

JUN 16 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

_____)
 UNITED STATES OF AMERICA)
)
 and)
)
 STATE OF MARYLAND,)
)
 Plaintiffs)
)
 v.)
)
 ALLIED-SIGNAL INC.)
 (BALTIMORE WORKS),)
)
 Defendant.)
 _____)

Civil Action No. R-89-1804

CONSENT DECREE

TIME STUDY CASE
Record Time Spent by Judge or Magistrate

4/27/89

[Revised Pages Show
Later Dates]

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2. Dismantlement Plan dated May 3, 1988 and letter from John A. Turner, Allied's Site Manager, to Ronald Nelson of MDE, dated July 26, 1988
3. Scope of Work for the Supplemental Site Characterization Plan
4. The RCRA Corrective Action Plan (CAP)
5. Remedial Plan dated May 3, 1988 and letter from John A. Turner, Allied's Site Manager, to Ronald Nelson of MDE, dated July 26, 1988
6. Scope of Work for the Surface Water Monitoring Plan
7. Scope of Work for the Groundwater Quality Monitoring Plan
8. Scope of Work for the Groundwater Gradient Monitoring Plan
9. Scope of Work for the Biological and Sediment Monitoring Plan
10. Dismantlement Schedule

IN THE UNITED STATES DISTRICT COURT
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(BALTIMORE WORKS),)	
)	
Defendant)	
_____)	

CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") has filed a Complaint in this action against Allied Signal Inc. ("Defendant"), seeking relief from an alleged endangerment to health and the environment from chromium contamination at and around Defendant's Baltimore Works (the "Site", as hereinafter defined) in the City of Baltimore, Maryland; and

WHEREAS, the State of Maryland ("State"), on behalf of the Maryland Department of the Environment ("MDE"), has filed a Complaint in this action against Defendant, seeking to impose liability upon and obtain redress from Defendant for alleged damage to resources of the State or for which the State is a trustee at and around the Site in the City of Baltimore, Maryland and resultant endangerment to health and the environment, arising out of alleged chromium contamination; and

WHEREAS, the United States filed its Complaint pursuant to the authority vested in it under Sections 3008(h) and 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6928 and 6973; and

WHEREAS, the State filed its Complaint pursuant to the authority vested in it as a "citizen" under Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and pursuant to the authority vested in the Secretary of the MDE (a) by the Environment Article of the Annotated Code of Maryland, including Sections 1-301 (Enforcement), 2-101 through 2-613 (Air Pollution Control), 7-201 through 7-268 (Controlled Hazardous Substances), and 9-301 through 9-351 (Water Pollution Control) and (b) by Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("CERCLA"); and

WHEREAS, the United States and the State alleged in their Complaints that chromium contamination is present in the buildings, soils, State surface water and groundwater at and around the Site, and that chromium has been released and threatens to be released from the Site into the environment; and

WHEREAS, for purposes of this proceeding Defendant waives any defenses to this Court's jurisdiction to enter this Consent Decree, but Defendant (a) does not waive any defense or objection to any requirement not imposed by this Consent Decree that the United States or the State may seek to impose in any other proceeding, and (b) does not admit the allegations set forth above or in the Complaint, the existence of any violation of any law or regulation, or any liability to any person; and

WHEREAS, MDE's predecessor, the State of Maryland Department of Health and Mental Hygiene ("DHMH"), and Defendant's predecessor, Allied Corporation, entered into a Consent Decree ("Prior Consent Decree") in this Court in Civil Action No. HM-86-2571 on September 2, 1986, which required Defendant to prepare and submit to DHMH for approval a Remedial Investigation and Risk Assessment, Groundwater Monitoring Program, Feasibility Study (collectively, the "Studies"), Dismantlement Plan, and Remedial Proposal for the Site, and Defendant and MDE agree that they have met their respective obligations under the Prior Consent Decree, and that no further action remains to be pursued under it; and

WHEREAS, EPA was not a party to the Prior Consent Decree and did not approve the Studies, Dismantlement Plan and Remedial Proposal for the Site which Defendant submitted to DHMH under the Prior Consent Decree; and

WHEREAS, DHMH issued to Defendant Controlled Hazardous Substance Storage Permit No. A-244 on May 24, 1985, for a term of three years, and has under consideration Defendant's application for renewal of that permit; and

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WHEREAS, EPA Region III issued a RCRA § 3004(u) corrective action permit for the Baltimore Works on November 26, 1986 (Region III RCRA Permit No. MDD 06 939 6711), Defendant appealed for review of the permit by the EPA Administrator (RCRA Appeal No. 86-4), and there has not been a final administrative disposition of Defendant's permit application; and

WHEREAS, Defendant's appeal of the permit has been stayed pending the outcome of negotiations on this Consent Decree; and

WHEREAS, MDE, under its State law authorities, is prepared to approve Defendant's plan for the dismantlement of the above-grade structures at the Site ("Dismantlement Plan"), and is also prepared to approve, in concept, Defendant's proposal for a deep vertical hydraulic barrier and a multi-media cap as corrective measures for the Site; and

WHEREAS, EPA, under Sections 3008(h) and 7003 of RCRA, is required to afford the public an opportunity for public comment on any proposed corrective measures before it approves or disapproves them; and

WHEREAS, the United States, the State and Defendant agree that settlement of this matter and entry of this Consent Decree are made in good faith in an effort to avoid expensive and protracted litigation and to settle and resolve claims which were raised by the United States and the State in this action, and that such settlement is in the public interest; and

WHEREAS, all Parties to this Consent Decree consent to the entry hereof;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter herein and the Parties (as hereinafter defined) to this action. The Parties agree not to contest the jurisdiction of the Court to enter this Consent Decree, or its jurisdiction in any subsequent action to enforce, modify or terminate it.

II. STATEMENT OF PURPOSE

The purpose of this Consent Decree, as well as the intention of the Parties, is: (1) to protect the public health and welfare and the environment by containing hazardous wastes and hazardous waste constituents remaining at the Site, preventing or mitigating releases or threatened releases from the Site and by taking such additional steps as may be deemed appropriate; (2) to mitigate alleged damage to resources of the State or for which the State is a trustee; (3) to further the public interest by avoiding protracted litigation between the Parties; and (4) to encourage the early and equitable resolution of claims by the United States and the State against Defendant.

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III. DEFINITIONS

Whenever the following terms are used in this Consent Decree or in any exhibits or appendices hereto, the definitions specified hereinafter shall apply:

1. "Baltimore Works" or "Site" or "Facility" shall mean the facility at Block and Wills Streets in the City of Baltimore, Maryland, consisting of approximately twenty acres which form a peninsula bounded by the Inner Harbor and the Northwest Branch of the Patapsco River. The Site is more specifically delineated on a map marked as Exhibit 1, which is attached hereto and incorporated herein.

2. "Contractor" shall mean any person or entity selected by Defendant to undertake and complete the Work (as hereinafter defined). Each Contractor retained by Defendant and any subcontractor retained by Defendant or any Contractor shall be deemed to be related by contract to Defendant and to be acting on behalf of Defendant. Each Contractor and any subcontractor shall be qualified to perform those portions of the Work for which the Contractor or subcontractor has been retained; provided, however, that the United States or the State reserve the right to disapprove any such Contractor or subcontractor in accordance with paragraph 3 of Section VI herein ("GENERAL PROVISIONS GOVERNING PERFORMANCE OF THE WORK").

3. "Parties" shall mean the United States (including EPA), the State of Maryland (including the Maryland Department of the Environment) and Allied-Signal Inc.

4. "Work" shall mean the implementation and completion of the tasks required pursuant to this Consent Decree, the exhibits attached hereto and incorporated herein, and any schedules or plans required to be submitted pursuant thereto.

IV. PARTIES BOUND

1. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State of Maryland, and the Defendant and its successors and assigns. Work performed by each Party, its successors and assigns, officers, directors, employees, agents, independent Contractors, Contractors, subcontractors and consultants shall be carried out in accordance with the requirements of this Consent Decree, and each Party shall be responsible for the failure of its officers, directors, employees, agents, independent Contractors, Contractors, subcontractors or consultants to do so.

