

Objection Deadline: June 19, 2009
Hearing Date: June 30, 2009

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	: Chapter 11
	: :
GENERAL MOTORS CORP., et al.,	: Case No. 09-50026 (REG)
	: :
Debtors.	: (Jointly Administered)
	: :
	: X

**LIMITED OBJECTION OF THE ENVIRONMENTAL CONSERVATION AND
CHEMICAL CORPORATION SITE TRUST FUND (“THE TRUST”) TO
MASTER SALE AND PURCHASE AGREEMENT WITH VEHICLE
ACQUISITION HOLDINGS LLC, A U.S. TREASURY-SPONSORED
PURCHASER**

The Trustees of the Environmental Conservation and Chemical Corporation Site Trust Fund (“The Trustees”) object to Section 2.3(a)(viii) of the Proposed Master Sale and Purchase Agreement (hereafter “Proposed Sale Agreement”) - the assumed liabilities subparagraph relating to Liabilities arising under any Environmental Law.¹

Section 2.3 in the Proposed Sale Agreement presently reads as follows:

“(a) The ‘Assumed Liabilities’ shall consist only of the following Liabilities of Sellers:...

¹ Pursuant to Article I of the Proposed Sale Agreement, Definitions, the term “ ‘Environmental Law’ means any Law in existence on the date hereof relating to the management or Release of, or exposure of humans to, any Hazardous Materials; or pollution; or the protection of human health and welfare and the Environment.”

(viii) all Liabilities arising under any Environmental Law (A) relating to conditions present on the Transferred Real Property, other than those Liabilities described in **Section 2.3(b)(iv)**, (B) resulting from Purchaser's ownership or operation of the Transferred Real Property after the Closing or (C) relating to Purchaser's failure to comply with Environmental Laws after the closing;"

As set forth in the Affirmation accompanying this Objection, General Motors Corp. ("GM"), along with other companies, entered into a Consent Decree with the United States and the State of Indiana to implement a clean-up of Hazardous Materials at the EnviroChem Superfund Site in Zionsville, Indiana ("the Site"). The Site is on EPA's National Priority List of the country's most significant environmental sites. The Consent Decree was approved by the United States District Court for the Southern District of Indiana in September 1991.

Pursuant to the Consent Decree, a Trust Fund was created to carry out the settling companies' (including GM's) obligations under the Consent Decree. GM signed both the Consent Decree and the Trust Agreement.

One of the obligations of the Trustees is to make assessments to the settling companies to fund the Trust as needed in the ordinary course to implement the remedy for the site approved by the United States Environmental Protection Agency ("EPA"). GM was and remains the settling defendant under the Consent Decree with the largest single share of responsibility for the clean-up of the Site.

On April 20, 2009, the Trustees issued an assessment (dated April 16, 2009) to each of the settling companies, including to GM, in the total amount of \$500,000.00. GM's share of the assessment was \$62,591.00. The assessment was due and payable to the Trust on May 21, 2009.

Shortly before that date, the Trust was notified by telephone by GM's representative to the Trust that GM would not honor its obligations under the Consent Decree and the Trust to pay its assessment. The Trustees requested GM to reconsider its position and was subsequently notified by GM that it would not reconsider.

Thereafter, on June 1, 2009, GM initiated these bankruptcy proceedings. No notice of these proceedings or the final date to file the objections to the Proposed Sale Agreement, June 19, 2009, was received by the Trust from GM. The Trustees learned of these proceedings and the bar date for objecting to the Proposed Sale Agreement through other means.

At the time of GM's dishonoring its obligations under the Environmental Laws, GM had received billions of dollars of public money from the United States and has since received many more billions of dollars from the United States. Under these circumstances, this Court should use its equitable powers to decline to approve the Purchase Agreement unless the assumed liabilities subsection, Sec. 2.3(a)(viii), is amended as follows:

1. Deleting the word "or" before clause (C) and substituting a comma before clause (C);
2. Deleting the semicolon at the end of clause (C), and;
3. Adding the following:

"or (D) relating to the clean-up of hazardous waste sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as to which General Motors (i) has heretofore entered into a Consent Decree under CERCLA that has been approved by a United States District Court, and (ii) failed to make a payment that was due prior to June 1, 2009 to a fiduciary under the terms of the Consent Decree and any trust created pursuant thereto, provided that the site was listed as of

June 1, 2009 on the National Priority List of the United States Environmental Protection Agency;”

Additionally, to avoid any inconsistency within the Proposed Sale Agreement as to Liabilities under Environmental Laws, the Retained Liabilities section, Section 2.3(b)(iv), should be amended by inserting the words “except as provided in **Section 2.3(a)(viii) clause (D)**,” at the outset of that Section 2.3(b)(iv).

WHEREFORE, for the reasons set forth herein, the Trustees respectfully request that the Proposed Sale Agreement not be approved unless it is amended to require GM to meet a narrowly limited obligation under the Environmental Laws that was created under a Consent Decree approved by a United States District Court, was due and payable prior to June 1, 2009, and arises out of a site listed on EPA’s National Priority List.

Respectfully submitted,

N.W. Bernstein & Associates, LLC
Attorneys for the Trustees of the
Environmental Conservation and Chemical
Corporation Site Trust Fund

/s/ Norman W. Bernstein

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Dated: June 18, 2009

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
GENERAL MOTORS CORPORATION, et al.,)	Case No. 09-50026 (REG)
)	
Debtors)	(Jointly Administered)

AFFIRMATION OF NORMAN W. BERNSTEIN

Norman W. Bernstein, under penalties of perjury affirms:

1. I am a Trustee of the Environmental Conservation and Chemical Corporation Site Trust Fund (“the Trust”).
2. The Environmental Conservation and Chemical Site, a/k/a the Envirochem Site, (“the Site”) is located in Zionsville, Indiana. The Site has been designated by the United States Environmental Protection Agency (“EPA”) as a hazardous waste facility under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) or the “Superfund” statute.
3. The Site is listed by EPA on its National Priority List of the most significant hazardous waste sites in the United States.
4. The Trust was created pursuant to the terms of a Consent Decree among a large number of companies and the United States and the State of Indiana. The Consent Decree was approved by the United States District Court for the Southern District of Indiana in September 1991.
5. One of the obligations of the Trustees of the Trust is to make periodic assessments to the Settling Defendants that entered into the Consent Decree to provide sufficient

funds for the Trust to carry out the responsibilities of the Settling Defendants under the Consent Decree to fund the cleanup of the Site.

6. On April 20, 2009, the Trustees of the Trust issued an assessment (dated April 16, 2009) to each of the settling companies including to General Motors, Corp. ("GM") in the total amount of \$500,000.00. GM's share of the assessment was \$62,591.00. The assessment was due and payable to the Trust on May 21, 2009.

7. On or about May 20, 2009, I was informed by telephone by GM's representative to the Trust that GM would not honor its obligation to pay its share of the April 20, 2009, assessment.

8. Thereafter, I requested that GM reconsider its position and was informed by a GM in-house attorney on or about May 24 or May 25, 2009, that General Motors would not reconsider its position.

9. A copy of the Court Order approving the Envirochem Site Consent Decree is attached as Exhibit A, a copy of the Consent Decree including the signature pages of GM and the United States and the State of Indiana are attached as Exhibit B, a copy of the Trust Agreement including the signature page of GM is attached as Exhibit C, and the Notice of Assessment (dated April 16, 2009) issued by the Trustees on April 20, 2009 is attached as Exhibit D.

I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE ABOVE REPRESENTATIONS ARE TRUE AND CORRECT.

/s/ Norman W. Bernstein
Norman W. Bernstein

Dated: June 18, 2009

EXHIBIT A TO THE AFFIRMATION OF NORMAN W. BERNSTEIN

2. The standard of liability of the Trustees that serve under the trust agreements established pursuant to Article V of said Consent Decree (Exhibits C and D thereto) shall be as set forth in Sections 3.08 and 3.07 of Exhibits C and D respectively.

Dated: Indianapolis, Indiana
September 10, 1991

James E. Noland, Judge

Judge, United States District Court

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EXHIBIT B TO THE AFFIRMATION OF NORMAN W. BERNSTEIN

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,
STATE OF INDIANA,

Plaintiff,

v.

ENVIRONMENTAL CONSERVATION AND
CHEMICAL CORPORATION, ET AL.,

Defendants.

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) CIVIL ACTION NO. 83-1419 C
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CONSENT DECREE

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I.

BACKGROUND

1. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C., § 9605, the United States Environmental Protection Agency ("EPA" or "the Agency") placed the Environmental Conservation and Chemical Corporation site (the "Site", "ECC", or the "Facility") on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register. See, 48 Fed. Reg. 40670 (September 8, 1983).

2. On November 9, 1983, this Court approved a consent decree (the "1983 Decree") between the EPA, the State of Indiana, certain local governmental agencies and approximately two hundred fifty Potentially Responsible Parties ("PRPs") which provided for the funding by the PRPs of a trust to pay for the cleanup of, among other things, drums, containers and a sludge lagoon, and for the removal of certain contaminated soil at the ECC Site. The trust was funded in accordance with the 1983 Decree and the work required thereunder was completed in November 1984. The 1983 Decree approved a remedy that focused on the need for immediate action and did not finally address ground water issues at the ECC Site or soils below four feet. The purpose of the present Decree is to resolve remaining environmental issues caused by the ECC Site.

