

1 2. Except as provided in Subparts C, D, and E of this Sec-
2 tion, upon fulfillment of Weber's obligations pursuant to Sub-
3 parts D through F of Section XII (Financial Assurance and Trust
4 Account), the United States covenants not to sue Weber with
5 respect to Covered Matters and not to sue Weber to attempt to
6 have Weber perform the tasks described in Subpart B of Section
7 VII (Work To Be Performed) if Weber is in full compliance with
8 the terms of this Decree.

9 3. Except as provided in Subparts C, D, E and F of this
10 Section, upon entry of this Decree, the United States covenants
11 not to sue the City to attempt to have the City perform the tasks
12 described in Subpart B of Section VII (Work To Be Performed) if
13 the City is in full compliance with the terms of this Decree.

14 B. Settling Defendants hereby release and covenant not to
15 sue the United States for any claim, counter-claim, or cross-
16 claim asserted, or that could have been asserted up to and in-
17 cluding the effective date of this Consent Decree related to or
18 arising from this Consent Decree or groundwater contamination at
19 the Site; provided, however, that nothing in this Consent Decree
20 shall be interpreted as waiving, abrogating or resolving (1) any
21 claims which any Settling Defendant has or may have based upon
22 any alleged liability which the United States Department of
23 Defense, any branch or division thereof, or any predecessor
24 agency has or may have for conditions at the Site pursuant to
25 CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972
27 or (2) any claims which Lockheed or Weber has or may have with

1 respect to the Site from the United States pursuant to any con-
2 tract between Lockheed or Weber and the United States or between
3 Lockheed or Weber and any government contractor(s). In agreeing
4 to this reservation the United States does not admit liability on
5 any such claims and expressly reserves any and all defenses that
6 it may have to any such claims. Except as expressly set forth in
7 this Decree, Settling Defendants do not waive any claim against
8 and do not release or covenant not to sue the United States with
9 respect to any matter.

10 C. Settling Defendants are expressly not released from, and
11 the provisions of Subpart A of this Section shall not apply to,
12 any matter not expressly addressed by this Consent Decree, in-
13 cluding, but not limited to the following claims:

14 1. Claims based on a failure of a Settling Defendant
15 to meet the requirements of this Decree;

16 2. Any other claims of the United States for any other
17 costs or actions necessary at the Site which are not Covered
18 Matters, including any remedial activities that are necessary to
19 implement the ROD (as modified by the ESD and Subpart F of Sec-
20 tion VII (Work To Be Performed)), other than the Work, except in-
21 sofar as Weber and the City are entitled to a covenant not to
22 sue, pursuant to Subpart A of this Section, for the tasks
23 described in Subpart B of Section VII (Work To Be Performed);

24 3. Claims based on liability of Lockheed, Weber and/or
25 the City arising from the past, present, or future disposal of
26 hazardous substances outside of the Site;

27

1 4. Any claim or demand for damage to federal property
2 located any place that the Work is being performed;

3 5. Claims based on criminal liability;

4 6. Claims based on liability for damage to natural
5 resources as defined in CERCLA;

6 7. Claims based on liability for hazardous substances
7 removed from the Site;

8 8. Claims for Future Response Costs (and interest
9 thereon) that become due and payable pursuant to Section XVI
10 (Reimbursement of Future Response Costs) of this Consent Decree,
11 but which Lockheed does not pay by the date any such amounts are
12 due;

13 9. Claims based on liability for future monitoring,
14 oversight, or other response costs incurred by the United States
15 except as those expenses are Covered Matters; or

16 10. Liability for any violations of federal or State
17 law which occur during performance of the Work.

