IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA and DISTRICT OF COLUMBIA, Plaintiffs, v. WASHINGTON GAS LIGHT COMPANY, Defendant.	Civil No. 11-2199 (RMC)

CERCLA CONSENT DECREE ASSOCIATED WITH THE WASHINGTON GAS EAST STATION SITE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the United States Department of the Interior ("DOI"), the National Park Service ("NPS") and the United States Environmental Protection Agency ("EPA"), and the District of Columbia Department of Environment ("DDOE"), on behalf of the District of Columbia ("District"), filed a complaint in this matter pursuant to Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g), and D.C. Official Code §§ 8-631 *et seq.* ("District of Columbia Brownfield Revitalization Amendment Act of 2010").

B. Authority under CERCLA Sections 104 and 122, 42 U.S.C. §§ 9604 and 9622, was delegated by the President to the Secretary of the Interior by Executive Order 12580, 52 Fed. Reg. 2923 (1987), as amended by Executive Order 13016, 61 Fed. Reg. 45871 (1996). The Secretary of DOI has re-delegated the CERCLA Section 104 authorities to the Director of NPS with respect to lands under NPS's jurisdiction, custody, or control and has re-delegated CERCLA Section 122 authorities to the Solicitor of DOI.

C. The authority to administer and enforce the District of Columbia Brownfield Revitalization Amendment Act of 2010, is delegated to the Director of DDOE pursuant to the authority vested in the Director by the District Department of the Environment Establishment Act, D.C. Official Code §§ 8-151.01, *et seq.*, Mayor's Order 2006-61 (53 D.C. Reg. 5684, July 14, 2006), and Mayor's Order 2003-41 (50 D.C. Reg. 2898, April 11, 2003).

D. The United States and the District in their complaint seek, *inter alia*: (1) reimbursement of costs incurred, and to be incurred, by DOI, NPS ("DOI/NPS") and EPA, and the District for response actions undertaken to address the release and substantial threat of release of hazardous substances at or from the Site, as defined herein, together with accrued Interest; and (2) performance of response actions by Washington Gas Light Company ("Settling Defendant") at the Site consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

E. Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, or any of the facts and legal assertions alleged therein or in this Consent Decree. Settling Defendant alleges that it has claims against certain entities related to the releases of Waste Materials associated with the Site. Nothing in this Consent Decree, nor the entry thereof, shall be construed as an admission of liability or an acknowledgment by Settling Defendant that any release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or the environment.

F. In accordance with the NCP and CERCLA, DOI/NPS notified the District of negotiations with Settling Defendant regarding the implementation of response actions at the Site, and the District has participated in such negotiations and is a party to this Consent Decree. In November 2008, NPS and the District entered into a Site Specific Memorandum of Agreement ("SSMOA"), addressing the roles and responsibilities of NPS and the District for the response actions at the Site.

G. Pursuant to P.L. 109-396, "The Federal and District of Columbia Government Real Property Act of 2006," title to certain portions of the Site was transferred to the District

on or about November 7, 2008. Pursuant to CERCLA and the SSMOA, NPS will continue to operate as the lead Federal agency for purposes of the response actions performed under this Consent Decree.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), DOI/NPS notified potential District and federal natural resource trustees on March 31, 2005, of negotiations with the Settling Defendant regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal or District trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, and pursuant to 40 C.F.R. § 300.430, Settling Defendant completed a report entitled "Additional Remedial Investigation and Feasibility Study (Phase IV), East Station" in 1999. On September 3, 1999, Settling Defendant prepared a Decision Document ("1999 Decision Document") that, among other things, included response actions to address soils at the Washington Gas East Station Property, and groundwater at the Washington Gas East Station Property and elsewhere at the Site as defined herein. On September 22, 1999, EPA recognized and accepted the 1999 Decision Document. Additional sampling of soils was performed in October 2001, and a human health risk assessment was completed in March 2002. Settling Defendant engaged in response actions at the Site, including soil and groundwater actions, as described in the Record of Decision ("ROD"), issued by NPS and dated September 2006, and further reflected in submissions to EPA, DOI/NPS, and the District by Settling Defendant.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, DOI/NPS published notice of the completion of the Feasibility Study ("FS") and of the proposed plan for Remedial Action ("RA") in February 2005, in a major local newspaper of general circulation. DOI/NPS provided an opportunity for written and oral comments from the public on the proposed plan for RA. A public meeting was held April 28, 2005. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the DOI Assistant Secretary for Policy, Management and Budget, based the selection of the response action.

K. The decision by DOI/NPS on the RA to be implemented at a portion of the Site is embodied in the ROD on which the District has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to DOI/NPS and the District, DOI/NPS and the District believe that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. This Consent Decree requires implementation of the portion of the ROD pertaining to Remedial Design and Remedial Action ("RD/RA") at a portion of the Site's soils and subsurface soils, defined as Operable Unit 1 ("OU1") herein, as selected in Section XII of the ROD; and performance of a Remedial Investigation and Feasibility Study ("RI/FS") for hazardous substances in groundwater, surface water, and the sediments of the Anacostia River, defined as Operable Unit 2 ("OU2") herein. The Parties contemplate

that additional response actions beyond what is required by this Consent Decree and the ROD may be taken to address OU2 following the RI/FS. Such additional response actions are not addressed in this Consent Decree.

N. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the RA to be performed by Settling Defendant under this Consent Decree shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record. If applicable, the determinations made by the District shall be reviewable in accordance with the District's Administrative Procedure Act, set forth at D.C. Official Code, § 2-501, *et seq.*, and applicable District law.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

P. The Parties have read this Consent Decree, have had a full opportunity to consult (and in fact have consulted) with legal counsel with regard to it, and have signed this Consent Decree voluntarily and freely and with the full understanding of its terms. The Parties further understand and agree that each has relied wholly upon its own judgment, belief, and knowledge of the nature, extent, and duration of the current action, and enter into this Consent Decree without reliance upon any statements or representations by any other Party or its representative except those expressly set forth herein.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the District and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree. Except as set forth in Paragraph 10, none of the obligations and duties of the Settling Defendant set forth in this Consent Decree may be assigned or delegated to any other person without the express, prior written consent of all other Parties.

3. Settling Defendant shall provide a copy of this Consent Decree to any subsequent owners or successors before ownership rights, stock, or assets are transferred through a corporate acquisition, merger, or sale. Within 14 Days after the Effective Date of this Consent Decree or on the date of retaining their services, whichever is later, Settling Defendant shall provide a copy of this Consent Decree to all contractors, subcontractors, laboratories, and consultants retained to perform Work. Settling Defendant shall condition all Work contracts upon conformity with the terms of this Consent Decree. Notwithstanding the terms of any contract, Settling Defendant is responsible for compliance with this Consent Decree and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXVII). In the event of conflict between this Consent Decree and any Appendix, this Consent Decree shall control.

"Contractor" shall mean any contractor retained by Settling Defendant, other than the Supervising Contractor, to perform some or all of the Work required under this Consent Decree (except Work performed by the Supervising Contractor) in accordance with the SOW.

"Date of Lodging" shall be the date upon which this Consent Decree is filed with the Court as recorded on the Court docket.

The term "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, federal or District holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or District holiday, the period shall run until the close of business of the next working day.

"District" shall mean the District of Columbia.

"District Fund" shall mean the District Department of the Environment's Special Revenue Account 0663 (the Clean Land Fund).

"District Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the District incurs after March 31, 2011 in negotiating this Consent Decree and the SOW, reviewing or developing plans, reports, and other deliverables related to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access, and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), Section XIII (Emergency Response), Paragraph 44 (Funding for Work Takeover), and Section XXVIII (Community Relations).

"District Past Response Costs" shall mean all response costs, including but not limited to, direct and indirect costs, that the District paid or incurred at or in connection with the Site through March 31, 2011, plus Interest on all such costs that has accrued through such date.