3. In response to a release or a substantial threat of a release of a hazardous substance at or from the ECC Site, the EPA

commenced a Remedial Investigation and Feasibility Study ("RIFS") for the Facility pursuant to 40 C.F.R. § 300.68. EPA completed its Remedial Investigation ("RI") Report in March 1986 and the Feasibility Study ("FS") in December 1986. EPA also prepared a Combined Alternative Analysis ("CAA") setting forth one combined remedy for ECC and the adjacent Northside Sanitary Landfill ("Northside Landfill" or "NSL"), a separate site located east of ECC.

4. In December 1986 and pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RIFS and the CAA. EPA provided opportunity for public comment to be submitted in writing by February 28, 1987, or orally at a public meeting held in Zionsville, Indiana on December 17, 1986. Many PRPs, including Settling Defendants hereunder, provided EPA with oral and written comments on the proposed remedy before the February 1987 deadline. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA has kept a record of these comments and a transcript of the public meeting and has made these documents available to the public as part of the administrative record located at EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 and at the Zionsville Town Hall, 110 South 4th Street, Zionsville, Indiana 46077.

5. In January 1987 and pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, EPA notified certain parties that it had determined each party to be a PRP regarding the proposed remedial action at the Facility.

6. In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Indiana on February 6, 1987, of negotiations with PRPs regarding the scope of the remedial design and remedial action for the Facility, and the State has participated in such negotiations and is a party to this Decree.

7. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Federal Natural Resources Trustee of negotiations with the PRPs on the subject of addressing the release or threatened release of hazardous substances at the Facility.

8. From February through September 1987, many PRPs provided EPA with additional technical data and analysis related to EPA's proposed remedy. This information has also been made a part of the Administrative Record in this proceeding.

9. After considering the Administrative Record, EPA reached a decision on its selected remedy which was embodied in a document called a Record of Decision ("ROD"), signed by the Regional Administrator on September 25, 1987. The State concurred in EPA's ROD remedy. The ROD includes a discussion of EPA's reasons for the final remedy and for any significant changes from the proposed remedy contained in the CAA, and selected a combined remedy for ECC and NSL.

10. Pursuant to Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), EPA provided public notice of the adoption of the ROD, as modified in response to public comments, including notice of the ROD's availability to the public for review in the same locations

as the administrative record referred to above. Pursuant to Section 117(d) of CERCLA, 42 U.S.C. § 9617(d), the notice was published in a major local newspaper of general circulation and included an explanation of any significant changes and reasons for such changes from the proposed remedy contained in the CAA.

11. Following issuance of the September 1987 ROD, EPA and the State (collectively, "the government") and the PRPs continued their technical discussions which then led to negotiations that have resulted in the settlement embodied in this Decree. A principal aspect of that settlement, as incorporated into Exhibit A to this Decree (which sets forth the Work to be performed hereunder), provides that a separate remedy will be implemented for ECC. The government believes that separate, complementary remedies for ECC and NSL will meet all of the environmental objectives of the ROD and will facilitate settlement. This conclusion is based upon the government's review of Exhibit A, and on the facts that PRPs at Northside and ECC are not the same, that Northside and ECC were two distinct types of operations susceptible to different remedies, that it is in the public interest to facilitate remediation of both sites by PRPs, and that such private party remediation would be facilitated by separate consent decrees and separate remedies for each site.

12. Another important aspect of the Work approved hereunder involves the use of soil vapor extraction technology to remove and destroy contaminants at ECC. During the period May through July 1988, Settling Defendants (as defined herein), at their own

expense, conducted a pilot test program of this innovative technology which demonstrated the ability to remove and destroy volatile organic contamination more rapidly than the remedy originally selected in the ROD. The separation of remedies for ECC and NSL, the use of soil vapor extraction, and other important refinements to the ECC remedy selected in the ROD, are reflected in Exhibit A hereto.

13. EPA and the State have reviewed Exhibit A and EPA, with the concurrence of the State, believes, subject to public comment, that Exhibit A and the supplemented administrative record support amending the ROD to correspond with Exhibit A. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA will provide public notice of this Consent Decree, the remedial action to be implemented as a result of it, and the proposed amended ROD submitted herewith in the same locations as the administrative record referred to above. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the notice will be published in a major local newspaper of general circulation and will include an explanation of any significant changes and the reasons for such changes from the remedy selected in the September 1987 ROD.

14. This Decree, including Exhibit A hereto, will be subject to public comment pursuant to CERCLA.

15. If after public comment, EPA adopts an amended ROD which differs materially from the proposed amended ROD, EPA shall so notify the Settling Defendants in writing prior to moving the Court to enter the Decree. The Settling Defendants shall then have the

right, for 30 days from receipt of such notice, to withdraw without prejudice from this Decree, in which case this Decree shall be without any force and effect for any purpose as to Settling Defendants. Settling Defendants may withdraw from this Decree under the provisions of this Paragraph by filing a notice with the Court that sets forth Settling Defendants' decision to withdraw. If Settling Defendants withdraw from the Decree pursuant to this Paragraph, such withdrawal shall not affect the obligations or rights of any Premium Settling Defendant or any Settling Government Agency under this Decree. In the event of such withdrawal by Settling Defendants, all monies to be paid by such Premium Settling Defendants and Settling Government Agencies pursuant to Section V of this Decree shall be deposited into the Hazardous Substances Superfund and shall be applied in the manner provided in Section V.B.2.b below. The Parties agree and intend that this Decree shall not be entered by the Court until a motion is made to enter the Decree after the amended ROD is adopted in final form.

16. The United States, the State, and the defendant signatories to this Decree (the "Settling Defendants") (collectively, "the Parties") believe that this Decree, including the remedial work described in Exhibit A: (1) is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621; (2) is consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300; (3) will attain a degree of cleanup of hazardous substances, pollutants and contaminants which, at a minimum, assures protection of human health and the environment; and (4) will provide a level

or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621(d)(2). EPA, with the concurrence of the State, has also determined that the Work required under the Consent Decree will be performed properly by Settling Defendants. The Parties recognize and intend to further hereby the public interest in expediting the remedy at the Facility and, at the same time, avoiding prolonged and complicated litigation between the Parties.

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

II.

JURISDICTION

For the limited purpose of entering, implementing and enforcing this Decree, this Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Parties shall not challenge this Court's jurisdiction to enter and enforce this Decree.

III.

PARTIES BOUND

This Decree applies to and is binding upon the undersigned Parties and their successors and assigns. The undersigned representative of each party to this Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Decree and to execute and legally bind that party to it. Settling Defendants

shall provide a copy of this Decree to any Contractor hired to perform the Work or Additional Work required hereunder and shall require any such Contractor to comply with the applicable terms of this Decree, including Exhibit A.

IV.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the Exhibits attached hereto, the following definitions specified in this Paragraph shall apply:

A. "Additional Work" means the design, construction and implementation at the ECC site of remedial action which may be required pursuant to Section VII below, and which may include the "contingent additional work" described in Section 3.3 of Exhibit A, including collection and treatment of ground water.

B. "Cleanup Standards" means (1) the cleanup standards set forth in Table 3-1 of Exhibit A, compliance with which shall be determined in accordance with Exhibit A including, without limitation, the footnotes to Table 3-1 and Sections 4.2 and 4.3; and (2) the Performance Standards for the RCRA-compliant cover as specified in Section 2.1.2 of Exhibit A.

C. "Consent Decree" or "Decree" means this Decree and all Exhibits hereto, which Exhibits are specifically incorporated by reference herein and made an enforceable part hereof.

D. "Contractor" means the company or companies (including any subcontractors) retained by or on behalf of Settling Defendants to prepare the construction plans and specifications necessary to

accomplish the Work or to undertake and complete the Work required by this Decree.

E. "Premium Settling Defendants" means those parties listed in Attachment 1 to Exhibit D to this Decree who pay money as required by the ECC 468B Trust Fund pursuant to Section V.B.2. Premium Settling Defendants were also parties to the 1983 Decree.

F. "Settling Government Agencies" means (1) the United States Postal Service and the United States Navy listed in Attachment 2 to Exhibit D to this Decree who pay money to the ECC 468B Trust Fund pursuant to Section V.B.2; and (2) the state agencies listed in Attachment 2 to Exhibit D to this Decree who pay money to the ECC 468B Trust Fund Agreement pursuant to Section V.B.2. Settling Government Agencies were also parties to the 1983 Decree.

G. "ECC", the "Site" and the "Facility" refer to the real property as depicted on the map attached as Exhibit B, consisting of approximately 6.5 acres and located approximately 10 miles northwest of Indianapolis on U.S. Highway 421 near Zionsville, Indiana where Environmental Conservation and Chemical Corporation conducted its operations.

H. "ECC Trust Funds" means the two trust funds funded as provided in Section V.B below which shall be used to pay for, among other things, the implementation of the Work and, if necessary, Additional Work.