18 D. Notwithstanding any other provisions of this Consent
19 Decree, the United States reserves the right to institute
20 proceedings in this action, or in a new action, or to issue an
21 Order seeking to compel Lockheed and/or the City and/or Weber to
22 perform the following tasks with respect to Covered Matters:

23 1. Perform any additional response work, including
24 changes in the Work, at or related to the Site; or

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1 2. Reimburse the United States for response costs and
2 reimburse the State for its matching share of any response ac-
3 tions undertaken under CERCLA with respect to Covered Matters,
4 relating to the Site, if:

5 a. for proceedings prior to EPA certification of
6 completion of the Work pursuant to Section XXXIV (Termination and
7 Satisfaction),

8 i. conditions at the Site, previously un-
9 known to the United States, are discovered after the entry of
10 this Decree, or

11 ii. information is received, in whole or in
12 part, after entry of this Decree, and these previously unknown
13 conditions or this information indicates that the Remedial Action
14 previously selected by EPA is not protective of human health and
15 the environment;

16 b. for proceedings subsequent to EPA certification of
17 completion of the Work pursuant to Section XXXIV (Termination and
18 Satisfaction),

19 i. conditions at the Site, previously un-
20 known to the United States, are discovered after the certifica-
21 tion of completion by EPA, or

22 ii. information is received, in whole or in
23 part, after the certification of completion by EPA, and these
24 previously unknown conditions or this information indicates that
25 the Remedial Action previously selected by EPA is not protective
26 of human health and the environment.

27

1 E.1.a. The reservation contained in Subpart D of this Sec-
2 tion pertains only to additional tasks related to the Work. The
3 United States does not have to meet the standards contained in
4 Subpart D to seek to have Lockheed perform additional tasks that
5 are excluded from the definition of the Work. Lockheed retains
6 any and all defenses to an action by EPA to have Lockheed perform
7 additional tasks not required by this Decree except those
8 defenses waived in Subpart D.1 of Section XVII (Reservation and
9 Waiver of Rights).

10 b. The reservation contained in Subpart D of this Section
11 pertains only to additional tasks related to the Work. The
12 United States does not have to meet the standards contained in
13 Subpart D to seek to have Weber perform additional tasks that are
14 excluded from the definition of the Work; provided, however, that
15 EPA agrees not to seek to have Weber perform the tasks described
16 in Subpart B of Section VII if Weber has a covenant not to sue
17 for those tasks, pursuant to Subpart A.2 of this Section. Weber
18 retains any and all defenses to an action by EPA to have Weber
19 perform additional tasks not required by this Decree except those
20 defenses waived in Subpart D.1 of Section XVII (Reservation and
21 Waiver of Rights).

22 c. The reservation contained in Subpart D of this Section
23 pertains only to additional tasks related to the Work. The
24 United States does not have to meet the standards contained in
25 Subpart D to seek to have the City perform additional tasks that
26 are excluded from the definition of the Work; provided, however,
27 that EPA agrees not to seek to have the City perform the tasks

1 described in Subpart B of Section VII if the City has a covenant
2 not to sue for those tasks, pursuant to Subpart A.3 of this Sec-
3 tion. The City retains any and all defenses to an action by EPA
4 to have the City perform additional tasks not required by this
5 Decree except those defenses waived in Subpart D.1 of Section
6 XVII (Reservation and Waiver of Rights).

7 2. If the United States institutes proceedings in this ac-
8 tion or in a new action or issues an order pursuant to the reser-
9 vation contained in Subpart D of this Section, each Settling
10 Defendant reserves any and all defenses it may have to any por-
11 tion of such action or order that requires a Settling Defendant
12 to perform tasks in addition to any portion of the Work which
13 that Settling Defendant agreed to perform in Section VII (Work To
14 Be Performed) of this Decree.

15 F. Notwithstanding any other provision in this Consent
16 Decree, this covenant not to sue shall not relieve Settling
17 Defendants of their obligations to meet and maintain compliance
18 with the requirements set forth in this Consent Decree. The
19 United States reserves all its rights to take response actions at
20 the Site with respect to the Work in the event that EPA deter-
21 mines that a Settling Work Defendant has failed to perform, in an
22 adequate and timely manner, the Work it is required to perform
23 pursuant to this Decree, and to seek to recover from that Set-
24 tling Work Defendant response costs which:

- 25 1. Result from such a breach of the Decree;
- 26 2. Relate to any portion of the Work funded or per-
27 formed by the United States; or

1 3. Are enforcement costs incurred by the United States
2 associated with the Site.