"District Property" shall mean the property identified on the Site map, Appendix D of this Consent Decree, as District Property.

"DDOE" shall mean the District Department of the Environment and any successor departments or agencies of the District.

"DOI" shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities of that Department.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of that Department.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

"FOSET" shall mean the Agreement Concerning a Finding of Suitability for Early Transfer executed between the United States and the District of Columbia on November 7, 2008.

"Federal Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in connection with the Site after March 31, 2011, including costs incurred in negotiating this Consent Decree and the SOW, reviewing or developing plans, reports, and other deliverables related to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VIII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access costs to

monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), Section XIII (Emergency Response), Paragraph 44 (Funding for Work Takeover), and Section XXVIII (Community Relations).

"Federal Past Response Costs" shall mean all response costs, including but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through March 31, 2011, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Quality Assurance Officer" shall mean the independent person or organization that will implement the construction quality assurance plan during the conduct of Remedial Action activities.

"Institutional Controls" shall mean federal and District laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the ROD or the RA; or (c) provide information intended to modify or guide human behavior at the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. For purposes of the District Past Response Costs and the District Future Response Costs, interest shall mean interest at the rate specified for judgments and decrees, established under D.C. Official Code § 28-3302(c).

"NAPL" (non-aqueous phase liquid) shall mean any tar or coal tar liquid, which may include fractions of light non-aqueous phase liquid (LNAPL) and dense non-aqueous phase liquid (DNAPL).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"NPS" shall mean the National Park Service, and any successor department or agency of the National Park Service.

"Operable Unit 1" or "OU1" shall mean surface soils and subsurface soils of the District Property and the managed by the United States Army Corps of Engineers ("USACE") property identified on the Site map, Appendix D of this Consent Decree.

"OU1 Remedial Action" or "OU1 RA" shall mean all activities relating to OU1 that Settling Defendant is required to perform under this Consent Decree to implement the ROD for surface and subsurface soils in accordance with the SOW. The OU1 RA includes the final RD/RA Work Plans, and other plans reviewed by the District and approved by NPS, including

those aspects of Institutional Controls that are the responsibility of Washington Gas, until the Performance Standards are met, excluding performance of the Remedial Design, and activities required under Section XXIV (Retention of Records).

"OU1 Remedial Design/Remedial Action Work Plan" or "OU1 RD/RA Work Plan" shall mean the document relating to OU1 reviewed by the District, approved by NPS, and developed pursuant to Section VI (Performance of the Work by Settling Defendant) of this Consent Decree and the SOW, and any modifications thereto.

"OU1 Remedial Design" or "OU1 RD" shall mean those activities relating to OU1 to be undertaken by Settling Defendant to develop the final plans and specifications for the OU1 RA pursuant to the OU1 RD/RA Work Plan.

"Operable Unit 2" or "OU2" shall mean groundwater, surface water, and sediments of the Anacostia River where hazardous substances released at or from the Washington Gas East Station Property have come to be located.

"OU2 Remedial Investigation and Feasibility Study" or "OU2 RI/FS" shall mean, as set forth herein and in the attached SOW, those activities relating to OU2 to investigate the nature and extent of releases of hazardous substances at or from the Washington Gas East Station Property and, if necessary, to develop and evaluate options for remedial action.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the OU1 RA as required under the O&M Plan approved or developed by NPS, with opportunity for DDOE review, pursuant to Section VI (Performance of the Work by Settling Defendant) and the SOW.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the District, and Settling Defendant.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the OU1 RA, set forth in Section 5 (OU1 Performance Standards) of the SOW.

"Plaintiffs" shall mean the United States and the District.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the DOI/NPS Record of Decision relating to the Site issued on September 14, 2006, and all amendments and attachments thereto. The ROD is attached as Appendix A.

"RD/RA" shall mean Remedial Design and Remedial Action under CERCLA.

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

"Settling Defendant" shall mean Washington Gas Light Company.

"Site" shall mean any area where hazardous substances released at or from the Washington Gas East Station Property have come to be located. The Site includes OU1, OU2, and the Washington Gas-Owned Soils.

"SSMOA" shall mean the Site Specific Memorandum of Agreement executed between NPS and the District on November 7, 2008 addressing the roles and responsibilities of NPS and the District regarding the Site.

"Statement of Work" or "SOW" shall mean the statement of work in Appendix B, which requires: (a) for OU1, implementation of the OU1 RD/RA, achievement of Performance Standards, and performance of compliance monitoring and reporting; and (b) for OU2, performance of the OU2 RI/FS and implementation of monitoring and reporting.

"Supervising Contractor" shall mean the one or more principal contractors retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree and the SOW.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including, but not limited to, DOI, NPS, EPA, USACE, and DOJ, and any federal natural resource trustee.

"Washington Gas East Station Property" shall mean the property identified on the Site map, Appendix D of this Consent Decree, as "Washington Gas East Station Property."

"Washington Gas-Owned Soils" shall mean the surface and subsurface soils of the Washington Gas East Station Property.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and D.C. Official Code § 8-631.02(8); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "pollutant" under the District's Water Pollution Control Act, D.C. Official Code § 8-103.01, *et seq.*, § 8-103.01(19); (5) any "solid waste" under D.C. Official Code § 8-901(6); (6) any hazardous substance under D.C. Official Code § 8-901(2A) or 8-1302(2); and (7) D.C. Official Code § 8-113.01 *et seq.*

"Work" shall mean all activities and obligations Settling Defendant is required to implement under this Consent Decree to perform the OU1 RD/RA and the OU2 RI/FS, in accordance with the SOW, except the activities required under Section XXIV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare, and the environment by implementation of response actions at the Site by Settling Defendant; to pay Federal Past Response Costs, Federal Future Response Costs, District Past Response Costs, and District Future Response Costs; and to resolve specified claims of the United States and the District against Settling Defendant as provided in this Consent Decree. The Parties contemplate that future response actions may be selected at the Site, in a manner not inconsistent with the NCP, based on the outcome of investigations at OU2, but such future response actions are not addressed in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by NPS, with review and comment by the District, pursuant to this Consent Decree. Settling Defendant shall pay Federal Past Response Costs, Federal Future Response Costs, District Past Response Costs, and District Future Response Costs as provided in this Consent Decree.

7. Compliance with Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and District laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements ("ARARs") of all federal and District environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by NPS, shall be deemed to be consistent with the NCP. This Consent Decree shall be governed by and construed and enforced in accordance with applicable federal and District laws and regulations.

8. Construction. This Consent Decree shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

9. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). If there is any portion of the Work that is implemented off-Site and requires a federal or District permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 9.a and required for the Work, provided that it has submitted timely and complete applications and taken all other necessary actions to obtain all such permits or approvals.

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

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Quality Assurance, Sampling and Data Analysis), VIII (Access and Institutional Controls), and XIII (Emergency Response) shall be under the direction and supervision of one or more Supervising Contractors, the selection of which shall be subject to disapproval by NPS after a reasonable opportunity for review and comment by the District. Within 10 days after the Effective Date, Settling Defendant shall notify NPS and the District in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendant shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by NPS. NPS will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to NPS and the District and must obtain an authorization to proceed from NPS, after a reasonable opportunity for review and comment by the District, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If NPS disapproves a proposed Supervising Contractor, NPS will notify Settling Defendant in writing. Settling Defendant shall submit to NPS and the District a list of contractors, including the qualifications of each contractor that would be acceptable to it within 45 days of receipt of NPS's disapproval of the contractor previously proposed. NPS will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify NPS and the District of the name of the contractor selected within 21 days of NPS's authorization to proceed.

c. If NPS fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by NPS pursuant to this Consent Decree, Settling Defendant may seek relief under Section XVI (Force Majeure).

d. Should Settling Defendant choose to retain one or more Contractors, in addition to the Supervising Contractor, to perform some or all of the Work, NPS shall have the right to disapprove of any such Contractor(s) at any time by providing notice to Settling Defendant in writing, such notice to be provided 30 days in advance with an opportunity to cure any deficiencies if the Contractor has already been retained by Settling Defendant.

