(4) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six (6) weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six (6) weeks. Settling Defendant shall submit these progress reports to EPA and the State by the tenth (10th) day of every month following the effective date of

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this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 48.b of Section XV (Certification of Completion). EPA may direct Settling Defendant to reduce the frequency of these reports. If requested by EPA or the Natural Resource Trustees, Settling Defendant shall also provide briefings for EPA and the Natural Resource Trustees to discuss the progress of the Work.

32. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days (7) prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 10, United States Environmental Protection Agency. These reporting requirements are in addition

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to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendant shall submit four (4) copies of all plans, reports, and data required by the AOC, the Remedial Design documents, the OMM Plan, the Consent Decree, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit one (1) copy of all such plans, reports and data to the State.

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

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

37. Except for submittals under the AOC, after review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable

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opportunity for review and comment by the State and the Natural Resource Trustees, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA.

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendant shall, within thirty (30) days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 41.

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b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

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

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern

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the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

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

XIII. PROJECT COORDINATORS

43. Within twenty (20) days of the effective date of this Consent Decree, Settling Defendant and EPA will notify the other Parties, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise

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sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for the Settling Defendant. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiffs may designate other representatives, including, but not limited to, EPA's and Natural Resource Trustees' employees, and federal and Natural Resource Trustees' contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree that is inconsistent with Work approved by EPA and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

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XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security for performance of the Work in the amount of $22,000,000 by demonstrating that the Settling Defendant has:

(a) A current rating for its most recent bond issuance of no lower than BBB, as issued by Standard and Poor's, or Baa, as issued by Moody's; and

(b) Equity of at least six (6) times the amount of the performance of the Work that remains to be completed.

46. To demonstrate the financial assurance for performance of the Work pursuant to Paragraph 45 of this Consent Decree, Settling Defendant shall submit to EPA a copy of an independent certified public accountant's report on examination of the Settling Defendant's most recent completed fiscal year. Settling Defendant shall resubmit the information required by Paragraph 45 annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in 40 CFR § 264.143. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not

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excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendant concludes that it has fully completed and attained Performance Standards for the Remedial Action for: (1) the cleanup and dredging of sediments in the Sitcum Waterway Problem Area; (2) the dredging of sediments in the Blair Waterway; (3) the disposal in the Milwaukee Waterway of sediments from both the Sitcum and Blair Waterways; and (4) the habitat mitigation at and beyond the mouth of the Milwaukee Waterway, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and, at their option, the Natural Resource Trustees. The pre-certification inspection shall proceed without regard to any Additional Response Actions for the Sitcum Phase 2 Area, pursuant to Paragraph 18.b. If, after the pre-certification inspection, the Settling Defendant still believes that these elements of the Remedial Action have been fully performed and the Performance Standards have been attained, it shall submit a written report requesting EPA approval, pursuant to Section XII (Submissions Requiring Agency Approval) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling

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Defendant's Project Coordinator shall state that such elements of the Remedial Action have been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The written report shall also describe how the habitat mitigation components have satisfied each identified Performance Standard. The report shall contain the following statement, signed by an authorized official of the Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that these elements of the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete these elements of the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree, including Remedial Design documents

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approved by EPA under the AOC or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. Within ninety (90) days after Settling Defendant concludes that the Remedial Action, including the Additional Mitigation Project, has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and, at their option, the Natural Resource Trustees. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, pursuant to Section XII (Submissions Requiring Agency Approval) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The

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written report shall include as-built drawings signed and stamped by a professional engineer; the report may refer to, but need not include, drawings already submitted pursuant to Paragraph 46.a. The written report shall also describe how the habitat mitigation components have satisfied each identified Performance Standard. The report shall contain the following statement, signed by an authorized official of the Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and Remedial Design documents approved by EPA under the AOC or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency

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Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

c. Within ninety (90) days after Settling Defendant concludes that the Remedial Action, including any Additional Response Actions under Section VII, has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and, at their option, the Natural Resource Trustees. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, pursuant to Section XII (Submissions Requiring Agency Approval) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer; the report may refer to, but need not include, drawings already submitted pursuant to Paragraph 46.a.