3 G. Nothing in this Consent Decree shall constitute or be
4 construed as a release from, or a covenant not to sue regarding,
5 any claim, cause of action, or demand in law or equity against
6 any person, firm, trust, joint venture, partnership, corporation
7 or other entity not a signatory to this Consent Decree for any
8 liability it may have arising out of or relating to the Site.

9 H. The Settling Parties agree that the United States shall
10 be under no obligation to assist Settling Defendants in any way
11 in defending against suits for contribution brought against Set-
12 tling Defendants, including any which allege liability for mat-
13 ters covered by this covenant not to sue.

14 XIX. STIPULATED PENALTIES

15 A.1. Unless excused by EPA or a force majeure event,
16 Lockheed shall be liable for stipulated penalties to the United
17 States, as set forth in Subpart D of this Section, for each
18 failure by Lockheed to comply with the requirements of this Con-
19 sent Decree. Lockheed shall not be liable for stipulated
20 penalties for failure to meet requirements that are solely the
21 obligation of the City pursuant to this Decree.

22 2. Unless excused by EPA or a force majeure event, the City
23 shall be liable for stipulated penalties to the United States, as
24 set forth in Subpart E of this Section, for each failure by the
25 City to comply with the requirements of this Consent Decree. The
26
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1 City shall not be liable for stipulated penalties for failure to
2 meet requirements that are solely the obligation of Lockheed pur-
3 suant to this Decree.

4 B.1. Any reports, plans, specifications, schedules,
5 deliverables, appendices, and attachments required by this Decree
6 or the Statement of Work, are, upon approval by EPA, incorporated
7 into this Decree. A failure by a Settling Work Defendant to
8 comply with applicable EPA-approved reports, plans, specifica-
9 tions, schedules, deliverables, appendices, or attachments shall
10 be considered a failure to comply with this Decree and shall sub-
11 ject that Settling Work Defendant to stipulated penalties as
12 provided in Subpart D or E of this Section.

13 2. Failure to comply with this Consent Decree shall also
14 include but is not limited to the following:

15 a. Failure to submit deliverables specified in this
16 Consent Decree or the Statement of Work in an acceptable manner
17 and by the date due pursuant to this Decree; provided, however,
18 that if the failure to comply results from a determination by EPA
19 that a written deliverable is inadequate, the Settling Work
20 Defendant required to submit the draft deliverable shall have ten
21 (10) working days from receipt of EPA's written notice of disap-
22 proval, or such other longer time period as provided by EPA in
23 the notice of disapproval, within which to correct the inadequacy
24 and resubmit the deliverable for approval. Any disapproval by
25 EPA shall include an explanation of why the deliverable is inade-

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1 quate. If the resubmitted deliverable is inadequate, the Set-
2 tling Work Defendant required to submit the deliverable shall be
3 deemed to be in violation of this Decree.

4 b. Failure by a Settling Work Defendant to use best
5 efforts to obtain any permits necessary for offsite Work which
6 that Settling Work Defendant is required to perform or failure by
7 a Settling Work Defendant to use best reasonable efforts to ob-
8 tain necessary access agreements.

9 c. Failure to comply with any permit obtained for the
10 purpose of implementing the requirements of this Consent Decree
11 in any offsite location.