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2. The undersigned representative of Defendant certifies that he is fully authorized by Defendant to enter into this Consent Decree and to legally bind Defendant hereto. The undersigned Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, certifies that he is fully authorized by the United States to enter into this Consent Decree and to legally bind the United States hereto. The undersigned Principal Counsel of the Office of the Attorney General of the State of Maryland certifies that he is fully authorized by the State to enter into this Consent Decree and to legally bind the State hereto.

3. No change in ownership or operation of the Site, or corporate or partnership status of Defendant will in any way alter Defendant's responsibility under this Consent Decree.

4. Defendant shall provide a copy of this Consent Decree to all Contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the Work performed pursuant to this Consent Decree within 2 weeks after the effective date of this Consent Decree or date of such retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Decree.

V. WORK TO BE PERFORMED

1. Dismantlement Plan. Defendant shall dismantle the above-grade structures at the Site in accordance with the Dismantlement Plan and the letter from John A. Turner, Allied's Site Manager, to Ronald Nelson of MDE, dated July 26, 1988, both of which are approved by MDE, attached hereto as Exhibit 2 and incorporated herein, and both of which MDE has determined to be consistent with the applicable substantive requirements of all applicable federal, State, and local laws governing (a) employee and public safety, (b) control of soil, air, water, and groundwater pollution, and (c) generation and transportation of solid and hazardous wastes as defined by RCRA. Defendant shall begin and complete dismantlement in accordance with the schedule in Exhibit 10 and provide MDE with notice of Defendant's performance of each Dismantlement Schedule milestone.

Equipment being transferred or sold for productive use containing hazardous material will be packaged and labeled in accordance with U.S. Department of Transportation requirements before being shipped off site. Any materials that may contain hazardous waste, including but not limited to equipment to be disposed of and not productively used, will be evaluated to determine if they contain hazardous waste, using methods satisfactory to EPA and the State, before shipment off site for disposal.

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2. Supplemental Plan and Reports. Defendant shall submit to EPA and MDE for approval the following plan and reports:

a. Supplemental Site Characterization Plan. Within 13 calendar weeks after the effective date of this Consent Decree, Defendant shall submit a supplemental site characterization plan ("Supplemental Site Characterization Plan"), in accordance with the Scope of Work in Exhibit 3, which is attached hereto and incorporated herein.

b. Supplemental Off-Site Investigation Report. Within 4 weeks after the effective date of this Consent Decree, Defendant shall submit a report of the results of all sampling of established and temporary monitoring wells not previously submitted to EPA ("Supplemental Off-Site Investigation Report"). The Report shall include, but not be limited to: the results of the sampling study conducted in 1988; revisions, if any, of the estimated configuration, extent, concentrations, and rate of migration of chromium in the off-site plume; revisions, if any, of previous assessments of risks to human health and the environment arising from the off-site plume; and the methods used in developing such results, estimates and assessments. If EPA or MDE or both determine that the information provided in the Report is inadequate to characterize the chromium plume fully, EPA or MDE may require Defendant to conduct additional chromium sampling and revise the Report accordingly or provide additional analysis of the information already obtained or both.

c. Supplemental Saprolite Study Report. Within 4 weeks after the effective date of this Consent Decree, Defendant shall submit a report on the results of studies conducted in 1988 and thereafter to investigate the composition and distribution of saprolite beneath the Site and its ability to support a deep vertical hydraulic barrier ("Supplemental Saprolite Study Report"), which is one component of the corrective measures under consideration.

3. Progress Reports. Beginning with the first calendar quarter following the effective date of this Consent Decree, and continuing throughout the period this Decree is effective, Defendant shall submit to EPA and MDE for approval signed progress reports every quarter during the life of this Decree. Said progress reports shall be due on the tenth day of the month immediately following the calendar quarter covered by the report and shall include, but not be limited to, the elements listed in Task XV, paragraph A of the RCRA Corrective Action Plan (CAP), which is attached hereto as Exhibit 4 and incorporated herein.

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4. Supplemental Site Characterization Report. Upon receipt of EPA and MDE approval of the Supplemental Site Characterization Plan, Defendant shall immediately implement said Plan. Within 26 weeks after receipt of EPA and MDE approval of said Plan, Defendant shall submit to EPA and MDE for approval a supplemental site characterization report ("Supplemental Site Characterization Report").

5. Monitoring Plans. Within 13 weeks after the effective date of this Consent Decree, Defendant shall submit to EPA and MDE for approval the following draft monitoring plans, in accordance with the corresponding Exhibits which are attached hereto and incorporated herein:

a. Air Emissions Monitoring Plan, as described in the Dismantlement Plan attached as Exhibit 2 and the Remedial Plan attached as Exhibit 5;

b. Surface Water Monitoring Plan, as described in the Scope of Work attached as Exhibit 6;

c. Groundwater Quality Monitoring Plan, as described in the Scope of Work attached as Exhibit 7;

d. Biological and Sediment Monitoring Plan, as described in the Scope of Work attached as Exhibit 9.

6. Corrective Measures Implementation Program Plan. Within 1 year after the effective date of this Consent Decree, Defendant shall submit to EPA and MDE for approval a draft Corrective Measures Implementation Program Plan, in accordance with Task XII of the RCRA CAP. The Parties contemplate that the draft Corrective Measures Implementation Program Plan will include a deep vertical hydraulic barrier, a cap, and maintenance of an inward flow of groundwater into the Site to meet the Performance Standards established in this Section. After the public comment period described in paragraph 2 of Section XIX, unless the Supplemental Plan and Reports required by paragraph 2 above or other information brought to the attention of all of the Parties before the approval of the Corrective Measures Implementation Program Plan shows the existence of risks to public health and the environment qualitatively different from those in the Risk Assessment approved by MDE, EPA and MDE shall approve the corrective measures described in this Corrective Action Measures Implementation Program Plan if EPA and MDE determine, on the basis of the information submitted by Defendant or otherwise known to EPA or MDE, that the corrective measures will achieve the Performance Standards established in this Section. Defendant shall apply for Corps of Engineers permits for construction of the corrective measures promptly after the effective date of this Consent Decree and for all other necessary permits in a timely fashion thereafter. MDE will take all appropriate steps to assist Defendant and facilitate the prompt review and issuance of such permits.

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7. Corrective Measures Design Plans.

a. Within 30 weeks after receipt of notice of EPA and MDE approval of the Corrective Measures Implementation Program Plan, Defendant shall submit to EPA and MDE a Draft Corrective Measures Preliminary Design Plan (50% Completion), in accordance with Task XIII of the RCRA CAP, paragraphs A, G.1. and G.2, a Groundwater Gradient Monitoring Plan as described in the Scope of Work attached as Exhibit 8, and a Surface Soil Monitoring Plan to monitor the integrity of the cap and its ability to prevent the upward migration of contaminants and control the infiltration of water. Only the Monitoring Plans will be subject to EPA and MDE approval, but EPA and MDE may offer comments on the Preliminary Design Plans within 8 weeks after submission for Defendant's consideration as it completes the Prefinal Design Submittal. If the comments of either EPA or MDE would require alterations that could delay submission of the Prefinal Design Submittal, Defendant shall submit for approval by EPA and MDE within 2 weeks after receipt of EPA's or MDE's comments (whichever are received later) a revised deadline for submission of the Prefinal Design Submittal. EPA and MDE shall approve or disapprove the revised deadline within 2 weeks after receipt from Defendant.

b. Within 54 weeks after receipt of notice of EPA and MDE approval of the Corrective Measures Implementation Program Plan (or such longer period as has been established as a revised deadline in accordance with paragraph 7.a. above), Defendant shall submit to EPA and MDE for approval a Prefinal Design Submittal, in accordance with Task XIII of the RCRA CAP, paragraphs A and G.6.

The Prefinal Design Submittal shall consist of the Prefinal Design Plan and specifications (100% completion) and the following draft documents: Operation and Maintenance Plan, Capital and Operating and Maintenance Cost Estimates, Project Schedule, Quality Assurance Plan and Health and Safety Plan, as described in Task XIII of the RCRA CAP, paragraphs A-F and G.6. In addition, it shall include the Contingency Plan, as more fully described in subsection V.7.b.ii, below.