11. OU1 Remedial Design/Remedial Action.

a. Settling Defendant shall comply with all requirements set forth in the

SOW for the performance of the OU1 RD/RA. All requirements relating to the OU1 RD/RA in the SOW are enforceable pursuant to this Consent Decree.

b. Settling Defendant is required to undertake the OU1 RD/RA activities specified in the SOW and shall deliver the documents identified in Section 3 of the SOW in accordance with the requirements and deadlines specified therein. These deliverables include, among other things: an RD/RA Work Plan that describes the schedule for completing the RA, the methods and procedures to be used to complete the RA and achieve Performance Standards; a Project Operation Plan that includes a Site Management Plan, Sampling and Analysis Plan, and a Health and Safety Plan as described in Attachment A of the SOW; a Construction Quality Assurance Plan; and a Project Closeout Report that documents and certifies that RA has achieved Performance Standards and that Settling Defendant has fulfilled all requirements of the Consent Decree and SOW related to OU1. All requirements, deadlines, and deliverables in the SOW are enforceable pursuant to this Consent Decree.

12. OU1 Remedial Action Completion Date. Settling Defendant shall continue to implement the OU1 RA until the Performance Standards are achieved.

13. OU2 Remedial Investigation and Feasibility Study.

a. Settling Defendant shall comply with all requirements set forth in the SOW for the performance of the OU2 RI/FS. All requirements relating to the OU2 RI/FS in the SOW are enforceable pursuant to this Consent Decree.

b. Settling Defendant is required to undertake the OU2 RI/FS activities specified in the SOW and shall deliver the documents identified therein in accordance with the requirements and deadlines specified therein. These deliverables include, among other things: an RI/FS Work Plan that describes the schedule for completing the RI/FS and the methods and procedures to be used to complete the RI/FS; a Project Operation Plan that includes a Site Management Plan, Sampling and Analysis Plan, and a Health and Safety Plan as described in Attachment A of the SOW; an RI Report that fully delineates the nature and extent of hazardous substances released at or from the Washington Gas East Station Property in OU2; and, in accordance with CERCLA, an FS that identifies and evaluates remedial alternatives to address risks to human health and the environment and attain ARARs. All requirements, deadlines, and deliverables in the SOW are enforceable pursuant to this Consent Decree.

14. OU2 Remedial Investigation/Feasibility Study Completion Dates.

a. Settling Defendant shall complete the final OU2 RI Report pursuant to the time-frames set forth in the SOW.

b. Settling Defendant shall complete the final OU2 FS pursuant to the time-frames set forth in the SOW.

15. Modification of SOW or Related Work Plans.

a. If NPS determines, after consultation with the District, that it is necessary to modify the Work specified for OU1 in the SOW or in Work Plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the OU1 RA, and such modification is consistent with the scope of the remedy set forth in the ROD, then NPS may issue such modification in writing and shall notify Settling Defendant of such modification. For purposes of this Paragraph 15, the "scope of the remedy set

forth in the ROD" is: (1) removal of surface soil to a depth of one foot; (2) removal of contaminated subsurface soil to a maximum depth of three feet; (3) backfilling of excavated areas with clean fill; and (4) revegetation of or, in certain locations cover with appropriate material, backfilled areas as specified in the ROD and SOW, within OU1, in the area specified in Section XII of the ROD. If Settling Defendant objects to the modification it may, within 30 days after NPS's notification, seek dispute resolution under Paragraph 64 (Record Review).

b. If NPS determines, after consultation with the District, that it is necessary to modify the OU2 Work specified in any OU2 Work Plan approved under the SOW to achieve the objectives of the RI/FS as set forth in Paragraph 13 of this Consent Decree and the relevant Sections of the SOW, and such modification is consistent with the scope of the RI/FS set forth in Paragraph 13 above and the relevant Sections of the SOW, then NPS may issue such modification in writing and shall notify Settling Defendant of such modification. If Settling Defendant objects to the modification it may, within 30 days after NPS's notification, seek dispute resolution under Paragraph 64 (Record Review).

c. The SOW and related Work Plans shall be modified: (i) in accordance with the modification issued by NPS; or (ii) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all Work required by such modification. Settling Defendant shall incorporate the modification into the OU1 RD/RA Work Plan under Paragraph 11 of this Consent Decree and the relevant Sections of the SOW, or the OU2 RI/FS Work Plan under Paragraph 13 of this Consent Decree and the relevant Sections of the SOW, as appropriate.

d. Nothing in this Paragraph shall be construed to limit DOI/NPS's authority to require performance of further response actions as otherwise provided in this Consent Decree.

16. Nothing in this Consent Decree, the SOW, or the OU1 RD/RA or OU2 RI/FS Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards or the objectives of the OU2 RI/FS.

17. Off-Site Shipment of Waste Material.

a. Settling Defendant may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440. Settling Defendant shall notify NPS of such shipments at least 15 days in advance.

b. Settling Defendant may ship Waste Material from the Site to an out-of-District waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the NPS Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and

(iv) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the NPS Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-District facility. Settling Defendant shall provide the written notice after the award of the contract for Remedial Action construction and no later than 15 days before the Waste Material is shipped.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

18. Quality Assurance.

a. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by NPS to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to NPS for approval, after a reasonable opportunity for review and comment by the District, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by NPS shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendant shall ensure that NPS and District personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by NPS pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by NPS, after opportunity for review and comment by the District, Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall use only laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by NPS. NPS may consider laboratories accredited under the National Environmental Laboratory Accreditation Program as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent

Decree are conducted in accordance with the procedures set forth in the QAPP approved by NPS.

19. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by NPS and the District or their authorized representatives. Settling Defendant shall notify NPS and the District not less than 20 days in advance of any sample collection activity, unless NPS agrees to a shorter time period. In addition, NPS and the District shall have the right to take any additional samples that NPS or the District deem necessary. Upon request, NPS and the District shall allow Settling Defendant to take split or duplicate samples of any samples they take as part of Plaintiffs' oversight of Settling Defendant's implementation of the Work.

20. Settling Defendant shall submit to NPS and the District each (3) three hard copies, as well as electronic versions, of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless NPS agrees otherwise.

21. Notwithstanding any provision of this Consent Decree, the United States and the District retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

VIII. ACCESS AND INSTITUTIONAL CONTROLS

22. If the Site, or any other real property where access or activity or use limitations are needed to implement the SOW, is owned or controlled by Settling Defendant, the United States, or the District:

a. Settling Defendant, the United States, and the District shall each, commencing on the Date of Lodging, provide access to the properties within the Site under its control to one another and one another's representatives, contractors, and subcontractors, at all reasonable times, or to such other real property within its control, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the District;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Section XXI (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with

Section XXIII (Access to Information);

(9) Assessing Settling Defendant's compliance with the Consent Decree;

(10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. commencing on the Date of Lodging of the Consent Decree, Settling Defendant shall not use the Site, or such other real property, in any manner that will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action.

23. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than Settling Defendant, the District, or the United States, Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for DOI/NPS, the District, Settling Defendant, and their representatives, contractors and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 22.a;

b. an agreement, enforceable by Settling Defendant, the District, and the United States, to refrain from using the Site, or such other real property, in any manner that Plaintiffs determine will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 22.a.