I. "EPA" means the United States Environmental Protection Agency.

J. "Future liability" refers to liability, if any, arising after EPA's Certification of Completion is issued pursuant to Section XXVI.

K. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

L. "IDEM" means the Indiana Department of Environmental Management.

M. "National Contingency Plan" or "NCP" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.

N. "Parties" means the Plaintiffs, Settling Defendants, Settling Government Agencies and Premium Settling Defendants.

O. "Plaintiffs" means the United States of America and the State of Indiana.

P. "Response Costs" means any costs incurred by Plaintiffs pursuant to 42 U.S.C. § 9601 et seq., which are not inconsistent with the National Contingency Plan.

Q. "Settling Defendants" means those parties other than the Plaintiffs, Premium Settling Defendants, and Settling Government Agencies who sign this Decree. Settling Defendants were also parties to the 1983 Decree.

R. "State" means the State of Indiana and all of its agencies or representatives.

S. "Trustee" means the person(s) or entity(ies) who (which) will manage the ECC Trust Funds.

T. "United States" means the United States of America and its agencies and representatives.

U. "DOJ" means the United States Department of Justice.

V. "Work" means the design, construction and implementation of the tasks as set forth in Exhibit A.

V.

GENERAL PROVISIONS

A. Settling Defendants shall finance and require to have performed as provided herein the Work and, if and to the extent applicable, Additional Work, in accordance with the requirements of all applicable local, state and federal laws, regulations and permits. The United States and the State have determined that the obligations and procedures authorized under this Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

B. ECC Trust Funds:

1. ECC Trust Fund Agreement

a. Settling Defendants shall submit to Plaintiffs a signed ECC Trust Fund Agreement ("ETFA") establishing the ECC Trust Fund ("ETF") in the form attached hereto as Exhibit C within ten (10) days of the effective date of this Decree. The ETFA shall be construed to confer upon the Trustee(s) sufficient powers and authority to raise and administer funds from Settling Defendants necessary to finance the Work and, if necessary, Additional Work.

b. Within sixty (60) days after the effective date of this Decree, each Settling Defendant shall make its respective

payment to the ETF in accordance with the ETFA. Settling Defendants shall instruct the Trustee(s) to use the money in the ETF (1) to pay the Contractor for the Work and, if required, Additional Work, and (2) to reimburse the United States and the State as provided in Section XVI for Response Costs, including Oversight Costs; provided, however, the Trustee(s) of the ETF shall first seek payment of any such amounts specified in subparagraphs 1 and 2 immediately above from the Trustee(s) of the ECC 468B Trust Fund until such time as the ECC 468B Trust Fund is depleted, and the Trustee(s) of the ECC 468B Trust Fund shall promptly make such payments.

c. Pursuant to the terms of the ETFA, if the cost of the Work or Additional Work exceeds the amounts allocated for the Work or Additional Work and paid under subparagraph B.1.b of this Section, Settling Defendants, upon notification from, and within the time prescribed by, the Trustee(s), but no later than sixty (60) days after notification, shall be responsible for and shall pay to the ETF such additional amounts in the same proportions relative to each other as shown in Exhibit C. If any Settling Defendant fails to pay any such additional amount, upon notice by the Trustees, the other Settling Defendants shall pay that amount in the same proportion relative to each other as set forth in Exhibit C within sixty (60) days of notice by the Trustee. The failure of any Settling Defendant to pay for its share of the costs of the Work or Additional Work, including increased costs, shall

not excuse timely completion of the Work or Additional Work and reimbursement of costs.

d. The Trustee(s) shall submit a financial report to the Parties on a semi-annual basis, beginning six months after the effective date of this Decree. The financial report shall include cash flow projections that project the level of funds that will be necessary for the Work for the succeeding one year period. If the amount of money in the ETF is less than such projected level, Settling Defendants shall make the necessary additional payments in amounts prescribed by the Trustee(s). The Trustee(s) shall notify Plaintiffs of the amount of, and time within which, the payments are required.

2. ECC 468B Trust Fund Agreement

a. The Premium Settling Defendants and Settling Government Agencies, other than the U.S. Postal Service and the U.S. Navy, shall submit to the Plaintiffs a signed ECC 468B Trust Fund Agreement in the form attached hereto as Exhibit D within ten (10) days of the effective date of this Consent Decree. The U.S. Postal Service and the U.S. Navy shall make their respective payments into the ECC 468B Trust Fund pursuant to Section V.B.2.b as if these Settling Government Agencies had signed the ECC 468B Trust Fund Agreement.

b. Within sixty (60) days after the effective date of this Decree, each Premium Settling Defendant and each Settling Government Agency shall make its respective payment to the ECC Section 468B Trust Fund in the amount shown in the payment schedule

in Exhibit D. Premium Settling Defendants and the Settling Government Agencies shall instruct the Trustee(s) of the ECC 468B Trust Fund to use all of the money in that fund for two purposes: (1) To pay the Trustee(s) of the ETF so that money can be used to reimburse Plaintiffs up to the amount provided in Section XVI.A (which covers that portion of Response Costs incurred prior to entry of this Decree for which Settling Defendants were not released under the 1983 Decree); and (2) To the extent funds remain, to pay the Trustee(s) of the ETF for the remaining expenses listed in subparagraph V.B.1.b above. If Settling Defendants exercise their right to withdraw from this Decree as provided at Section I, paragraph 14, above, all money in the ECC 468B Trust Fund shall be applied first to reimburse the United States and the State for their Response Costs incurred prior to the entry of this Decree as provided in Section XVI.A below, and then to any other costs for which the government claims Premium Settling Defendants are liable; that is, no such money shall be applied to costs as to which the government has covenanted not to sue such defendants under the 1983 Consent Decree.

c. The Trustee(s) shall submit a financial report to the Parties on a semi-annual basis, beginning six months after the effective date of this Decree and continuing until the termination of the ECC 468B Trust Fund. The financial report shall show the financial condition of the ECC 468B Trust Fund, including, without limitation, income and expense of the Fund for the period.

3. Nothing in this Decree constitutes approval by the Plaintiffs of the ETFA or the ECC 468B Trust Fund Agreement for any purposes other than for the purpose of implementing the requirements of this Decree. Payments into both trust funds established hereunder shall not constitute penalties or monetary sanctions.

VI.

THE WORK

A. Settling Defendants shall require the Work to be performed and completed as provided herein in accordance with all requirements of this Decree, Exhibit A, and all applicable local, state and federal laws, regulations and permits. The United States and the State have determined that Work (and if necessary under Section VII, Additional Work) required under this Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

B. In accordance with Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), no federal, state, or local permits are required for those portions of the Work conducted entirely on-site. Settling Defendants shall make timely application for any and all permits that may be required to conduct the Work.

C. The standards and provisions of Section XIII hereof describing Force Majeure shall govern delays in receiving any permits required for the Work (and, if necessary, Additional Work) and also the denial of any such permits.

D. Settling Defendants shall require to be included in all contracts (including subcontracts) entered into for the Work, provisions stating that such Contractors, including their agents and employees, shall comply with all applicable laws and regulations in performing all activities required by such contracts. This Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or state statute or regulation.

E. The Work shall be initiated, performed and completed in accordance with Exhibit A.

F. Subject to Settling Defendants' right to invoke Dispute Resolution pursuant to Section XIV, Settling Defendants shall implement the Work, and, as provided under Section VII below, Additional Work, upon EPA approval (after consultation with the State) of (1) the deliverables referred to in Section 5.0 of Exhibit A with respect to the Work, or (2) EPA approval of deliverables to be submitted for any Additional Work. Unless otherwise directed by EPA in writing, Settling Defendants shall not commence field activities until EPA approves such deliverables. All Work (or Additional Work) shall be conducted in accordance with the National Contingency Plan, the EPA Superfund Remedial Design and Remedial Action Guidance, and the specifications of this Decree, including the standards, specifications and schedules developed hereunder.

G. It is the goal and intent of the Parties that implementing the Work will achieve the Cleanup Standards set forth

in Table 3-1 of Exhibit A; however, if implementing the Work does not achieve the Cleanup Standards, Additional Work may be required as specified in Section VII below. Moreover, the Parties acknowledge and agree that EPA's approval of Exhibit A (1) does not constitute a warranty or representation of any kind by EPA that implementing Exhibit A will achieve the Cleanup Standards and (2) shall not foreclose EPA from seeking performance of all terms and conditions of this Decree.

H. Modification of Exhibit A:

1. If any provision of Exhibit A is determined to be ineffective or inefficient in accomplishing the Cleanup Standards set forth in Table 3-1 of Exhibit A, EPA, the State or Settling Defendants may request that the relevant sections of Exhibit A be modified to make better provision for accomplishing the Cleanup Standards.

2. Any request for modification of Exhibit A under this paragraph, and the final responses of the other Parties, shall be reflected in writing and served upon all Parties. If the Parties agree, modification of Exhibit A may be effected by written stipulation filed with the Court.

