties agree and this Court hereby finds that the principles of Section 4 of the Uniform Contribution Among Joint Tortfeasors Act (1955) shall govern, and that, accordingly, the Settling Defendants shall not be liable to make contribution to any person.

The Parties represent that this covenant is made in good faith and that the amount required to be paid pursuant to paragraph two, above, under all the circumstances of this case and only for purposes of settlement, represents a fair and

equitable apportionment of the Settling Defendants alleged responsibilities for the response costs incurred by the United States at the Hoult Road site.

The Parties recognize the possibility that there may be brought or asserted against the Settling Defendants suits or claims for contribution for liability by persons or entities that have not entered into this settlement which might, if successful, obligate the Settling Defendants to pay amounts in addition to those required pursuant to this Decree. It is the expressed intention of the Parties that the Settling Defendants not be required to pay amounts in contribution or be required to remain as parties in any suit or claim for contribution. The Parties also agree that the United States shall be under no obligation to assist the Settling Defendants in any way in defending any suit for contribution. The United States and the Settling Defendants believe that the terms of this Consent Decree constitute a fair and reasonable agreement.

V

COVENANT OF THE SETTLING DEFENDANTS

10. The Settling Defendants agree not to make any claims pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other provisions of law directly or indirectly against the Hazardous Substance

Response Trust Fund established by CERCLA, or other claims against the United States or against each other for expenses related to this case and this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VI

REOPENERS

11. Notwithstanding any other provisions of this Decree, the plaintiff reserves any and all rights it may have to institute a new action, if necessary, to compel one or more of the Settling Defendants to perform additional response measures at the Hoult Road site or to reimburse the United States for future cleanup costs, if

1) conditions unknown and undetected by the plaintiff on the effective date of this Consent Decree are discovered at the Hoult Road site which present or may present an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threat of release of hazardous substances from the Hoult Road site; and/or

2) plaintiff receives new information not known and which was not available on or before the effective date of this Consent Decree concerning the nature of the substances at the Hoult

Road site or the appropriateness of past response actions which indicates that the Hoult Road site may present an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threat of release of hazardous substances.

12. Nothing contained in this Decree shall be construed to limit the right of the plaintiff to take judicial or administrative action to enforce the federal environmental laws except as provided in paragraph seven, above.

VII

JUDGMENT

13. This Consent Decree represents final judgment in this action under Fed. R. Civ. P. 54, and this Court retains jurisdiction over this Decree to enforce, construe, implement, modify, terminate, or reinstate the terms of this Consent Decree, or to provide any further relief as the interests of justice may require consistent with this Decree.

The Parties enter into this Consent Decree and submit it to the Court for approval and entry.

Each of the signatories to this Decree certifies that he or she is fully authorized to enter into the terms and conditions of the Decree and to bind the party represented by him or her to this Decree.

For the Plaintiff:

UNITED STATES OF AMERICA

BY: _____

F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources Division

BY: _____

CYRUS S. PICKEN, Trial Attorney
Environmental Enforcement Section
Land and Natural Resources Division

BY: _____

WILLIAM A. KOLIBASH
United States Attorney
Northern District of West Virginia

BY: _____

DAVID E. GODWIN
Assistant United States Attorney
Northern District of West Virginia

For the Settling Defendants:

REILLY TAR & CHEMICAL CORP.

BY: _____

ROBERT POLACK, Esq.

WESTINGHOUSE ELECTRIC CORP.

BY: _____

ROGER E. WILLS JR., Esq.

BY: _____

Acting Assistant Administrator for Enforcement
and Compliance Monitoring
United States Environmental Protection
Agency

BY: M. Elizabeth Cox

M. ELIZABETH COX
Attorney/Advisor, Office of Enforcement
and Compliance Monitoring
United States Environmental Protection
Agency

BY: _____

BRUCE M. DIAMOND
Regional Counsel
Region III, U.S.E.P.A.

BY: _____

MARTIN HARRELL
Assistant Regional Counsel
U.S.E.P.A., Region III

I hereby certify that the annexed instrument is a true and correct copy of the original filed in my office.
ATTEST: Dr. Wally Edgell
Clerk, U. S. District Court
Northern District of West Virginia
By: Diana L. Bedell
Deputy Clerk

APPROVED AND SO ORDERED:

_____

WILLIAM M. KIDD, J.

Exhibit B

Action Memorandum

Appendix A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Action Memorandum – Request for Removal Action and Exemption from the $2 Million/12-Month Statutory Limit at the Big John Salvage Superfund Site, WV

FROM: Eric Newman, Remedial Project Manager
DE, VA, WV Remedial Section (3HS23)

TO: Ronald J. Borsellino, Director
Hazardous Site Cleanup Division (3HS00)

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval for a proposed non-time critical removal action at the Big John Salvage Superfund Site ("Site" or "BJS Site") in Fairmont, Marion County, West Virginia. This Action "consistency" exemption request from the $2 million and 12-month limitation is made under the consistency waiver provisions of Section 104(c)(1)(C) of CERCLA, 42 U.S.C. § 9604 (c)(1)(C).

This Action Memorandum identifies the proposed responses for contaminated soil, groundwater and sediment at the BJS Site. This Action Memorandum includes the proposed response for the Monongahela River portion of the Site to reduce exposure to contaminants in a "hotspot" of industrial wastes referred to as black semi-solid deposits ("BSD") and contaminants in stained sediments closely associated with the toxic hotspot that is serving as a source of contamination to Monongahela River sediments. The BSD and visibly stained sediments contain high levels of polycyclic aromatic hydrocarbons ("PAHs").

This response action includes an area in the Monongahela River impacted by co-mingled wastes from two contiguous Superfund sites, the Big John Salvage Site and the Sharon Steel/Fairmont Coke Works Site. The Administrative Record documents that historically, aqueous wastes and uncontrolled storm water runoff at/from the two facilities contained hazardous substances, pollutants or contaminants which flowed through a common tributary to the Monongahela River. The two facilities both handled coal-tar and coal tar byproducts containing high concentrations of the PAHs present in the BSD hotspot. The BJS Site is located on Hoult Road in Fairmont, West Virginia and was placed on the National Priorities List ("NPL") on July 27, 2000. The Sharon Steel/Fairmont Coke Works Site ("FCW Site") is located on Dixie Avenue in Fairmont, West Virginia and was placed on the NPL on December 23, 1996.

The Environmental Protection Agency ("EPA") performed a site-wide Remedial Investigation for the BJS Site and included the Monongahela River in the study area. An Engineering Evaluation/Cost Analysis ("EE/CA") was conducted in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.415 and applicable guidance. A thirty (30)-day public comment period on the EE/CA for the non-time critical

removal action ("NTCRA") proposed in this Action Memorandum included an advertisement placed in the Times West Virginian on October 4, 2009. On October 22, 2009, EPA and the West Virginia Department of Environmental Protection ("WVDEP") held a public meeting in Fairmont to present the draft EE/CA and solicit comment. The Administrative Record File for this NTCRA has been established pursuant to 40 C.F.R. § 300.415.

The response actions proposed in this Action Memorandum will mitigate threats to the public health, welfare, and the environment presented by the presence of an uncontrolled release of PAHs, including but not limited to naphthalene and benzo(a)pyrene, both hazardous substances listed at 40 C.F.R § 302.4 and as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14). The cleanup decision is based upon analysis in the EE/CA (see Attachment 1).

The proposed response actions for the Monongahela River include dredging highly contaminated material from the river, treatment and/or off-Site disposal in an appropriately permitted facility. The response activities will require approximately 8 months to plan and 60-120 on-Site working days to complete, and will result in the removal of approximately 5,400 cubic yards of waste material. The estimated cost to implement the proposed response action for the river is $5,073,000, including 5 years of environmental monitoring.

The proposed response actions for the upland portion of the Site include consolidating contaminated sediment with contaminated soils and containing the material on-Site with a low-permeability cap and enhanced collection and treatment system for contaminated groundwater. Post-removal site controls will be implemented to preserve the integrity of the response action. The upland response activities will require approximately 18-24 months to design and complete, and will result in the isolation of contaminated soil, sediment and groundwater. The estimated present net worth cost to implement the proposed response action for the upland portion of the Site is between $12,198,000 and $13,911,000 including 30 years of operations, maintenance and environmental monitoring.

The Monongahela River has been the subject of a Remedial Investigation and EE/CA completed under the Big John Salvage Superfund Site title. However, due to the co-mingled contamination originating from both the Big John Salvage and the Sharon Steel/Fairmont Coke Works facilities, EPA will provide the opportunity for the Potentially Responsible Parties ("PRPs") from both of these Superfund Sites to cooperatively implement all of the required response actions. An obligation of funds is not necessary at this time as EPA anticipates that this action will be conducted by the PRPs.

There are no nationally significant or precedent-setting issues associated with the Site.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

In October 2009 EPA completed, and released for public comment, the Administrative Record supporting an EE/CA addressing the Big John Salvage Superfund Site, including the Monongahela River in the study area. The Monongahela River portion of the study area is impacted by co-mingled wastes from the BJS and FCW Sites.

Environmental investigations have documented black semi-solid deposits of industrial wastes spread over approximately 1 acre of the Monongahela River bottom extending from the Sharon Steel Run confluence. The elliptical-shaped area ranges from 50-100 feet wide, extending approximately 25-50 feet upstream to approximately 350 feet downstream from the Sharon Steel Run confluence. The thickness of the BSD was reported to typically be 3-6 inches with mounds up to 12 inches thick. Analytical results from samples of BSD indicate that total PAH concentrations are in the 20,000 mg/kg range. Visibly stained sediment deposits (SSD), sediments which contain high enough mass of BSD to be visible, appear to be an erosion feature extending down gradient of the BSD. The SSD occurs in the upper 12 inches, is approximately 30 feet wide and was observed to extend 800 feet. The concentration of total PAHs in the visibly stained sediment deposits are the 1,000 mg/kg range. The intent of the NTCRA is to remove the BSD and SSD exhibiting significant toxicity from the Monongahela River and to restore the area.

Environmental investigations documented an estimated 1,800 cubic yards of buried coal tar wastes in at least 6 areas of the upland portion of the Site along with hundreds of thousands of cubic yards of soil contaminated with elevated concentrations of PAHs, including benzo(a)pyrene. Buried coal-tar wastes have seeped up to the ground surface in several areas, including the area near the existing water treatment plant. The surface and subsurface coal tar wastes are leaching hazardous constituents to groundwater, including but not limited to naphthalene.

2. Physical Location

This response action addresses the BJS Site and includes an area in the Monongahela River impacted by co-mingled wastes from two contiguous Superfund sites, the Big John Salvage Site and the Sharon Steel/Fairmont Coke Works Site. The definition of a Superfund site boundary is generally accepted to be the extent of contamination. The co-mingling of contamination extending from each of these Superfund Sites means that the respective Superfund Sites overlap within the area of concern. Accordingly, Site Conditions and Background information for each of the facilities upgradient of the area of concern within the Monongahela River will be described below.

a. Big John Salvage

The Big John Salvage Site (WVD054827944) is located in Fairmont, Marion County, West Virginia on the east bank of the Monongahela River (see Figure 1 for a general location map). The property lies along the eastern edge of WV Route 150 (Hoult Road), approximately 1,320 feet east of the Monongahela River. The extent of contamination from the Big John Salvage Site consists of both the BJS property and adjacent off-property areas sloping down to the Sharon Steel Run and extending into the Monongahela River downstream (north) of the property. The entire BJS Site is approximately 38 acres and is situated in a mixed industrial/residential area (see Figure 2). Steel Fabricators, Inc. ("Steel Fabricators") currently owns the 20-acre Big John's Property ("Big John's Property"). In terms of historic industrial use, these 20 acres constitute the most important portion of the 38-acre BJS Site (see Figure 3 for a tax parcel map).

The BJS Site also includes 18 acres of adjacent areas[1], including a low lying drainage area that is

1 The 18-acres of adjacent areas are comprised of steep slopes extending from the Big John Salvage Property down

known as the Unnamed Tributary #1 (also referred to as Sharon Steel Run). This portion of the Site is vegetated with trees and shrubs, and has steep hillsides dropping off to Sharon Steel Run and the Monongahela River. To the north and east, the Site is also bordered by generally steeply sloped, wooded terrain. Surface water runoff from the Site generally flows in a southerly direction toward Sharon Steel Run through three intermittent tributaries (East, Middle and West Tributaries). Sharon Steel Run originates south and east of the BJS Site at the Sharon Steel/Fairmont Coke Works Superfund Site and discharges to the Monongahela River.

The Monongahela River is a major river that flows northward where it discharges into the Ohio River approximately 125 miles downstream from the Site. The Site is located along a section of the Monongahela River which is known as the Opekiska water pool. This pool extends between mile marker 115.4 (Opekiska Lock) and mile marker 130 on the Monongahela River (note the confluence of Sharon Steel Run with the Monongahela River is located at approximately river mile 125.25, see Figure 4). At the confluence with Sharon Steel Run, the Monongahela River is more than 350 feet wide and 8-15 feet deep.

The Monongahela River is known to be used for multiple recreational purposes including swimming, boating and sport fishing, as well as for commerce, mainly coal and other materials barging. This river is protected as a warm-water fishery and, according to the regional fish biologist for the West Virginia Department of Natural Resources, the State stocks the Monongahela River in the area of the Site with fish. The Opekiska pool is the site of several bass-fishing tournaments throughout the year. The river is known to support a rich and diverse fish community and would be expected to provide habitat for freshwater clams and mussels, benthic invertebrates, and fishes as well as predatory terrestrial wildlife species. The significant foraging zone for predatory terrestrial wildlife would be along the shallow banks of the river. Piscivorous birds could be expected to prey on small fish throughout the river.

b. Sharon Steel/Fairmont Coke Works

The FCW Site (WVD000800441) is located in Fairmont, Marion County, West Virginia. The property lies along the southern edge of Suncrest Avenue approximately 1,600 feet east of the Monongahela River. The FCW Site (depicted on Figure 5 as the area within the property boundary) encompasses approximately 97 acres south-southeast of, and adjacent to, the BJS Site. Approximately 55 acres of the FCW Site were used for historical industrial operations. Approximately 7 acres located along the periphery to the north and northeast was formerly residential and commercial properties that were purchased and incorporated into the FCW Site. The remaining 35 acres include a wooded hillside that descends to the Monongahela River at the western portion of the FCW Site property. The western drainage from the FCW Site shares a common drainage system (the Unnamed Tributary) with the BJS Site. The extent of contamination from the FCW Site includes the developed portions of the property and extends into the Monongahela River downstream (north) of the property. Land surrounding the FCW Site is a mixture of industrial, commercial and residential properties.

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to the Sharon Steel Run and the Monongahela River. A portion of these 18 acres are generally included in the group of parcels comprising the FCW Site.

3. Site Characteristics

a. Big John Salvage

F.J. Lewis Manufacturing Company acquired the Big John's Property on October 24, 1925 and began refining coal tar on the Site in 1928. On December 29, 1928, F.J. Lewis changed its name to International Combustion Tar and Chemical Corporation. On December 31, 1932, International Combustion Tar and Chemical Corporation changed its name to Reilly Tar and Chemical Corporation. On May 2, 1933, Reilly Tar and Chemical Corporation changed its name to the Reilly Corporation ("Reilly"). Finally, in 2006 Reilly merged with Rutherford Chemical and changed its name to Vertellus Specialties, Inc. ("Vertellus").