1. If a deep vertical hydraulic barrier is one of the corrective measures proposed by Defendant, the Prefinal Design Plan must demonstrate that: (1) the materials proposed to be used for the deep vertical hydraulic barrier are compatible with the soils, surface water, saline water, and any hazardous wastes or hazardous waste constituents at the Site; and (2) that Defendant will be able to maintain an inward flow of groundwater into the Site once the corrective measures are completed, in accordance with the Groundwater Gradient Performance Standard prescribed in paragraph 13 of this Section.

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ii. Contingency Plan. As part of the Prefinal Design Submittal, Defendant shall submit a Contingency Plan to EPA and MDE for approval. The Contingency Plan shall describe the actions Defendant will take to mitigate, prevent or minimize hazards to human health or the environment arising from: (1) violations of the Performance Standards specified in paragraphs 12 and 13 of this Section; or (2) abrupt or gradual releases of hazardous waste or hazardous waste constituents from the Site that are likely to cause a violation of the Performance Standard(s). At a minimum, the Contingency Plan shall contain the following:

Poss. failures

(a). A list and description of likely types of abrupt failures of the proposed corrective measures. For example, if a deep vertical hydraulic barrier and cap are components of the proposed design, said Plan shall identify and describe, to the extent possible, material, structural, design or other conceptual failures that could result in releases to the environment or violations of the Performance Standards as the result of fires, explosions, any abrupt breaches in the integrity of the cap or barrier or other such events, and the likely causes therefor.

(b). For each potential abrupt failure event, provision for prompt notification to EPA and MDE and a description of various interim measures or supplementary remedial techniques ("Techniques") or technologies that would be appropriate to mitigate, prevent, or minimize the releases to the environment or restore the integrity of the corrective measures, and approximate schedules for their implementation.

(c). A list and description of possible gradual or long term material, structural, design or other conceptual failures of the proposed corrective measures which could result in releases to the environment or violations of the Performance Standards and descriptions of the causes therefor.

(d). For each potential gradual failure event, provision for notification to EPA and MDE and a description of various interim measures or supplementary remedial Techniques or technologies that would be appropriate to mitigate, prevent or minimize the releases to the environment or restore the long-term integrity of the corrective measures. In addition, a description of major modifications that

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would be made to the proposed corrective measures, and alternative Techniques or technologies that would be presented to EPA and MDE for approval as substitute corrective measures, in accordance with the procedures specified in paragraph 14 of this Section, "Remedy Failure," and approximate schedules for their implementation.

The Contingency Plan shall also specify all emergency procedures, methods and equipment to be employed by Defendant or its Contractors in the event of abrupt or gradual releases to the environment, in accordance with the requirements of 40 C.F.R. §§ 265.50 - 265.56. In addition, the Contingency Plan shall describe what steps, if any, must be taken during initial construction of the corrective measures to facilitate the subsequent use of the Techniques or technologies.

c. Within 8 weeks after receipt of notice of EPA and MDE approval of the Prefinal Design Submittal, Defendant shall submit to EPA and MDE for approval a Final Design Submittal, in accordance with the RCRA CAP, Title XIII, paragraphs A and G.6, and any comments made by EPA and MDE on the Prefinal Design Submittal.

The Final Design Submittal shall consist of Defendant's Final Design Plan and specifications, Final Construction Cost Estimate, Final Operation and Maintenance Plan, Final Quality Assurance Plan, Final Project Schedule, Final Health and Safety Plan and Final Contingency Plan.

8. After public comment, if required pursuant to paragraph 4 of Section XIX ("PUBLIC COMMENT, PARTICIPATION AND REVIEW OF RECORDS"), on the Prefinal Design Submittal, EPA and MDE shall approve the corrective measures in the Prefinal Design Submittal if EPA and MDE determine, on the basis of the information submitted by Defendant or otherwise known to EPA or MDE, that the corrective measures will achieve the Performance Standards established in this Section.

9. Construction Quality Assurance Plan. Not later than submission of the Prefinal Design Plan, Defendant shall submit to EPA and MDE for approval a Draft Construction Quality Assurance Plan ("CQA Plan"), in accordance with Task XIV of the RCRA CAP.

10. Construction and Implementation of Corrective Measures; Operation and Maintenance. Not later than 4 weeks after receipt of EPA and MDE approval of the Final Design Submittal and CQA Plan, Defendant shall begin constructing and implementing the corrective measures in accordance with the approved Final Design Submittal and the approved CQA Plan, and shall begin implementing the approved operation and maintenance plan. After approval of the Prefinal Design Plan and the CQA Plan by EPA

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and MDE, Defendant may proceed with dredging and construction of the outboard embankment and deep vertical hydraulic barrier. Until approval of such Prefinal Design Submittal and CQA Plan are given by EPA and MDE, Defendant shall not proceed with such dredging or construction. Construction of other elements of the corrective measures shall await approval of the Final Design Submittal and CQA Plan.

11. Corrective Measures Implementation Report. Within 8 weeks after the completion of construction of the corrective measures, Defendant shall submit to EPA and MDE for approval a draft Corrective Measures Implementation Report. Said Report shall document that the completed corrective measures are consistent with and are being operated in accordance with the approved design specifications. The draft Corrective Measures Implementation Report shall include, but not be limited to, the elements listed in Task XV, paragraph B.4. of the RCRA CAP.

12. Surface Water Performance Standard(s); Monitoring. The surface water performance standard ("Surface Water Performance Standard") for total chromium shall be 50 parts per billion, calculated for each sample location by arithmetically averaging the samples taken at all depths over 4 consecutive days. Samples shall be taken in accordance with the EPA and MDE-approved Surface Water Monitoring Plan. EPA and MDE may establish additional Surface Water Performance Standards for any hazardous waste constituents identified in the approved Supplemental Site Characterization Report that are originating on the Site and are measurably contributing to a violation of State Water Quality Standards for specific contaminants in the surface waters adjacent to the Site. Defendant shall comply with these Standards beginning six months after EPA and MDE accept the last Independent Engineer's certificate of completion of the corrective measures Work, as more fully described in paragraph 4 of Section VI herein ("GENERAL PROVISIONS GOVERNING PERFORMANCE OF THE WORK"). Defendant shall monitor the surface water around the Site at the points and times and in the manner specified in the approved Surface Water Monitoring Plan. If such monitoring indicates that the Surface Water Performance Standards have been exceeded at any sampling location, Defendant shall take the actions described in paragraph 14 of this Section, "Remedy Failure."

13. Groundwater Gradient Performance Standard; Monitoring. EPA and MDE shall establish a groundwater gradient performance standard ("Groundwater Gradient Performance Standard") which requires Defendant to maintain an inward flow of groundwater into the Site. Defendant shall comply with this Standard beginning six months after EPA and MDE accept the last Independent Engineer's certificate of completion of the corrective measures Work, as more fully described in paragraph 4 of Section VI herein ("GENERAL PROVISIONS GOVERNING PERFORMANCE OF THE WORK"). The following Groundwater Gradient Performance Standard shall be established: for each pair of piezometers, for every 30 day period, the average hydraulic head measured at the piezometer inside the barrier

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shall be lower than the average hydraulic head measured at the piezometer outside the barrier, and the absolute value of the average hydraulic head differential shall be greater than 0.01 feet. Said value shall represent the arithmetic average of hourly readings for the aforementioned period. Defendant shall monitor the performance of the deep vertical hydraulic barrier at the points and times and in the manner specified in the approved Groundwater Gradient Monitoring Plan. If at any time the results of monitoring indicate that the Groundwater Gradient Performance Standard has not been met, Defendant shall take the actions described in paragraph 14 of this Section, "Remedy Failure."

14. Remedy Failure.

a. A failure of the corrective measures ("Remedy Failure" or "Failure") means a violation of any Performance Standard specified in paragraphs 12 or 13 of this Section or any impairment of the structural integrity of the cap such that a direct exposure hazard has been created. If inspections, monitoring or any other information indicates that a Failure has occurred or is occurring, Defendant shall take the following actions:

1. Defendant shall verbally notify EPA and MDE of any such evidence of Failure within 24 hours after information indicating said Failure becomes available to Defendant, and shall provide written notification of said Failure to EPA and MDE within 1 week after the information indicating its occurrence becomes available. Such written notification shall include all data which indicate that a Failure has occurred or is occurring, and a summary of actions taken, if any, to prevent or mitigate said Failure.