24. For purposes of Paragraph 23, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 45 days of the Effective Date Settling Defendant has not obtained agreements to provide access, restrict land/water use, as required by Paragraph 23, Settling Defendant shall promptly notify NPS and the District in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 23. NPS or the District may, as they deem appropriate, assist Settling Defendant in obtaining access or agreements to restrict land/water use. Settling Defendant shall reimburse NPS or the District under Section XIV (Payments for Response Costs), for all costs incurred, direct or indirect, by NPS or the District in obtaining such access, agreements to restrict land/water use, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

25. Institutional Controls in the form of District or other local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed to implement and ensure the protectiveness of the OU1 RA selected in the ROD; and identify measures for non-interference with OU2.

a. In accordance with this Paragraph and Sections 2.D and 4.C of the SOW, Settling Defendant shall submit an Institutional Controls Implementation and Assurance Plan ("ICIAP") and any associated Work Plan to Plaintiffs for review and approval.

b. Upon approval by Plaintiffs and in accordance with this Paragraph and Sections 2.D and 4.C of the SOW, Settling Defendant, with the cooperation of the District and the United States, shall record the Institutional Controls with the Recorder's Office or Registry of Deeds or other office where land records are maintained in the District of Columbia.

c. In accordance with this Paragraph and Sections 2.D and 4.C of the SOW, Settling Defendant remains responsible for all aspects of Institutional Controls required by this Consent Decree. DDOE has agreed to monitor and enforce such Institutional Controls pursuant to the Agreement between the District and Settling Defendant attached at Appendix E.

26. Notwithstanding any provision of the Consent Decree, the United States and the District retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable federal or District statute or regulations. In addition, NPS and the District retain all access privileges set forth in Section V.2. of the SSMOA.

IX. REPORTING REQUIREMENTS

27. In addition to any other reporting requirements of this Consent Decree or the SOW, Settling Defendant shall submit to NPS and the District three (3) hard copies, or, if agreed to by NPS and the District, electronic versions, of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous quarter; (c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six 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 NPS or that have been approved by NPS; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to NPS and the District by the tenth day of each quarterly period following the Effective Date. If requested by NPS or the District, Settling Defendant shall also provide briefings for NPS and the District to discuss the progress of the Work.

28. Settling Defendant shall notify NPS of any change in the schedule described in any 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 prior to the performance of the activity.

29. Upon the occurrence of any event during performance of the Work that Settling

Defendant is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Settling Defendant shall within 24 hours of the onset of such event orally notify the NPS Project Coordinator or the Alternate NPS Project Coordinator (in the event of the unavailability of the NPS Project Coordinator) and the District's Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

31. Settling Defendant shall submit three (3) hard copies, or, if agreed to by NPS and the District, electronic versions, of all plans, reports, data, and other deliverables required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to NPS in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit three (3) hard copies or, if agreed to by NPS and the District, electronic versions, of all such plans, reports, data, and other deliverables to the District. Upon request by NPS, Settling Defendant shall submit in electronic form all or any portion of any deliverables Settling Defendant is required to submit pursuant to the provisions of this Consent Decree.

32. All deliverables submitted by Settling Defendant to NPS which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

X. NPS APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

33. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, NPS, after reasonable opportunity for review and comment by the District, as provided in the SSMOA, shall submit a consolidated set of comments on behalf of Plaintiffs identifying changes to the deliverable that Settling Defendant must incorporate or otherwise address prior to submitting a subsequent draft of the deliverable. Such comments from Plaintiffs shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing. The receipt by Settling Defendant of a consolidated set of comments on a deliverable from NPS shall trigger the applicable time period specified in Section 3 or 4 of the SOW for Settling Defendant to submit a subsequent draft of the deliverable.

b. NPS also may modify the initial submission to cure deficiencies in the submission if, with due regard to the process and schedule set forth in the SOW: (i) NPS determines disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

34. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 33.a.(iii)

or (iv), or if required by a notice of approval upon specified conditions under Paragraph 33.a.(ii), Settling Defendant shall, within 21 days or such longer time as specified by NPS in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, NPS may, after reasonable opportunity for review and comment by the District: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

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

35. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect taking into account its status as a draft, if applicable, and the plan, report, or other deliverable is disapproved or modified by NPS under Paragraph 33.b.(ii) or 34 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Section XVIII (Stipulated Penalties). The provisions of Section XVII (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant's submissions under this Section. If NPS'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 XVIII (Stipulated Penalties).

36. Implementation. Upon approval, approval upon conditions, or modification by NPS under Paragraph 33 or 34, of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and be enforceable under this Consent Decree; and (b) Settling Defendant shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by NPS. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 33 or 34 shall not relieve Settling Defendant of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

XI. PROJECT COORDINATORS

37. Within 20 days of the Effective Date, Settling Defendant, the District, and NPS will notify one another, 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 change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by NPS and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator

shall not be an attorney for 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.

38. NPS and the District may designate other representatives including, but not limited to, NPS and District employees, and federal and District contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. NPS'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 NCP, 40 C.F.R. Part 300. NPS's Project Coordinator or Alternate Project Coordinator shall have the authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she 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.

39. NPS's Project Coordinator, Settling Defendant's Project Coordinator, and the District's Project Coordinator will meet or telephone conference on a monthly basis, or as deemed appropriate by NPS and the District.

XII. PERFORMANCE GUARANTEE

40. In order to ensure the full and final completion of the Work, Settling Defendant shall establish and maintain a performance guarantee, initially in the amount of $5,000,000, for the benefit of DOI/NPS and, if applicable, the District (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to DOI/NPS, shall be in the form of one or more of the following mechanisms (provided that, if Settling Defendant intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

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

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

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

d. A policy of insurance that (i) provides DOI/NPS with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a federal or District agency;

e. A demonstration by Settling Defendant that Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work

(plus the amount(s) of any other federal or any District environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to DOI/NPS's satisfaction; or

f. A written guarantee to fund or perform the Work executed in favor of DOI/NPS by one or more of the following: (i) a direct or indirect parent company of the Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of DOI/NPS that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any District environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

41. Settling Defendant has selected, and DOI/NPS has found satisfactory, as an initial performance guarantee a demonstration by Settling Defendant that Settling Defendant meets the financial test criteria pursuant to Paragraph 40.e, in the form attached hereto as Appendix C. Within 10 days after the Effective Date, Settling Defendant shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix C, and such performance guarantee(s) shall thereupon be fully effective. Within 30 days of the Effective Date, Settling Defendant shall submit copies to DOI/NPS and the District of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the DOI/NPS as specified in Section XXV (Notices and Submissions).

42. If, at any time after the Effective Date, Settling Defendant provides a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 40.e or 40.f, Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from Settling Defendant's Chief Financial Officer and an independent Certified Public Accountant, in the form prescribed by DOI/NPS; (b) the annual re-submission of such reports and statements within 90 days after the close of Settling Defendant's fiscal year; and (c) the prompt notification of DOI/NPS and the District after Settling Defendant determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which Settling Defendant no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to Settling Defendant; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

43. In the event that DOI/NPS determines at any time that a performance guarantee provided by the Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that the Settling Defendant

becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendant, within 30 days of receipt of notice of DOI/NPS's determination or, as the case may be, within 30 days of the Settling Defendant becoming aware of such information, shall obtain and present to DOI/NPS for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 40 that satisfies all requirements set forth in this Section XII; provided, however, that if the Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, DOI/NPS shall extend such period for such time as is reasonably necessary for the Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Settling Defendant shall provide to DOI/NPS a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 45.b.(2). Settling Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in strict accordance with the terms of this Consent Decree.

44. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Section XXI (Work Takeover) shall trigger DOI/NPS's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 40.a, 40.b, 40.c, 40.d, or 40.f, and at such time DOI/NPS shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by DOI/NPS under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason DOI/NPS is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by DOI/NPS under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 40.e or Paragraph 40.f.(ii), Settling Defendant (or in the case of Paragraph 40.f.(ii), the guarantor) shall immediately upon written demand from DOI/NPS deposit into a special account within the DOI Central Hazardous Materials Fund ("CHF"), in accordance with the payment instructions in Paragraph 51.b, or such other account as DOI/NPS may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by DOI/NPS. In addition, if at any time Plaintiffs are notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Defendant provides a substitute performance guarantee mechanism in accordance with this Section XII no later than 30 days prior to the impending cancellation date, DOI/NPS shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XIV (Payments for Response Costs).