Reilly processed approximately 12,000 gallons of crude coal tar per day at the BJS Site from 1928 through 1973. Most of the crude coal tar received at the Site was from the adjacent Sharon Steel/Fairmont Coke Works Site, but some crude coal tar was also received from the DuPont Belle plant in Belle, WV near Charleston. Crude tar was pumped from the railroad tank cars into storage tanks. The crude tar was then separated by distillation and condensation processes into products, which included creosote, phenol, road tar, pitch, and naphthalene. Intermediate products such as acid oil and crude acids not refined at the plant were shipped to other Reilly plants for further processing.

Wastes from the coal tar refining process included materials such as tar storage tank residues and still bottoms, lime sludge, still bottoms in the form of pitch, surplus water from the pitch pond, drainage and leakage from various plant operations, coal tar, sulfuric acid waste, water from acid oil and water separated from crude phenol distillation. The wastes generated during the years of operation were discharged through a series of impoundments at various locations throughout the Site. According to the limited historical documents available, the impoundments received industrial wastes from various sewers and drainage ditches located on the property in addition to the cooling waters, acid wastes, and tar wastes. Discharge from the impoundments reportedly flowed into the East and West Tributaries, then to Sharon Steel Run and eventually into the Monongahela River.

In January 1973, Reilly sold the property to Big John Salvage, Inc. Big John Salvage owned and operated a salvage facility on the property until approximately 1984. During its operation, Big John Salvage accepted various scrap and salvageable materials as well as waste materials at the property. Some of the material disposed at the property included glass cullet (crushed non-saleable fluorescent light bulbs), lead dust, and mercury-containing oil from the Westinghouse Electrical Corporation's ("WEC") light bulb manufacturing plant located across the street from the Big John's Property. Westinghouse Electric Corporation later merged with Viacom Inc. and the new entity changed its name to CBS Corporation.

The salvage operation also disposed of drums containing petroleum distillates, xylene, turpentine, and other hazardous and non-hazardous substances from sources other than WEC. The contents of the drums were reportedly emptied into holding tanks at the Big John's Property. The emptied drums were rinsed on-Site and then were reportedly transported off-Site.

On June 11, 1984, Big John's Salvage, Inc. filed for bankruptcy under Chapter 11 of the Bankruptcy Act. In 1990, the property was acquired by the state of West Virginia for nonpayment of taxes. In August 1992, the property was turned over to Marion County by the State. On November 14, 1997, the Deputy Commissioner of Delinquent and Nonentered Lands of Marion County, West Virginia, transferred title of the Big John's Property to Steel Fabricators, Inc., who is the current owner of the

Big John's Property. Steel Fabricators had used the Big John's Property for logging-related operations prior to the start of removal operations at the Site in 2000.

b. Fairmont Coke Works

In 1918, Domestic Coke Corporation, a predecessor of ExxonMobil purchased the FCS Site property for the construction and operation of a 60-oven by-product coke facility. Domestic Coke Corporation operated the coke plant from 1920 through 1948. Sharon Steel Corporation acquired the property and facility in 1948 and operated it until 1979, when the facility shut down. In 1991, Sharon Steel filed for bankruptcy and ownership of the property was transferred to FAC, Inc., a subsidiary of Sharon Steel Corporation. In June 1998, Green Bluff Development, Inc., a subsidiary of ExxonMobil Corporation, purchased the Site to facilitate cleanup.

During operation, the facility processed approximately 1,000 tons of coal daily to produce coke. By-products were produced from the coke-making process and included coal tar, phenol, ammonium sulfate, benzene, toluene, xylene, and coke oven gas. Facilities and process included: coke ovens, coal and coke handling facilities by-product recovery structures, coal tar tanks, other product and production intermediate tanks, gas scrubbers, and machinery and maintenance buildings. Coal tar was sold to Reilly Tar and Chemical Corporation. Coke oven gas was distributed by the local utility company.

Plant wastes were disposed of on-Site in landfills, sludge ponds, or waste piles located at the western portion of the property. Since 1920 solid wastes were deposited in two on-Site landfills: the North Landfill and the South Landfill. Starting in the early 1960s, process water from the coke plant was treated in two wastewater oxidation impoundments: Oxidation Impoundment #1 and Oxidation Impoundment #2. The impoundments were constructed along a former drainage ditch on the west end of the plant production area and discharged to Sharon Steel Run. Tar sludge from the oil recovery operations was placed in a pit referred to as the Waste Tar Pit, located in the central plant area (northeast area of the property) near the decanter tanks. Breeze (fine grained residue from coal and coke handling) was deposited in the Breeze Pile, adjacent to the North Landfill.

B. Other Actions to Date

1. Previous Actions

a. Big John Salvage

The BJS Site has been subject to regulatory interest since at least the late 1930's. The West Virginia State Water Commission ("WV Water Commission") issued a report dated October 18, 1940 which documents the Water Commission's efforts over several years to get Reilly to install treatment measures to remove tar and phenol from their effluent. The Administrative Record includes copies of official correspondence between West Virginia public health officials and Reilly documenting a steady pattern of engagement between 1940 and 1973 as regulators investigated problematic releases from the facility to the environment and subsequently attempted to direct Reilly to mitigate the releases identified.

In the early 1980's WVDNR became aware that the Big John's Salvage operation at the BJS Site was accepting hazardous materials for disposal from the nearby Westinghouse Electric Corporation ("WEC"). This led the State to conduct an inspection performed pursuant to the Resource

Conservation and Recovery Act ("RCRA") during which conditions observed led to the State requesting assistance from EPA to assess potential hazards.

In May 1983, EPA performed a preliminary assessment that included sampling of various soil, sediment, and surface water at the Site. At the time of the initial inspection, storage tanks, an oil/water separator system, a cullet pile, tar pits, and 75-100 drums were observed as concerns for the Site. Based on the results of the analyses, EPA determined that hazardous substances at the Site presented immediate threats to human health and the environment. In June 1983, EPA requested that Big John Salvage, Inc., WEC, and Reilly, as Site PRPs take actions to abate the immediate threat posed by hazardous substances at the Site. The PRPs declined to take immediate action.

EPA initiated removal actions in July 1983 which included an extent-of-contamination survey. An EPA contractor also installed sediment erosion control silt fencing and perimeter Site fence around critical areas on the Site.

In January 1984, EPA entered into a Consent Order with the owner of Big John Salvage, Inc., requiring the removal of all drums and cullet piles. The order also required Big John Salvage, Inc., to drain the oil separator and complete all work by June of 1984. EPA also collected additional samples in January 1984. Based on the January 1984 findings, the Center for Disease Control ("CDC"), with consultation from EPA, advised that the Site continued to present an imminent and substantial threat to human health and the environment in April 1984.

Although Big John Salvage, Inc. had conducted some mitigation efforts in early 1984, it filed for bankruptcy in May 1984, and EPA subsequently determined in June 1984 that insufficient work had been completed to mitigate the risk. EPA issued further demand letters to PRPs in July 1984. Although bankrupt, Big John Salvage, Inc. advised of its intent to pursue cleanup of the cullet pile; however, the company ultimately did not remove the cullet pile. Further, WEC advised EPA of its refusal to take action at the Site at that time.

Reilly subsequently expressed interest in performing mitigation efforts attributable to its past operations, and ultimately, a Consent Order, EPA Docket Number III-85-2-DC ("Reilly Order") was executed in October 1984 wherein Reilly agreed to remove all on-Site coal tar related wastes. The primary mitigation action conducted by Reilly was started on October 30, 1984, and completed on April 16, 1985, when EPA concurred with Reilly's conclusion that cleanup actions specified under the Reilly Order were completed. During this initial removal action, Reilly removed 4,100 tons of coal tar waste solids and 18,500 tons of liquid non-hazardous waste.

In October 1991, the West Virginia Department of Natural Resources ("WVDNR") conducted an inspection of the Site and found various containers with potentially hazardous substances. EPA contractors collected samples and confirmed the presence of hazardous materials. EPA conducted further reconnaissance in May 1992 identifying more than 100 containers at the Site (presumably placed at the Site sometime between 1985 and 1991). EPA implemented a removal action and 129 overpacked drums and 39 cubic yards of asbestos were properly disposed off-Site. Removal operations ended on March 31, 1993.

In March 1998, a West Virginia Department of Environmental Protection ("WVDEP") inspection performed pursuant to the Resource Conservation and Recovery Act ("RCRA") discovered that a previously empty 20,000-gallon vertical tank had been removed from the BJS Site and transported to the adjacent Sharon Steel Property. The tank was later found to contain used oil or coal tar oil.

WVDEP also observed two large excavation pits containing used oil at the Site, and requested EPA assistance to assess potential hazards in April 1998. The City of Fairmont and WVDEP expressed concern about the Site operations being conducted by Steel Fabricators, Inc. and the potential release of hazardous substances from the Site to the Monongahela River. Sampling conducted by EPA in May 1998 confirmed the presence of oil, antifreeze, and diesel fuel in the pits, as well as CERCLA hazardous substances. Initial oil removal actions commenced in May 1998, but the scope of this work was ultimately expanded to include all waste oil removal and on-Site stabilization of oil-saturated soil with cement kiln dust. Approximately 10,413 gallons of waste oil and 521 tons of non-hazardous stabilized soil from the pits were removed and disposed of off-Site. The removal action was completed in December 1998.

In 2000, EPA determined that significant hazardous substances remained at the BJS Site, which presented both short-term immediate threats and long-term risks to human health and the environment. EPA initiated a two-part strategy to take immediate action pursuant to CERCLA removal authorities to address the short-term threats and to list the Site on the NPL, making the property eligible for long-term remedial action necessary to make the property safe for reuse.

On March 31, 2000, EPA issued a Determination of Threat to Public Health or Welfare or the Environment, which found that conditions at the Site presented an imminent and substantial endangerment to the public health or welfare or the environment. The determination of threat identified two circumstances at the BJS Site which required immediate action to abate risk. First, glass cullet was present in large piles at the surface containing elevated levels of inorganic hazardous substances, including but not limited to mercury and lead. Secondly, coal tar and coal tar byproducts such as polyaromatic hydrocarbons (PAHs) containing hazardous substances, including but not limited to benzo(a)pyrene, were actively migrating from the BJS Site via steep ravines (referred to as the East Tributary and the Middle Tributary) leading to Sharon Steel Run and flowing onward toward the Monongahela River.

In April 2000, EPA notified the PRPs through a Removal Notice Letter of its intent to perform response actions at the BJS Site. EPA subsequently negotiated an Administrative Order on Consent ("AOC") with Viacom, Inc. (which had merged with WEC) and Steel Fabricators, Inc. in September 2000 to clean up the cullet and associated contamination from the cullet. Cullet removal operations by the AOC signatory PRPs began in October 2000 and ended in July 2001. EPA subsequently approved the final report for the cullet removal in August 2001. Nearly 7,300 tons of cullet was removed (approximately 4,000 tons of which were disposed of as RCRA characteristic hazardous waste for lead and mercury, D008 and D009, respectively). Nearly 16,000 gallons of water were removed from the sedimentation basins, which were also disposed of as hazardous. However, excavation of the cullet area revealed additional coal tar contaminated soils in the area formerly overlain by the cullet pile. Therefore, some cullet mixed with coal tar derivatives were left on-Site after the cullet removal action. Additionally, the mercury cleanup level during this time-critical removal was 610 mg/kg; the lead cleanup level was 1,000 mg/kg. Areas containing mercury at concentrations less than 610 mg/kg and lead at concentrations less than 1,000 mg/kg were not excavated, leaving mercury and lead in surface soils up to 609 mg/kg and 999 mg/kg, respectively. Mercury and lead are listed as hazardous substances at 40 C.F.R § 302.4 and as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

Reilly (now known as "Vertellus"), the former owner/operator of the coal tar refinery on the Site declined the invitation to enter into an AOC to address coal tar wastes. In September 2000, EPA issued a Unilateral Administrative Order ("UAO") directing Reilly to mitigate the imminent and

substantial threat presented by coal-tar derivatives migrating down the ravines and off-Site. Under the terms of the UAO, Reilly submitted a remedial action plan ("RAP") to EPA in October 2000, and with EPA approval, Reilly began on-Site response actions in November 2000. During the period November 2000 through May 2001, Reilly conducted a variety of remedial measures, including the excavation and on-Site stockpiling of approximately 3,000 tons of coal tar contaminated soil/sediment from the East and Middle Tributaries, and the installation of a tar collection system in the East and Middle Tributaries. These systems were designed to collect tar and contaminated water migrating from the upland areas down-slope and into a manhole located at the base of the respective tributary, which is then pumped to an on-Site pre-treatment system with the effluent ultimately discharged to the City of Fairmont sewer system for final treatment. Reilly continues to operate and maintain this collection and treatment system.

On May 11, 2001, representatives from EPA, WVDEP, and Reilly met to identify outstanding removal work at the Site. Following this meeting, Reilly was notified in writing by EPA on May 16, 2001 of specific work tasks that still needed to be completed to meet the requirements of the UAO. On June 15, 2001, Reilly responded to EPA indicating they were only willing to conduct a limited amount of the work required by EPA. EPA reiterated to Reilly the requirement to fully implement the actions described in EPA's May 16, 2001 letter. Reilly responded verbally on August 30, 2001 and in writing on August 31, 2001, that they were unwilling to undertake the actions necessary to fully address the EPA items. Due to Reilly's refusal to fully implement the requirements outlined in the UAO, EPA signed an Action Memorandum on September 21, 2001, for additional funding and an exemption from the statutory limits for a removal action.

In October 2001, the EPA began additional Site stabilization and removal actions. The primary activities completed during this removal action included consolidation and disposal of contaminated soil excavated by Reilly, excavation and backfilling of additional coal tar contaminated areas and mixed coal tar and cullet areas, demolition of on-Site buildings, removal of asbestos material, and construction of an access road along Sharon Steel Run. Most significant to the scope of this action memorandum, EPA's removal work included excavation of contaminated sediments from Sharon Steel Run and the settling pond near the confluence of Sharon Steel Run with the Monongahela River. With the Site reasonably stabilized, this removal effort was completed in July 2003. During this action, approximately 194 tons of non-hazardous waste and 3,000 tons of hazardous waste were removed from the Site. In addition, approximately 44,000 cubic yards of excavated soil and sediment remained staged on-Site at the completion of this effort. The soil piles created are to be addressed as part of the response action proposed to be implemented under this Action Memorandum.

In late 2007, an EPA contractor cleaned out accumulated sediments from the settling pond near the confluence of Sharon Steel Run with the Monongahela River. Approximately 8,000 cubic yards of sediments were consolidated on the upland portion of the BJS Site.

b. <u>Fairmont Coke Works</u>

From May 1993 through August 2, 1996, EPA completed an emergency removal action at the FCW Site to stabilize the Site. During this removal action EPA addressed the contents of approximately 250 containers of unknown laboratory chemicals and several large above ground tanks. EPA properly disposed of suspected asbestos containing building materials, disposed of approximately 650 gallons of PCB-containing oil, and separated and disposed approximately 26,100 gallons of emulsified oil from water remaining on-Site. EPA treated and properly disposed approximately 1.5

million gallons of benzene-contaminated water from the FCW Site. Several large tanks were decontaminated and dismantled.