2. Not later than 3 weeks after said written notification of Failure, Defendant shall submit a report to EPA and MDE. The report shall describe the nature and cause of the Failure and include a schedule for evaluating additional action, in accordance with the approved Contingency Plan described in subsection V.7.b.11., or other techniques and technologies which will remediate the Failure and prevent the Failure from recurring. Defendant shall submit a subsequent report in accordance with the schedule that contains the conclusions of its evaluation and a schedule for implementing any necessary additional action.

b. EPA and MDE shall notify Defendant of their approval or disapproval of each report.

c. Within 2 weeks after receipt of notice of disapproval by EPA or MDE or both, Defendant shall submit a revised report which satisfactorily addresses all of EPA and MDE's comments.

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d. EPA and MDE shall notify Defendant of their approval or disapproval of each revised report.

e. EPA and MDE shall notify Defendant of their selection of further remedial action, provided, however, that if EPA or MDE or both determine that the further remedial action selected by EPA and MDE is significantly different from the remedial action originally selected pursuant to paragraph 6 of this Section, EPA and MDE shall afford the public the right to public comment in accordance with Section XIX herein ("PUBLIC COMMENT, PARTICIPATION AND REVIEW OF RECORDS").

f. Within 2 weeks after receipt of the notice under paragraph e. above, Defendant shall begin to implement the approved proposal for further remedial action in accordance with the schedule therein.

15. Additional Work. EPA or MDE or both may determine that certain tasks, including but not limited to investigatory work, engineering evaluation, additional corrective measures, or additional investigation or corrective measures for offsite groundwater, are necessary in addition to the tasks and deliverables included in this Consent Decree and attachments hereto (a) if the Supplemental Plan and Reports required by paragraph 2 of Section V above or other information brought to the attention of all of the Parties before the approval of the Corrective Measures Implementation Program Plan shows the existence of risks to public health and the environment qualitatively different from those in the Risk Assessment approved by MDE or (b) if new information that becomes available after the approval of the Corrective Measures Implementation Program Plan shows the existence of risks to public health or the environment that were not known to EPA or MDE at the time of approval of the Corrective Measures Implementation Program Plan under paragraph 6 of Section V herein ("WORK TO BE PERFORMED"). In that event, EPA or MDE or both will request in writing that Defendant perform the additional Work and shall specify the basis and reasons for the determination that the additional Work is necessary. Defendant shall perform the additional Work which EPA or MDE or both have requested according to an EPA and MDE-approved work plan in a manner consistent with this Consent Decree and any relevant EPA guidance.

16. Redevelopment Plans. Prior to the initiation of construction of any improvements ("Improvements") for redevelopment at the Site, Defendant or any successor owner or operator shall submit to EPA and MDE for approval both conceptual development plans and detailed development plans for the Improvements ("Conceptual Development Plans" and "Detailed Development Plans"), along with an engineering evaluation of the impact of the Improvements and related construction activity on the corrective measures.

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The Plans shall contain an engineering analysis and Defendant or any successor owner or operator or their Contractors shall provide certification that the Improvements shown in the Conceptual Development Plans and Detailed Development Plans will not: (a) interfere with the efficacy of the corrective measures or Defendant's ability to comply with the Performance Standards, the Groundwater Gradient Monitoring Plan, the Surface Water Monitoring Plan, the Surface Soil Monitoring Plan, and any other monitoring plan then in effect; or (b) increase the risks to health or the environment from the conditions at the Site. The Plans shall require compliance with applicable health and safety laws and require that any soil or material removed from the Site shall be handled and disposed of in accordance with all applicable federal, state or local laws. EPA and MDE shall review the Plans and certification to determine whether the above conditions for approval have been met and shall notify Defendant of their approval or disapproval.

Except for Improvements that are designed, submitted, and approved as a part of the Design Plans described in Paragraph 7 of this Section, which may be installed after Final Design Plan approval, no construction of Improvements shall be undertaken until EPA and MDE have approved the applicable Conceptual Development Plan and Detailed Development Plan and until Defendant has demonstrated compliance with the Performance Standards for a verification period of 1 year after Defendant submits the last Independent Engineer's certificate of completion of the corrective measures Work. The verification period may be extended if, at any time prior to the conclusion of this 1-year period, there has been a Remedy Failure and EPA or MDE or both determine that an additional period of verification is required to demonstrate that the corrective measures are capable of achieving and maintaining the Performance Standards.

17. EPA and MDE Approvals. EPA and MDE shall review, provide any required public notice, and approve or disapprove all draft or final or revised reports, work plans and other submissions within 8 weeks after receipt from Defendant, except that, for those documents for which this Consent Decree requires a public comment period, EPA and MDE shall approve or disapprove within 12 weeks after receipt from Defendant. Each agency shall notify Defendant in writing of the agency's approval or disapproval of the report, work plan, other submission, or any part thereof. Said notice shall specify the reasons for any disapproval. Within 8 weeks after receipt of notice of disapproval by EPA, MDE or both, Defendant shall amend and submit a revised report, work plan, or other submission that addresses the disapproval. Reports, work plans and other submissions shall not be deemed approved until they are approved by both EPA and MDE. Reports, work plans and other submissions which are approved by EPA and MDE shall be deemed incorporated into and part of this Decree. Failure of EPA or MDE to respond within the specified period does not constitute an implicit approval of the submission being reviewed, but such failure is a force majeure event.

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VI. GENERAL PROVISIONS GOVERNING PERFORMANCE OF THE WORK

1. All actions required to be taken pursuant to this Consent Decree, including but not limited to, the generation, transportation, treatment, storage and disposal of hazardous wastes or hazardous waste constituents, shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, RCRA, the Clean Water Act, 33 U.S.C. § 1251 et seq., Sections 13 and 1 of the Rivers and Harbors Act, as amended, 33 U.S.C. §§ 407 and 441, and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.

2. Defendant agrees to make timely and complete application for all required Federal, State and local permits, including, but not limited to, any permits required under RCRA, the Clean Water Act, Sections 13 and 1 of the Rivers and Harbors Act, and local ordinances, for the work performed pursuant to this Decree. When EPA and MDE determine that Defendant's applications for any permits which EPA or MDE have authority to issue are in fact complete, they agree to process such applications in a timely manner.

3. All work performed pursuant to this Consent Decree shall be under the direction and supervision of a licensed professional engineer ("Supervising Engineer"). Within 2 weeks after the entry of this Consent Decree or the retention of such individuals or entities, Defendant shall notify EPA and MDE in writing of the name, title and qualifications of the Supervising Engineer and of any Contractor(s) or subcontractor(s) and their supervisory personnel to be used in carrying out the Work. EPA or MDE or both retain the right to disapprove any Supervising Engineer, Contractor or subcontractor if EPA or MDE or both reasonably determine that they are not qualified to perform the Work. EPA or MDE or both shall notify Defendant of any disapproval and the reasons therefor. Within 4 weeks after receipt of a notice of disapproval, Defendant shall notify EPA and MDE of the name, title and qualifications of the person or firm that is proposed to replace the one that was disapproved. EPA or MDE or both retain the right to disapprove of any substitute if EPA or MDE or both reasonably determine that they are not qualified to perform the Work.

4. Prior to the construction of any corrective measure, EPA and MDE shall approve the selection of one or more independent licensed professional engineers ("Independent Engineer(s)"). Upon completion of each portion of the Work described in the approved Final Design Plan, the Independent Engineer(s) shall certify to EPA, MDE and this Court whether, to the best of his or her knowledge, information and belief, and on the basis of his or her observations and inspections, the identified portion of the Work has been completed in accordance with the requirements of the approved Design Plan. Defendant agrees to pay the Independent Engineer(s)' costs and fees.