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

a. Reduction of Amount of Performance Guarantee. If Settling Defendant believes that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 40, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition DOI/NPS in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Settling Defendant shall submit a written proposal for such reduction to DOI/NPS and the District that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 45.b.(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 45.a. If DOI/NPS decides to accept Settling Defendant's proposal for a reduction in the amount of the performance guarantee, after an opportunity for review and comment by the District, either to the amount set forth in Settling Defendant's written proposal or to some other amount as selected by DOI/NPS, DOI/NPS will notify the Settling Defendant of such decision in writing. Upon DOI/NPS's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in DOI/NPS's written decision. After receiving DOI/NPS's written decision, Settling Defendant may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies to DOI/NPS and the District of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 45.b.(2). In the event of a dispute, Settling Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVII (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 43 or 45.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition DOI/NPS in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 45.b.(2). Any decision made by DOI/NPS on a petition submitted under this Paragraph shall be made in DOI/NPS's sole and unreviewable discretion, after an opportunity for review and comment by the District, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendant shall submit a written proposal for a revised or alternative performance guarantee to DOI/NPS which shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all

requirements set forth or incorporated by reference in this Section. Settling Defendant shall submit such proposed revised or alternative performance guarantee to the NPS Project Coordinator. DOI/NPS will notify Settling Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to DOI/NPS as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendant shall submit copies to DOI/NPS and the District of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to DOI/NPS within 30 days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXV (Notices and Submissions).

c. Release of Performance Guarantee. Settling Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If DOI/NPS so notifies Settling Defendant in writing, Settling Defendant may release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Settling Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVII (Dispute Resolution).

XIII. EMERGENCY RESPONSE

46. If any action or occurrence during the performance of the Work causes or threatens a release of Waste Material from the Site 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 47, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Plaintiffs' Project Coordinators, or, if the Project Coordinators are unavailable, Alternate Project Coordinators. Settling Defendant shall take such actions in consultation with Plaintiffs and in accordance with all applicable provisions of the HASPs, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and NPS or, as appropriate, the District takes such action instead, Settling Defendant shall reimburse NPS and the District all costs of the response action under Section XIV (Payments for Response Costs).

47. Subject to Section XIX (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the District, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIV. PAYMENTS FOR RESPONSE COSTS

48. Payment by Settling Defendant for Federal Past Response Costs and District Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendant shall pay to the United States, on behalf of DOI/NPS, $500,000.00 in payment for Federal Past Response Costs. Payment shall be made in accordance with Paragraph 50.

b. Within 30 days of the Effective Date, Settling Defendant shall pay to the United States, on behalf of EPA, $160,000.00 in payment for Federal Past Response Costs. Payment shall be made in accordance with Paragraph 50. The total amount to be paid by Settling Defendant pursuant to this Paragraph 48.b shall be deposited in the Washington Gas & Light Special Account (03TB) within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, including, without limitation, oversight activities, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. Within 30 days of the Effective Date, Settling Defendant shall pay to the District $70,673.62 in payment for District Past Response Costs and such payment shall be in the form of an automatic clearing house ("ACH") wire transfer to DC Custodial Account:

Bank of America
ABA #: 054 001 204
Account #: 2080107436

49. Payments by Settling Defendant for Federal Future Response Costs and District Future Response Costs. Settling Defendant shall pay to the United States and the District all Federal Future Response Costs and District Future Response Costs not inconsistent with the NCP. Settling Defendant shall not be required to reimburse the District for certain costs paid pursuant to the Agreement attached in Appendix E. The Costs paid pursuant to the Agreement in Appendix E include monies paid to secure access, maintenance of the cap after re-vegetation, landscaping, but not the enforcement or monitoring of Institutional Controls. Settling Defendant shall not be required to reimburse the District for contractor costs that are disproportionate to the role of providing oversight as a support agency, taking into account that the United States' contractor is also performing oversight.

a. Every six (6) months, DOI/NPS will make best efforts to send Settling Defendant a bill requiring payment that includes a summary of Federal Future Response Costs incurred by DOI/NPS and their contractors. Failure by DOI/NPS to send a bill every six (6) months does not waive or otherwise diminish the right of DOI/NPS to recover Federal Future Response Costs. DOI/NPS shall provide with each bill the following documentation supporting the bill: all contractor task order(s), statement(s) of work and invoices, a description of the work performed by the contractor, the hours of work spent by employees of the United States, a description of the work performed by the employees, the billing rate of each such employee, and an accounting of indirect costs. In addition, Settling Defendant may request additional documentation on costs for which it wishes supplementary information. Any such request shall not toll, modify, or affect in any manner the obligations of the Settling Defendant related to the payment of Federal Future Response Costs. Settling Defendant shall make all payments of

Federal Future Response Costs incurred by DOI/NPS and required by this Consent Decree within 45 days of Settling Defendant's receipt of each bill requiring payment and the supporting documentation provided with each bill, except as otherwise provided in Paragraph 52 or as expressly stated in the bill, in accordance with Paragraph 51.b.

b. Every six (6) months, the District will make best efforts to send Settling Defendant a bill requiring payment that includes a summary of District Future Response Costs incurred by the District and its contractors. Failure by the District to send a bill every six (6) months does not waive or otherwise diminish the right of the District to recover District Future Response Costs. The District shall provide with each bill the following documentation supporting the bill: all contractor task order(s), statement(s) of work and invoices, a description of the work performed by the contractor, the hours of work spent by employees of the District, a description of the work performed by the employees, the billing rate of each such employee, and an accounting of indirect costs. In addition, Settling Defendant may request additional documentation on costs for which it wishes supplementary information. Any such request shall not toll, modify, or affect in any manner the obligations of the Settling Defendant related to the payment of District Future Response Costs. Settling Defendant shall make all payments of District Future Response Costs incurred by the District and required by this Consent Decree within 45 days of Settling Defendant's receipt of each bill requiring payment and the supporting documentation provided with each bill, except as otherwise provided in Paragraph 52 or as expressly stated in the bill, in accordance with Paragraph 48.c.

c. On a periodic basis, EPA will send a bill requiring payment of Federal Future Response Costs that includes a cost summary report, which sets forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Defendant shall make all payments within 45 days after Settling Defendant's receipt of each bill requiring payment except as otherwise provided in Paragraph 52 or as expressly stated in the bill, in accordance with Paragraph 51.a.

50. Instructions for Settling Defendant for Payment of Federal Past Response Costs and Stipulated Penalties. All payments made to the United States pursuant to Paragraphs 48.a, 48.b, or Section XVIII (Stipulated Penalties) shall be made by Settling Defendant in accordance with the following instructions. Payment shall be made at https://www.pay.gov to the U.S. Department of Justice account, in accordance with written instruction to be provided to Settling Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Columbia after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Mary Jean Brady
Manager, Safety and Environment
Washington Gas Company
6801 Industrial Road
Springfield, VA 22151
703-750-5558 - phone
703-750-5591 - fax
email: MaryJeanBrady@washgas.com

on behalf of Settling Defendant.

51. Instructions for Settling Defendant for Payment of Federal Future Response Costs.

a. For payments of Federal Future Response Costs for bills from the United States, excluding DOI/NPS, Settling Defendants shall make all payments required by Paragraph 49.c. by Electronic Fund Transfer or by a certified or cashier's check that is made payable to "EPA Hazardous Substance Superfund" and that references the name and address of the Settling Defendant, EPA Site/Spill ID No, 03TB, and DOJ case number 90-11-2-08557/2. Settling Defendant shall send the check to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

To send an Electronic Fund Transfer (wire transfer):

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
New York, NY 10045

Note: Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

Settling Defendants shall send notice with copies of the check to EPA and DOJ at the addresses specified in Section XXV (Notices and Submissions). Notice shall also be sent to:

Lydia Guy (3RC00)
Docket Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

b. For payments of Federal Future Response Costs for bills from DOI/NPS, payment shall be made to the DOI's CHF by automated clearing-house known as the Department of the Treasury's Automated Clearing House ("ACH")/Remittance Express program.