EPA modified a sludge impoundment to act as a temporary holding impoundment for coal and coke dust (referred to as "breeze") which had been migrating off-Site due to storm water erosion. An estimated 12,000 cubic yards of breeze was consolidated in the sludge impoundment and covered with a 60-millimeter HDPE cover.

Solidification and stabilization techniques were utilized on approximately 34,000 tons of process sludge from the former and existing oxidation ponds. The former oxidation pond was re-graded to shed water and the existing oxidation pond was rehabilitated to treat contaminated storm water run off from the FCW Site during removal operations.

To minimize potential failure of the northern slope of the north landfill, the unstable northeastern toe of the north landfill was removed and the material was consolidated on the south and west sections of the landfill. A temporary soil cover was installed over the entire north landfill.

During the removal action, erosion control measures were employed and surface water management at the FCW Site was improved with engineering controls. These controls were implemented to contain and direct storm water from contaminated portions of the FCW Site to the remaining oxidation pond for treatment via settling and pH adjustment (low pH runoff was treated with soda ash to increase the pH) prior to discharge the Unnamed Tributary. Storm water from clean areas was redirected away from contaminated areas and directly to the Unnamed Tributary.

EPA terminated its emergency removal activities on August 2, 1996.

Following completion of the EPA removal action, the acidic storm water continued to be discharged from the FCW Site. On November 30, 1999, the WVDEP directed ExxonMobil to remove the oxidation pond and implement interim treatment measures for Site storm water discharges. In 2000, ExxonMobil completed removal of the oxidation pond, replacing it with a limestone riprap channel to control the pH of the Site discharge. As part of that work, ExxonMobil also removed the sludge impoundment and staged the contents on-Site for later treatment or disposal.

2. Current Actions

a. Big John Salvage

Vertellus continues to operate and maintain the tar seep and contaminated groundwater collection and treatment system installed at the Middle and East Tributaries. This work component is being performed in accordance with the approved Response Action Plan submitted in accordance with the September 2000 UAO directing Reilly to mitigate the imminent and substantial threat presented by coal-tar derivatives migrating down the ravines and off-Site. The system intercepts tar seeps and contaminated groundwater (i.e., tar derivatives) by collecting the liquids migrating down-slope into a manhole located at the base of the respective tributary, which is then pumped to a pre-treatment system housed in a trailer on the Big John Salvage Site. The on-Site treatment plant effluent is discharged to the City of Fairmont sewer system for final treatment in accordance with the terms of an agreement between Vertellus and the City of Fairmont.

Approximately 44,000 cubic yards of contaminated sediments from Sharon Steel Run and the

settling pond excavated by EPA during previous removal-related responses remain staged on-Site. Vertellus maintains surface drainage ways by cleaning culverts and check dams and taking action to correct erosion features in accordance with a voluntary informal agreement with EPA. Vertellus submits a monthly progress report describing on-going work, Site observations, and conveying all environmental sampling data to EPA.

b. Fairmont Coke Works

On September 17, 1997, EPA and ExxonMobil entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study ("RI/FS Order"). On December 11, 1998 EPA and ExxonMobil suspended performance of the RI/FS AOC in favor of an Administrative Order on Consent the parties entered into as part of EPA's "Project XL," a program developed to test innovative environmental management strategies. Under the Project XL agreement, the strategy for cleanup includes implementation of Non-Time Critical Removal Actions to address the major source areas to be followed by an RI/FS and ROD to address groundwater and any other concerns which may exist due to post removal residual contamination. Phase I and Phase II EE/CAs were conducted by ExxonMobil with EPA and WVDEP oversight. Action Memoranda approving the Phase I and Phase II EE/CAs were issued by EPA on June 6, 2000 and July 23, 2003, respectively.

Implementation of the response actions outlined in the EE/CAs began in 2003 are projected for completion in 2011. Major components of the on-going NTCRA include excavation and treatment and/or disposal of wastes and contaminated soils exceeding Site-specific cleanup standards from the North Landfill, the South Landfill and the Former Process Area. In addition, materials have been excavated from the Light Oil Storage Area and the Coal Storage and Coke Handling Area. All off-site treatment and/or disposal activities are being carried out in accordance with CERCLA 121(d)(3) and 40 CFR 300.440. As of August 31, 2010:

- 486,110 tons of synthetic fuel has been generated by blending excavated wastes from Site landfills with coal and other amendments. This product is not RCRA-characteristic waste and was shipped off-Site for energy recovery
- 6,100 tons of high BTU waste materials have been shipped off-Site for energy recovery
- Approximately 163,000 tons of contaminated but non-hazardous soils were disposed of at appropriately permitted landfills
- Approximately 17,000 tons of contaminated soil determined to be RCRA-characteristic hazardous waste have been shipped to RCRA-permitted facilities for appropriate treatment and/or disposal

The on-going response actions selected in the EE/CAs are nearing completion and have reportedly cost ExxonMobil in excess of $50 million to implement. Systematic post-excavation confirmation samples conduct for each 50ft x 50ft grid provide a high degree of confidence that source removal and risk reduction goals will be achieved. Since 2000, all storm water coming in contact with contaminated ground surfaces at the FCW Site has been treated in an on-Site water treatment plant prior to its discharge to Sharon Steel Run. The treated effluent has been in compliance with its West Virginia Pollution Discharge Elimination System permit. The NTCRA source removal and on-going control of runoff from the FCW Site are significant factors in ensuring that the Monongahela River will not be re-contaminated with Site-related contaminants after the BSD hotspot removal actions proposed in the Action Memorandum are completed.

Groundwater monitoring wells are being installed to support a final RI/FS. EPA expects to re-activate the suspended RI/FS AOC with ExxonMobil in late 2010. ExxonMobil will conduct an RI/FS for the FCW Site and a Record of Decision addressing the groundwater and any other outstanding matters will follow.

C. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Several field sampling events and underwater surveys were conducted by EPA, WVDEP and Vertellus over a two river mile reach of the Monongahela River near its confluence with Sharon Steel Run. Surface water and sediment were sampled in April 2005 and April 2007 as part of a Remedial Investigation. Vertellus conducted underwater river surveys and sediment/waste material sampling in June 2005 and April 2006. A summary of the field sampling results is presented in the EE/CA Report prepared by Tetratech on behalf of EPA, dated September 2010 and the Administrative Record (see Figure 4 for map of impacted areas).

A wide variety of PAHs were detected in river sediments during EPA's RI sampling, and total PAH concentrations in the river sediment increase substantially along the eastern bank below the confluence with Sharon Steel Run. A black semi-solid deposit (BSD) was observed approximately downstream from the confluence. High total PAH concentrations (>1,500 mg/kg) were detected by EPA in sediments approximately 1 foot below the river bottom approximately 300 feet downstream from the confluence in an area of stained sediment just outside the BSD.

In a separate investigation conducted in June 2005 and April 2006, Vertellus delineated highly impacted river sediment areas downstream of the confluence. Vertellus mapped the extent of BSD with field sampling techniques and confirmed the findings using divers. The underwater visual inspection indicated the presence of the BSD extending at least 50-75 feet away from the east bank, and approximately 350 feet downstream from the confluence. The BSD was also observed extending about 25 feet upstream of the current confluence location. The thickness of the BSD was reported to typically be 3-6 inches with mounds up to 12 inches thick.

The divers also delineated stained sediments approximately 40 feet off the eastern shore under a surficial layer of clean sediments extending at least 800 feet downstream. Stained sediment deposits (SSD), sediments which contain high enough mass of BSD to be visible, appear to be an erosion feature extending down gradient of the BSD. The SSD appears to be approximately 30 feet wide.

Reilly collected samples of the BSD and reported total PAH concentrations for most samples in excess of 20,000 mg/kg. The BSD includes elevated concentrations of many PAHs, including but not limited to benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene; each of these specific PAHs are listed as hazardous substances at 40 C.F.R § 302.4 and as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

The concentration of PAHs drops rapidly outside this BSD/SSD area. River sediment sampling conducted to support RI ecological characterization activities indicated that the total PAH concentrations in the shallow river sediment outside the BSD/SSD hotspot area ranged from 1.89 mg/kg to 4.76 mg/kg. The surface sediment locations collected in the BSD/SSD area had higher total PAH concentrations detected at 27 mg/kg and 1,289 mg/kg. The upstream/background station had a concentration of 2.75 mg/kg total PAH in surface sediment. Concentrations of total

PAHs in subsurface sediments (2 to 5 feet below the river bottom) are in the 20-52 mg/kg range over a much larger area outside the BSD/SSD.

Surface water sampling conducted in April 2005 and April 2007 indicated that the discharge from Sharon Steel Run was not significantly affecting the Monongahela River water quality, as there was no major change in water quality observed above and below the confluence.

In addition to surface water and sediment sampling, sampling was also conducted in the Monongahela River to support ecological characterization. This included fish sampling for histopathology, macroinvertebrate (clam) sampling, and sediment sampling for toxicity testing.

The fish histopathology findings concluded that a number of changes observed in the fish (abnormal bile ducts, altered foci, and abnormal hepatocytes) suggests exposure to contaminants, most likely ones metabolized by the liver.

Clam samples were collected from two locations in the river—one from a location with relatively unimpacted sediments (total PAH concentrations $\leq$ 2 mg/kg), and one from a location heavily impacted (total PAH concentrations ~ 1,300 mg/kg). The total PAH concentration in clam tissue collected from the less impacted location was 710 ug/kg, whereas the total PAH concentration in clam tissue collected from the impacted sediment location was 220 mg/kg, which clearly indicates PAH uptake into the clam tissue.

Sediment toxicity tests revealed that the sediment collected from the vicinity of the BSD caused significant mortality to Hyalella azteca after 28 days of exposure (note that this location, SD-07, also had a total PAH concentration of ~ 1,300 mg/kg). However, no other sediment locations were found to be significantly different from the reference control sediment with respect to toxicity.

The Human Health Risk Assessment for the Big John Salvage RI considered potential exposure to Monongahela River surface water and sediments by recreational users. The risk assessment used Site-specific exposure assumptions for recreational users and toxicological values for carcinogenic PAHs identified within the "total PAH"[2] concentrations reported. EPA's generally acceptable risk range for Site-related exposures is between 1 in 10,000 and 1 in 1,000,000. The risk assessment back-calculated to determine that a benzo(a)pyrene concentration of 2.0 mg/kg in sediment corresponds to a lifetime cancer risk of 1 in 10,000. Concentration levels of benzo(a)pyrene in the BSD and stained sediments in the hotspot area represents an excess cancer risk of greater than 1 in 1,000, exceeding EPA's cancer risk management guidelines.

Environmental sampling of on-Site soil by EPA identified elevated concentrations of PAHs throughout the upland portion of the Site. Nearly seventy-five percent of the locations sampled contained elevated concentrations of PAHs. PAH concentrations were greater than 1,500 mg/kg in surface soils and greater than 20,000 mg/kg in subsurface samples. In addition, semi-solid pools/patches of coal tar are present on the ground surface in several areas throughout the Site. These pools/patches of coal tar are known to contain greater than 20,000 mg/kg PAHs. The Human Health Risk Assessment for the Big John Salvage RI used Site-specific exposure

2 Risk to ecological receptors is most appropriately evaluated by considering "total PAH" concentration. Potential health risks to people are evaluated by considering toxicological profiles of individual PAHs. Benzo(a)pyrene is a good indicator compound because of its toxicity relative to other constituents makes it a "risk driver."

assumptions for future industrial workers and determined that surface soil presents a lifetime cancer risk greater 1 in 10,000 primarily due to the PAH, benzo(a)pyrene. Environmental Sampling of on-Site soil conducted by Viacom determined that concentrations of mercury up to 610 mg/kg remain in surface soils in the area of the former cullet piles near the West Tributary.

Sediment sampling conducted by EPA identified elevated PAH concentrations in the upland drainage ways, with the highest concentrations between 297 mg/kg and 510 mg/kg total PAHs in the Unnamed Tributary #2. Elevated metal concentrations in drainage way sediment included mercury (up to 9 mg/kg) and lead (up to 699 mg/kg). The Ecological Risk Assessment concluded that unacceptable risk to ecological receptors is presented primarily due to elevated concentrations of PAHs and mercury in the upland habitat areas, and PAHs, mercury and lead in the upland aquatic habitat areas.

Groundwater sampling conducted by EPA identified elevated concentrations of benzene and PAHs, predominantly naphthalene present in the overburden aquifer in the central portion of the Site in areas consistent with historical operations. The highest total PAH concentrations in groundwater were more than 3,000 µg/kg. No non-aquous phase liquids were observed in the constructed monitoring wells; however, non-aquous phase liquids continue to be collected in the contaminated groundwater and seep collection system extraction point at the bottom of the Eastern Tributary. The continuing seepage of non-aquous phase liquids to the Eastern Tributary is evidence that a local source area is present in the up-gradient upland portion of the Site. The human health risk assessment used Site-specific exposure assumptions for a future resident accessing the groundwater as a potable source and determined that groundwater presents a lifetime cancer risk greater 1 in 10,000 primarily due to the PAHs benzo(a)anthracene, benzo(b)fluoranthene, and benzo(k)fluoranthene and arsenic. Considering the same exposure assumptions, the risk assessment determined that groundwater presents an unacceptable non-carcinogenic risk primarily due to naphthalene.

Surface water sampling conducted by EPA in Sharon Steel Run and the Unnamed Tributary #2 identified elevated concentrations of benzene and several PAHs, including naphthalene, benzo(a)anthracene and benzo(b)fluoranthene. The human health risk assessment used Site-specific exposure assumptions for a current/future recreational user of the Site and determined that surface water presents a lifetime cancer risk greater than 1 in 1,000 primarily due to benzene and the PAHs benzo(a)pyrene, benzo(a)anthracene, and benzo(b)fluoranthene. The source of the organic contaminants in the surface water is likely discharge from the overburden aquifer in the area, potentially from contaminant sources located on Site as well as from the adjacent FCW Site, which historically has high benzene concentrations in groundwater.

D. National Priorities List

The 38-acre Big John Salvage Site is located on Hoult Road in Fairmont, West Virginia and was placed on the National Priorities List ("NPL") on July 27, 2000.

The 97-acre Sharon Steel/Fairmont Coke Works Site is located on Dixie Avenue in Fairmont, West Virginia and was placed on the NPL on December 23, 1996.

E. State and Local Authorities' Roles

The West Virginia Department of the Environmental Protection ("WVDEP")(and its predecessor

agencies) has responded to a long history of incidents of non-compliance with environmental regulations with respect to facility operations at both the FCW Site and Big John Salvage Site. See Section II.C.1 (Previous Actions) and the Administrative Record for additional details on past response actions.

On April 1, 2005, WVDEP issued an Administrative Order (Order 5711) requiring Reilly Industries (aka Vertellus) to take corrective action to clean up "deposits" on the bottom of the Monongahela River near the mouth of the Sharon Steel Run. Reilly Industries appealed WVDEPs decision to issue Order 5711, arguing before the WV Environmental Quality Board ("Board"), Charleston, West Virginia that the action was unwarranted considering that an EPA CERCLA action to cleanup the Big John Salvage Site would consider clean-up of the Monongahela River, and that other nearby property owners were responsible for the hotspot cleanup in the river. On December 28, 2006 the Board vacated Order 5711, finding that there was not enough evidence in the record to establish that Reilly Industries was the sole source of the BSD at the bottom of the Monongahela River.