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The written report shall also describe how the habitat mitigation components have satisfied each identified Performance Standard. The report shall contain the following statement, signed by an authorized official of the Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and Remedial Design documents approved by EPA under the AOC or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to

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their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

d. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

48. Completion of the Work

a. Within ninety (90) days after Settling Defendant concludes that all phases of the Work (including activities under the OMM Plan), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of

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the requirements of this Consent Decree. The report shall contain the following statement, signed by an authorized official of the Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportuntiy for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and Remedial Design documents approved by EPA under the AOC or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling

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Defendant, and after reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XVI. EMERGENCY RESPONSE

49. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Sitcum Waterway Remediation Project that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 50, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Superfund Response/Investigations Branch, Region 10. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the AOC. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead,

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Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS AND SETTLEMENT OF NATURAL RESOURCE DAMAGE CLAIMS

51. a. Response Costs.

Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall pay to the United States $1,136,638.18 in reimbursement of EPA's Past Response Costs. The payments shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lockbox bank, *referencing* DOJ Case No. 90-11-3-711, and U.S.A.O. file number 9301795, and EPA Region and Site/Spill ID #10G7 in reimbursement of EPA's Past Response Costs. Payment shall be made in accordance with instructions provided by the United States to the Settling Defendant upon execution of this Consent Decree by the United States. Payments by EFT must be received at

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the U.S. D.O.J. lockbox bank by 4:00 p.m. (Eastern Time) to be credited on that day.

b. Natural Resource Damages.

i. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall pay to the Natural Resource Trustees the sum of $335,000.00 in reimbursement of Past Trustee Assessment Costs. Payments to each of the Natural Resource Trustees shall be made in the amounts and with payees and addressed as follows:

Payee: National Oceanic and Atmospheric Administration

Amount: $157,003.53

Address: Manager
NOS/Damage Assessment Center
6001 Executive Blvd., Rm. 425
Rockville, MD 20852

Payee: Puyallup Tribe of Indians

Amount: $84,588.00

Address: Mr. Richard Du Bey
Stoel Rives Boley Jones & Grey
3600 One Union Square
600 University Street
Seattle, WA 98101

Payee: Muckleshoot Indian Tribe

Amount: $28,542.47

Address: Mr. Rob Otsea
Reservation Attorney
Muckleshoot Indian Tribe
39015 172nd Avenue Southeast
Auburn, WA 98002

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Payee: State of Washington/Dept. of Ecology

Amount: $23,000.00

Address: State of Washington
Department of Ecology
Attention: Cashiering Section
P.O. Box 5128
Lacey, WA 98503-0210

Payee: Secretary of the Interior

Amount: $41,866.00

Address: Kate Benkert
U.S. Fish and Wildlife Service
3704 Griffen Lane S.E., Suite 102
Olympia, WA 98501-2192

ii. Settling Defendant shall pay to the Natural Resource Trustees $12,000,000 (twelve million dollars) in settlement of Natural Resource Damages caused by releases of hazardous substances from property owned, managed or operated by Settling Defendant within the Commencement Bay Environment. Payments shall be made in accordance with the attached Order directing the deposit of Natural Resource Damages into the Registry of the Court and in compliance with the following schedule:

Date:	Amount:
11/15/93	$ 800,000
11/15/94	$1,000,000
11/15/95	$ 800,000
5/15/96	$ 500,000
11/15/96	$ 500,000
5/15/97	$1,000,000
11/15/97	$1,000,000
5/15/98	$1,400,000
11/15/98	$1,400,000
5/15/99	$1,900,000
11/15/99	$1,700,000