Receiver name:	Central Hazardous Materials Fund ALC 14010001
Receiver Tax ID Number:	53-0196949

Receiver address:	7401 West Mansfield Ave. Mailstop D-2777 Lakewood, CO 80235
Receiver bank:	Federal Reserve Bank New York, NY ABA # 051036706
Receiver ACH Account No.:	312024

Settling Defendant shall send notification of payment referencing the amount of payment, the Site name, and the time period for which reimbursement of response costs is being provided to the following individuals:

Shawn P. Mulligan
NPS Senior Environmental Program Advisor
1050 Walnut Street, Suite 220
Boulder, CO 80302

Courtney Hoover
Fund Manager
Central Hazardous Materials Fund
Department of the Interior
1849 C Street, N.W., Mail Stop 2342
Washington, D.C. 20240

Casey S. Padgett
Assistant Solicitor
Office of the Solicitor
1849 C Street, N.W., Mail Stop 5530
Washington, D.C. 20240

52. Settling Defendant may contest any Federal Future Response Costs or District Future Response Costs billed under Paragraph 49 if it determines that DOI/NPS, EPA, or the District has made a mathematical error or included a cost item that is not within the definition of Federal Future Response Costs or District Future Response Costs, or the costs are inconsistent with the NCP. Such objection shall be made in writing within: 45 days of receipt of the bill from DOI/NPS and supporting documentation provided with each bill and must be sent to DOI/NPS (if DOI/NPS's accounting is being disputed) pursuant to Section XXV (Notices and Submissions); 45 days of receipt of the bill from EPA and must be sent to EPA (if EPA's accounting is being disputed) pursuant to Section XXV (Notices and Submissions); or 45 days of receipt of the bill from the District and supporting documentation provided with each bill and must be sent to the District (if the District's accounting is being disputed) pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Federal Future Response Costs or District Future Response Costs and the basis for objection. In the event of an objection, Settling Defendant shall pay all uncontested Federal Future Response Costs or District

Future Response Costs to DOI/NPS, EPA or the District within 45 days of receipt of the bill and supporting documentation provided with the bill (for EPA, payment is due within 45 days of receipt of bill only). Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested Federal Future Response Costs or District Future Response Costs. Settling Defendant shall send to DOI/NPS, EPA, or the District, as the situation warrants, as provided in Section XXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Federal Future Response Costs or District 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, Settling Defendant shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If DOI/NPS, EPA, or the District prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to DOI/NPS, EPA, or the District within five days of the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to DOI/NPS, EPA, or the District within five (5) days of the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account within five (5) days of the resolution of the dispute. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 51.a. or 51.b. All payments to the District under this Paragraph shall be made in accordance with Paragraph 48.c. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse DOI/NPS, EPA, and the District for Federal Future Response Costs or District Future Response Costs.

53. Interest. In the event that any payment for Federal Past Response Costs, Federal Future Response Costs, District Past Response Costs, or for District Future Response Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Federal Past Response Costs and District Past Response Costs under this Paragraph shall begin to accrue on the day after payment is due if payment is not made on that date. The Interest on Federal Future Response Costs and District Future Response Costs shall begin to accrue on the day after that payment of the bill is due if payment is not made on that date. The Interest shall accrue through the date of 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 including, but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

XV. INDEMNIFICATION AND INSURANCE

54. Settling Defendant's Indemnification of the United States and the District.

a. The United States and the District do not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as DOI/NPS's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling

Defendant shall indemnify, save and hold harmless the United States, the District, 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, negligent or other wrongful 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, including, but not limited to, any claims arising from any designation of Settling Defendant as DOI/NPS's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States and the District 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 District based on negligent or other wrongful 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 District 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 Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the District.

b. The United States and the District shall give Settling Defendant notice of any claim for which the United States or the District plans to seek indemnification pursuant to Paragraph 54, and shall consult with Settling Defendant prior to settling such claim.

55. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the District for damages or reimbursement or for set-off of any payments made or to be made to the United States or the District, arising from or on account of any contract, agreement, or arrangement between the 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 District 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 Site, including, but not limited to, claims on account of construction delays.

56. No later than 15 days before commencing any on-Site Work, Settling Defendant shall secure, and shall maintain commercial general liability insurance with limits of $7,000,000, for any one occurrence, and automobile liability insurance with limits of $4,000,000, combined single limit, and professional and contractors pollution liability insurance with limits of $4,000,000, combined single limit naming the United States and the District as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. 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 DOI/NPS and the District 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. If Settling Defendant demonstrates by evidence satisfactory to DOI/NPS and the District that any contractor maintains insurance

equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor.

XVI. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes solely beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors 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 Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify orally the District and NPS's Project Coordinator or, in his or her absence, NPS's Alternate Project Coordinator, within 48 hours of when Settling Defendant first knew that the event was likely to cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to NPS and the District 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; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if NPS, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 57 and whether Settling Defendant has exercised its best efforts under Paragraph 57, NPS may, in its unreviewable discretion, after an opportunity for review and comment by the District, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

59. If NPS, after a reasonable opportunity for review and comment by the District, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by NPS, after a reasonable opportunity for review and comment by the District, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If NPS, after a reasonable opportunity for review and comment by the District, does not agree that the delay or anticipated delay has been or will be

caused by a force majeure, NPS will notify Settling Defendant in writing of its decision. If NPS, after a reasonable opportunity for review and comment by the District, agrees that the delay is attributable to a force majeure, NPS will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

60. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), it shall do so no later than 15 days after receipt of NPS'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, 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 Settling Defendant complied with the requirements of Paragraphs 57 and 58. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to NPS and the Court.

XVII. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the District to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section. Disputes arising between DOI/NPS and the District shall be resolved as provided in Section III of the SSMOA.

62. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when Settling Defendant sends Plaintiffs a written Notice of Dispute.

63. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by NPS shall be considered binding unless, within 15 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 and the District a written Statement of Position on the matter in dispute, including, but not limited to, any data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 64 or 65.

b. Within 30 days after receipt of Settling Defendant's Statement of Position, NPS will serve on Settling Defendant its Statement of Position, including, but not limited to, any data, analysis, or opinion supporting that position and all supporting documentation relied upon by NPS. NPS's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 64 or 65. Within 15 days after receipt of NPS's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between NPS and Settling Defendant as to whether dispute resolution should proceed under Paragraph 64 or 65, the Parties shall follow the procedures set forth in the Paragraph determined by NPS to be applicable. However, if Settling Defendant ultimately 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 64 and 65.

64. Record Review. Formal dispute resolution for disputes pertaining to the 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, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by NPS under this Consent Decree, and 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 NPS and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, NPS may allow submission of supplemental statements of position by the Parties.

b. The NPS Associate Director, Park Planning, Facilities and Lands will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 64.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 64.c and 64.d.

c. Any administrative decision made by NPS pursuant to Paragraph 64.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 15 days of receipt of NPS's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the NPS Associate Director, Park Planning, Facilities and Lands is arbitrary and capricious or otherwise not in accordance with law. Judicial review of NPS's decision shall be on the administrative record compiled pursuant to Paragraph 64.a.

65. 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 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 63, the NPS Associate Director, Park Planning, Facilities and Lands will issue a final decision resolving the dispute. The NPS Associate Director, Park Planning, Facilities and Lands' decision shall be binding on Settling Defendant unless, within 15 days of receipt of the decision, Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties

to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph N (CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless NPS or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 64. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVIII. STIPULATED PENALTIES

67. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 68 through 70 to Plaintiffs for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

68. Stipulated Penalty Amounts – Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any failure to comply with any requirement identified in Paragraph 68.b.