The WVDEP has assumed the role of a support agency for the ongoing Superfund removal and remedial activities at both the BJS and the FCW Sites. WVDEP provided technical support during preparation of the RI, the EE/CA and participated in the public meeting held to present the EE/CA to stakeholders for comment. West Virginia has been informed about, and concurs with, the proposed non-time-critical removal action for the BSD hotspot described in this Action Memorandum. WVDEP informed EPA that the State of West Virginia does not have the resources to undertake the work.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

40 C.F.R. §300.415(b)(2) of the NCP outlines the factors which should be considered in determining the appropriateness of a removal action. The following factors from §300.415(b)(2) are directly applicable to the conditions present on Site which the action proposed in this Action Memorandum will address. These factors are as follows:

A. 300.415(b)(2)(i) "Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants"

This factor is present at the Site due to the presence of high concentrations of hazardous substances, pollutants or contaminants in tar seeps on the ground surface and the BSD and visibly stained sediments closely associated with the hotspot extending from the point that Sharon Steel Run discharges to the Monongahela River. The BSD and SSD are contaminated with PAHs, including but not limited to benzo(a)pyrene, in an area of approximately 1 ½ acres along the Monongahela River bottom. Access to the Monongahela River is unrestricted to humans using the Site for recreational activities including fishing and swimming. A frequently utilized rails-to-trails-type public hiking and biking path extends along the river between the contiguous Big John Salvage and Sharon Steel/Fairmont Coke Works Superfund Sites and the hotspot in the river. Wildlife in the area also has unrestricted access. Sediment toxicity tests revealed that the sediment collected from the vicinity of the BSD caused significant mortality to laboratory test species (total PAH concentration of ~ 1,300 mg/kg).

Conditions at the Site pose an imminent threat to human health. EPA conducted a baseline risk assessment to support the EE/CA. The quantitative risk evaluation included samples collected during performance of the RI and was supplemented with additional samples collected from hotspot BSD area by PRPs. For potential carcinogenic risks, EPA's acceptable risk range is 10^{-4} to 10^{-6}. The cumulative carcinogenic risk estimate for the Recreational Reasonable Maximum Exposure scenario is greater than 1×10^{-3} and was related primarily to carcinogenic PAHs, evaluated as benzo(a)pyrene equivalents.

The semi-solid pools/patches of tar present on the ground surface in the upland portion of the Site present significant potential for exposure to trespassers and wildlife accessing the Site.

B. 300.415(b)(2)(iv) "High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate"

This factor is present at the Site due to the existence of high concentrations of PAHs (>20,000 mg/kg) in the black semi-solid deposits and BSD-stained sediments at or near the surface of the river bottom. The BSD are cohesive along the river bottom and not likely to scour away during a single flood event as evidence by the continued presence of the BSD hotspot 30-40 years after coal tar processing has been terminated at the two Superfund Sites. However, the visibly stained sediments extending downriver of the BSD area appear to contain small particles of BSD material which have eroded from the larger mass and subsequently contaminated adjacent sediments with approximately 1,000 mg/kg total PAHs. Ecological toxicity tests conducted on sediment with greater than 1,000 mg/kg demonstrated acute toxicity to laboratory test organisms. Native aquatic organisms in the vicinity are being exposed to the contaminated sediments. The BSD/SSD is susceptible to erosion and the contaminants in the BSD area act as a source of sediment contamination further down the Monongahela River.

Contaminated soils containing elevated concentrations of PAHs, arsenic and mercury and tar seeps containing high concentrations of PAHs are exposed on the surface of the Site. The contaminated soil and tar at the surface is exposed and susceptible to erosion from water and wind and may migrate from the upland portion of the Site and act as a continuing source of sediment contamination in the upland drainage ways and the Monongahela River.

C. 300.415(b)(2)(v) "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released"

The Monongahela River is subject to periodic extreme weather conditions as heavy spring rains and/or summer storms increase river volume and current velocity, which lead to increased scouring of the river bottom. The high concentrations of PAHs (>20,000 mg/kg) in the BSD and stained sediments at or near the surface of the river bottom are more likely to be transported and deposited further down-river during periods of high energy. The BSD are cohesive along the river bottom and not likely to scour away during a single flood event but the visibly stained sediments extending downriver of the BSD area appear to contain small particles of BSD material which have eroded from the larger mass and subsequently contaminated adjacent sediments with approximately 1,000 mg/kg total PAHs. The BSD is susceptible to erosion during extreme precipitation and the contaminants in the BSD area act as a source of sediment contamination further down the Monongahela River.

D. 300.415(b)(2)(vii) "The availability of other appropriate federal or state response mechanisms to respond to the release"

The WVDEP, the City of Fairmont, and Marion County do not possess the resources to undertake a removal response of this magnitude at this time. Although both the Big John Salvage Site and the Sharon Steel/Fairmont Coke Works Sites are on the NPL, a non-time critical removal action is the best mechanism to address the hotspot of PAHs exhibiting acute toxicity to aquatic animals in the river and the unacceptable risks presented by hazardous substances in soil, sediment and groundwater in the upland portion of the Site in a timely manner. All removal activities will be consistent with any future remedial actions.

IV. ENDANGERMENT DETERMINATION

An imminent and substantial threat to human health, welfare, and the environment exists due to the potential exposure of humans and animals to high concentration of contaminants in the BSD/SSD area sediments and soils and groundwater in the upland portion of the Site. Contaminants in the BSD/SSD area are subject to flood-related contaminant migration. EPA has determined that the Site meets the criteria for a removal action under Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP")(40 C.F.R. §300.415). A sufficient planning period existed before activities for this action had to be initiated, and accordingly, this response is being conducted as a Non-time Critical Removal Action ("NTCRA"). The goals of the NTCRA are to:

- Reduce ecological and human health risk levels stemming from exposure to BSD and highly contaminated stained sediments by removing the industrial wastes and decreasing the concentration of PAHs in river sediments
- Reduce ecological and human health risk levels presented by exposure to contaminated soil and sediment in the upland portion of the Site
- Reduce the potential risk presented by contaminated groundwater migrating from the Site

This NTCRA will remove the hotspot of PAHs from the river bottom thereby eliminating acute toxicity in the short term. EPA expects that this removal will create conditions that will enable the monitored natural recovery processes to further degrade the remaining PAHs to concentrations that are within EPA's target risk range within a reasonable time period. In addition, the industrial wastes will be removed from the river bottom, thus decreasing the likelihood that highly toxic materials would be eroded further down river. EPA anticipates issuing a Record of Decision ("ROD") after post-removal environmental monitoring records the effectiveness of the removal in risk reduction and tracks the effectiveness of on-going monitored natural recovery. The response action EPA is proposing in this Action Memorandum is consistent with the long-term remediation goals required by the NCP. Potential exposure to contaminated soil and sediments in the uplands portion of the Site will be minimized with a low-permeability cap. Migration of contaminated groundwater will be controlled.

Given the conditions in the Monongahela River, the nature of hazardous substances in the BSD hotspot area, and the potential exposure pathways described above, the actual and threatened release of PAHs and mercury from this Site, if not addressed by implementing the response action described in this Action Memorandum, may present an imminent and substantial endangerment to the public health, or welfare, or the environment.

V. EXEMPTION FROM STATUTORY LIMITS

The Big John Salvage Superfund Site meets the criteria in Section 104(c) of CERCLA, 42 U.S.C. § 9604 (c), for exemption from the Statutory Limit of $2,000,000 for Removal Actions as follows:

Section 104(c)(1)(C)	"Continued response action is otherwise appropriate and consistent with the remedial action to be taken"

A. Appropriateness

It is imperative that the NTCRA be conducted to reduce potential for human and animal exposure to contaminants in soils in the upland portion of the Site and the "hotspot" of industrial wastes referred to as BSD and contaminants in stained sediments closely associated with the toxic hotspot that is serving as a source of contamination to Monongahela River sediments. The BSD and stained sediments are contaminated with polycyclic aromatic hydrocarbons ("PAHs") and are acutely toxic to aquatic life. The upland soils and groundwater are contaminated with PAHs; the soil and drainage ways are also contaminated with residual mercury concentrations. The proposed action is appropriate to abate the threat presented by the PAHs and will prevent further migration of contaminants. It is estimated in the EE/CA that the river NTCRA can be completed in 4 months in the field but with planning time may take one year to complete. The upland response activities will require approximately 18 to 24 months to complete.

The proposed removal action is therefore appropriate and necessary.

B. Consistent With the Remedial Action

EPA anticipates issuing a Record of Decision ("ROD") after a focused FS is completed. EPA expects that this removal will mitigate the risks presented by PAH-contaminated soil in the upland portion for the Site and create conditions in the river that will enable the monitored natural recovery processes to further degrade the remaining PAHs to concentrations that are within EPA's target risk range within a reasonable time period. In addition, the industrial wastes will be removed from the river bottom, thus decreasing the likelihood that highly toxic materials would be eroded further down river. EPA anticipates issuing a ROD after post-removal environmental monitoring records the effectiveness of the removal in risk reduction and tracks the effectiveness of on-going monitored natural recovery. A focused Feasibility Study will be prepared to support the ROD. The response action EPA is proposing in this Action Memorandum is consistent with the long-term remediation goals required by the NCP.

VI. IDENTIFICATION AND ANALYSIS OF REMOVAL ACTION ALTERNATIVES

A. River Sediments

The EE/CA Report evaluates four response action alternatives for the black semi-solid deposits and heavily contaminated stained sediments in the Monongahela River. Please review the EE/CA Report in the Administrative Record for a complete analysis of the removal action alternatives evaluated and the recommended alternative for the river (See Sections 3.4, 4.4 and 5.4). A summary of the four alternatives developed and considered by EPA for river sediment are set out below:

Alternative RS1 - No Action

Alternative RS1 provided a baseline for comparing the other three alternatives. In this alternative no active remediation, treatment, or engineering controls would be implemented and no long term monitoring would be performed. There are no costs associated with this alternative. Under this alternative, potential exposure to wastes and contaminated sediments in the hotspot area would continue and hazardous substances would continue to migrate downstream within the river.

Alternative RS2 – Excavation and Off-Site Treatment and/or Disposal

Excavating the BSD and highly contaminated sediment (SSD) from the Monongahela River and disposing of it in an off-Site landfill or treating it off-Site. Alternative RS2 includes:

- Isolating the excavation area to reduce/prevent erosion and limit migration of re-suspended contaminants during removal activities
- Removing the BSD and SSD from the river
- Conveyance of impacted sediment for staging and dewatering
- Treatment and/or disposal in an appropriately permitted off-Site facility
- Managing the residual contamination by restoring excavated area with 6 inches of sand/gravel or other appropriate substrate
- Environmental monitoring program – 5 years

The EE/CA evaluated an Option A (excavate only BSD – an estimated 4,500 cubic yards) and an Option B (excavate BSD and SSD – an estimated 5,400 cubic yards) with respect to the scope of the removal action. The cost for Alternative RS2 is estimated at approximately $3.8 million for Option A or approximately $5.1 million for Option B.

Alternative RS3 – Excavation and On-Site Containment

Alternative RS3 includes the same removal activities as described in Alternative RS2, except the materials excavated from the river bottom would be consolidated on the upland area of the Big John Salvage Site beneath an impermeable cap.

In the same manner as discussed for RS2 above, the EE/CA evaluated an Option A (excavate only BSD – an estimated 4,500 cubic yards) and an Option B (excavate BSD and SSD – an estimated 5,400 cubic yards). The cost estimate for RS3 did not include the expense for constructing or maintaining the impermeable cap over the consolidated sediments because the EE/CA had accounted for those expenses in a section evaluating response alternatives for contaminated soil media on the Big John Salvage Site. The cost for Alternative RS2 is estimated at approximately $3.4 million for Option A or approximately $4.6 million for Option B.

Alternative RS4 – Monitored Natural Recovery

Alternative RS4 considers the continued use of naturally occurring physical, biological, and/or chemical mechanisms to reduce risk to human and/or ecological receptors, and the prevention of

contact with contaminated sediments through implementation of institutional controls.

The alternative includes a biological and chemical monitoring plan to measure and evaluate the changes in sediment contaminant levels and the associated biological response for a period of 30 years.

The cost for implementation would be derived from environmental monitoring, institutional controls, and public education. The cost for Alternative RS4 is estimated at approximately $1.9 million.

B. Uplands Soil

The EE/CA Report evaluates seven response action alternatives for the buried wastes and contaminated soil with concentrations of hazardous substances greater than performance standards identified in Table 1. Please review the EE/CA Report for a complete analysis of the removal action alternatives evaluated and the recommended alternative for the soil (See Sections 3.1, 4.1 and 5.1). A summary of the alternatives developed and considered by EPA for soil are set out below:

Alternative SO1 - No Action

Alternative SO1 provided a baseline for comparing the other six soil alternatives. In this alternative no active remediation, treatment, or engineering controls would be implemented and no long term monitoring would be performed. There are no costs associated with this alternative. Under this alternative, potential exposure to wastes and contaminated soils in the upland portion of the Site would continue.

Alternative SO2 - No Further Action

Similar to No Action alternative, there would be no further soil removal actions beyond those already completed at the Site under this alternative. However, it would include long-term maintenance of the existing on-site features, including sediment erosion control silt fencing and a site perimeter fence that an EPA contractor installed.

Operating and maintenance (O&M) costs for this alternative would consist of routine monitoring of the Site, and maintenance of the fence and sediment erosion control silt fencing on a semi-annual basis for a period of 30 years. The Present Worth Cost of Alternative SO2 is estimated at approximately $745,000.

Alternative SO3 - Excavation and On-Site Thermal Treatment

Excavating the contaminated soil on the Site and treating it on-Site using thermal desorption technology. Upon completion of treatment, the excavated area would be backfilled with treated soil, covered with a layer of clean top soil to encourage vegetation growth, and then seeded with a perennial grass mixture suitable for the Site. Alternative SO3 includes:

- Excavating and staging approximately 312,000 cubic yards of soil/sediment containing hazardous substances in excess of removal performance standards listed in Table 1

- Screening soils to remove rocks and debris before placing into the desorption system
- Treating excavated soil in a thermal desorption unit to separate organic chemicals and mercury from soil
- Treatment and disposal of desorbed, recondensed contaminants from the thermal desorption process
- Staging treated soils for confirmation sampling and subsequent backfilling
- Establishing a vegetative cover

Stack testing and Proof of Performance (POP) testing would be required to determine the maximum throughput rate for the treatment units. Considering the volume of soil to be treated, multiple units would be required to achieve a treatment rate of at least 50 tons per hour. At this rate of treatment, it would take approximately 3 years to complete. The Present Worth Cost of Alternative SO3 is estimated at $94,633,000.