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The Natural Resource Trustees and Settling Defendant intend that all funds paid for Natural Resource Damages be used to benefit the natural resources of Commencement Bay in Pierce County injured as a result of releases of hazardous substances. The Natural Resource Trustees and Settling Defendant also recognize that the maximum benefit of habitat restoration in Commencement Bay can best be achieved with prompt resolution of all claims for Natural Resource Damages by the Natural Resource Trustees against responsible parties. Accordingly, the Natural Resource Trustees and Settling Defendant agree that the Natural Resource Trustees may apply up to $1,950,000 (one million nine hundred fifty thousand dollars) of the funds paid as Natural Resource Damages to pay Future Trustee Assessment Costs as follows: (a) up to $150,000 (one hundred fifty thousand dollars) of that sum for Future Trustee Assessment Costs incurred in connection with the Sitcum Waterway Remediation Project; (b) up to $800,000 (eight hundred thousand dollars) of that sum for the costs of assessing Natural Resource Damages in the Commencement Bay Environment; and (c) up to an additional $1,000,000 (one million dollars) of that sum for the costs of assessing Natural Resource Damages in the Commencement Bay Environment subsequent to January 1, 1995, if the Natural Resource Trustees are unable, after good faith efforts, to obtain adequate funds to cover such costs from other potentially responsible parties. The Natural Resource Trustees

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agree to credit Settling Defendant the amount of $35,555.56 (thirty-five thousand five hundred fifty-five dollars and fifty-six cents) against the payment due November 15, 1999, to reflect payments made by Settling Defendant toward the costs of the natural resource damage assessment pursuant to the Funding and Participation Agreement for Phase 1 of the Commencement Bay Natural Resource Damage Assessment.

iii. Settling Defendant shall impose institutional controls on the "Wasser & Winters Property" (identified in Appendix E) to establish:

(1) a permanent Buffer Area (as defined in Appendix E) in which the Settling Defendant shall refrain from conducting any development activities, except remedial activities under CERCLA, MTCA, or otherwise required under applicable law; and

(2) a permanent Disturbance Barrier, which shall be an eight-foot cedar fence constructed along the "Disturbance Barrier Line" (as shown on Appendix E), or such other Disturbance Barrier agreed upon by the Settling Defendant and the Natural Resource Trustees that meets the objectives set forth in this Subparagraph. The purpose of the permanent Buffer Area and the permanent Disturbance Barrier is to minimize sound, light, visual and physical disturbances within the Buffer Area and upon the habitat and wildlife in the Hylebos Creek area.

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iv. Settling Defendant agrees to provide the Natural Resource Trustees and their representatives, including their contractors, access to the Buffer Area on the "Wasser & Winters Property" to monitor the area and undertake such restoration activities as may enhance the habitat value of the Buffer Area. The Natural Resource Trustees and their representatives shall give reasonable notice prior to access. Settling Defendant agrees to provide the Natural Resource Trustees with applicable health and safety plans. The Natural Resource Trustees agree to abide by such health and safety requirements. In addition, the Natural Resource Trustees and the Settling Defendant agree to conduct their activities in the Buffer Area in a manner designed to minimize interference with the Settling Defendant's obligations under this Consent Decree or any other applicable law. The Natural Resource Trustees agree to notify Settling Defendant prior to conducting any restoration activities in the Buffer Area.

v. The Natural Resource Trustees agree to require that any contractor who performs work for them in the Buffer Area shall agree to indemnify and save the Settling Defendant harmless against all claims of any nature, including, but not limited to, claims by third parties for death, personal injury, or property damage, and claims for environmental liability that arises as the result of negligent acts or omissions of such contractors, its

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employees and agents, while they are present on the Buffer Area. Such indemnity shall be limited to actual damages only, and shall not extend to consequential damages or any other liability.

vi. To minimize the impact upon the natural environment, drainage on the "Wasser & Winters Property" shall be discharged at a point no closer to the mouth of Hylebos Creek than the discharge point shown on Appendix E.