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5. EPA, MDE and Defendant, and their respective consultants, shall cooperate with each other. Except to the extent prohibited by applicable law, and upon request, each shall provide the others with any information in its possession which relates to this Consent Decree and which would not be subject to a claim of privilege under federal or state law. Any material withheld on such grounds must be identified. This paragraph is not intended to limit any other reporting requirements in law or in this Decree.

VII. PROJECT COORDINATORS

1. Within 2 weeks after the effective date of this Consent Decree, EPA, MDE, and Defendant shall each designate a Project Coordinator. Defendant, EPA, and MDE shall each notify the others, in writing, of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree. The EPA and MDE Project Coordinators will be the primary designated representatives for their respective agencies at the Site. All communications between or among Defendant, EPA and MDE and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Decree, shall be directed through the Project Coordinators.

2. The Parties agree to provide at least 1 week written notice prior to changing Project Coordinators.

3. If the EPA or MDE Project Coordinator(s) or both determine that activities undertaken pursuant to this Consent Decree have caused or may cause a release or threatened release of hazardous wastes or hazardous waste constituents which threaten or may pose a threat to the public health or to the environment, the EPA or MDE Project Coordinator(s) or both may direct Defendant to stop further implementation of this Consent Decree for such period of time as may be needed to abate any such release or threatened release or to undertake any action which EPA or MDE or both determine is necessary to abate such release or threatened release.

4. If the Work is delayed by direction of the EPA or MDE Project Coordinator(s) or both, the schedule for completion of the Work shall be extended by the time period of the delay, provided, however, that if the EPA or MDE Project Coordinator(s) or both suspend the Work and the reasons are due to the negligent or willful acts or omissions of Defendant or its Contractor(s), then any extension of the schedule of completion shall be at the discretion of EPA and MDE.

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5. Minor technical modifications in the studies, techniques, procedures or designs utilized in carrying out this Consent Decree ("Minor Technical Modifications"), which do not alter or affect in any way the substance of this Decree, and which are consistent with the objectives of this Decree and necessary to the completion of the project, may be made by mutual agreement of the Project Coordinators. Such Minor Technical Modifications shall be made by letter by the Project Coordinators and shall have as an effective date the date on which the EPA Project Coordinator signs the letter. Any Minor Technical Modifications so approved shall be deemed incorporated into and part of this Decree.

6. The absence of the EPA and/or MDE Project Coordinator(s) from the Facility shall not be cause for the stoppage of work.

VIII. NOTIFICATION AND CERTIFICATION OF DOCUMENTS

1. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Consent Decree shall be in writing and shall be sent to the following:

2 copies of all documents to be submitted to EPA shall be sent to the EPA Project Coordinator:

Humane Zia
Corrective Action RCRA Enforcement Section (3HW11)
Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-8214

2 copies of all documents to be submitted to MDE shall be sent to the MDE Project Coordinator:

Program Administrator
Hazardous Waste Program
Hazardous and Solid Waste Management Administration
Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224
(301) 631-3343

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1 copy of all documents to be submitted to the Department of Justice (DOJ) shall be sent to:

U.S. Department of Justice
Land and Natural Resources Division
Environmental Enforcement Section
10th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attn: DOJ No. 90-7-1-478

Documents to be submitted to the Defendant shall be sent to:

[Defendant's Project Coordinator]
Allied-Signal Inc.
Engineered Materials Sector
1348 Block Street
Baltimore, Maryland 21231-3399
(301) 522-5350

1 copy of all documents to be submitted to Defendant shall be sent to:

L. Ray Taunton
Vice President - Operations
Allied-Signal Inc.
P.O. Box 1087R
Columbia Road and Park Avenue
Morristown, New Jersey 07960
(201) 455-5790

Any party may change the name or address to which its documents are to be sent by giving 1 week notice to the other parties by registered mail.

2. Any document submitted by Defendant under or pursuant to paragraphs 2(b), 2(c), 4, 6, 7(b), 7(c) or 11 of Section V, paragraph 3 of Section IX, paragraph 1 of Section X, or Section XVI of this Consent Decree shall be certified by a responsible corporate officer of Defendant. The term "responsible corporate officer" means (a) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

3. The certification of the responsible corporate officer specified by paragraph 2 of this Section VIII shall be in the following form:

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"I certify that the information contained in or accompanying this (submission) (document), except with respect to the portions identified pursuant to the next paragraph, is true, accurate, and complete.

As to (the) (those) identified portion(s) of this (submission) (document) for which I cannot personally verify (its) (their) truth and accuracy, I certify, as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate and complete to the best of my knowledge after reasonable inquiry."

[Signature]

[Name]

[Title]

IX. ON-SITE AND OFF-SITE ACCESS

1. EPA, MDE, and any authorized representatives of EPA or MDE, including Contractors, are authorized to enter and freely move about all property at the Facility at all reasonable times for the purposes of, inter alia, interviewing Facility personnel and Contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of the Defendant in carrying out the terms of this Consent Decree; conducting such tests, sampling or monitoring as EPA, MDE or their Project Coordinators deem necessary; using a camera, sound recording, or other documentary-type equipment; and verifying the reports and data submitted to EPA and MDE by Defendant. Defendant shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Decree. Nothing herein shall be interpreted as limiting the inspection authority of EPA and MDE under federal and state law. Defendant and all parties with access to this Site pursuant to this paragraph shall comply with all applicable health and safety plans.

2. To the extent that Work required by this Consent Decree, or any approved scope(s) of work or work plan(s) prepared pursuant hereto, must be done on property not owned or controlled by Defendant, Defendant shall use its best efforts as defined in 52 Fed. Reg. 45788 to obtain Site access agreements from the present owner(s) and/or lessees, as appropriate, of such property within 4 weeks after receipt of notice of EPA and MDE approval of any scope of work or work plan pursuant to this Decree which requires Work on property which is not owned or controlled

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by Defendant. "Best efforts," as used in this paragraph, shall include at a minimum, but shall not be limited to, Defendant's sending a certified letter to the present owners and/or lessees of such property requesting access agreements to permit Defendant, EPA, MDE, and their authorized representatives to enter such property, but Defendant is not obligated to initiate or pursue legal action or to purchase access rights except at fair market value or as a part of an eminent domain proceeding.

3. In the event that access agreements cannot be obtained within this time period, Defendant shall immediately notify EPA and MDE in writing indicating all efforts made to obtain such agreements, and the United States or the State or both may, consistent with their legal authority and subject to prosecutorial discretion, assist Defendant in obtaining access. In the event that the United States or the State or both obtain such access, Defendant shall be obligated to reimburse the United States or the State or both for any costs judicially awarded or reasonably incurred in the exercise of their authority. If the United States or the State or both do not provide such access, the approved scope of work or work plan shall be modified by mutual agreement among EPA, MDE and Defendant to take account of the lack of such access.

4. Nothing herein shall be interpreted as limiting the authority of the United States or the State to enter the Site or other location under federal or state law.

X. SAMPLING

1. Defendant shall submit to EPA and MDE the results of all sampling and/or tests or other data generated by, or on behalf of Defendant to comply with the requirements of this Consent Decree and its attachments appended hereto.

2. Defendant shall notify EPA and MDE at least 1 week before engaging in any field activities, such as well drilling, installation of equipment, or sampling to comply with the requirements of this Consent Decree. Submission by Defendant of an annual calendar showing dates on which samples will be taken will serve as notice for all samples taken in accordance with the Calendar. At the request of EPA or MDE or both, Defendant shall provide, or allow EPA, MDE, or their authorized representatives to take split or duplicate samples of all samples collected by Defendant pursuant to this Consent Decree. Similarly, at the request of Defendant, EPA or MDE or both shall allow Defendant or its authorized representatives to take split or duplicate samples collected by EPA or MDE or both under this Consent Decree. EPA or MDE or both shall notify Defendant at least 1 week before conducting any sampling under this Consent Decree, unless an emergency makes advance notice impracticable.

3. Nothing herein shall be interpreted as limiting the inspection authority of EPA and MDE under federal and state law.

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XI. QUALITY ASSURANCE

Defendant shall:

1. Ensure that laboratories that it uses for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods approved by EPA and MDE. If methods other than EPA methods are to be used, Defendant shall submit protocols to be used for analyses to EPA and MDE for approval at least 4 weeks prior to the commencement of analyses.