Alternative SO4 - Excavation and Off-Site Disposal/Treatment

Excavate the contaminated soil, and either dispose of it in an off-site landfill (as either non-hazardous or hazardous, depending on the ultimate waste classification) or treat it off-site (most likely thermally). Carry out all off-site treatment and/or disposal activities in accordance with CERCLA 121(d)(3) and 40 CFR 300.440. The major components of Alternative SO4 include:

- Excavating approximately 312,000 cubic yards of soil/sediment containing hazardous substances in excess of removal performance standards listed in Table 1. Performing waste characterization on excavated materials
- Transporting high btu wastes determined not to be RCRA-characteristic to a blended-fuel electric generation facility for energy recovery
- Transporting low btu contaminated soil determined not to be RCRA-characteristic to an appropriately permitted landfill
- Transporting RCRA-characteristic wastes to an appropriately permitted treatment facility
- Minimally backfill and grade excavated area and re-vegetate

It was estimated 44,000 cubic yards of soil with a total PAH level of 300 mg/kg or higher would be sent for off-Site treatment and 268,000 cubic yards of the remaining soil would be sent to an off-Site landfill. It would take approximately 4 years to plan and complete. The Present Worth Cost of Alternative SO4 is estimated at $49,985,000.

Alternative SO5 - Capping/Containment

Construct an engineered cap over the impacted area of the Site to prevent exposure to soil/sediment containing hazardous substances in excess of removal performance standards listed in Table 1. The engineered cap would be designed to meet the objectives of minimizing infiltration of precipitation, providing a barrier capable of preventing exposure of people and animals to concentrations of hazardous substances exceeding the Site-specific performance standards (including prevention of tar rising to surface through the constructed barrier), and preventing erosion. The final cap design must meet the performance objectives outlined in West Virginia's RCRA Subtitle-D regulations. The actual extent and specific configuration (i.e., profile) of the cap included as part of Alternative SO5 would be selected during the design.

The area to be capped would include approximately 15 acres of relatively flat areas and approximately 3 acres of steep sloped areas on the north side of Sharon Steel Run (see Figure 6). This area encompasses all of the impacted surface soils as well as subsurface soils. Consolidation of contaminated soils from perimeter areas could reduce the size of the cap. The actual configuration of the footprint and profile of the cap will be established during design.

Obvious masses of tar derived materials encountered at the surface or before and during earthwork would be segregated for appropriate off-Site disposal. Institutional controls would be implemented to ensure that future use of the property is not inconsistent with the containment strategy. It would take 18-24 months to implement. The estimated present worth cost of three suitable cap profiles for Alternative SO5 ranged from $7.1 to $8.3 million.

Alternative SO6 - In-Situ Chemical Oxidation (ISCO)

Treat soil/sediment containing hazardous substances in excess of removal performance standards listed in Table 1 with an in-situ chemical oxidation process. Major components of SO6 include:

- Installing injection points throughout area of contamination
- Mixing oxidation reagent in preparation of injection events
- Periodically injecting reagent into contaminated subsurface to chemically oxidize hazardous substances to less harmful compounds
- Periodic confirmation sampling

This alternative requires bench-scale testing to select an appropriate reagent and pilot-scale testing to affirm adequate delivery of reagent. It is likely that mechanical mixing would be required to achieve adequate reaction and destruction of contaminants. If mechanical mixing is utilized the area would require solidification to support future use of the Site. It would take approximately 2 – 3 years to implement SO6. Assuming that injection method is effective, the estimated present worth cost of Alternative SO6 is $14,766,000.

Alternative SO7 - In-Situ Treatment - Stabilization/Solidification

Treat soil/sediment containing hazardous substances in excess of removal performance standards listed in Table 1 with an in-situ solidification/stabilization process. Major components of SO7 include:

- Mixing solidification/stabilization reagent into contaminated soils with large auger-mounted injection device (or excavate and mix contaminated soil in pug mill)

This alternative requires bench-scale testing to select an appropriate mixture of Portland cement and bentonite and pilot-scale testing to affirm adequate delivery of reagent. Reducing the permeability (or hydraulic conductivity) of treated soil would result in the groundwater and surface water flowing around the treated mass instead of through it. Performance specifications for the treated soil would be required, including a maximum hydraulic conductivity (e.g., $1x10^{-5}$ cm/sec) and unconfined compressive strength (e.g., 10 to 50 psi). In addition, leachability testing with treated soil would be required to measure effectiveness of the immobilization. It would take approximately 18 months to implement SO7. The estimated present worth cost of Alternative SO7 is $23,720,000.

C. Upland Sediments

The EE/CA Report evaluates four response action alternatives for restoring contaminated sediments in upland drainage channels at the Site. Please review the EE/CA Report (Attachment 1) for a complete analysis of the removal action alternatives evaluated for sediments in drainage ways at the Site (See Sections 3.3, 4.3 and 5.3). A summary of the alternatives developed and considered by EPA for sediments in drainage ways are set out below:

Alternative OSS1 - No Action

The No Action alternative (OSS1) provided a baseline for comparing the other upland sediment alternatives. In this alternative no active remediation, treatment, or engineering controls would be implemented and no long term monitoring would be performed. There are no costs associated with this alternative.

Alternative OSS2 - Excavation and Off-Site Disposal

Excavate the on-site sediment exceeding performance standards identified in Table 1 from the impacted areas and sending it off-site for disposal. Excavated drainage way areas would be restored in a manner appropriate to its respective function. The total volume of impacted sediments in Sharon Steel Run/Unnamed Tributary #1, Unnamed Tributary #2, and the West Tributary is estimated to be approximately 3,280 cubic yards. Alternative OSS2 would take approximately 1 month to complete and would cost an estimated $805,000.

Alternative OSS3 - Excavation and On-Site Confinement

Excavate and consolidate on-Site sediment exceeding performance standards identified in Table 1 with contaminated soil on the Site for on-Site containment. The sediment would be excavated from the various drainage way segments and spread to fill in low areas on the Site prior to the site being capped. Excavated drainage way areas would be restored in a manner appropriate to its respective function. The total volume of impacted sediments in Sharon Steel Run/Unnamed Tributary #1, Unnamed Tributary #2, and the West Tributary is estimated to be approximately 3,280 cubic yards. Consolidation of the sediments would take one month; full implementation of Alternative OSS3, including planning and on-Site confinement would take approximately 12-18 months to complete and would cost an estimated $523,000.

Alternative OSS4 - Monitored Natural Recovery

Allow monitored natural attenuation (MNA) of hazardous substances in drainage way sediments to achieve removal performance standards listed in Table 1. The activity performed consists of institutional controls to limit exposure and monitoring of sediment quality recovery while natural processes reduce the concentrations of chemicals of concern. Monitoring sediment quality would provide an on-going evaluation of the nature and extent of natural attenuation processes occurring at the Site. The monitoring component would begin immediately but the time to achieve performance standards would be very long. The estimated present worth cost of Alternative OSS4 is $1,179,000.

D. Groundwater

The EE/CA Report evaluates six response action alternatives for restoring contaminated groundwater or containing the contaminated groundwater within a waste management area at the Site. Please review the EE/CA Report (Attachment 1) for a complete analysis of the removal action alternatives evaluated and the recommended alternative for the river (See Sections 3.2, 4.2 and 5.2). A summary of the alternatives developed and considered by EPA for groundwater are set out below:

Alternative GW1 - No Action

Alternative GW1 provided a baseline for comparing the other groundwater alternatives. In this alternative no active remediation, treatment, or engineering controls would be implemented and no long term monitoring would be performed. There are no costs associated with this alternative. Under this alternative, there would be no additional removal actions beyond those already completed at the Site, and the existing on-site groundwater collection system operation (which consists of the collection of groundwater from two sumps, on-site treatment including activated carbon, and subsequent discharge to the City of Fairmont sewer system) would be discontinued.

Alternative GW2 - No Further Action

The existing groundwater collection and treatment system would continue to be operated as it has been operated since March 2001, with no improvements or expansion beyond that currently in operation. There would also be no further removal actions beyond those already completed at the Site. The major components of Alternative GW2 include:

- Maintain two groundwater collection trenches in the Middle and East Tributaries
- Pump collected NAPL fraction and water to on-Site treatment plant
- Treat water to meet City of Fairmont's pre-treatment requirements
- Discharge to the City of Fairmont sewer system

No additional time is required to implement GW2 and the estimated present worth cost is $745,000.

Alternative GW3 - Monitored Natural Attenuation

Allow monitored natural attenuation (MNA) to achieve removal performance standards listed in Table 1. MNA refers to the reliance on natural processes (i.e., biodegradation, dilution and dispersion, and sorption) to achieve site-specific contamination removal objectives. This alternative would involve very detailed monitoring of groundwater quality to provide an on-going evaluation of the nature and extent of natural attenuation processes occurring at the Site. The estimated present worth cost of Alternative GW3 is $3,204,000.

Alternative GW4 - Expansion of the Existing Groundwater Containment System

This alternative includes expansion of the existing groundwater containment and treatment

features described in Alternative GW2 to enhance performance of the current containment systems to prevent site-related contaminants in groundwater from migrating off-site or into receiving surface waters. The locations of these features are shown in Figure 7. The Alternative was evaluated with two options. Option A would upgrade the existing on-Site treatment plant and continue to discharge to the City of Fairmont sewer for a final treatment step. Option B would upgrade the existing plant so that the treated water could be discharged to the unnamed tributary rather than the sewer. The major components of Alternative GW4 include:

- Re-configuring the tar and seep collection system by extending and re-aligning French drains to better capture tar and contaminated groundwater
- Pump collected NAPL fraction and water to on-Site treatment plant
- Upgrade or replace of existing groundwater treatment system to accommodate higher flow rate

Option A

- Treat water to meet City of Fairmont's pre-treatment requirements
- Discharge to the City of Fairmont sewer system

Option B

- Treat water to meet NPDES treatment requirements
- On-Site discharge to Sharon Steel Run

Alternative GW4 Option A could be implemented in approximately 6 months and cost an estimated $5,073,000. Alternative GW4 Option B could be implemented in approximately one year and cost an estimated $10,542,000.

Alternative GW5 - In-situ Chemical Oxidation

Treat groundwater containing hazardous substances in excess of removal performance standards listed in Table 1 with an in-situ chemical oxidation process. Major components of GW5 include:

- Installing injectors or treatment trenches throughout area of groundwater contamination
- Mixing oxidation reagent in preparation of injection events
- Periodically injecting reagent into contaminated saturated zone to chemically oxidize hazardous substances to less harmful compounds
- Periodic confirmation sampling

This alternative requires bench-scale testing to select an appropriate reagent. It would take approximately 2 - 3 years to implement GW5. The estimated cost of Alternative GW5 is $17,257,000.

Alternative GW6 - In-situ Bioremediation

Treat contaminated groundwater utilizing in-situ bioremediation to achieve removal performance standards listed in Table 1. Bioremediation is a process that attempts to accelerate the natural biodegradation process by providing/supplementing nutrients, electron acceptors, and/or

competent degrading microorganisms that may otherwise be limiting the rapid conversion of organic contaminants to innocuous end products. The major components of Alternative GW6 include:

- Installing groundwater extraction points
- Installing infiltration galleries/treatment trenches throughout area of groundwater contamination
- Mixing appropriate amendments in preparation of treatment events
- Periodically re-injecting enriched water into contaminated saturated zone to optimize biodegradation of contaminants of concern
- Periodic confirmation sampling

This alternative requires bench-scale testing to determine which essential nutrients are deficient. Pilot-scale testing would be required to design an appropriate delivery system. Bioremediation would be implemented for approximately 5 years and would be re-evaluated for continuation. The estimated cost of Alternative GW6 is $5,899,000.

VII. PROPOSED ACTION AND ESTIMATED COSTS

A. Removal Action Selection Process

EPA completed the EE/CA in accordance with the NCP, 40 C.F.R. §300.415, and applicable guidance. The EE/CA considered removal action alternatives to mitigate direct exposure of human and ecological receptors to industrial waste deposits (BSD) and contaminated sediments in the Monongahela River and to soil, sediment and groundwater in the upland portion of the Site. In addition, the alternatives considered mitigating the release or potential release of hazardous substances from the BSD area further down river as well as the costs associated with those removal actions. The potential response actions described in Section VI were primarily analyzed in terms of effectiveness, implementability and cost. In accordance with the "Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA" (OSWER, August 1993), the following additional criteria were also used in this removal response action selection process: overall protection of human health and the environment; compliance with ARARs; long-term effectiveness and permanence; reduction of toxicity, mobility or volume through treatment; short-term effectiveness; state acceptance; and, community acceptance.

Based on the information contained in the EE/CA report and the Administrative Record, the removal action described in Section VII.B.1 is proposed for the Monongahela River downgradient of the Big John Salvage and Sharon Steel/Fairmont Coke Works Sites. This removal action is designed to mitigate direct contact risk to human and potential ecological receptors associated with highly contaminated wastes and river sediments and mitigate the potential risk from the release of hazardous substances, pollutants or contaminants from those wastes and sediments further down river. EPA expects that implementation of removal action described in Section VII.B.1 will achieve total PAH concentrations in the 100-500 mg/kg range and create conditions suitable for monitored natural recovery to satisfactorily reduce the residual PAHs to concentrations within EPA's target risk range within a reasonable time period. Materials removed from the river will be sampled and treated and/or disposed of in an appropriately RCRA-permitted facility.

Based on the information contained in the EE/CA report and the Administrative Record, the removal action described in Sections VII:B.2 through 4 are proposed for the contaminated media located at the upland areas of the Big John Salvage Site. This removal action is designed to mitigate direct contact risk to human and potential ecological receptors associated with buried wastes, contaminated soils, and sediment in the drainage ways. The removal action will also prevent contaminated groundwater from migrating beyond the waste management area. EPA expects that implementation of removal action described in Sections VII.B.2 through 4 will prevent exposure to concentrations of hazardous substances in excess of performance standards and achieve EPA's target risk range.

EPA carefully considered state and community acceptance of the proposed response actions prior to reaching a final decision regarding the final clean up plan. After full consideration of comments submitted during the 30-public comment period, EPA changed its recommendation for contaminated river sediments from RS2 (Excavation and On-Site Confinement) to Alternative RS3 (Excavation and Off-Site Treatment/Disposal). The community consensus was that an off-site disposal option for the wastes removed from the River was preferred. The comparative analyses completed in Section 3.4 of the EE/CA determined that the two options graded out very closely for most criteria. The two options were re-considered in light of the significant technically sound community objections. EPA determined that the more conventional option of long-term management in an appropriately constructed, permitted and monitored facility is the better option. Alternative RS2 (Excavation and Off-Site Disposal/Treatment) is EPA's recommended alternative for the BSD/SSD on the River bottom.