3. No provision of this Consent Decree may be construed or applied or modified to obligate Settling Defendants to meet any cleanup criteria which differ from the Cleanup Standards set forth in Exhibit A hereto. This Paragraph VI.H.3 shall not be subject to Section XIV of this Decree. Nothing herein shall preclude EPA from adopting cleanup criteria which differ from the Cleanup

Standards if necessary to protect human health and the environment and, subject to the limitations of Section XVIII, from seeking further relief from Settling Defendants.

VII.

ADDITIONAL WORK

A. If after 5 years of operation of the soil vapor extraction system provided for in Section 2.1.1 of Exhibit A, EPA determines, after consultation with the State, that the soil vapor extraction system has not met the Cleanup Standards set forth in Table 3-1 of Exhibit A, Settling Defendants agree to implement the remedial action specified in Section 3.3 of Exhibit A, unless the Parties agree otherwise.

B. Any disputes relating to the need for and nature of Additional Work shall be resolved pursuant to Paragraph G of Section XIV below (Dispute Resolution).

C. Nothing in this Section shall preclude the Parties from mutually agreeing to continue the Work beyond the five-year period referenced in Paragraph A above.

D. Nothing in this Section shall preclude Settling Defendants from terminating the Work before the expiration of the five-year period described in Paragraph A above and initiating Additional Work at that time so long as Settling Defendants provide EPA and the State with thirty (30) days written notice prior to terminating the Work.

VIII.

EPA PERIODIC REVIEW TO ASSURE
PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

A. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Decree to assure that human health and the environment are being protected by the remedial action being implemented. If, upon such review, EPA determines that further response action in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604, 9606, is appropriate at the Facility, then, to the extent permitted under Section XVIII.C of this Decree, EPA, after consultation with the State, may take or seek to require such action.

B. Settling Defendants shall be provided with an opportunity to confer with EPA and the State regarding any additional remedial action that EPA may believe is appropriate as a result of the Periodic Review described in Paragraph A above. The provisions of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), where applicable, will govern any judicial review of EPA's determination that any such additional remedial action is necessary or the nature of any such action.

IX.

QUALITY ASSURANCE

Settling Defendants shall require their Contractor to use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For

Preparing Quality Assurance Project Plans," (QAM-005/80), and any subsequent, final amendments to such guidelines, upon written notification to Settling Defendants of such amendments by EPA for subsequent sampling and analysis events. Prior to the commencement of any monitoring project under this Decree, Settling Defendants shall require their Contractor to submit a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with Exhibit A and applicable guidelines. EPA, after review of the QAPP(s) and the State's comments thereon, will notify Settling Defendants of any required modifications, conditional approval, disapproval, or approval of the QAPP(s). Upon notification of disapproval or any need for modifications, Settling Defendants shall make all required modifications in the QAPP, subject to their right to invoke Dispute Resolution under Section XIV below. Sampling data generated consistent with the QAPP shall be admissible as evidence, without objection, in any proceeding under this Decree, except the Parties reserve all rights with respect to the weight, if any, to be accorded such evidence. Settling Defendants reserve all rights with respect to the admissibility into evidence of, and the weight, if any, to be accorded, such sampling data in any other proceedings. Settling Defendants shall assure that EPA personnel or authorized representatives are allowed access at reasonable times to any laboratory utilized on behalf of Settling Defendants in implementing this Decree and shall require said laboratory(ies) to analyze samples submitted by EPA, as part

of its oversight activities hereunder, for quality assurance purposes.

X.

FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that the Facility or other areas where Work (or Additional Work) is to be performed hereunder is presently owned by persons other than those bound by this Decree, Settling Defendants shall use their best efforts to obtain access agreements from the present owners within sixty (60) calendar days of entry of this Decree for purposes of implementing the requirements of this Decree. Such agreement shall provide access for the Parties and their authorized representatives. If such access agreements are not obtained within the time specified herein, Settling Defendants shall so notify EPA and the State. Provided that Settling Defendants have utilized their best efforts to obtain timely access, any delays encountered or inability to obtain any necessary access under this Decree shall constitute Force Majeure under Section XIII below. Best efforts shall not require commencement of litigation against owners of the Facility.

B. The Parties shall make available to each other the results of all validated sampling and/or tests or other data generated in performance of this Decree, and, in the case of Settling Defendants, shall submit these results in progress reports as described in Section XII of this Decree (Reporting Requirements). Each Party may review, upon request, all sampling

data generated by any other party as part of the Work conducted under this Decree.

C. Any party collecting samples pursuant to the performance of this Decree shall allow, upon request, split or duplicate samples to be taken by any other Party and/or their authorized representatives and shall provide the other Parties not less than seven (7) days advance notice of any such sample collection activity; provided, however, that if seven (7) days notice is not practical under the circumstances, such Party shall provide reasonable notice of the sampling activity. All Parties will provide the other Parties with all results of any split sample analyses.

XI.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

A. EPA shall designate a Remedial Project Manager ("RPM") or an On-Scene Coordinator ("OSC") (hereafter collectively called "RPM/OSC"), and the State shall designate a Project Coordinator ("Project Coordinator") for the Facility. Plaintiffs may designate other representatives, including EPA and State employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA reserves the right, to the extent provided by law and consistent with Section XVIII below, to take any necessary response action when conditions at the Facility present an imminent

and substantial endangerment to public health, welfare or the environment.

B. Settling Defendants shall designate a Project Manager ("Project Manager") who shall have primary responsibility for implementation of the Work, and, if necessary, Additional Work, at the Facility.

C. To the maximum extent possible, except as specifically provided in this Decree, communications between Settling Defendants, the State and EPA concerning the terms and conditions of this Decree shall be made between the Project Manager, the Project Coordinator, and the RPM/OSC.

D. Within twenty (20) calendar days of the effective date of this Decree, Settling Defendants, the State and EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Manager, Project Coordinator and an Alternate Project Coordinator, and RPM/OSC and Alternate RPM/OSC. The Parties will notify each other in writing of any changes to the originally-supplied information under this Paragraph D within twenty (20) days of any such change.

XII.

REPORTING REQUIREMENTS

A. Settling Defendants shall require their Contractor to prepare and provide to EPA, DOJ and the State written progress reports which, for each reporting period: (1) describe the actions which have been taken toward achieving compliance with this Decree; (2) include all validated results of sampling and tests and all

other data relating to the Work or Additional Work received by Settling Defendants; (3) describe all portions of the Work or Additional Work completed under Exhibit A and attach copies of appropriate supporting documentation such as invoices, contract documents and photographs, if any; (4) describe all actions, data and plans which are scheduled for the next reporting period and provide other information relating to the progress of construction as is customary in the industry; and (5) include information regarding percentage of completion and unresolved delays encountered, or anticipated, that may affect the future schedule of major milestones in the implementation of the Work or Additional Work, a description of efforts made to investigate those delays or anticipated delays, and a description of any missed deadlines or other violations of this Decree which may give rise to stipulated penalties under Section XVII of this Decree. These progress reports will be submitted to EPA, DOJ and the State on a monthly basis by the fourteenth day of each month during the period the remedial action required hereunder is being constructed. For the purposes of this Paragraph, construction of the remedy will be completed when the soil vapor extraction system, the RCRA-compliant cover, and monitoring wells are installed as required by Exhibit A. Once such construction is completed, the schedule for submitting such progress reports may be modified to provide for quarterly reports.

B. If the date for submission of any item or notification required by this Decree falls upon a weekend or state or federal

holiday, the time period for submission of that item or notification will be extended to the next business day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Settling Defendants shall require prompt oral notification to the RPM or OSC and to the State's Emergency Response Section, in accordance with IND. CODE § 13-7. If the RPM/OSC or Project Coordinator is unavailable, Settling Defendants shall require their Contractor to notify the Emergency Response Section, Region V, EPA. The above notification is in addition to the reporting required by Section 103 of CERCLA. Settling Defendants shall require their Contractor to furnish Plaintiffs (1) a written report within 20 days of the onset of such an event setting forth the events which occurred and the measures taken, and to be taken, in response thereto, and (2) within 30 days of the conclusion of such an event, a report setting forth all actions taken to respond thereto.

XIII.

FORCE MAJEURE

A. For purposes of this Decree, "Force Majeure" is defined as any event arising from causes beyond the control of Settling Defendants which delays or prevents the performance of any obligation under this Decree. Force majeure shall not include increased costs or expenses or non-attainment of Cleanup Standards. However, any event which would otherwise qualify as a force majeure

event shall not be disqualified simply because it results in increased costs.

B. When circumstances occur which may delay or prevent the completion of any phase of the Work, or delay or prevent access to the Facility or to any property on which any part of the Work is to be performed, whether or not caused by a force majeure event, Settling Defendants shall promptly notify the RPM/OSC and the State Project Coordinator by telephone or, in the event of their unavailability, the Director of the Waste Management Division of EPA. Within twenty (20) days of the circumstances which Settling Defendants contend are responsible for the delay or obstacle to performance, Settling Defendants shall supply to Plaintiffs in writing a description of and reason(s) for the event(s), the anticipated duration of any delay, the measures taken and to be taken by or on behalf of Settling Defendants to prevent or minimize the delay or effects of such event(s), and the timetable for implementation of such measures. Failure to give timely notice to the RPM/OSC and State Project Coordinator under this Paragraph B will constitute a waiver of any claim of force majeure.