vii. Settling Defendant shall continue to remain liable for the cleanup and/or remediation of any hazardous substances, including all known or subsequently discovered hazardous substances, that remain on, in, under or about the "Wasser & Winters Property" and the Option Area on the "East West Road Property" (as defined in Appendix F) as of the effective date of the Consent Decree ("Historic Contamination"). Settling Defendant shall be liable for all monitoring, testing or other ongoing or future requirements regarding Historic Contamination on, in, under or about the "Wasser & Winters Property" and the Option Area on the "East West Road Property" that either have been, or may in the future be, imposed by this Consent Decree or other lawful means. To the extent permitted by law, Settling Defendant shall hold the Natural Resource Trustees harmless and shall indemnify and defend the Natural Resource Trustees against any claim that may be asserted by any person against the Natural Resource Trustees due to the presence of hazardous substances on,

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in, under or about the "Wasser & Winters Property" and the Option Area on the "East West Road Property." If by intent of Settling Defendant or by operation of law any property interest is transferred to the Natural Resource Trustees pursuant to this Consent Decree, such transfer shall not create liability for future cleanup, remediation and/or natural resource damages due to the presence of Historic Contamination that remains on, in, under or about the "Wasser & Winters Property" and the Option Area on the "East West Road Property" as of the date that such interest is transferred.

viii. Settling Defendant and the Natural Resource Trustees have entered into an Option Agreement to Buy Real Property, attached and made a part hereof as Appendix F. The Settling Defendant and Natural Resource Trustees agree to be bound by the terms of said Agreement. Settling Defendant agrees to grant the Natural Resource Trustees a right of first refusal with regard to the Option Area, defined in Appendix F. Such right of first refusal shall commence at the end of the first five-year term of the Option Agreement and continue for five years thereafter; provided, however, that such right of first refusal shall terminate upon exercising of the Option. This right of first refusal shall be exercised within ten (10) days of the communication of an offer to purchase the Option Area to the Lead Trustee.

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ix. The obligations of Settling Defendant with regard to the implementation of the institutional controls on the "Wasser & Winters Property," including the right of access described above, and on the "East West Road Property" (identified in Appendix F) shall be binding upon the Settling Defendant and any and all persons who subsequently acquire any interest in such property. Within fifteen (15) days after entry of this Consent Decree, Settling Defendant shall record at the Registry of Deeds a notice of institutional controls on each property, which shall be reviewed and concurred in by the Lead Trustee prior to recording.

52. Settling Defendant shall reimburse the United States for all Future Response Costs in connection with the Sitcum Waterway Remediation Project not inconsistent with the National Contingency Plan incurred by the United States that are not reimbursed as Future Trustee Assessment Costs pursuant to Paragraph 51.b.ii. The United States will send the Settling Defendant a bill requiring payment that includes a prepared cost summary, which includes direct and indirect costs incurred by EPA and DOJ, and their contractors, on an annual basis. Settling Defendant shall make all payments within sixty (60) days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 53. Settling Defendant shall make all payments required by this Paragraph in the form of a certified check(s) made payable to "EPA Hazardous Substances

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Superfund" and referencing the U.S.A.O. file number 9301795, the EPA Region and Site/Spill ID #10G7, and DOJ case number 90-11-3-711. Settling Defendant shall forward the certified check(s)to the U.S. EPA Superfund, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251, and shall send copies of the check(s) to the Director of the Hazardous Waste Division, EPA, Region 10, the EPA RPM, and the EPA Hearing Clerk, Office of Regional Counsel, EPA, Region 10, and to the U.S. Department of Justice as specified in Section XXVII (Notice and Submissions).

53. Settling Defendant may contest payment of any Future Response Costs under Paragraph 52 if they determine that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States (if the United States accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 52. Simultaneously, the Settling Defendant shall establish an interest bearing escrow account in a federally-insured bank duly

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chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States, in the manner described in Paragraph 52. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States, in the manner described in Paragraph 52; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute

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Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by Paragraphs 51.a. and 51.b.i. are not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraph 52 are not made within sixty (60) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the thirty-first (31st) day after the effective date of this Consent Decree. The interest on Future Response Costs shall begin to accrue on the sixty-first (61st) day after the date of the Settling Defendant's receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

55. The United States and the Natural Resource Trustees do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's

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authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States, the Natural Resource Trustees, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States and the Natural Resource Trustees all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Natural Resource Trustees based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Natural Resource Trustees shall be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this

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Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States or the Natural Resource Trustees.