B. Proposed Action Description

1. River Sediment Alternative RS2: *Excavation and Off-Site Treatment and/or Disposal – Option B (BSD and SSD)*

a) Perform pre-design sampling and surveying (3-dimentional) in the black semi-solid deposits (BSD) and visibly stained sediment deposits (SSD) area of the Monongahela River near the confluence with Sharon Steel Run (see Figure 4 for map of area). Develop a dredging prism which will refine the boundaries of the BSD/SSD and define the excavation area ("River Excavation Area").

b) Isolate the River Excavation Area with turbidity curtains or other appropriate methods to reduce/prevent erosion and limit migration of re-suspended contaminants during removal activities. Measure upstream and downstream turbidity levels in the river during dredging/excavation to ensure that engineering controls are effective in minimizing the migration of residual contamination re-suspended by removal operations.

c) Remove all BSD and visibly stained sediment deposits from the River Excavation Area using dredging/excavation techniques appropriate to the Site conditions. Employ methods to minimize re-suspension and residual materials.

d) Dewater and stabilize excavated wastes and sediments (i.e., BSD and SSD) with additives (i.e., polymers, kiln dust, etc.) as required to meet off-Site treatment or disposal facility acceptance criteria.

e) Discharge water collected during the dewatering process to the Monongahela River in

accordance with National Pollution Discharge Elimination System ("NPDES") and State discharge limits.

f) Sample excavated BSD/SSD for RCRA characteristics to determine appropriate treatment and/or disposal requirements. Preliminary waste characterization profiling and landfill approval will be completed to the extent practicable prior to excavation.

g) Transport dewatered BSD/SSD by truck or other means to an appropriately permitted facility for treatment and/or disposal.

h) Dispose excavated BSD/SSD at an off-Site treatment and/or disposal facility operating in accordance with CERCLA 121(d)(3) and 40 CFR 300.440.

i) Conduct a post-excavation evaluation to verify the removal of BSD and assess the nature and extent residual contamination.

j) If the post-dredging assessment indicates that BSD remains, remove that BSD and dispose in accordance with (h), above.

k) Restore excavation area and isolate any remaining thin layer of residual visually stained sediment deposits from the benthic and aquatic ecosystems by placing a layer of sand or other earthen materials above such stained areas. Material selection shall be appropriate for the nature of contamination, the physical and hydraulic characteristics of the waterway (including scour) and permitting requirements. Post-removal elevations within the excavation and restoration area shall not be greater than pre-removal elevations (i.e., no net fill to river bottom).

l) Conduct an environmental monitoring program to document post-removal baseline conditions and continue for 5 years to document the effectiveness of natural restoration in reducing toxicity to aquatic organisms and producing a downward trend of PAH concentrations in sediments and relevant biota.

m) Implement post-removal site controls to preserve the integrity of the response action.

2. Soil Alternatives SO5: *Capping/Containment of Contaminated Soil*

a) Install a RCRA Subtitle D-type cap (Cap") over the area of the Site where surface and/or subsurface soil concentrations exceed cleanup standards identified in Table 1 (Removal Performance Standards) and the slope of the land is less than 10 percent. Contaminated soil may be consolidated prior to installation of the Cap to minimize the area of the Cap. Consolidate contaminated soil which has eroded onto adjacent properties with on-Site contaminated soil prior to installation of the Cap.

b) Construct a RCRA Subtitle D-type cap or implement an alternative equivalent containment technique in areas with a slope greater than 10 percent.

c) Install and maintain an engineered surface water runoff and erosion control system in accordance with West Virginia storm water control regulations.

d) Segregate obvious masses of tar derived materials encountered at the surface before and during earth work to the extent practical. Segregated material shall be sampled and transported and disposed or treated at an off-Site facility in accordance with CERCLA 121(d)(3) and 40 CFR 300.440..

e) Conduct confirmation sampling to demonstrate that soils contaminated with hazardous substances greater that the performance standards identified in Table 1 have been contained beneath the Cap.

f) Implement post-removal site controls to preserve the integrity of the response action.

3. Upland Sediment Alternative OSS3: *Excavation and On-Site Confinement of Sediment*

a) Excavate surficial sediments in upland drainage ways exceeding performance standards for sediment identified in Table 1. Consolidate such excavated sediments with on-Site soil prior to installation of the Cap described in 2.a, above. The upland drainage ways include Sharon Steel Run, Unnamed Tributary #2, West Tributary, Middle Tributary and East Tributary.

b) Conduct confirmation sampling to demonstrate that surficial sediments contaminated with hazardous substances greater than the performance standards identified in Table 1 have been removed from the drainage ways.

c) If the confirmation sampling indicates that contaminated sediment remains, remove that contaminated sediment and consolidate in accordance with (a), above.

d) Restore excavated drainage ways to their respective functions. Restoration of Sharon Steel Run shall include placement of clean sediment and/or root wads into select areas where established sediment deposits thicker than six inches were removed.

4. Groundwater Alternative GW4A: *Expansion of the Existing Groundwater Containment System with Discharge to POTW*

a) Upgrade and maintain existing French drains installed beneath the Middle and East Tributary, including collection area around respective sumps, to prevent migration of water with concentrations of hazardous substances greater than concentrations listed in Table 1 ("Contaminated Water") to or beneath Sharon Steel Run and to provide for efficient evacuation of Contaminated Water and non-aqueous phase liquids ("NAPL").

b) Augment the existing groundwater collection system with additional collection trenches to capture Contaminated Water closer to the upland source area and to prevent migration of Contaminated Water from the Waste Management Area to or beneath Sharon Steel Run via the West Tributary or any other point.

c) Operate the expanded groundwater collection system to contain Contaminated Water within the Waste Management Area so that groundwater performance standards identified in Table 1 are achieved and maintained in the Area of Attainment (Figure 8 - map of the Waste Management Area and the Area of Attainment).

d) Implement a groundwater and surface water monitoring program to demonstrate that Contaminated Water is contained within the Waste Management Area. Install additional groundwater monitoring wells as necessary to demonstrate such containment. Adequacy of the re-configured groundwater collection system will be measured by achieving performance standards identified in Table 1 for surface water and groundwater in the Area of Attainment.

e) Conduct periodic evaluation of the performance and effectiveness of the containment system. Modify the groundwater collection system as necessary to achieve the performance standards in the Area of Attainment beyond the Waste Management Area.

f) Convey Contaminated Water and NAPL from collection trenches and sumps to an on-Site wastewater treatment facility.

g) Replace or modify the existing water treatment plant as appropriate to accommodate the increased flow rate [estimated at 10 gallons per minute ("gpm")] and to provide automated controls and monitoring.

h) Operate, maintain and monitor on-Site water treatment plant to demonstrate treated water continues to achieve the City of Fairmont's influent pretreatment requirements.

i) Discharge treated water to the City of Fairmont sewer system.

j) Implement post-removal site controls to preserve the integrity of the response action.

C. Contribution to Remedial Performance

The Big John Salvage Site is an NPL Site. The proposed removal action is consistent with accepted removal practices and is expected to abate the threats that meet NCP removal criteria. Further, the proposed removal action is consistent with the long term remedial actions at this Site.

D. Compliance with Applicable or Relevant and Appropriate Requirements ("ARARs")

Pursuant to 40 CFR 300.415(j), the proposed removal action set forth in this memorandum will comply with all federal and state applicable or relevant and appropriate environmental and health requirements, to the extent practicable considering the exigencies of the situation. A list of federal and state ARARs identified for the proposed removal action included as Table 2-1 in Attachment 1.

E. Project Schedule

EPA expects planning work for the removal of BSD/SSD from the river will be completed over the winter of 2010/2011. Field work for the river is expected to require 2-4 months and will be scheduled during a period of anticipated lower flows in the Monongahela River. Work will be coordinated with the West Virginia Department of Environmental Protection, U.S. Fish & Wildlife Service and the U.S. Army Corps of Engineers. EPA expects planning and construction

of the RCRA Subtitle D type cap and the enhanced groundwater containment system will require 18-24 months to complete if implemented concurrently. Post-removal site controls will follow.

F. Public Participation

Pursuant to the NCP, 40 C.F.R. § 300.415, a public comment period on the EE/CA and Administrative Record concluded on November 2, 2009. A thirty (30)-day public comment period on the EE/CA, for the non-time critical action proposed in this Action Memorandum included an advertisement placed in the Times West Virginian on October 4, 2009. The Administrative Record for this non-time critical removal action has been established pursuant to 40 C.F.R. § 300.415.

EPA received written comments from representatives of Vertellus, CBS Corporation and ExxonMobil. Each of these corporations has been notified by EPA of potential liability at the Big John Salvage and/or Sharon Steel/Fairmont Coke Works Superfund Sites. Points raised in the written or verbal comments during the public comment period are summarized and EPA's response to these comments can be found in the Responsiveness Summary (see Attachment 2).

G. Estimated Costs

The total cost estimate is $21,953,000. This cost estimate was prepared in accordance with OSWER Directive 9360.0-42, "Amendment to the Action Memorandum Guidance and Removal Cost Management System to Address Calculation of Removal Action Project Ceilings."

Extramural Costs:	
Regional Removal Allowance Costs:	
Total Cleanup Contractor Costs	$17,794,000
(This costs includes estimates for contractors, including a 25% contingency and 15% for design, project and construction management, and operation and monitoring.)	
Other Extramural Costs not Funded from the Regional Allowance:	
Total START (oversight)	$500,000
Subtotal	$18,294,000
Extramural Costs Contingency: (20% of Subtotal, Extramural Costs; round to nearest thousand)	$ 3,659,000
TOTAL, REMOVAL ACTION PROJECT CEILING	$21,953,000

VIII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If no action is taken or the action is delayed, the release or threat of potential release of hazardous substances from black semi-solid deposits and visibly contaminated sediment deposits in the vicinity of the hotspot will continue. The release or threat of release of hazardous substances from the upland area contaminated soil, sediment and groundwater will also continue. The potential threat to human health and the environment from an uncontrolled release of hazardous substances from the soil, groundwater, submerged wastes and contaminated sediments will remain.

IX. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues pertaining to the removal action proposed herein for the Big John Salvage Site.

X. ENFORCEMENT

The Potentially Responsible Party Search Section has conducted an investigation to determine who the viable PRPs are. See attached confidential enforcement addendum (Attachment 4) for further information and enforcement strategy.

EPA's estimated costs for this removal action are calculated as follows:

Direct Costs[3] + Indirect Costs = Estimated EPA Costs for a Removal Action, where:

Direct Costs = Direct Extramural + Direct Intramural
Indirect Costs = Region-specific Indirect Cost Rate x (Direct Costs)

Direct Extramural = $21,953,000
Direct Intramural = 100,000

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[3]Direct Costs include direct extramural costs and direct intramural costs. Indirect Costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

Region-specific Rate = 57.23%

Therefore:

($21,953,000 + $100,000) + (57.23% * $22,053,000) = $34,674,000

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be $34,674,000.

XI. RECOMMENDATIONS

This Action Memorandum represents the recommended Removal Action for the Monongahela River and upland area at the Big John Salvage Site, located in Fairmont, Marion County, West Virginia, developed in accordance with CERCLA, as amended and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Pursuant to Section 113(k) of CERCLA and EPA Delegation No. 14-22, I hereby establish the documents listed in the attached Index (Attachment 3) as the Administrative Record supporting the issuance of this Action Memorandum.

Conditions at the Big John Salvage Site meet the NCP Section 300.415(b) criteria and the CERCLA Section 104(c) consistency exemption from the $2 million and 12-month limitation for a non-time critical removal action and I recommend your approval of the proposed non-time critical removal action described above.

Action by the Approving Official:

I have reviewed the above-stated facts and based upon those facts and the information compiled in the documents described above, I hereby determine that the release or threatened release of hazardous substances presents or may present an imminent and substantial endangerment to the public health or welfare or to the environment. I concur with the recommended Removal Action as outlined in this Action Memorandum.

APPROVED: _____ **DATE:** 9/30/10

Ronald J. Borsellino, Director
Hazardous Site Cleanup Division
EPA Region 3

Attachment 1: Engineering Evaluation/Cost Analysis
Attachment 2: Responsiveness Summary
Attachment 3: Index to the Administrative Record
Attachment 4: Confidential Enforcement Addendum

NOT TO SCALE

Figure 1
General Location Map
Big John Salvage - Hoult Road Site
Fairmont, West Virginia

N:\Projects\NUS\112G01225_\Action Memo\Figure 1_Location-map.dwg

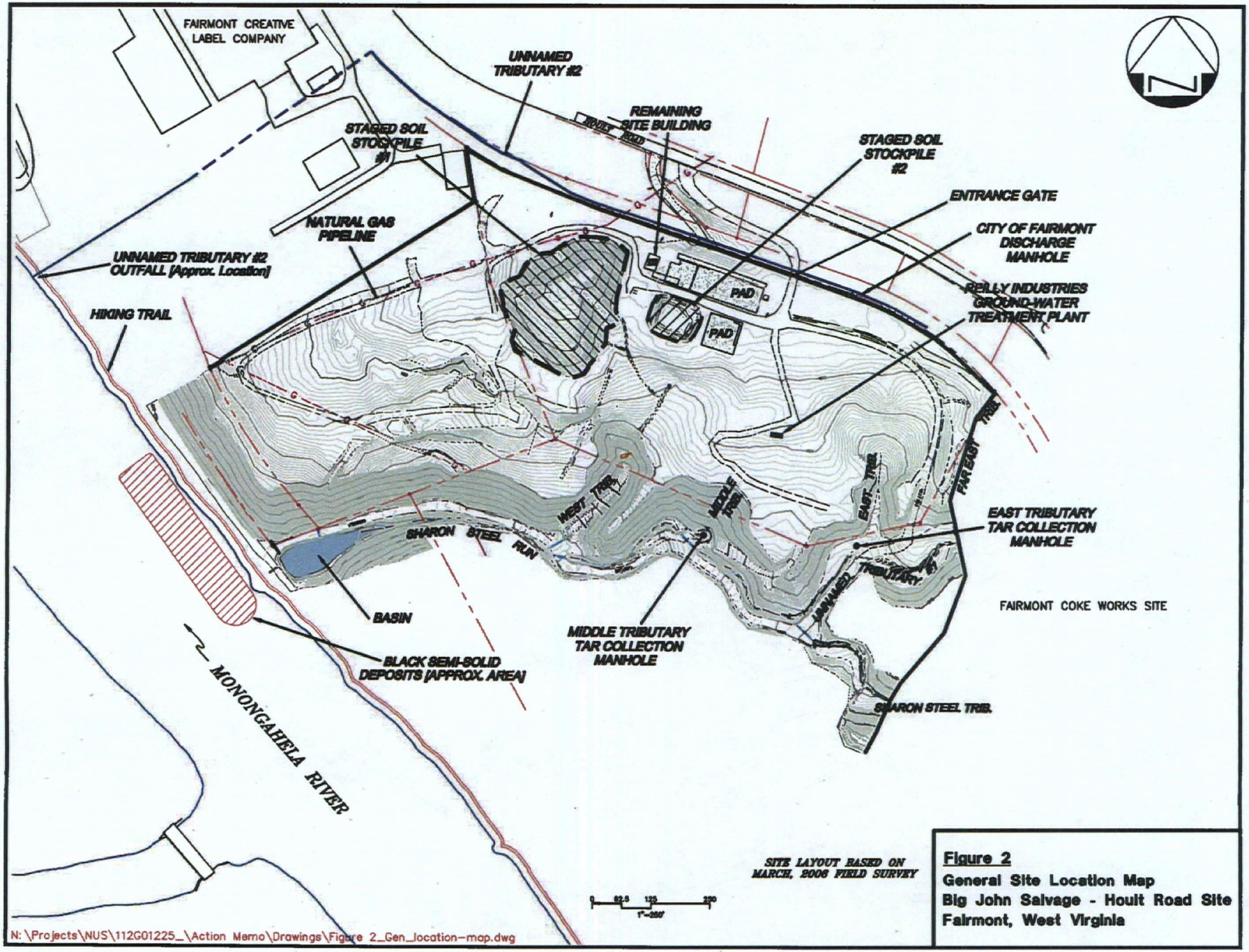


Figure 2
General Site Location Map
Big John Salvage - Hoult Road Site
Fairmont, West Virginia