12 C. Stipulated penalties for failure to perform any require-
13 ment of this Consent Decree for which a deadline is specified
14 shall begin to accrue on the first day after the deadline.
15 Stipulated penalties for any other violation of this Consent
16 Decree shall begin to accrue on the first day after the Settling
17 Work Defendant(s) subject to penalties receive(s) notice from EPA
18 of such violation. For any violation, stipulated penalties shall
19 continue to accrue up to and including the day on which the non-
20 compliance is corrected. EPA, in its sole discretion, may waive
21 or reduce stipulated penalties. If EPA does not waive stipulated
22 penalties, EPA shall provide the Settling Work Defendant(s) sub-
23 ject to penalties with written notice of the alleged deficiency
24 in compliance with this Decree, and accrued stipulated penalties
25 shall become payable thirty (30) days after Settling Work
26 Defendant's receipt of EPA's written notice of deficiency;
27 provided, however, that if EPA provides notice of an alleged

1 deficiency, and that deficiency continues, EPA shall not be re-
2 quired to provide any additional notice in order for stipulated
3 penalties to continue to accrue and become payable.

4 D. With respect to Lockheed, stipulated penalties shall ac-
5 crue in the following amounts, and, as provided in Subpart H of
6 Section XVII (Reservation and Waiver of Rights), Lockheed may not
7 dispute the amount of stipulated penalties due per type of viola-
8 tion:

9 1. Monthly Progress Reports and Quarterly Quality Assurance
10 Reports

11 (a). Lockheed shall pay a stipulated penalty of \$1,000 per
12 day for the submission of a late or deficient Monthly Progress
13 Report.

14 (b) Lockheed shall pay a stipulated penalty of \$1,000 per
15 day for the submission of a late or deficient Quarterly Quality
16 Assurance Report.

17 2. MCL Effluent Violations

18 (a). At any time after the first sixty (60) days after the
19 System Operation Date for each phase, if the concentration of TCE
20 in the treated water is greater than 5.0 ppb, Lockheed shall be
21 considered to have been out of compliance for each day for which
22 the representative treated water sample (as defined in Subpart
23 J.1 of Section VII (Work to Be Performed)) indicates that the
24 concentration of TCE was greater than 5.0. ppb. Lockheed shall
25 be subject to stipulated penalties in the amount of \$5,000 per
26 day for each such day of noncompliance.

27

1 (b). At any time after the first sixty (60) days after the
2 System Operation Date for each phase, if the concentration of PCE
3 in the treated water is greater than 5.0 ppb, Lockheed shall be
4 considered to have been out of compliance for each day for which
5 the representative treated water sample (as defined in Subpart
6 J.1 of Section VII (Work To Be Performed)) indicates that the
7 concentration of PCE was greater than 5.0 ppb. Lockheed shall be
8 subject to stipulated penalties in the amount of \$5,000 per day
9 for each such day of noncompliance.

10 (c) At any time after the first sixty (60) days after the
11 System Operation Date for each phase, if the concentration of a
12 volatile organic compound ("VOC") other than TCE or PCE in the
13 treated water is greater than the MCL in effect at that time for
14 such VOC, Lockheed shall be considered to have been out of com-
15 pliance for each day for which the representative treated water
16 sample (as defined in Subpart J.1 of Section VII (Work To Be
17 Performed)) indicates that the concentration of that VOC was
18 greater than the MCL in effect, provided that the MCL in effect
19 was promulgated on or before January 31, 1991. Lockheed shall be
20 subject to stipulated penalties in the amount of \$5,000 per day
21 for each such day of noncompliance.

22 (d) At any time after the first sixty (60) days after an
23 analytical sample result shows that the concentration of a con-
24 taminant in the treated water other than a VOC or nitrate is
25 greater than the MCL in effect at that time for such contaminant,
26 Lockheed shall be considered to have been out of compliance for
27 each day for which the representative treated water sample (as

1 defined in Subpart J.1 of Section VII (Work To Be Performed)) in-
2 dicates that the concentration of that contaminant was greater
3 than the MCL in effect, provided that the MCL in effect was
4 promulgated on or before January 31, 1991. Lockheed shall be
5 subject to stipulated penalties in the amount of \$3,000 per day
6 for each such day of noncompliance.