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$2,500	15th through 30th day
$5,000	31st day and beyond

b. (1) Payment of Federal Past Response Costs or District Past Response Costs within 30 days of the Effective Date of the Consent Decree.

(2) Payment of Federal Future Response Costs or District Future Response Costs within 45 days of receipt of bill and supporting documentation provided with bill (for EPA, payment is due within 45 days of receipt of bill only).

69. Stipulated Penalty Amounts – Consent Decree Compliance, Plans, Reports, and other Deliverables.

a. The following stipulated penalties shall accrue per violation per day for: (1) failure to comply with any requirement of this Consent Decree; and (2) failure to submit timely or adequate reports or other plans or deliverables identified in Section 2, 3, 4, or 6 of the SOW:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,000	15th through 30th day
$ 3,000	31st day and beyond

70. In the event that DOI/NPS assumes performance of a portion or all of the Work pursuant to Section XXI (Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of $750,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 44 (Funding for Work Takeover) and 94 (Work Takeover).

71. Any stipulated penalty paid by Settling Defendant pursuant to this Section XVIII (Stipulated Penalties), including any accrued interest, shall be split equally between the United States and the District. All payments to the United States under this Section XVIII shall be made in accordance with Paragraph 50. All payments to the District shall be made in accordance with Paragraph 48.c.

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (NPS Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 20th day after NPS's receipt of such submission until the date that NPS notifies Settling Defendant of any deficiency; (b) with respect to a decision by the NPS Associate Director, Park Planning, Facilities and Lands, under Paragraph 64.b of Section XVII (Dispute Resolution), during the period, if any, beginning on the 20th day after the date that Settling Defendant's reply to DOI/NPS's Statement of Position is received until the date that the Associate Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XVII (Dispute Resolution), during the period, if any, beginning on the 30th day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

74. All penalties accruing under this Section shall be due and payable to DOI/NPS and the District within 30 days of Settling Defendant's receipt from DOI/NPS or the District of a

demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XVII (Dispute Resolution) within the 30-day period.

75. 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 of the Parties or by a decision of DOI/NPS that is not appealed to this Court, accrued penalties determined to be owed shall be paid to DOI/NPS and the District within 15 days of the agreement or the receipt of DOI/NPS's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to DOI/NPS and the District within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 75.c;

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 owed to the United States and the District into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to DOI/NPS and the District or to Settling Defendant to the extent that it prevails.

76. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 75 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 75 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States or the District may institute proceedings to collect the penalties and Interest.

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

78. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the District to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

79. Notwithstanding any other provision of this Section, DOI/NPS may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XIX. COVENANTS BY PLAINTIFFS

80. Covenants for Settling Defendant by the United States for OU1, OU2, and the Washington Gas-Owned Soils. In consideration of the actions that were or will be performed and the payments that will be made with respect to OU1 and OU2 under this Consent Decree and the Washington Gas-Owned Soils, and except as specifically provided in Paragraphs 81 through 84, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for: (1) the Work at OU1; (2) the Work at OU2; (3) any remedy addressing the Washington Gas-Owned Soils; (4) Federal Past Response Costs relating to the Site; and (5) Federal Future Response Costs relating to the Work. These covenants shall take effect upon the receipt by Plaintiffs of the payments required by Paragraph 48 (Payment by Settling Defendant for Federal Past Response Costs and District Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 53 (Interest) or Section XVIII (Stipulated Penalties). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant, and do not extend to any other person.

81. The United States' Reservation of Rights for the Washington Gas-Owned Soils. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Washington Gas-Owned Soils and/or to pay the United States for additional costs of response if, (a)(1) conditions regarding the Washington Gas-Owned Soils, previously unknown to the United States, are discovered, or (2) information regarding the Washington Gas-Owned Soils, previously unknown to the United States, is received, in whole or in part, and (b) the United States determines that these previously unknown conditions or this information together with other relevant information indicate that the actions taken are not protective of human health or the environment.

82. For purposes of Paragraph 81 (United States' Reservation of Rights for the Washington Gas-Owned Soils), the information and the conditions known to the United States shall include only that information and those conditions known to the United States as set forth in the 1999 Decision Document, the ROD, all attachments thereto, and all documents listed in Appendix F.

83. The United States' General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

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

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

d. liability based on Settling Defendant's off-Site transportation, treatment, storage, or disposal, or the arrangement for the off-Site transportation, treatment, storage, or disposal of Waste Material;

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

f. criminal liability;

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

h. liability at OU1, prior to the achievement of Performance Standards, for additional response actions that DOI/NPS determines are necessary to achieve and maintain Performance Standards at OU1 or to carry out and maintain the effectiveness of the remedy set forth in the ROD for OU1, but that cannot be required pursuant to Paragraph 15 (Modification of SOW or Related Work Plans); and

i. liability at OU1 and OU2, at any time, for response actions beyond the scope of the Work.

84. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

85. Covenants for Settling Defendant by the District for OU1, OU2, and the Washington Gas-Owned Soils. In consideration of the actions that were or will be performed and the payments that will be made with respect to OU1 and OU2 under this Consent Decree and the Washington Gas-Owned Soils, and except as specifically provided in Paragraphs 86 through 89, the District covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, Section 7002 of RCRA, the DC Underground Storage Tank Act, and the District of Columbia Brownfield Revitalization Amendment Act of 2010, for: the Work at OU1; the Work at OU2; for any remedy addressing the Washington Gas-Owned Soils;, for District Past Response Costs relating to the Site; and for District Future Response Costs relating to the Work. Except with respect to future liability, these covenants shall take effect upon the receipt by Plaintiffs of the payments required by Paragraph 48 (Payment by Settling Defendant for Federal Past Response Costs and District Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 53 (Interest) or Section XVIII (Stipulated Penalties). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

86. The District's Reservation of Rights for the Washington Gas-Owned Soils. Notwithstanding any other provision of this Consent Decree, the District reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Washington Gas-Owned Soils and/or to pay the District for additional costs of response if, (a)(1) conditions at the Site regarding the Washington Gas-Owned Soils, previously unknown to the United States or the District, are discovered, or (2) information regarding the Washington Gas owned soils, previously unknown to the United States or the District, is received, in whole or in part, and (b) the District determines that these

previously unknown conditions or this information together with other relevant information indicate that the action taken are not protective of human health or the environment.

87. For purposes of Paragraph 86 (The District's Reservation of Rights for the Washington Gas-Owned Soils), the information and the conditions known to the District shall include only that information and those conditions known to the United States as set forth in the 1999 Decision Document, the ROD, all attachments thereto, and all documents listed in Appendix F.

88. The District's General Reservations of Rights. The District reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the District's covenants. Notwithstanding any other provision of this Consent Decree, the District reserves all rights against Settling Defendant with respect to:

a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

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

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

d. liability based on Settling Defendant's off-Site transportation, treatment, storage, or disposal, or the arrangement for the off-Site transportation, treatment, storage, or disposal of Waste Material;

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

f. criminal liability;

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

h. liability at OU1, prior to the achievement of Performance Standards, for additional response actions that DOI/NPS determines are necessary to achieve and maintain Performance Standards at OU1 or to carry out and maintain the effectiveness of the remedy set forth in the ROD for OU1, but that cannot be required pursuant to Paragraph 15 (Modification of SOW or Related Work Plans); and

i. liability at OU1 and OU2, at any time, for response actions beyond the scope of the Work.