C. If EPA agrees that the delay or obstacle to performance is or was attributable to a force majeure event, the Parties shall modify Exhibit A or, as appropriate, schedules developed thereunder to provide such additional time, or to take into account such obstacles, as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay or obstacle. Such additional time shall not

exceed the actual duration of the delay resulting from the force majeure event, unless the Parties agree otherwise.

D. If the Parties cannot agree whether the obstacle to performance or reason for the delay was caused by a force majeure event, or whether the duration of the delay is or was warranted under the circumstances, any party may invoke the dispute resolution provisions of Section XIV below. Settling Defendants will have the burden of proving force majeure as a defense to a failure to comply with this Decree.

XIV.

DISPUTE RESOLUTION

A. The Parties shall attempt to resolve expeditiously and informally any disputes that arise under this Decree.

B. If any dispute arising under this Decree is not resolved expeditiously through informal means, any Party may initiate dispute resolution under this Section by serving prompt written notice by certified mail on the other Parties.

C. Within ten (10) days of the service of a notice of dispute under paragraph B above, the Party who gave notice shall serve on the other Parties a written statement of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis or opinion supporting its position; and all supporting documentation on which such Party relies (hereinafter "Statement of Position"). Any response by a Party to any such Statement of Position shall be served on all other Parties within ten (10) days of receiving such a Statement of Position. The

Parties, by agreement, may alter or extend any deadlines under this Section XIV.

D. An administrative record of any dispute under this Section shall be maintained by EPA and shall include the written notification of such dispute, the Statement of Position, any responses thereto, and EPA's final determination with respect to any such dispute. The record shall also include any additional information submitted for the record by any Party on which all Parties shall have a reasonable opportunity to comment.

E. Any Party shall have the right to petition the Court for a review of EPA's final determination under this Section XIV. Any Party may file such a petition prior to the issuance of EPA's final determination if the circumstances require prompt resolution. However, in such a case, EPA shall have a reasonable opportunity to render its decision.

F. The administrative and judicial dispute resolution procedures of this Section XIV shall be the exclusive mechanism to resolve disputes arising under this Decree and shall apply to all provisions of this Decree unless otherwise expressly provided. The invocation of the procedures stated in this Section shall not alter Settling Defendants' obligations under this Decree with respect to the disputed issues or any other requirement of this Decree unless and until the Court orders otherwise.

G. In judicial proceedings on any dispute relating to whether the Work or Additional Work has been performed as required by this Decree, or relating to the necessity for or nature of

Additional Work, or relating to designs and plans to implement Work or Additional Work, Settling Defendants shall have the burden of demonstrating, based on the administrative record developed under Paragraph D of this Section, that the position of EPA is arbitrary and capricious or otherwise not in accordance with law or this Decree.

H. In any judicial proceeding where Settling Defendants allege delay or impossibility attributable to force majeure, they 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 circumstances beyond their control, and that the duration of the delay is or was warranted under the circumstances; provided, however, that nothing in this Paragraph H is intended to limit or otherwise alter the appropriate standard of review for matters covered in Paragraph G of this Section.

I. Except as provided in Paragraphs G and H of this Section, this Decree does not establish scopes of review, burdens of proof, or standards of any kind for judicial review of disputes between the Parties.

XV.

RETENTION AND AVAILABILITY OF INFORMATION

A. Documents Relating to Performance of this Decree.

1. Documents generated prior to termination of the Decree. During the pendency of this Decree and for a period of five (5) years after its termination, Settling Defendants shall require their Contractor to retain and to make available to EPA,

DOJ, and the State all records and documents in its possession, custody or control which relate to the performance of this Decree, including, without limitation, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by it, or on its behalf, with respect to the Facility. After the five (5) year period of document retention, Settling Defendants shall require their Contractor to notify EPA, DOJ and the State at least ninety (90) days prior to the destruction of any such documents, and upon request by EPA, DOJ or the State, shall relinquish custody of said documents to EPA, DOJ or the State.

2. Documents generated after termination of the Decree.

If any records or documents relating to the performance of this Decree are generated after termination of this Decree, Settling Defendants shall require their Contractor to retain and to make available to EPA, DOJ, and the State all such records and documents in its possession, custody or control, for a period of ten years after their generation, including, without limitation, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by it, or on its behalf, with respect to the Facility. After this ten (10) year period of document retention, Settling Defendants shall require their Contractor to notify EPA, DOJ, and the State at least ninety (90) days prior to the destruction of any such documents, and upon request by EPA, DOJ or the State, shall relinquish custody of said documents to EPA, DOJ or the State.

B. Documents Relating to the Alleged Liability of Settling Defendants. During the pendency of this Decree and for a period of five (5) years after its termination, Settling Defendants shall retain and make available to EPA, DOJ, and the State all records and documents in their possession, custody, or control pertaining to their own or any other person's alleged liability at ECC for response action or costs under CERCLA not previously provided to EPA. After the five (5) year period of document retention, Settling Defendants shall notify EPA, DOJ and the State at least ninety (90) days prior to the destruction of any such documents, and upon request by EPA, DOJ or the State, Settling Defendants shall relinquish custody of the documents to EPA, DOJ or the State. Nothing in this Paragraph or in Paragraph A immediately above shall preclude EPA, DOJ or the State from requesting copies of the documents described hereunder at any time prior to their destruction.

C. Settling Defendants or their Contractor may assert business confidentiality claims covering part or all of the information provided in connection with this Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b) and applicable State law.

D. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under state law by the State, afforded protection under state law by the State. If no such claim accompanies the information when it is

submitted to EPA and the State, the public may be given access to such information without further notice to Settling Defendants.

E. Information acquired or generated in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants or their Contractor.

F. In the event that Settling Defendants' obligations to produce documents under this Section includes documents which are privileged from disclosure as attorney-client communications, attorney work-product or other privilege recognized by law, Settling Defendants may withhold production of such documents to avoid improper disclosure until agreement is reached with the United States and the State as appropriate, or, if agreement cannot be reached, until resolution of the issue is reached pursuant to Section XIV (Dispute Resolution). However, Settling Defendants must provide the United States and the State, as appropriate, with a list of the documents sought to be withheld, identifying subject, author, addressee(s) and date for each document, and any other information necessary to determine whether the document is privileged. Further, Settling Defendants shall not withhold as privileged any information or documents that are created, generated or collected pursuant to requirements of this Decree, regardless of whether the document has been generated in the form of an attorney-client communication or other generally privileged manner. Settling Defendants may not withhold as privileged any documents

that are subject to the public disclosure provision of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

XVI.

REIMBURSEMENT

A. Settling Defendants shall pay, within sixty (60) days of the entry of this Consent Decree:

(1) \$700,000 to the EPA Hazardous Substances Superfund delivered to EPA Region V, Attn: Superfund Accounting, P.O. Box 70753, Chicago, IL 60673, in the form of a wire transfer or certified or cashier's check payable to "EPA Hazardous Substances Superfund" (a copy of such check shall be sent to the Director, Waste Management Division, U.S. EPA, Region V and to the DOJ addressee set forth in Section XXII below). Payments to the United States shall include a reference, "Enviro Chem #30", and the docket number of this case;

(2) \$15,437 to the State delivered to the Indiana Department of Environmental Management, 105 South Meridian Street, Indianapolis, IN 46206-6015, in the form of a wire transfer or cashiers or certified check made payable to "Indiana Department of Environmental Management, ATTN: Cashier" (a copy of such check shall be sent to the Attorney General of the State);

(3) \$22,500 to the Office of the Secretary, Department of Interior, Fiscal Section, 18th and E Street, N.W.,

Washington, D.C. 20240. The check should reference the Enviro-Chem Site with a copy of the check sent to the Office of Environmental Project Review, Department of Interior, 18th and C Street, N.W., Washington, D.C. 20240; and

(4) \$5,250 to the Indiana Department of Natural Resources, Office of the Director, 608 State Office Building, Indianapolis, Indiana 46204.

B. The payments made under Paragraph A(1) and (2) above are reimbursement of past costs claimed by the United States and the State in this action. In consideration of the monies received under the above Paragraph, the United States and the State covenant not to sue Settling Defendants for any costs incurred prior to the entry date of this Consent Decree.

C. Settling Defendants shall pay all response costs of the United States and the State which are not inconsistent with the NCP incurred after the entry of this Consent Decree in overseeing implementation of the Work and, if necessary, Additional Work (hereafter, "oversight costs"); provided, however, Settling Defendants shall not be liable for paying government oversight costs incurred in overseeing the Work in excess of \$850,000. Response costs incurred by the United States in overseeing implementation of Additional Work, if any, and in seeking to enforce the terms of this Decree, shall not be subject to the \$850,000 limit in the preceding sentence. Payments shall be made on an annual basis and within 30 days of the submission of itemized

cost statements and supporting documentation by the United States and the State. The United States and the State shall submit their oversight cost claims as soon as practicable after each anniversary date of this Consent Decree.