7 3. Class I Violations

8 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
9 Days 1 - 5	\$1,000
10 Days 6 - 30	\$2,500
11 After 30 Days	\$5,000

12 (a). Each failure to comply in a timely and adequate manner
13 with the terms of this Consent Decree, including the Statement of
14 Work, and any documents incorporated into this Decree pursuant to
15 this Decree, that are not specifically listed as a violation
16 anywhere else under Subparts D.1 or D.2 of this Section or under
17 this Class I or under Classes II or III, and specifically includ-
18 ing any failure to comply with the substantive standards of any
19 applicable or relevant and appropriate requirement identified in
20 the ROD (as modified by the ESD and Subpart F of Section VII
21 (Work To Be Performed)) not identified as a violation under Sub-
22 parts D.1 or D.2 of this Section or under Class II or Class III,
23 provided that Lockheed shall not be subjected to stipulated
24 penalties for any requirement of this Decree that is solely the
25 obligation of the City pursuant to this Decree.

26 (b). Failure to submit any of the following:

27 i. Draft Conceptual Design Report(s)

- 1 ii. Draft Pre-Final Design Report(s)
- 2 iii. Draft Remedial Action Work Plan(s)
- 3 iv. Draft Remedial Design Work Plan(s)
- 4 v. Draft Preliminary Sampling Plan
- 5 vi. Draft Interim Remedial Action Report(s)
- 6 vii. Notification of Selection of RD
- 7 Architect/Engineer
- 8 viii. Notification of Selection of RA Engineer
- 9 ix. Notification of Selection of RA
- 10 Contractors/Subcontractors
- 11 x. Draft Plan(s) for Satisfaction of Permit
- 12 Requirements
- 13 ix. Draft QA Project Plan(s)
- 14 x. Draft Operational Sampling Plan(s)
- 15 xi. Draft Operation and Maintenance Plan(s)
- 16 xii. Notification of Selection of Independent
- 17 Quality Assurance Team
- 18 (c) Each violation of the following:
- 19 i. Obligation to hold Preconstruction Conference(s)
- 20 ii. Obligation to hold Pre-Final Inspection(s)
- 21 iii. Obligation to hold Final Inspection(s)
- 22 iv. Applicable or Relevant and Appropriate Require-
- 23 ments, other than MCL violations
- 24 and South Coast Air Quality Management District
- 25 Regulation XIII
- 26
- 27

1 4. Class II Violations

2 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
3 Days 1 - 5	\$2,000
4 Days 6 - 30	\$4,000
5 After 30 Days	\$10,000

6 (a). Failure to submit any of the following:

- 7 i. Draft Final Remedial Design Report(s)
- 8 ii. Final Pre-Final Design Report(s)
- 9 iii. Final Health and Safety Plan(s)
- 10 iv. Final Preliminary Sampling Plan
- 11 v. Final Interim Remedial Action Report(s)
- 12 vi. Plan(s) for Satisfaction of Permit Requirements
- 13 vii. Remedial Design Workplan(s)
- 14 viii. Conceptual Remedial Design Report(s)

15 (b). Each violation of the following:

- 16 i. QA Project Plan(s)
- 17 ii. Remedial Design Work Plan(s)
- 18 iii. Plan(s) for Satisfaction of Permit Requirements
- 19 iv. California South Coast Air Quality Management
20 District Regulation XIII
- 21 v. Preliminary Sampling Plan
- 22 vi. Remedial Action Work Plan(s)

23 5. Class III Violations

24 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25 Days 1 - 5	\$5,000
26 Days 6 - 30	\$8,000
27 Days 30-60	\$15,000

1 After 60 Days \$20,000

2 (a). Failure to submit any of the following:

3 i. Final Remedial Design Report(s)

4 ii. Remedial Action Work Report(s)

5 iii. Operation & Maintenance Plan(s)

6 iv. Final QA Project Plan(s)

7 (b). Each violation of the following:

8 i. Operation & Maintenance Plan(s)

9 ii. Operation Sampling Plan(s)

10 E. With respect to the City, stipulated penalties shall ac-
11 crue in the following amounts, and, as provided in Subpart H of
12 Section XVII (Reservation and Waiver of Rights), the City may not
13 dispute the amount of stipulated penalties due per type of viola-
14 tion:

15 1. Monthly Progress Reports and Quarterly Quality Assurance
16 Reports

17 (a). The City shall pay a stipulated penalty of \$500 per day
18 for the submission of a late or deficient Monthly Progress
19 Report.