2. Ensure that laboratories that it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

3. At least 4 weeks in advance of any sample analyses, inform the EPA and MDE Project Coordinators of the identity of the laboratories which will be used by Defendant, and ensure that EPA and MDE personnel and authorized representatives of EPA and MDE have reasonable access to the laboratories and personnel used for analyses.

XII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification of a requirement of this Consent Decree by EPA and MDE, or excusable delay as defined in Section XIII herein ("FORCE MAJEURE AND EXCUSABLE DELAY"), Defendant shall be liable upon demand by EPA or MDE for stipulated penalties if Defendant fails to comply with the requirements set forth below. Compliance with any requirement by Defendant shall mean initiation or completion of any task required pursuant to this Consent Decree in a manner required by this Consent Decree and within the specified time schedules in and approved under this Consent Decree.

a. For failure to commence or complete any portion of the Work as prescribed in this Consent Decree: \$1,000 per day for 1 to 7 days of noncompliance, \$2,000 per day for each day of noncompliance for 8 to 120 days, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter.

b. For failure to submit any report other than a progress report at the time and in the manner required pursuant to this Consent Decree: \$500 per day for 1 to 7 days of noncompliance, \$1,000 per day for each day of noncompliance for 8 to 120 days, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter.

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c. For failure to submit any notice or progress report at the time and in the manner required pursuant to this Consent Decree: \$250 per day for 1 to 7 days of noncompliance, \$1,000 per day for each day of noncompliance for 8 to 120 days, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter.

d. For failure to submit other deliverables or provide access required by this Consent Decree: \$500 per day for the first 1 to 7 days of noncompliance, \$1,000 per day for each day of noncompliance for 8 to 120 days, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter.

e. For failure to carry out any identifiable operation, maintenance, inspection, or monitoring activity required by this Consent Decree: \$500 per day for the first 1 to 7 days of noncompliance, \$1,000 per day for each day of noncompliance for 8 to 120 days, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter.

2. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

3. All penalties owed to EPA and MDE under this Section shall be due within 4 weeks after receipt of a notification of noncompliance from EPA or MDE. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the 4-week period and shall accrue at the U.S. Department of the Treasury tax and loan rate pursuant to 4 C.F.R. §102.13(c).

4. Stipulated penalties shall be paid in equal portions to EPA and MDE. The portion payable to EPA shall be paid by certified or cashier's check made payable to "Treasurer, United States of America" and shall be remitted to:

U.S. Attorney
District of Maryland
U.S. Courthouse, 8th Floor
101 West Lombard Street
Baltimore, Maryland 21201

All payments to EPA and MDE shall reference the name of the Facility, the Defendant's name and address, and the docket number of this action. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator, the Regional Hearing Clerk (3RC00), U.S.

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Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and the U.S. Department of Justice, Land and Natural Resources Division, Environmental Enforcement Section, 10th & Pennsylvania Avenue, N.W., Room 1541, Washington, D.C. 20530 (Attention: DOJ No. 90-7-1-478).

The portion of the stipulated penalties payable to MDE shall be paid by certified or cashier's check made payable to:

Controlled Hazardous Substance Fund
c/o Director
Hazardous and Solid Waste Management Administration
2500 Broening Highway
Baltimore, Maryland 21224

5. Unless the Court so decides, neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Defendant's obligation to comply with the requirements of this Consent Decree.

6. The stipulated penalties set forth in this Section XII do not preclude EPA and MDE from pursuing other remedies or sanctions which may be available to them by reason of Defendant's failure to comply with any of the requirements of this Consent Decree. However, in the event that the United States or the State seek statutory penalties for a violation of any requirement of this Decree for which Defendant has previously paid a stipulated penalty, the amount of the statutory penalty shall be reduced by the amount of the stipulated penalty previously paid.

XIII. FORCE MAJEURE AND EXCUSABLE DELAY

1. Defendant shall perform the requirements of this Consent Decree within the time limits set herein, unless the performance is prevented or delayed by events which constitute a force majeure. Defendant shall have the burden of proving a force majeure. A force majeure is defined as (a) a work stoppage under paragraph 4 of Section VII herein ("PROJECT COORDINATORS") not due to the negligent or willful acts or omissions of Defendant or its Contractor(s), or (b) any event arising from causes beyond the control of Defendant, which cannot be avoided or overcome by due diligence and which delays or prevents performance by a date required in this Consent Decree. Such events do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal, state or local permits unless Defendant has made timely and complete application for such permits and has diligently pursued them.

2. Within 1 week after any event that Defendant believes constitutes a force majeure, Defendant shall orally notify EPA and MDE of such event. Defendant shall confirm notification of such event in writing within 1 week after oral notification. Such written notification

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shall include a description of the event, the cause of the event, an estimate of the anticipated length of delay, including necessary demobilization and remobilization, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Defendant's right to assert a force majeure claim. Defendant shall take all reasonable actions to prevent or minimize any delay.

3. If EPA and MDE determine that the event constitutes a force majeure, the deadlines for completion of the portion of the work affected by the event shall be extended for a period equal to the delay resulting from such circumstances. This shall be accomplished by written approval by EPA and MDE. Unless otherwise specified by EPA and MDE, such an extension does not alter the schedule for performance or completion of tasks required by this Consent Decree not affected by the force majeure event.

4. In the event that EPA, MDE and Defendant cannot agree that any delay or failure has been or will be caused by an event that constitutes a force majeure, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XIV herein ("DISPUTE RESOLUTION").

XIV. DISPUTE RESOLUTION

1. Disputes between Defendant and EPA or MDE.

a. All disputes between Defendant and EPA or MDE or both involving this Consent Decree shall be resolved in accordance with this Section at the request of any party, whether or not the particular provisions of the Consent Decree in question make reference to dispute resolution or this section.

b. If Defendant disagrees, in whole or in part, with any EPA or MDE disapproval or other decision or directive made by EPA or MDE pursuant to this Consent Decree, Defendant shall notify EPA and MDE in writing of its objections, and the basis therefore, within 3 weeks after receipt of EPA or MDE's disapproval or other decision or directive. Said notice shall set forth the specific points of the dispute, the position that Defendant is maintaining should be adopted as consistent with the requirements of this Consent Decree, the basis for Defendant's position, and any matters which it considers necessary for EPA or MDE's determination.

c. EPA or MDE or both and Defendant shall have 3 weeks from the receipt of Defendant's written notice of its objections to reach agreement on the matters in dispute.

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d. If agreement cannot be reached on any issue within this 3 week period, the Agency(ies) which took the action objected to shall give Defendant a written statement setting forth its proposed resolution of the dispute. The dispute shall be resolved in accordance with that Agency's proposed resolution unless, within 4 weeks after receipt of such proposed resolution, Defendant files a petition for resolution of the dispute with the Court. Any such petition shall describe the nature of the dispute and Defendant's proposal for resolution of the dispute. The Agency(ies) which took the action objected to shall have 6 weeks within which to file a response to the petition.

e. This Court shall have exclusive jurisdiction to issue any order or resolve any dispute arising between the parties with respect to matters within the scope of this Consent Decree and all documents incorporated herein. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law, deciding for itself the extent to which it is bound by administrative determinations by the State or the United States with respect to any matters of fact or law.

f. Except if Defendant prevails or to the extent otherwise allowed by this Court, the existence of a dispute, as defined in this Section, shall not excuse, toll, or suspend any obligation or deadline established by this Consent Decree or any stipulated penalties accrued as a result of a failure to meet any compliance obligation or deadline.

2. Disputes between EPA and MDE.

In the event of any dispute between EPA and MDE arising under this Decree that the Agencies are unable to resolve, EPA or MDE or both may petition the Court to resolve the dispute. The Court shall resolve the dispute in accordance with applicable law.