D. In consideration of and upon payment of all oversight costs as required by this Section, the United States and the State covenant not to sue Settling Defendants for any oversight costs incurred in overseeing the Work or the Additional Work, if any.

E. If reimbursement is owed for oversight costs at the time the United States and the State plan to terminate this Decree, Settling Defendants shall, within thirty (30) days of the submission of an itemized cost statement and supporting documentation by the United States and the State, and before termination of this Decree, pay such costs.

F. The Response Costs reimbursed in accordance with Paragraphs A, B and C of this Section, respectively, are consistent with the National Contingency Plan.

XVII.

STIPULATED PENALTIES

A. Penalties. The Settling Defendants shall be liable to the Plaintiffs for payment of stipulated penalties for each of the following violations of this Decree, unless the violation is excused pursuant to Section XIII (Force Majeure), or is reduced or waived by Plaintiffs in accordance with Subparagraph A.3 below:

1. Late Reports. For each day that the Settling Defendants fail to submit periodic progress reports in

accordance with Section XII of the Decree: \$500 for the first 7 days; \$1,000 for the 8th through 30th days; and \$1,500 for each day after the 30th day.

2. Delayed Work. For each day that any major milestone specified below in this Subparagraph A.2.a through A.2.g of this Section is delayed: \$1,500 for the first 7 days; \$4,000 for the 8th through 30th days; \$6,500 for the 31st through the 60th day; and \$9,000 a day after the 60th day.

a. Submission of the project plans, construction contract specifications and revised drawings necessary to solicit competitive bidding as required in Section 5.0 of Exhibit A -- three (3) months from the entry of the Decree.

b. Completion of site preparation, including grading, removal of the tanks and buildings, repair or moving of the fence -- 4 months after approval by EPA of the documents referred to in subparagraph A.2.a above. Completion of site preparation shall mean that all hindrances, obstructions or obstacles to construction and security of the soil vapor extraction trenches, monitoring wells or cap have been removed.

c. Completion of installation of the on-site and off-site monitoring wells -- 5 months after approval

by EPA of the documents referred to in subparagraph A.2.a above.

d. Startup of the soil vapor extraction system -- 10 months after approval by EPA of the documents referred to in subparagraph A.2.a above.

e. Completion of installation of the cap -- eleven (11) months after EPA approval of the documents referred to in subparagraph A.2.a above.

f. Submission of all documents necessary to perform Additional Work that may be required under Section VII of this Decree -- 6 months after written notice is provided by EPA or Settling Defendants that Additional Work needs to be implemented.

g. Completion of installation of the ground water collection trench -- on a schedule to be approved by EPA after consultation with the State.

3. Stipulated penalties for major milestones A.2.b and A.2.c may be waived by Plaintiffs, in whole or in part, at their discretion, if Settling Defendants startup the soil vapor extraction system and complete installation of the cap within 10 and 11 months, respectively, after approval by EPA of the documents referred to in subparagraph A.2.a above.

4. Forgiveness of Certain Delayed Work Penalties. Any stipulated penalties incurred for any of the major milestones listed in subparagraphs A.2.b and A.2.c above

shall be collected as specified pursuant to Paragraphs C and D below, but shall be paid into an escrow account and shall remain there until the earlier of (a) the startup of the soil vapor extraction system and installation of all components of the cap, or (b) 11 months after approval by EPA of the documents referred to in subparagraph A.2.a above. If startup of the soil vapor extraction system and completion of the cap do not occur within 10 and 11 months, respectively, after approval by EPA of the documents referred to in subparagraph A.2.a above, the balance of the escrow account shall be paid to Plaintiffs as provided in Paragraph D below. If such deadlines are met, the balance of the escrow account may, upon granting of the permissive waiver referenced in subparagraph A.2.3 immediately above, be paid to the Trustee(s) of the ETF on behalf of Settling Defendants.

5. Time Limitation. Stipulated penalties due hereunder shall be deemed waived if notice is not given by the Plaintiffs pursuant to Paragraph C below within one year of the deadline for an action that has been missed or other violation giving rise to the penalty has occurred. This limitation shall not apply if Settling Defendants have failed to report a missed deadline or other violation giving rise to a stipulated penalty in the reports submitted pursuant to Section XII above.

6. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree, except that Plaintiffs are collectively entitled to no more than one penalty per violation.

B. Accrual Dates. Except as provided in Paragraph E below, all stipulated penalties begin to accrue on the day following the day that complete performance for each item specified in paragraphs A.1 and A.2 is due, and continue to accrue through the final day of correction of the noncompliance or completion of performance. Payment of stipulated penalties shall not alter in any way Settling Defendants' obligations to complete performance. Any modification of the time for submitting reports or accomplishing major milestones that are subject to Stipulated Penalties under paragraphs A.1 and A.2 above shall be in writing and approved by EPA.

C. Notice. Following the Plaintiffs' determination that Settling Defendants have failed to comply with the requirements of this Decree, Plaintiffs shall give Settling Defendants written notice of said claim and provide a description of the alleged noncompliance, including the portion of Work or Additional Work affected and the date of noncompliance. This notice shall also indicate the amount of stipulated penalties allegedly due.

D. Payment. All stipulated penalties owed to the Plaintiffs under this Section shall be payable within thirty (30) days of receipt of written demand, unless Settling Defendants seek resolution of the dispute under Section XIV above. Penalties shall

accrue from the date of violation regardless of whether EPA has notified Settling Defendants of a violation. Interest shall begin to accrue on the unpaid balance of any specific penalty at the end of the thirty (30) day period for that penalty. One half of all stipulated penalties owed shall be paid to the United States, and the other half shall be paid to the State of Indiana, as described below. Such payments shall include a reference "Enviro-Chem #30" and the docket number of this case. All payments shall be mailed or wired to U.S. EPA Region V, Attn: Superfund Accounting; P.O. Box 70753; Chicago, Illinois 60673 (with copies to the federal addressees shown in Section XXII) and to the Indiana Department of Environmental Management, Attn: Cashier, 105 S. Meridian St., Indianapolis, Indiana 46206-6015, respectively.

E. Disputes. During any dispute resolution proceeding pursuant to Section XIV, penalties shall accrue, with interest, but need not be paid during the dispute resolution period. If a Court becomes involved in the resolution of the dispute, the period of dispute shall end and the accrual of penalties shall cease, upon the rendering of a decision by the District Court regardless of whether any Party appeals such decision. If Settling Defendants prevail upon resolution, Settling Defendants shall pay only such penalties as the resolution requires. If the Settling Defendants do not prevail upon resolution, the United States and the State have the right to collect all penalties which accrue during the period of dispute. The Settling Defendants shall, however, have the right to petition the Court for a finding that the Settling

Defendants' position regarding the dispute had substantial support in law, fact and/or expert opinion (as applicable) and reasonably could have been expected to prevail, in light of the applicable standard of judicial review, and that Settling Defendants sought resolution of the dispute at the earliest practicable time and took all other appropriate steps to avoid any delay in the Work as a result of the dispute. If the Court so finds, the Court may reduce the stipulated penalties as appropriate. Settling Defendants shall have the burden of proof and persuasion on any petition for reduction of stipulated penalties submitted hereunder.

F. Choice of Penalties. Nothing herein shall preclude EPA from bringing an action in this Court pursuant to Section 109 of CERCLA for any failure or refusal to comply with the provisions of this Decree. The United States may elect, in its sole discretion, whether to seek stipulated penalties under this Section or to seek civil penalties under Section 109 of CERCLA for a particular violation of the Decree, but agrees not to seek both types of penalties for the same violation. The United States and the State are precluded from seeking double payment of penalties by requiring that stipulated penalties be paid to one plaintiff and civil penalties to the other for the same violation.

G. Effect of Notice. The filing of a written notice of a dispute shall not alter in any way the Settling Defendants' obligations to complete the activities required of them under this Decree.

H. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed at the end of each 30 day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within 90 days of the due date.

XVIII.

COVENANT NOT TO SUE SETTLING DEFENDANTS

A. In consideration of actions which will be performed and payments which will be made by the Settling Defendants under the terms of the Decree, and except as otherwise specifically provided in this Decree, the United States and the State covenant not to sue or take administrative action against the Settling Defendants or their officers, directors, employees, or agents for Covered Matters. Covered Matters shall include any and all claims available to Plaintiffs under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, and any and all claims available to the State under Indiana statutes, regulations and common law nuisance, relating to the Facility. With respect to future liability, this covenant not to sue shall take effect upon certification by EPA of the completion of the remedial action concerning the Facility.

B. "Covered Matters" do not include:

- (1) Liability arising from hazardous substances removed from the Facility;

- (2) Criminal liability;
- (3) Claims based on a failure by the Settling Defendants to meet the requirements of this Decree;
- (4) Any matters for which the United States or the State is owed indemnification under Section XX hereof; and
- (5) Liability for violations of Federal or State law which occur during implementation of the remedial action.