20 (b) The City shall pay a stipulated penalty of \$500 per day
21 for the submission of a late or deficient Quarterly Quality As-
22 surance Report.

23 2. Class I Violations

24 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25 Days 1 - 5	\$500
26 Days 6 - 30	\$1,000
27 After 30 Days	\$2,500

1 (a). Each failure to comply in a timely and adequate manner
2 with the terms of this Consent Decree, including the Statement of
3 Work, and any documents incorporated into this Decree pursuant to
4 this Decree, that are not specifically listed as a violation un-
5 der Class II, and specifically including any failure to comply
6 with the substantive standards of any applicable or relevant and
7 appropriate requirement identified in the ROD (as modified by the
8 ESD and Subpart F of Section VII (Work To Be Performed)) not
9 identified as a violation under Class II; provided that the City
10 shall not be subjected to stipulated penalties for any require-
11 ment of this Decree that are solely the obligation of Lockheed
12 pursuant to this Decree.

13 3. Class II Violations

14 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
15 Days 1 - 5	\$1,000
16 Days 6 - 30	\$3,000
17 After 30 Days	\$10,000

18 (a). Failure to submit any the following:

- 19 i. Plan for Satisfaction of Permitting
- 20 Requirements
- 21 ii. QA Project Plan (or equivalent document(s)
- 22 pursuant to Subpart E of Section VIII
- 23 (Quality Assurance))
- 24 iii. Health and Safety Plan
- 25 iv. Operation and Maintenance Plan

26 (b). Failure to comply with any of the following:

- 27 i. Plan for Satisfaction of Permitting

1 Requirements

2 ii. QA Project Plan (or equivalent document(s))
3 pursuant to Subpart E of Section VIII
4 (Quality Assurance))

5 iii. Health and Safety Plan

6 iv. Operation and Maintenance Plan

7 F. All stipulated penalties owed pursuant to this Decree
8 shall be paid by certified check made payable to the "EPA-
9 Hazardous Substance Superfund" within thirty (30) days after
10 receipt of EPA's notice of deficiency by the Settling Work Defen-
11 dant that it failed to meet a requirement of this Decree. Inter-
12 est shall begin to accrue on any penalty due thirty (30) days
13 after that Settling Work Defendant receives EPA's notice of
14 deficiency. A copy of the check and a copy of the letter for-
15 warding the check, which letter shall include a brief description
16 of the alleged violation, Settling Work Defendant's complete and
17 correct address, the Operable Unit name, the Site spill iden-
18 tifier number (SSID #L6), the civil action number, and the date
19 of receipt of EPA's notice of deficiency shall be submitted to
20 the EPA Project Coordinator, the EPA Assistant Regional Counsel,
21 and the United States Department of Justice at the addresses to
22 which notice is to be provided pursuant to Section XXIII (Form of
23 Notice). The check and the original copy of the letter shall be
24 sent to:

25 U.S. Environmental Protection Agency
26 Region IX
Superfund Accounting
P.O. Box 360863M
27 Pittsburgh, PA 15251
Attention: Collection Officer for Superfund

1 If a Settling Work Defendant fails to pay stipulated penalties in
2 accordance with this Section, the United States may institute
3 proceedings in this action or a new action to collect the
4 penalties and any interest due.

5 G. Notwithstanding the stipulated penalties provided for
6 in this Section, and to the extent authorized by law, EPA may
7 elect to assess civil penalties or bring an action in District
8 Court to enforce the provisions of this Consent Decree. Payment
9 of stipulated penalties shall not preclude EPA from electing to
10 pursue any other remedy or sanction it may have to enforce this
11 Consent Decree, and nothing in this Decree shall preclude EPA
12 from seeking statutory penalties against a Settling Defendant who
13 violates statutory or regulatory requirements, except that the
14 total civil penalties (including stipulated penalties) collected
15 by EPA for any such violation shall not exceed \$25,000 per day
16 per violation.