XV. RECORD PRESERVATION

1. Defendant agrees that it shall preserve, for a minimum of 10 years after their creation, all data, records and documents in its possession, or in the possession of its division, officers, directors, employees, agents, Contractors, successors, and assigns, which relate in any way to this Consent Decree or to hazardous waste management and/or disposal at the Facility. After 10 years, except for such documents as are subject to a claim of privilege, Defendant shall make such records available to EPA and MDE for inspection or shall provide copies of any such records to EPA and MDE. Any material withheld as subject to a claim of privilege shall be identified to EPA and MDE. Defendant shall notify EPA and MDE 4 weeks prior to the destruction of any such records, and shall provide EPA and MDE with the opportunity to take possession of any such records.

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2. Defendant further agrees that within 2 weeks after the effective date of this Decree or retaining or employing an agent, consultant or contractor, whichever comes later, Defendant will enter into agreements, to be confirmed in writing within 2 weeks, with its agents, consultants and/or Contractors, whereby each of its agents, consultants and Contractors will be required to maintain and preserve for a minimum of 10 years after their creation, or will transfer to Defendant, all data, records and documents within its possession which relate in any way to this Decree or to hazardous waste management and disposal at the Facility and are not subject to a claim of privilege. Any material withheld as subject to a claim of privilege shall be identified to Defendant.

XVI. FINANCIAL RESPONSIBILITY

1. Within 4 weeks after EPA and MDE approval of the cost estimate for the Work to be performed pursuant to paragraph 7.b. of Section V herein ("WORK TO BE PERFORMED"), Defendant shall present to EPA and MDE for review and approval copies and a summary and analysis of Defendant's existing instruments for financial assurance under the applicable Maryland Controlled Hazardous Substances regulations for the Facility. The analysis shall describe clearly, but shall not be limited to, the following items:

a. The nature and extent to which these instruments are available for access by the Regional Administrator of EPA Region III and MDE for the purpose of ensuring the completion of all requirements established pursuant to this Decree, including all tasks described in the Attachments hereto; and

b. The precise dollar amounts that are available for access by the Regional Administrator of EPA Region III and MDE, and schedules for their availability for the above-stated purposes.

2. EPA and MDE shall review the submittal and provide notice to Defendant as to the adequacy of its existing financial assurance measures for the above-stated purposes, and shall indicate therein what additional financial assurances, if any, must be provided by Defendant to assure compliance with the terms of this Decree. The amount of financial assurance that may be required, may equal but shall not exceed, the sum of the amounts that would be required separately for closure, post-closure, liability coverage, and the work required under this Consent Decree.

3. Within 8 weeks after Defendant's receipt of notice from EPA or MDE that Defendant's financial assurance measures are inadequate, Defendant shall establish additional financial assurances in a form authorized by the applicable Maryland Controlled Hazardous Substances regulations. Such additional financial assurance measures shall be available to EPA and MDE to perform such terms or conditions

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established pursuant to the Decree, provided that, in the case of Defendant's non-performance, EPA or MDE or both shall notify Defendant in writing of its failure to perform the requirements of this Decree prior to drawing upon any such assurance measure, and shall provide Defendant with a reasonable time period within which to remedy the nonperformance.

XVII. RECORDATION OF DECREE

Within 1 week after entry of this Decree, Defendant shall file a copy of the Decree for recordation with the appropriate land recording office and cause it to be indexed under Allied-Signal Inc. in the Grantor index. Defendant shall provide EPA and MDE with evidence of such recordation. Defendant may file copies of any EPA or MDE documents evidencing completion of its obligations under this Decree or the termination of this Decree.

XVIII. TRANSFER OF INTEREST, DEED AND CONTRACT RESTRICTIONS

1. Defendant shall notify EPA and MDE in writing, by certified mail, return receipt requested, of its intent to convey any interest in the Site or business, and of the name and address of the successor(s) in interest, at least 4 weeks in advance of settlement. Defendant shall also provide a copy of this Decree to the successor(s) in interest prior to any agreement for transfer, and shall provide copies of any indemnification agreement executed to EPA and MDE within 1 week after its execution.

2. No conveyance of title, easement, or other interest in the site or business shall be executed by Defendant without complete provision for the fulfillment of all requirements of this Consent Decree, including submission to EPA and MDE of a form of financial assurance sufficient to assure completion of the remedial Work. Such transfer shall not release Defendant from its obligations under this Consent Decree.

3. Defendant shall include in any deed, lease, contract or similar document transferring any interest in the Facility to any successor(s) in interest, provisions: (a) prohibiting actions that would compromise the effectiveness of any corrective measures being constructed under this Decree; (b) prohibiting any use of groundwater at the Facility without the approval of EPA and the State; (c) requiring disclosure of the environmental conditions at the Facility to every prospective successor in interest prior to settlement; (d) permitting EPA, MDE, Defendant and their respective Contractors and representatives to enter upon the Site for purposes of effectuating all terms of this Consent Decree; (e) containing an agreement that successor(s) in interest shall not interfere with or disturb the Work and any future remedial activities (including operation and maintenance) that may be performed; and (f) containing an agreement to inform any person or entity that subsequently acquires any title, easement, or other interest in the Site, or any portion thereof, of the requirements, conditions, and operative

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effect of this Section. The restrictions and obligations set forth in this paragraph shall run with the land and shall be binding upon any and all persons or entities that acquire any title, easement, or other interest in the Site or any portion thereof.

XIX. PUBLIC COMMENT, PARTICIPATION AND REVIEW OF RECORDS

1. In accordance with 28 C.F.R. §50.7, the United States shall notify the public of this Consent Decree. All public comments will be duly considered by the United States and the State before final entry of this Decree.

2. Upon tentative approval by EPA and MDE of the Corrective Measures Implementation Program Plan submittal described in paragraph 6 of Section V herein ("WORK TO BE PERFORMED"), EPA and MDE shall make available to the public for review and comment for at least 3 weeks: the Remedial Investigation Report (or summary thereof), the Feasibility Study Report (or summary thereof), all reports and plans submitted by Defendant pursuant to this Consent Decree, the Corrective Measures Implementation Program Plan submittal, and a Statement of Basis that summarizes EPA and MDE's proposed corrective measures and the Agencies' justification for proposing them.

3. Following the public review and comment period prescribed by paragraph 2, EPA and MDE will select the corrective measures to be implemented at the Site in accordance with Section V, paragraph 6. Within 1 week after EPA and MDE have selected the corrective measures to be implemented at the Site, EPA and MDE will notify the Defendant of the selected corrective measures. If the corrective measures selected by EPA and MDE after consideration of the public comments are the corrective measures identified in the Corrective Measures Implementation Program Plan, then upon receipt of the notice Defendant shall design and implement the selected corrective measures in accordance with this Consent Decree. If the corrective measures selected by EPA and MDE after consideration of the public comments are not the corrective measures identified in the Corrective Measures Implementation Program Plan, the notice will set forth the reasons why EPA and MDE selected different corrective measures. Within 8 weeks after Defendant receives said notice, Defendant shall revise the Corrective Measures Implementation Program Plan, as necessary to reflect the selected corrective measures, and shall submit the revised Corrective Measures Implementation Program Plan to EPA and MDE for approval or appeal the decision in accordance with Section XIV herein ("DISPUTE RESOLUTION").

4. Upon tentative approval by EPA and MDE of the Prefinal Design Submittal described in paragraph 7.b. of Section V herein ("WORK TO BE PERFORMED"), if the design is significantly different from the design suggested in the approved Corrective Measures Implementation Program Plan, EPA and MDE shall make available to the public for review and comment for at least 3 weeks: the Remedial Investigation Report (or

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summary thereof), the Feasibility Study Report (or summary thereof), all reports and plans submitted by Defendant pursuant to this Consent Decree, the approved Corrective Measures Implementation Program Plan, and a Statement of Basis that summarizes EPA and MDE's proposed approval of the Prefinal Design Submittal and the Agencies' justification therefor.

5. Following the public review and comment period prescribed by paragraph 4, EPA and MDE will notify Defendant of their approval of the Prefinal Design Submittal in accordance with paragraph 8 of Section V herein ("WORK TO BE PERFORMED"). If EPA and MDE approve the Prefinal Design Plan, Defendant shall submit the Final Design Submittal in accordance with paragraph 7.c. of Section V herein ("WORK TO BE PERFORMED"). If EPA or MDE does not approve the Prefinal Design Submittal, the notice will set forth the reasons why EPA or MDE has disapproved it. Within 8 weeks after Defendant receives said notice, Defendant shall either revise the Prefinal Design Submittal as necessary to reflect the EPA or MDE decision and submit the revised Prefinal Design Submittal to EPA and MDE for approval or appeal the decision in accordance with Section XIV herein ("DISPUTE RESOLUTION").