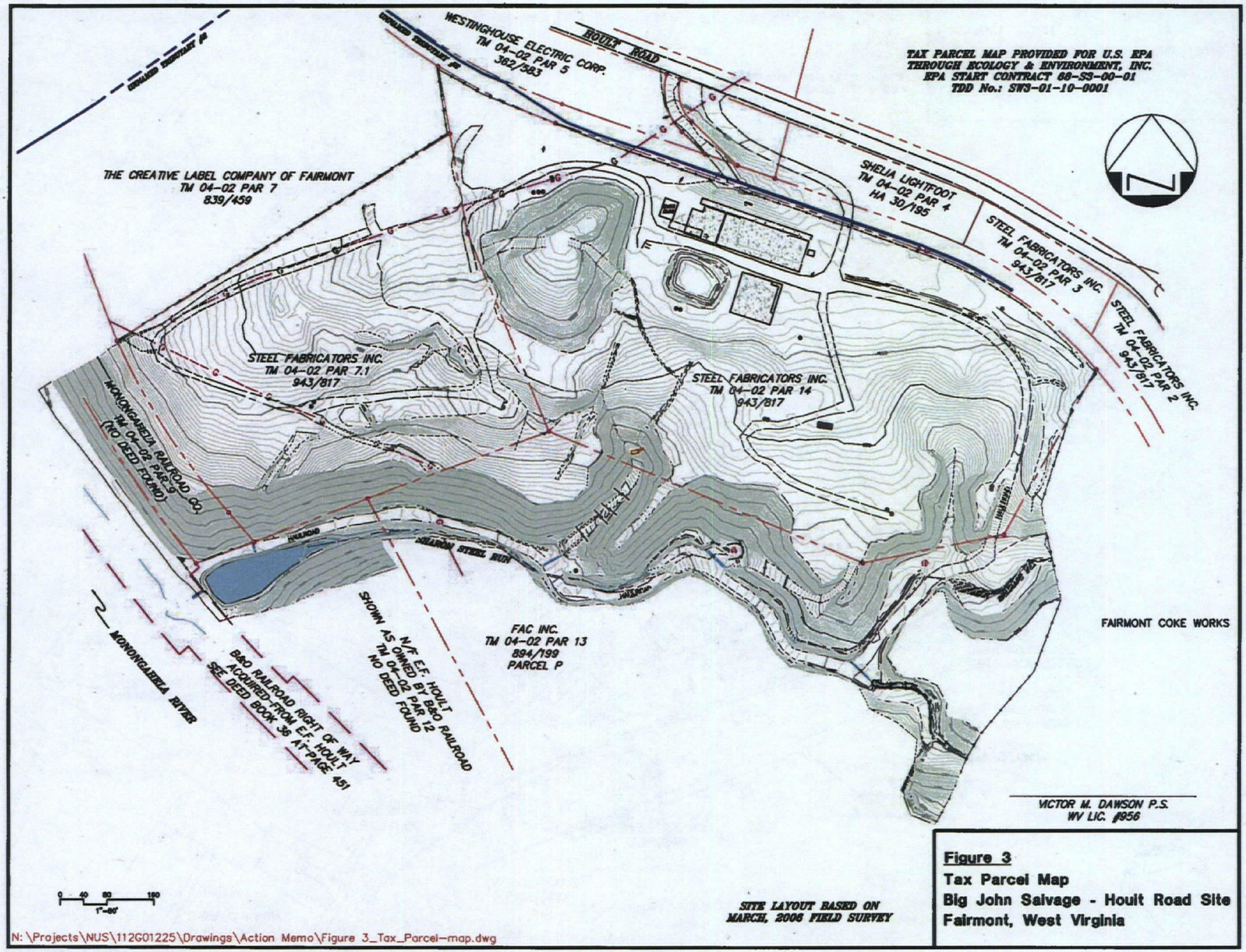


Figure 3
Tax Parcel Map
Big John Salvage - Houlf Road Site
Fairmont, West Virginia

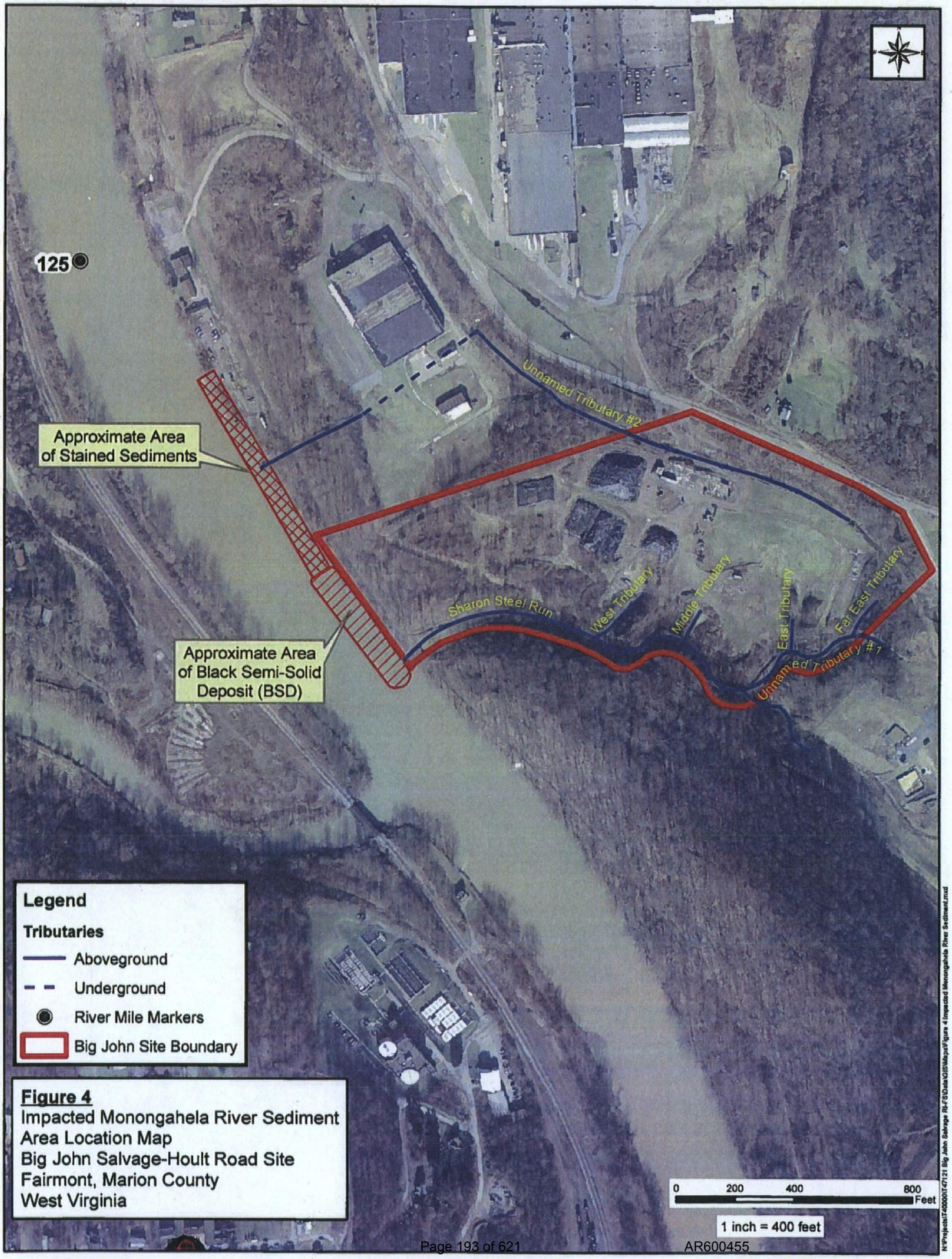
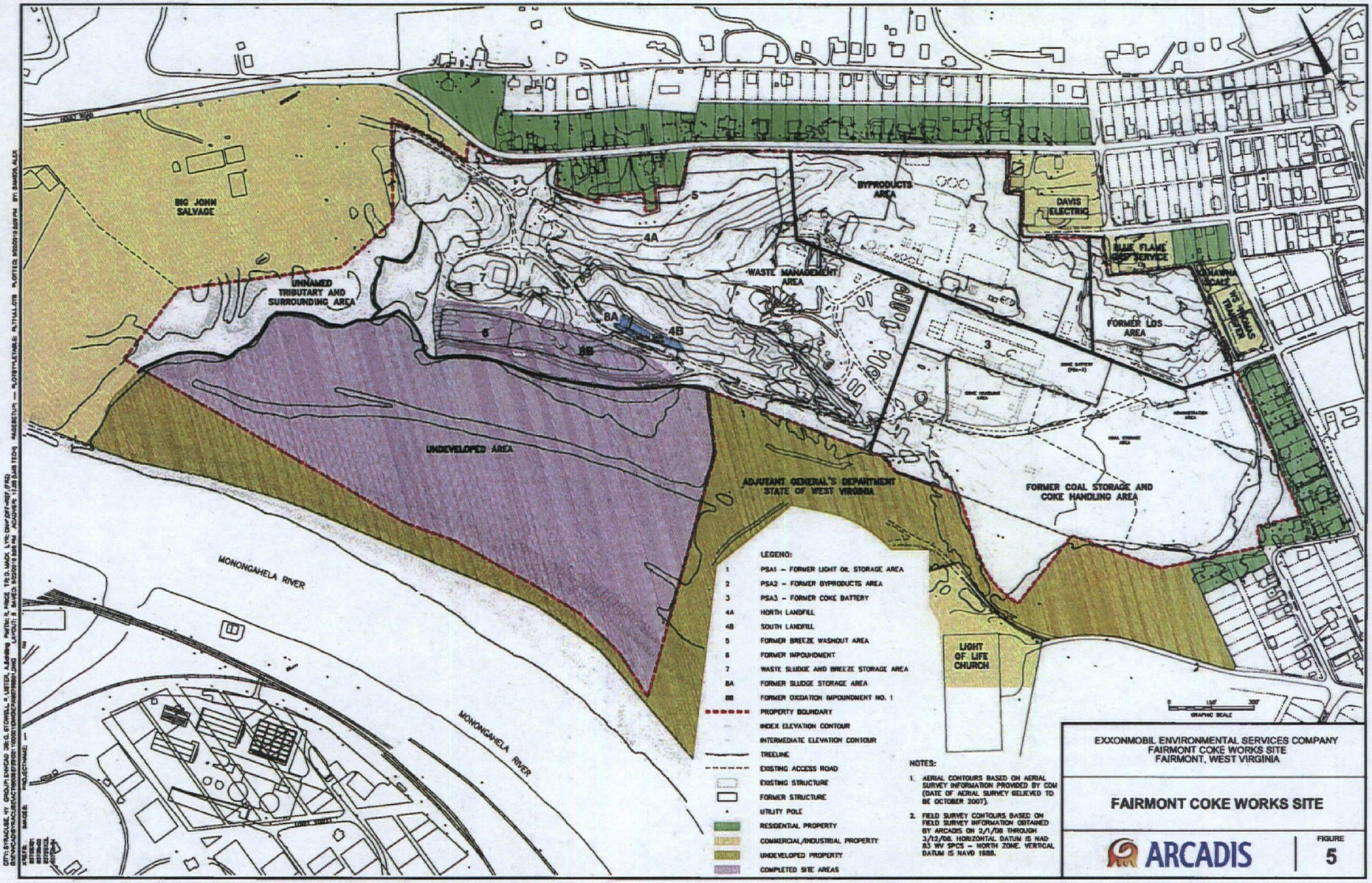


Figure 4
Impacted Monongahela River Sediment
Area Location Map
Big John Salvage-Hoult Road Site
Fairmont, Marion County
West Virginia


BIG JOHN SALVAGE
UNNAMED TRIBUTARY AND SURROUNDING AREA
UNDEVELOPED AREA
MONONGAHELA RIVER
MONONGAHELA RIVER
BYPRODUCTS AREA
DAVIS ELECTRIC
BLUE FLAME GAS SERVICE
WASTE MANAGEMENT AREA
FORMER LOS AREA
ADJUTANT GENERAL'S DEPARTMENT STATE OF WEST VIRGINIA
FORMER COAL STORAGE AND COKE HANDLING AREA
LIGHT OF LIFE CHURCH
4A
4B
5
6
7
8A
8B
1
2
3
LEGEND:
1 PSA1 – FORMER LIGHT OIL STORAGE AREA
2 PSA2 – FORMER BYPRODUCTS AREA
3 PSA3 – FORMER COKE BATTERY
4A NORTH LANDFILL
4B SOUTH LANDFILL
5 FORMER BREEZE WASHOUT AREA
6 FORMER IMPOUNDMENT
7 WASTE SLUDGE AND BREEZE STORAGE AREA
8A FORMER SLUDGE STORAGE AREA
8B FORMER OXIDATION IMPOUNDMENT NO. 1
PROPERTY BOUNDARY
INDEX ELEVATION CONTOUR
INTERMEDIATE ELEVATION CONTOUR
TREELINE
EXISTING ACCESS ROAD
EXISTING STRUCTURE
FORMER STRUCTURE
UTILITY POLE
RESIDENTIAL PROPERTY
COMMERCIAL/INDUSTRIAL PROPERTY
UNDEVELOPED PROPERTY
COMPLETED SITE AREAS
NOTES:
1. AERIAL CONTOURS BASED ON AERIAL SURVEY INFORMATION PROVIDED BY CDM (DATE OF AERIAL SURVEY BELIEVED TO BE OCTOBER 2007).
2. FIELD SURVEY CONTOURS BASED ON FIELD SURVEY INFORMATION OBTAINED BY ARCADIS ON 2/1/08 THROUGH 3/12/08. HORIZONTAL DATUM IS NAD 83 WV SPCS – NORTH ZONE. VERTICAL DATUM IS NAVD 1988.
GRAPHIC SCALE
EXXONMOBIL ENVIRONMENTAL SERVICES COMPANY
FAIRMONT COKE WORKS SITE
FAIRMONT, WEST VIRGINIA
FAIRMONT COKE WORKS SITE
ARCADIS
FIGURE 5