17 H. Each Settling Work Defendant may dispute any notice of
18 deficiency issued to it. Penalties shall continue to accrue as
19 provided in this Section but need not be paid until the follow-
20 ing:

21 1. If the dispute is resolved by agreement or by decision
22 or order of EPA which is not appealed to this Court, accrued
23 penalties, plus interest at the rate specified in 28 U.S.C. §
24 1961, shall be paid to EPA within thirty (30) days of the agree-
25 ment or Settling Work Defendant's receipt of EPA's decision or
26 order;
27

1 2. If a Settling Work Defendant appeals EPA's decision
2 pursuant to Subpart C of Section XX (Dispute Resolution) and
3 prevails upon final resolution of the dispute, no stipulated
4 penalties or interest thereon will be payable and any assessment
5 of stipulated penalties and interest thereon shall be set aside
6 in writing by EPA.

7 3. If a Settling Work Defendant appeals EPA's decision
8 pursuant to Subpart C of Section XX (Dispute Resolution) and does
9 not prevail upon final resolution of the dispute, all accrued
10 stipulated penalties, plus interest at the rate specified in 28
11 U.S.C. § 1961, shall be paid within thirty (30) days of a final
12 court order.

13 I.1. In the event that, pursuant to Subpart AA of Section
14 VII (Work To Be Performed), EPA assumes performance of all or a
15 portion of the Work that Lockheed is required by this Decree to
16 perform, Lockheed shall, in lieu of any other penalties that
17 might be payable under this Decree, pay a Work Assumption Penalty
18 in the amount of one million dollars (\$1,000,000.00). Lockheed
19 is not required to pay a Work Assumption Penalty if EPA takes
20 over the Work pursuant to Subpart C(2) of Section XVII
21 (Reservation and Waiver of Rights).

22 2. In the event that, pursuant to Subpart AA of Section VII
23 (Work To Be Performed), EPA assumes performance of all or a por-
24 tion of the Work that the City is required by this Decree to per-
25 form, the City shall, in lieu of any other penalties that might
26 be payable under this Decree, pay a Work Assumption Penalty in
27 the amount of two hundred and fifty thousand dollars

1 (\$250,000.00). The City is not required to pay a Work Assumption
2 Penalty if EPA takes over the Work pursuant to Subpart C(2) of
3 Section XVII (Reservation and Waiver of Rights).

4 3. Payment of the Work Assumption penalties provided for in
5 this Subpart H shall be in addition to any stipulated penalties
6 which accrued prior to a Settling Work Defendant's receipt of
7 EPA's notice of intent to take over all or a portion of the Work.
8 Unless waived by EPA, such Work Assumption Penalty shall be pay-
9 able within thirty (30) days after a Settling Work Defendant's
10 receipt of notice that EPA intends to take over all or a portion
11 of the Work. However, if that Settling Work Defendant invokes
12 the dispute resolution procedure, payment of its Work Assumption
13 Penalty shall be tolled until thirty (30) days after final
14 resolution of the dispute; provided, however, that that Settling
15 Work Defendant shall not pay any Work Assumption Penalty or,
16 pre-assumption penalties related to the issue(s) on which that
17 Settling Work Defendant prevails, or interest thereon if it is
18 determined that EPA's takeover of the Work of that Settling Work
19 Defendant was not permitted pursuant to Subpart Y of Section VII
20 (Work to Be Performed).

21 **XX. DISPUTE RESOLUTION**

22 A. As required by Section 121(e) of CERCLA, 42 U.S.C. §
23 9621(e), the Settling Parties shall attempt to resolve ex-
24 peditiously and informally any disagreements arising under or
25 from the implementation of this Decree or any Work required
26 hereunder.

27