56. Settling Defendant waives all claims against the United States and the Natural Resource Trustees for reimbursement or for set-off of any payments made or to be made to the United States or the Natural Resource Trustees for damages or to the United States or the Natural Resource Trustees arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States and the Natural Resource Trustees with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Sitcum Waterway Remediation Project, including, but not limited to, claims on account of construction delays.

57. No later than fifteen (15) days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47.d. of Section XV (Certification of Completion) comprehensive general liability

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insurance and automobile insurance with limits of ten million dollars, combined single limit naming as additional insured the United States and the Natural Resource Trustees. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA and the Natural Resource Trustees certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendant demonstrates by evidence satisfactory to EPA and the Natural Resource Trustees that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

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XIX. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or of any entity controlled by Settling Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Division, EPA Region 10, within forty-eight (48) hours of when Settling Defendant first knew or

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should have known that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as

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

61. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 58 and 59, above. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a

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violation by the Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

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

63. Any dispute which arises under or with respect to this Consent Decree shall be resolved as follows: If the Settling Defendant objects to any EPA notice or EPA action made pursuant to this Consent Decree, Settling Defendant shall send the EPA Project Coordinator a written Notice of Dispute within fifteen (15) days after EPA's action or after receiving EPA's notice. The dispute in the first instance shall be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the Notice of Dispute is received by the Project Coordinator, unless the parties to the dispute agree in writing to an alternative period.

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph,

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then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 65 or 66.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or 66.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 65 or 66, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately

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appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 65 or 66.

65. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

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

b. The Director of the Hazardous Waste Division, EPA Region 10, will issue a final administrative decision resolving

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the dispute based on the administrative record described in Paragraph 65.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 65.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 65.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, the Settling Defendant shall have the burden of demonstrating that the decision of the Hazardous Waste Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 65.a.

66. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under

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applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 64, the Director of the Hazardous Waste Division, EPA Region 10, will issue a final decision resolving the dispute. The Hazardous Waste Division Director's decision shall be binding on the Settling Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Notwithstanding Paragraph R of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

67. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed

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matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

68. The Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69 and 70 to the United States for failure to comply with the requirements of this Consent Decree, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, remedial design documents approved by EPA pursuant to the AOC, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance that is not governed by Paragraph 70:

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Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 30th day
$6,000	31st through 60th day
$15,000	61st day and beyond

70. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other written documents:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 30th day
$1,000	31st through 60th day
$2,500	61st day and beyond

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendant shall be liable for a stipulated penalty in the amount of $250,000.

72. All penalties shall begin to accrue on the day after the complete performance is due or other failure or refusal to comply occurs, and shall continue to accrue through the final day of the noncompliance, except that, for any violation pursuant to Paragraph 37 arising out of EPA's disapproval of timely submittals of deliverables pursuant to the AOC or the Consent Decree, penalties shall begin to accrue on the due date of such submittals and shall continue to accrue for thirty (30) days, at which point penalties shall stop accruing until EPA notifies Settling Defendant of the violation, whereupon accrual of

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penalties shall resume. With respect to all other violations, penalties shall accrue from the date of violation regardless of whether the United States has notified Settling Defendant of a violation. All penalties shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

74. All penalties owed to the United States under this section shall be due and payable within sixty (60) days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). The payments shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lockbox

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bank, referencing DOJ Case No. 90-11-3-711, and U.S.A.O. file number 9301795, and EPA Region and Site/Spill ID #10G7. Payment shall be made in accordance with instructions provided by the United States to the Settling Defendant upon execution of the consent decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 4:00 p.m. (Eastern Time) will be credited on the next business day.

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

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within sixty (60) days of the agreement or the receipt of EPA's decision or order;

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

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c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

77. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.

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