6. The Administrative Record supporting any action subject to public comment under this Consent Decree will be available for public review on Mondays through Fridays, from 9:00 a.m. to 4:00 p.m. by contacting the EPA Project Coordinator:

Humane Zia
Corrective Action RCRA Enforcement Section (3HW11)
Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
Telephone Number: (215) 597-8214

or the MDE Project Coordinator:

Program Administrator
Hazardous Waste Program
Hazardous and Solid Waste Management Administration
Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224
(301) 631-3343

7. All data, factual information, and documents submitted by the Defendant to EPA and MDE pursuant to this Consent Decree shall be subject to public inspection unless at the time of submission Defendant asserts a confidential business information or trade secret claim pursuant to 40 C.F.R. 2.203(b) and comparable State law requirements. Any assertion of confidentiality shall be adequately substantiated by Defendant at the time the assertion is made, in accordance with 40 C.F.R.

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§2.204(e)(4) and comparable State law requirements. Information for which such an assertion is made shall be treated in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B and comparable State law requirements. Defendant shall not assert a claim of confidentiality with respect to any physical, hydrogeological, sampling, monitoring, or analytical data.

XX. EFFECT OF CONSENT DECREE

1. Except as provided in Section XXI herein ("RESERVATION OF RIGHTS"), entry of this Consent Decree and compliance by Defendant with the requirements contained herein shall constitute full settlement of (a) the claims set forth in the Complaint, (b) any civil claims of the United States and the State for violations of RCRA, 42 U.S.C. §§ 6901 et seq., the Rivers and Harbors Act, 33 U.S.C. §§ 401-467e and the State laws and regulations cited in the Preamble to this Decree (all as amended) about which the United States or the State knew or should have known and could have brought under those statutes as of the date of entry of this Consent Decree, and (c) any counterclaims about which the Defendant knew or should have known and could have brought against the United States and the State as of that date.

2. Compliance by Defendant with the terms of this Consent Decree shall not relieve Defendant of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

3. This Consent Decree is not intended to be, nor shall it be construed as, a permit. EPA and Defendant will petition the EPA Chief Judicial Officer to stay proceedings on the pending RCRA corrective action permit until either such time as the State has determined whether the storage units have been "clean closed" in accordance with COMAR 26.13 or 10 years, whichever is shorter.

Has this happened?

XXI. RESERVATION OF RIGHTS

1. The signing of this Consent Decree and Defendant's consent to comply shall not limit or otherwise preclude EPA or MDE from taking additional action pursuant to Sections 3008(h) and 7003 of RCRA, 42 U.S.C. §§ 6928 and 6973, Sections 13 and 1 of the Rivers and Harbors Act, as amended, 33 U.S.C. §§ 407 and 441, or EPA and the State's authority under CERCLA, should EPA or MDE determine after the signing of this Consent Decree that such actions are necessary to reduce or eliminate risks to public health or the environment that were not known to EPA or MDE at the time of the approval of the Corrective Measures Implementation Program Plan under paragraph 6 of Section V herein ("WORK TO BE PERFORMED"). The United States also reserves its right to bring an action under CERCLA Section 107(a) for natural resource damages. MDE also reserves its right to bring an action under CERCLA Section 107(a) for natural resource damages that were not known to MDE at the time of the approval of the Corrective Measures Implementation Program Plan under paragraph 6 of Section V herein ("WORK TO BE PERFORMED").

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2. EPA and MDE reserve the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as EPA or MDE deem necessary to protect public health and the environment if EPA or MDE determines that the Defendant is refusing to carry out its obligations under this Decree. In that event, EPA and MDE reserve their right to seek reimbursement from Defendant for such additional costs incurred by the United States, and the Defendant reserves the right to contest the obligation to reimburse the United States or the State.

3. Defendant waives whatever rights it may have under Section 106(b) of CERCLA, 42 U.S.C. §9606(b), to seek reimbursement from the Hazardous Substances Superfund for response costs incurred in complying with the terms of this Consent Decree. Defendant further agrees not to sue or otherwise assert any cause of action, claims, or demands against the United States, including any claims pursuant to Section 112 of CERCLA, 42 U.S.C. §9616, or any other provision of law, directly or indirectly, or against the Hazardous Substances Superfund established by Section 221 of CERCLA, 42 U.S.C. §9631, or other claims against the United States for expenses related to this case and this Consent Decree. Nothing in this Consent Decree shall constitute preauthorization of a claim within the meaning of the National Contingency Plan.

XXII. THIRD PARTY CLAIMS

Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a party to this Decree for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XXIII. INDEMNIFICATION OF THE UNITED STATES AND THE STATE

Defendant agrees to indemnify and save and hold harmless the United States and the State, their agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of any act or omission of Defendant or its agents, independent Contractors, receivers, trustees, successors and assigns in (1) carrying out activities required by this Consent Decree and (2) constructing any improvements at the Site. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Defendant, the State or the United States under their various contracts.

XXIV. COSTS

Except as provided in paragraphs 2 and 3 of Section IX herein ("ON-SITE AND OFF-SITE ACCESS"), each Party to this action shall bear its own costs and attorney's fees.

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XXV. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this Consent Decree for the purpose of ensuring compliance with its terms and conditions, including timely implementation by the parties, and resolving disputes under Section XIV herein ("DISPUTE RESOLUTION").

XXVI. SUBSEQUENT MODIFICATION

1. Except as provided in Section VII, paragraph 5, amendments to this Consent Decree shall be in writing, shall be signed by all parties, and shall be submitted to the Court for approval. The effective date of any amendment shall be the date on which it is approved by the Court.

2. Upon written approval by EPA and MDE, reports, plans, specifications, schedules, and attachments required by this Consent Decree shall be incorporated into this Consent Decree. Any noncompliance with such EPA and MDE-approved reports, plans, specifications, schedules and attachments shall be considered a violation of this Consent Decree and shall subject Defendant to any applicable stipulated penalty provisions included in Section XII herein ("DELAY IN PERFORMANCE/ STIPULATED PENALTIES").

3. No informal advice, guidance, suggestions, or comments by EPA or MDE regarding reports, plans, specifications, schedules, and any other writing submitted by Defendant will be construed as relieving Defendant of its obligations to obtain written approval, if and when required by this Consent Decree.

XXVII. SEVERABILITY AND PRIORITY

1. If any provision of this Consent Decree is held by any judicial authority to be invalid, the remainder of this Consent Decree shall not be affected thereby and shall remain in full force and effect.

2. In case of any conflict between the terms of this Consent Decree and any attached exhibit or any document approved under and incorporated into this Consent Decree, the provisions of this Consent Decree shall take priority over the conflicting provisions.

XXVIII. PERPETUAL RESPONSIBILITY

Defendant shall have perpetual responsibility for operating and maintaining the approved corrective measures, and for complying with the Surface Water Performance Standard and the Groundwater Gradient Performance Standard discussed in paragraphs 12 and 13 of Section V herein ("WORK TO BE PERFORMED").

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XXIX. SURVIVABILITY/PERMIT INTEGRATION

Any requirements of this Decree shall not terminate upon the issuance of a RCRA permit unless the requirements are expressly replaced by requirements in the permit.

XXX. TERMINATION AND SATISFACTION

This Consent Decree may be terminated in whole or in part or replaced by a new Consent Decree by the Parties on their mutual consent and the approval of this Court.

XXXI. EFFECTIVE DATE

This Consent Decree shall become effective upon the date of its entry by the Court.

WHEREFORE, the parties enter into this Consent Decree and submit it to the Court, in order that it may be approved and entered.

Civil Action No.

FOR THE UNITED STATES OF AMERICA

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APPROVED and so ORDERED this 29th day of September, 1989.

ENTERED ON.



Juan P. Lamy
United States District Judge

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