C. Notwithstanding any other provision in this Decree, (1) the United States reserves the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the Settling Defendants to perform any additional response work at the Facility, and (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States for natural resource damages and for its response costs and to reimburse the State for its matching share of any response action undertaken by the EPA under CERCLA, relating to the Facility, if:

- a. For proceedings prior to EPA certification of completion of the remedial action concerning the Facility,
 - (i) conditions at the Facility, previously unknown to the United States, are discovered after the entry of this Decree, or

(ii) information is received, in whole or in part, after the entry of this Decree, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment, and

b. For proceedings subsequent to EPA certification of completion of the remedial action concerning the Facility,

(i) conditions at the Facility, previously unknown to the United States, are discovered after the certification of completion by EPA, or

(ii) information is received, in whole or in part, after the certification of completion by EPA, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

D. Notwithstanding any other provision in this Decree, the covenant not to sue in this Section shall not relieve the Settling Defendants of their obligation to meet and maintain compliance with the requirements set forth in this Decree, including the conditions in the amended ROD, which are incorporated herein, and the United States and the State reserve their rights to take response actions at the Facility in the event of a breach of the terms of this Decree and to seek recovery of response costs incurred after entry of the Decree (1) relating to any portion of the Work funded or performed by the United States or the State; and/or (2) incurred

by the United States or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facility.

E. Nothing in this Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Decree for any liability it may have arising out of or relating to the Facility. Plaintiffs expressly reserve the right to continue to sue any person, other than the Settling Defendants, in connection with the Facility.

XIX.

SPECIAL PROVISIONS FOR PREMIUM SETTLING
DEFENDANTS AND SETTLING GOVERNMENT AGENCIES

A. Covenants Not to Sue. Except for those claims reserved in Paragraph C below, the Plaintiffs covenant not to sue Premium Settling Defendants and Settling Government Agencies with regard to any liability that could be imposed upon any of the Premium Settling Defendants and Settling Government Agencies as to any obligations or liability at the ECC Site arising under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, or under any State environmental statute, regulation or common law doctrine. This Paragraph does not provide a covenant not to sue any Premium Settling Defendant or Settling Government Agency who does not make timely payment of the amount

required from it by this Consent Decree or for any other person or entity not a Party to this Consent Decree.

B. Consideration. The covenants not to sue contained in Paragraph A above are given in consideration of the payment to the trust fund, established pursuant to Section V.B.2 and Exhibit D, by each Premium Settling Defendant and Settling Government Agency of the amount shown for that Premium Settling Defendant and Settling Government Agency. Each such payment includes a premium amount in consideration of the covenants not to sue given to such Premium Settling Defendant as provided herein. The Premium Settling Defendants and the Settling Government Agencies, other than the United States Navy, shall be entitled to the contribution protection provided for in Section 122(g)(5) of CERCLA for matters addressed by this Consent Decree. The United States Navy shall be entitled to the contribution protection provided for in Section 113(f)(2) of CERCLA for matters addressed by this Consent Decree.

C. Reservation. The covenants not to sue contained in Paragraph A above shall not apply to any claim or demand for personal injury, third-party property damage (not including natural resource damages), "toxic tort" claims of any kind, or criminal liability, if any.

D. Certification. Each Premium Settling Defendant and Settling Government Agency hereby certifies that, based on information currently available to it and to the best of its knowledge and belief, it is aware of no facts indicating that its volumetric contribution of hazardous substances or contaminants to

the Facility was higher than the amount attributed to it in Exhibit D.

E. Covenants Null and Void. If it is ever shown that the volume attributed to a Premium Settling Defendant or Settling Government Agency is materially greater than the amount shown in Exhibit D, then the covenant not to sue provided in Paragraph A above shall be null and void as to such Premium Settling Defendant or Settling Government Agency, and such Defendant shall be subject to all the requirements and obligations of Settling Defendants set forth in this Decree.

F. Agreement to Terms of Trust Fund. Each Premium Settling Defendant and Settling Government Agency agrees to abide by the terms of the ECC 468B Trust Fund Agreement.

G. Effective Date. The covenants not to sue provided in Paragraph A above shall become effective upon payment to the ECC 468B Trust Fund.

H. Notwithstanding the provisions of this Section, EPA may, through appropriate administrative process, proceed against the United States Navy pursuant to Section XVIII.C. This provision shall not create any rights in the Navy for contribution from the Settling Defendants. This provision shall not affect, limit, or create any rights, liabilities or obligations of or in any other person, whether a party to this Consent Decree or not.

I. No Other Obligations. Notwithstanding any other provision of this Decree, Premium Settling Defendants and Settling Government Agencies shall have no obligation or liability under

this Decree except as set forth or reserved in this Section XIX and Section V.B.2.

XX.

INDEMNIFICATION; OTHER CLAIMS

A. Settling Defendants agree to indemnify, save and hold harmless EPA, the State and/or their representatives from any and all liability arising out of the acts or omissions of Settling Defendants and/or their representatives in carrying out the activities required by this Decree. EPA and the State shall notify Settling Defendants of any such claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed. EPA and the State agree upon request by Settling Defendants to notify the designated representative(s) of Settling Defendants to the extent practicable of developments in any such action and not to settle any such action without first providing them with an opportunity to participate.

B. EPA and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by Settling Defendants in carrying out the activities pursuant to this Decree. The proper completion of Exhibit A under this Decree is solely the responsibility of Settling Defendants and the Contractor as provided herein.

C. Settling Defendants waive their rights to assert any claims against the Hazardous Substances Superfund under CERCLA that are related to any past costs or costs incurred in the Work performed pursuant to this Decree, and nothing in this Decree shall

be construed as EPA's pre-authorization of a claim against the Hazardous Substances Superfund.

XXI.

FINANCIAL RESPONSIBILITY

Settling Defendants, or some of them, will provide financial assurance to ensure that sufficient assets exist to fund the Work or Additional Work. Such financial assurance shall be in the form of a performance bond or a financial assurance mechanism provided for under the State's RCRA regulations at 329 I.A.C. § 3-22. If less than all Settling Defendants provide such financial assurance, it is expressly understood and agreed by the Parties that such subset of Settling Defendants providing such financial assurance shall not thereby incur, as a result of providing such financial assurance, any additional obligation to fund or guarantee performance of the Work or Additional Work (if any) beyond the obligations set forth in this Decree and in the ECC Trust Fund.

XXII.

NOTICES

A. Whenever, under the terms of this Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the terms hereof, such correspondence shall be directed to the following individuals at the addresses specified below:

As to the United States or
U.S. EPA:

- a. Regional Counsel
Attn: Attorney for
ECC Site -5CS-TUB
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, IL 60604
- b. Director, Waste Management
Division
Attn: ECC Remedial
Project Manager 5HS-11
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, IL 60604
- c. Assistant Attorney General
Environment & Natural
Resources Division
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

As to the State of Indiana:

- a. Attorney General
State of Indiana
Attn: Attorney for
ECC Site
Room 219 - State House
Indianapolis, IN 46204
- b. Commissioner, Indiana
Department of Environmental
Management
Attn: ECC Project
Coordinator
105 South Meridian Street
P.O. Box 6015
Indianapolis, IN 46206-6015

As to Settling Defendants:

- a. Norman W. Bernstein
Shea & Gould
Suite 700
1775 Pennsylvania Ave., N.W.
Washington, D.C. 20006
- b. Timothy L. Harker
The Harker Firm
Suite 310
2021 K Street, N.W.
Washington, D.C. 20006

XXIII.

CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

The United States and the State agree that the Work and Additional Work, if properly performed as set forth in Section VI and VII hereof, are consistent with the provisions of the National Contingency Plan pursuant to 42 U.S.C. § 9605.

XXIV.

RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. § 9604, or the State under the Environmental Management Act, IND. CODE § 13-7.

XXV.

COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA and the State in providing information to the public regarding the progress of remedial design and remedial action at the Facility. As requested by EPA or the State, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or concerning the Facility.

XXVI.

EFFECTIVE AND TERMINATION DATES

A. This Decree shall be effective upon the date of its entry by the Court.

B. Certification of Completion of Remedial Action:

1. Application. When Settling Defendants believe that the demonstration of compliance with the Work or Additional Work has been made in accordance with this Decree, they shall submit to the United States a Notification of Completion of Remedial Action and a final report which summarizes the work done, any modification made to the Work or Additional Work thereunder relating to the Cleanup Standards, and data demonstrating that Work or Additional

Work has been accomplished. The report shall include or reference any supporting documentation.

2. Certification. Upon receipt of the Notice of Completion of Remedial Action, EPA shall review the final report and any other supporting documentation, and the remedial actions taken. EPA shall issue a Certification of Completion of Remedial Action upon a determination that Settling Defendants have demonstrated satisfactory completion of the Work or Additional Work which certification shall not be unreasonably withheld. Nothing herein shall preclude EPA from certifying that any portion of the Work has been completed as required hereunder; provided, however, that EPA is not required to provide any such partial certification.