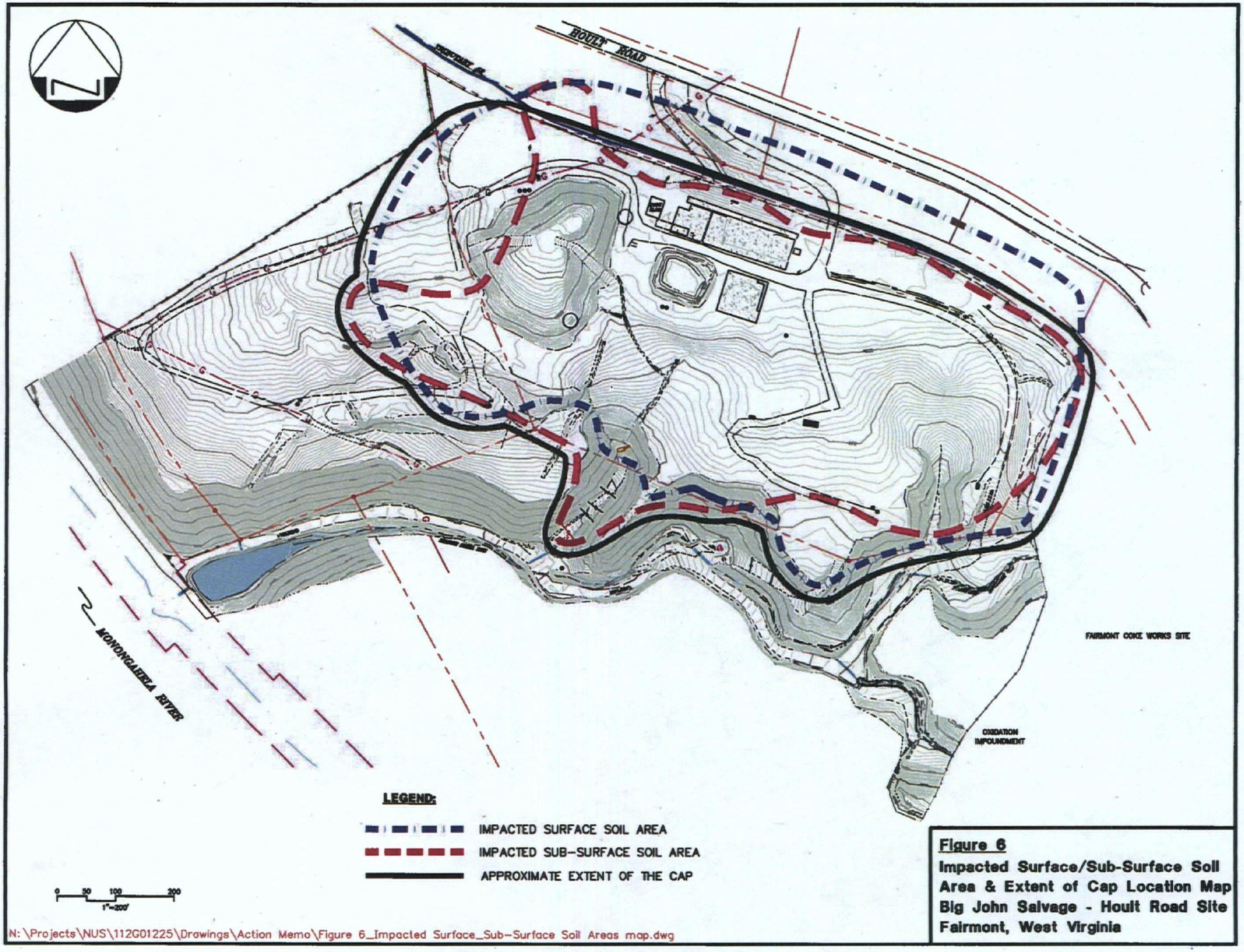


Figure 6
Impacted Surface/Sub-Surface Soil Area & Extent of Cap Location Map
Big John Salvage - Hoult Road Site
Fairmont, West Virginia

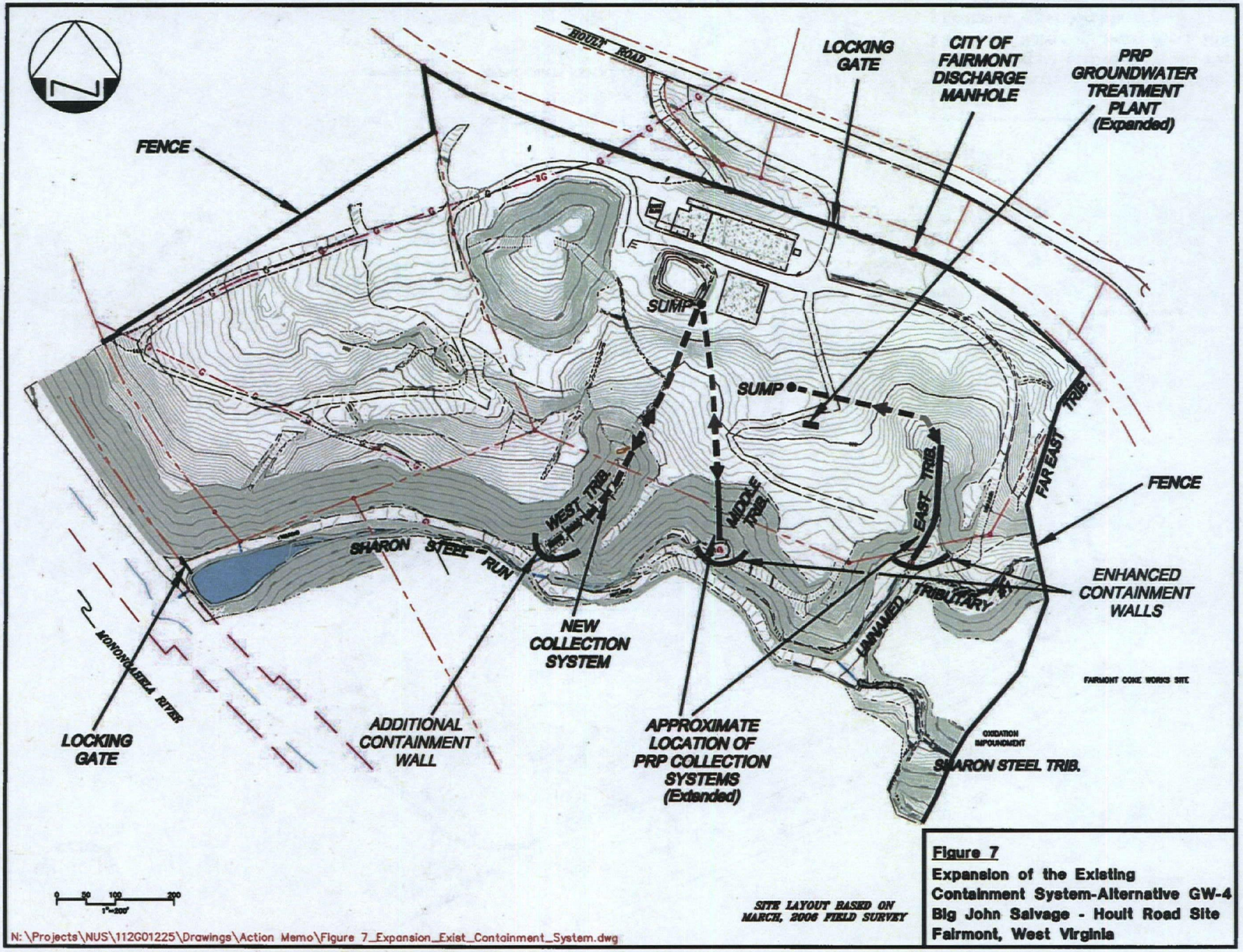


Figure 7
Expansion of the Existing Containment System-Alternative GW-4
Big John Salvage - Hoult Road Site
Fairmont, West Virginia

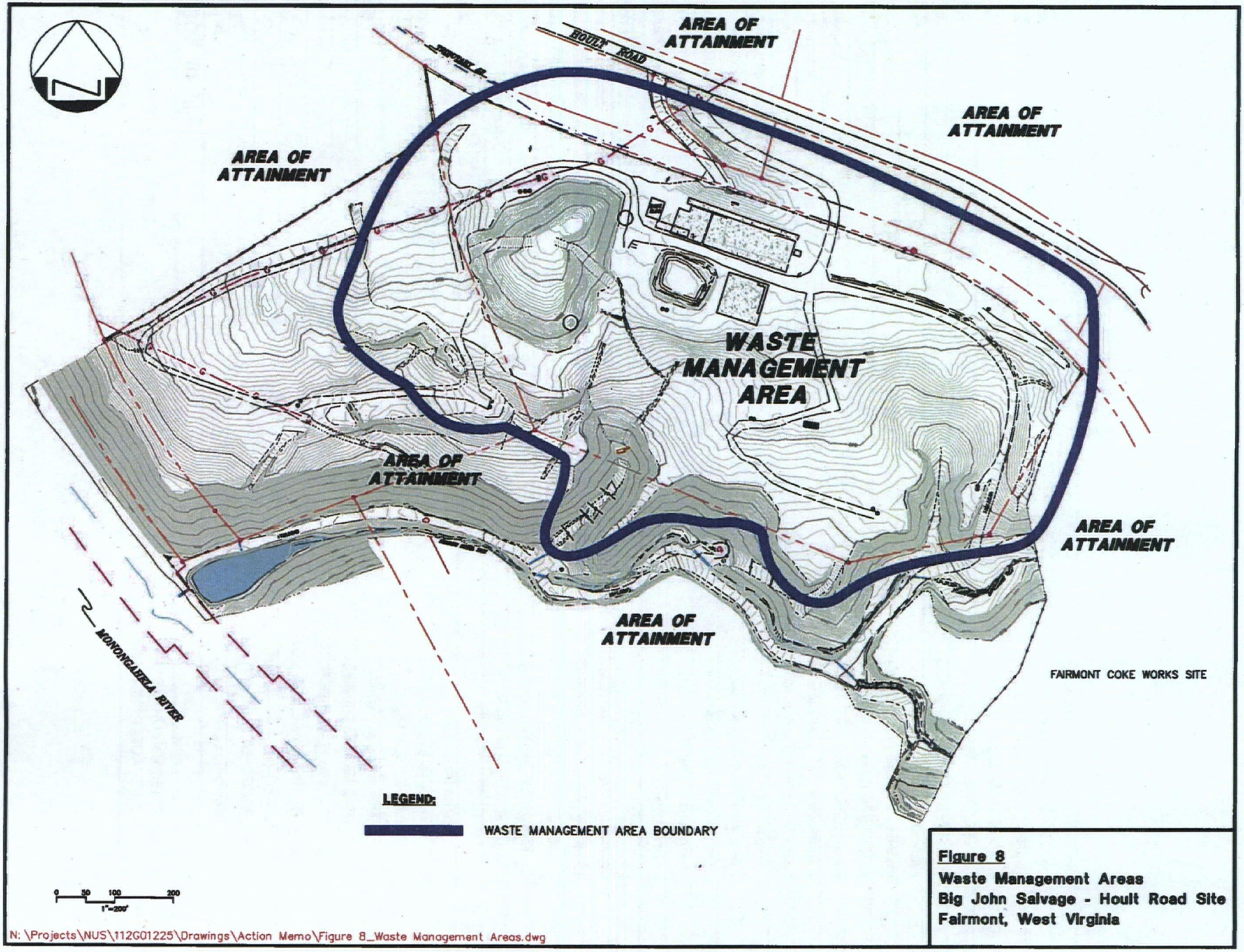


Figure 8
Waste Management Areas
Big John Salvage - Hoult Road Site
Fairmont, West Virginia

TABLE 1
REMOVAL PERFORMANCE STANDARDS
BIG JOHN SALVAGE/HOULT ROAD SITE

CHEMICAL OF CONCERN	REMOVAL PERFORMANCE STANDARDS	BASIS FOR REMOVAL PERFORMANCE STANDARD SELECTION
SOIL (mg/kg)		
Arsenic	20	Protection of Industrial Uses
Total benzo(a)pyrene (BAP) equivalents	4.6	Protection of Industrial Uses
Total PAHs	26	Protection of Ecological Receptors
Naphthalene	10	Proteciton of Industrial Uses/Soil to Groundwater
Copper	35	Protection of Ecological Receptors
Mercury	1	Protection of Ecological Receptors
Zinc	95	Protection of Ecological Receptors
Benzene	0.03	Soil to Groundwater
1,2-Dibromo-3-chloropropane	0.02	Soil to Groundwater
2-Methylnaphthalene	1	Soil to Groundwater
SEDIMENT - ON-SITE (mg/kg)		
Total BAP equivalents	0.4	Protection of Recreational Uses
Total PAHs	26	Protection of Ecological Receptors
Lead	130	Protection of Ecological Receptors
Mercury	1	Protection of Ecological Receptors
Cadmium	1	Protection of Ecological Receptors
SURFACE WATER - ON-SITE (ug/L)		
Benzo(a)anthracene	0.2/GOAL - 0.02 (1)	Protection of Recreational Uses
Benzo(a)pyrene	0.03/GOAL - 0.02 (1)	Protection of Recreational Uses
Benzo(b)fluoranthene	0.5/GOAL - 0.02 (1)	Protection of Recreational Uses
Dibenzo(a,h)anthracene	0.02	Protection of Recreational Uses
Indeno(1,2,3-cd)pyrene	0.06/GOAL - 0.02 (1)	Protection of Recreational Uses
Fluoranthene	370	Protection of Ecological Receptors
Naphthalene	11	Protection of Ecological Receptors
Pyrene	0.06	Protection of Ecological Receptors
Benzene	51	Protection of Ecological Receptors
Aluminum	750	Protection of Ecological Receptors
Barium	40	Protection of Ecological Receptors
Cyanide	5	Protection of Ecological Receptors
Cadmium	0.8 - 1.1	Protection of Ecological Receptors
Iron	1500	Protection of Ecological Receptors
Lead	4.5 - 8.4	Protection of Ecological Receptors
Mercury	2.4	Protection of Ecological Receptors
Manganese	1000	Protection of Ecological Receptors

TABLE 1
REMOVAL PERFORMANCE STANDARDS
BIG JOHN SALVAGE/HOULT ROAD SITE

CHEMICAL OF CONCERN	REMOVAL PERFORMANCE STANDARDS	BASIS FOR REMOVAL PERFORMANCE STANDARD SELECTION
GROUNDWATER (ug/L)*		
1,2-Dibromo-3-chloropropane	0.2 (3)	Protection of Future Residential Uses
2-Methylnaphthalene	27	Protection of Future Residential Uses
Benzo(a)anthracene	0.2/GOAL - 0.005 (2)	Protection of Future Residential Uses
Benzo(b)fluoranthene	0.3/GOAL - 0.003 (2)	Protection of Future Residential Uses
Benzo(k)fluoranthene	0.5/GOAL - 0.03 (2)	Protection of Future Residential Uses
Benzo(a)pyrene (and total BAP equivalents)	0.2 (3)	Protection of Future Residential Uses
Naphthalene	62	Protection of Future Residential Uses
Benzene	5	Protection of Future Residential Uses
Arsenic	10 (3)	Protection of Future Residential Uses
Iron	2300	Protection of Future Residential Uses
Manganese	270	Protection of Future Residential Uses
Thallium	2 (3)	Protection of Future Residential Uses
Cyanide	200	Protection of Future Residential Uses
Vanadium	12	Protection of Future Residential Uses.
MONONGAHELA RIVER SEDIMENT (mg/kg)		
Black Semi-Solid Deposit (BSD)	COMPLETE REMOVAL	Risk reduction - Human Health/Environment
Visually Stained Sediments	REMOVAL(4)	Risk reduction - Human Health/Environment

(1) First value presented is typical detection limit available from routine analytical methods. Second value is ultimate goal based on meeting West Virginia AWQC standards for protection of ecological receptors.
(2) First value presented is typical detection limit available from routine analytical methods. Second value is ultimate goal based on meeting human health risk goals (cancer risk = 1E-05, or HI = 1.0)

(3) Value presented is the maximum contaminant level (MCL).

(4) Complete removal or isolate post-excavation residual with earthen material

* The groundwater performance standards apply to the "area of attainment."