89. Notwithstanding any other provision of this Consent Decree, the District retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY SETTLING DEFENDANT

90. Covenant Not to Sue by Settling Defendant. Subject to the reservations in Paragraph 92, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the District with respect to: the Work at OU1; the

Work at OU2; any remedy addressing the Washington Gas-Owned Soils; Federal Past and District Past Response Costs relating to the Site; and Federal Future and District Future Response Costs relating to the Work, and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law;

b. any claims against the United States or the District, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or District law regarding the Work at OU1; the Work at OU2; for any soil remedy addressing the Washington Gas-Owned Soils; for Federal Past and District Past Response Costs relating to the Site; and for Federal Future and District Future Response Costs relating to the Work, and this Consent Decree; or

c. any claims arising out of any response actions at or in connection with the Site including any claim under the United States Constitution, the District Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

91. Except as provided in Paragraph 99 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the District brings a cause of action or issues an order pursuant to any of the reservations in Section XIX (Covenants by Plaintiffs), other than in Paragraphs 83.a and 88.a (claims for failure to meet a requirement of the Decree), 83.f and 88.f (criminal liability), and 83.g and 88.g (violations of federal/District law during or after implementation of the Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the District is seeking pursuant to the applicable reservation.

92. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on DOI/NPS's selection of response actions, or the oversight or approval of Settling Defendant's plans, reports, other deliverables or activities.

93. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. WORK TAKEOVER

94. In the event DOI/NPS or, if applicable, the District determines that Settling Defendant has (1) ceased implementation of any portion of the Work, or (2) is seriously or repeatedly deficient or late in its performance of any portion of the Work, or (3) is implementing

the Work or any portion thereof in a manner that may cause an endangerment to human health or the environment, DOI/NPS may issue a written notice ("Work Takeover Notice"), after an opportunity for review and comment by the District, to Settling Defendant. Any Work Takeover Notice issued by DOI/NPS will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 15 days within which to remedy the circumstances giving rise to DOI/NPS's issuance of such notice.

a. If, after expiration of the 15-day notice period specified in this Paragraph 94, Settling Defendant has not remedied to DOI/NPS's satisfaction the circumstances giving rise to DOI/NPS's issuance of the relevant Work Takeover Notice, DOI/NPS may at any time thereafter assume the performance of all or any portion of the Work as DOI/NPS deems necessary ("Work Takeover"). DOI/NPS will notify Settling Defendant in writing (which writing may be electronic) if DOI/NPS determines that implementation of a Work Takeover is warranted under this Paragraph 94.a. Funding of Work Takeover costs is addressed under Paragraph 44.

b. Settling Defendant may invoke the procedures set forth in Section XVII (Dispute Resolution), to dispute DOI/NPS's implementation of a Work Takeover under Paragraph 94.a. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, DOI/NPS may in its sole discretion commence and continue a Work Takeover under Paragraph 94.a until the earlier of (1) the date that Settling Defendant remedies, to DOI/NPS's satisfaction, the circumstances giving rise to DOI/NPS's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution) requiring DOI/NPS to terminate such Work Takeover.

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION

95. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the District, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

96. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the Work at OU1; the Work at OU2; any remedy addressing the Washington Gas-Owned Soils; payment of Federal Past and District Past Response Costs relating to the Site; and payment of Federal Future and District Future Response Costs relating to the Work.

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

98. Settling Defendant shall, with respect to any suit or claim brought against it for matters addressed by this Consent Decree, notify in writing the United States and the District within 15 days of service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States and the District within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

99. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the District for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the District in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants by Plaintiffs).

XXIII. ACCESS TO INFORMATION

100. Settling Defendant shall provide to DOI/NPS and the District, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to environmental investigation and remediation at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Defendant shall also make available to DOI/NPS and the District, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Notwithstanding any provision of this Consent Decree, the United States and the District retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

101. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by DOI/NPS will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to DOI/NPS and the District, or if DOI/NPS has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the Plaintiffs in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the Plaintiffs have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States or the District on the grounds that they are privileged or confidential.

102. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents (or portions thereof) evidencing conditions at or around the Site.

XXIV. RETENTION OF RECORDS

103. Until 10 years after Settling Defendant's completion of the Work, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

104. At the conclusion of this record retention period, Settling Defendant shall notify NPS and the District at least 90 days prior to the destruction of any such Records, and, upon request by NPS or the District, Settling Defendant shall deliver any such Records to NPS or the District. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to NPS and the District in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the NPS and the District have had a reasonable

opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

105. Settling Defendant certifies that it will not alter, mutilate, discard, destroyor otherwise disposeof any Records (other than identical copies) relating to its potential liability regarding the Site, and that to the best of its current knowledge, there were no requests relating to the Site for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXV. NOTICES AND SUBMISSIONS

106. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section, or electronic notice (when accompanied by simultaneous sending of a written copy) shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, DOI, NPS, the District, and Settling Defendant, respectively. Notices required to be sent to DOI or NPS, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08557/1 & /2

As to DOI/NPS:

Greg Nottingham
NPS Project Coordinator
Environmental Compliance and Response Branch
National Park Service
1050 Walnut Street, Suite 220
Boulder, CO 80302

Shawn P. Mulligan
Senior Environmental Program Advisor
Environmental Compliance and Response Branch
National Park Service
1050 Walnut Street, Suite 220
Boulder, CO 80302

Casey S. Padgett, Esq.
Assistant Solicitor
1849 C Street, N.W., Mail Stop 5530
Washington, D.C. 20240

As to EPA:

Steven Hirsh
Sr. Project Manager
USEPA Region III
1650 Arch St.
Philadelphia, PA 19103

Charles B. Howland
Sr. Asst. Regional Counsel
USEPA Region III
1650 Arch St.
Philadelphia, PA 19103

As to the District:

Carolyn Barley
DDOE Project Coordinator
1200 First Street, N.E.
Washington, D.C. 20002

Jared Piaggione, Assistant Attorney General
District Department of the Environment
1200 First Street, N.E.
Washington, D.C. 20002

As to Settling Defendant:

Mary Jean Brady
Manager, Safety and Environment
Washington Gas Company
6801 Industrial Road
Springfield, VA 22151
703-750-5558 - phone
703-750-5591 - fax
e:mail: MaryJeanBrady@washgas.com

Karen Pancost
Washington Gas Company
101 Constitution Avenue, NW
Phone: (202) 624-6512
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XXVI. RETENTION OF JURISDICTION

107. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution).

XXVII. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the performance guarantee.

"Appendix D" is the Site map.

"Appendix E" is the Institutional Controls Agreement between the District and Settling Defendant.

"Appendix F" is the documents list referenced in Paragraphs 82 and 87.

XXVIII.COMMUNITY RELATIONS

109. If requested by NPS or the District, Settling Defendant shall participate in community relations activities pursuant to the Community Involvement Plan to be developed by NPS. NPS will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with NPS and the District in providing information regarding the Work to the public. As requested by NPS or the District, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by NPS or the District to explain activities at or relating to the Site.

XXIX. MODIFICATION

110. Except as provided in Paragraph 15 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 15 (Modification of SOW or Related Work Plans), non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Defendant. All modifications to the Consent Decree, other than the SOW, also shall be signed by the District, or a duly authorized representative of the District, as appropriate. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, NPS will provide the District with a reasonable opportunity to review and comment on the proposed modification.

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

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

112. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

113. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties. The Settling Defendant need not file an answer unless the Court expressly declines to enter the Consent Decree.

XXXI. SIGNATORIES/SERVICE

114. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Attorney General for the District certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

115. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

116. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

117. This agreement is not severable.

118. Provided that all Parties execute a copy of this Consent Decree, the Consent Decree may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Consent Decree may be delivered by facsimile transmission or other comparable means. This Consent Decree shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.

XXXII. FINAL JUDGMENT

119. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

120. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the District, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 25 DAY OF September, 2012.

Rosemary M Collyer

United States District Judge

Signature Page for CERCLA Consent Decree Associated with the Washington Gas East Station Site

FOR THE UNITED STATES OF AMERICA

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FOR WASHINGTON GAS LIGHT COMPANY

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Title: Chairman and Chief Executive Officer
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Agent Authorized to Accept Service on Behalf of Above-signed Party:

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