C. Termination. Upon the filing of EPA's Certification of Completion pursuant to the preceding paragraph, and a showing that the other terms of this Decree (other than the post-termination obligations referred to below), including payment of all costs and stipulated penalties due hereunder, have been complied with, the Work and Additional Work provisions of this Decree shall be terminated upon motion of any of the Parties. However, Settling Defendants' obligations to maintain the cap required by Work and any operation and maintenance required by Additional Work, shall survive the termination of said provisions and shall be enforceable by the United States by re-institution of this action.

XXVII.

NON-ADMISSIONS

Settling Defendants deny any liability with respect to any claim arising out of or related to the ECC Site or operation of the ECC Facility. By entering into this Decree and performing the Work or Additional Work hereunder, Settling Defendants do not admit any liability with respect to any claim arising out of or related to the ECC Site or operation of the ECC Facility. This Decree shall not be admissible as evidence against any Settling Defendant on any question of law or fact in any proceeding, except that it shall be admissible by any Party hereto in a proceeding before this Court to implement or enforce the terms thereof against any other Party.

XXVIII.

RESERVATION OF RIGHTS

Settling Defendants, their agents, successors and assigns reserve all rights and defenses that they may have under the law with respect to (1) any claim of the United States or the State that is not barred by the Covenant Not To Sue hereunder, and (2) any claim of any person or entity not a Party to this Decree.

XXIX.

EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

A. This Decree was negotiated in good faith by the Plaintiffs and Settling Defendants. The Settling Defendants shall be entitled to the contribution protection provided for in Section 113(f)(2) of CERCLA for matters addressed by this Consent Decree. The settlement reached among the Settling Defendants, Premium

Settling Defendants and Settling Government Agencies was reached at arm's length and is in good faith, is a fair settlement of the alleged liability of the Settling Defendants, Premium Settling Defendants and Settling Government Agencies and is in the public interest.

B. Settling Defendants agree that if any claim for contribution or indemnity is brought against them, individually or collectively, the named Settling Defendant(s) will timely notify Plaintiffs of the institution of that claim. If Settling Defendants individually or collectively bring a claim for contribution against any person, they will timely notify Plaintiffs of the institution of that claim.

C. Settling Defendants and Premium Settling Defendants covenant not to sue the Settling Government Agencies regarding matters addressed in this settlement, or the matters addressed in Section XIX.H.

D. Nothing in this Decree shall be construed to require any payment by the Settling Government Agencies in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341; provided, however, that if a Settling Government Agency does not make any payment required by this Decree or the Trusts established hereunder, it shall not be entitled to the contribution protections and covenants of this Decree.

ENTERED this _____ day of _____, 1991.

U.S. District Judge

The Parties whose signatures appear below hereby consent to the terms of this Decree. The consent of the United States is subject to the public notice and comment requirements of Section 122(i) of CERCLA and 28 C.F.R. § 50.7 and the consent of all Parties is conditional upon the EPA adopting an amended ROD consistent with the proposed amended ROD lodged with this Decree.

By: Richard B. Stewart

Richard B. Stewart
Assistant Attorney
General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D. C. 20530

Date: 2-27-91

By: Samuel B. Boxerman

Samuel B. Boxerman
Environmental Enforcement
Section
United States Department
of Justice
Washington, D.C. 20530

Date: 2/8/91

By: Valdas V. Adamkus

Valdas V. Adamkus
Regional Administrator
U.S. EPA Region V

Date: 12/27/89

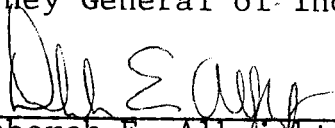
STATE OF INDIANA
By: Kathy Prosser

Kathy Prosser
Commissioner, Indiana
Department of
Environmental Management

Date: 12-18-89

APPROVED FOR LEGALITY AND FORM

LINLEY E. PEARSON
Attorney General of Indiana

By: 
Deborah E. Albright
Deputy Attorney General

DATE: 10-16-89

SIGNATURES OF SETTLING DEFENDANTS:

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Environmental Conservation and Chemical Corporation, et al.

September 15, 1989
Date

General Motors Corporation
NAME OF SETTLING DEFENDANT (Type)*

P.O. Box 33122, Detroit, MI 48232
Address

By:

Mark Hester
(Signature of Officer) Mark Hester

Attorney
Title

(Corporate acknowledgment)

John Kyle
NAME OF ATTORNEY OR
AUTHORIZED REPRESENTATIVE (Type)

Barres & Thornburg
115. Meridian St, Suite 1313
Address Indianapolis, IN 46204

317-231-7284
Telephone Number

In the event of a change of address of defendant, counsel, or the authorized representative, notice shall be given to plaintiffs at the address in Section XXII.

Consent to the Service of all papers in connection with the lodging and entry of this Consent Decree and notices hereunder may be made by deliver to the Envirochem Steering Committee, c/o _____

Signature

* on behalf of GMC - Delco Electronics, appearing as # _____
on Attachment 1 to Exhibit C of this Decree.

EXHIBIT C TO THE AFFIRMATION OF NORMAN W. BERNSTEIN

ENVIRONMENTAL CONSERVATION AND CHEMICAL CORPORATION
TRUST FUND AGREEMENT

ENVIRONMENTAL CONSERVATION AND CHEMICAL CORPORATION
TRUST FUND AGREEMENT

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ENVIRONMENTAL CONSERVATION AND CHEMICAL CORPORATION SITE

TRUST FUND AGREEMENT

Agreement, made this 10^m day of September, 1991, by and among the parties listed on Attachment 1 hereto (hereinafter called the "Settlors"), and the Trustees listed on page 13 (hereinafter, together with any successors in office, called the "Trustees").

The Trustees shall have and hold the funds contributed to the Trust Fund created by this Agreement as provided herein, and all funds otherwise contributed to, or received by, the Trust Fund, together with the proceeds and reinvestments thereof (hereinafter collectively called the "Trust Fund"), and shall administer such funds in accordance with the provisions of this Agreement.

FIRST: PURPOSE, SETTLORS AND NAME

1.01. TRUST FUND PURPOSE. This Trust relates to the Environmental Conservation and Chemical Corporation ("ECC") Site located in Boone County, Indiana (the "ECC Site" or the "Facility"). The purpose of this Trust is to fulfill the obligations of Settlers under the Consent Decree which was entered on September 10, 1991, in United States of America, State of Indiana v. Environmental Conservation and Chemical Corporation, et al., Civil Action No. 83-1419 C (S.D. Ind.) (hereinafter referred to as the "Consent Decree"). All terms used herein which are defined in the Consent Decree shall have the same meanings herein.

To fulfill this purpose, the Trustees shall review the terms of the Consent Decree and take such appropriate actions as are authorized herein or in the Consent Decree to effectuate the Consent Decree.

The provisions of this Trust Agreement and the rights granted to the Trustees hereunder shall not diminish, alter or modify the rights or obligations of Settlers pursuant to the Consent Decree.

The payments provided for herein are and shall be construed to be payments made in settlement of the claims made against the Settlers by Plaintiffs for damages caused by the alleged releases and threatened releases of hazardous substances at and from the Facility.¹ The payments into the Trust Fund are not by way of a fine or penalty or in lieu of any fine or penalty. Settlers neither expected nor intended those alleged releases to occur. By executing this Trust Agreement, Settlers do not admit, accept or intend to acknowledge any liability or fault with respect to any matter arising out of or relating to the Facility.

1.02. SETTLORS. In accordance with the terms of the Consent Decree each Settlor agrees to contribute funds to this Trust by check in such total amounts as are set forth on Attachment 1 hereto. Settlers' payments to this Trust shall be due in such amounts and at such times as are set forth in written demands for contributions issued by the Trustees,

¹-----
The United States takes no position as to the statements contained in this sentence.

pursuant to Sections 2.03 and 2.04 below. Each such contribution must be accompanied by a fully executed ECC Site Trust Fund Contribution Form, as set forth on Attachment 2 hereto.

Upon entry of the Consent Decree by the Court, each Settlor shall be respectively deemed to have qualified as a Settlor of this Trust and shall be fully bound by this Trust's terms. If, pursuant to the procedures set forth at Section I, Paragraphs 14 and 15, of the Consent Decree, any Settling Defendant withdraws from the Consent Decree due to the issuance of an amended Record of Decision ("ROD") that causes the ROD to differ materially from the Work, said Settling Defendant will be deemed to have withdrawn from the Consent Decree and from this Trust Agreement.

The percentage share applicable to each Settlor as shown on Attachment 1, or as adjusted as provided in Section 2.03, shall be known as the "Individual Settlor Percentage" for that Settlor. All signatories to this Trust Agreement acknowledge that the Individual Settlor Percentages set forth in Attachment 1 represents an agreement among the Settlers only as to the apportionment of their payment obligations under the Consent Decree. The signatories further acknowledge that, notwithstanding anything to the contrary in the Consent Decree or the Trust Agreement, any funds required to be paid by the Settlers under the Consent Decree or this Trust Agreement shall be made in accordance with the allocation percentages set forth in Attachment 1, as may be adjusted pursuant to Section 2.03. The signatories further

agree that, except as provided in Section 2.03, the future payment obligations of the Settlers shall be limited to the same proportion as set forth in Attachment 1.

1.03. NAME OF TRUST. The funds received by the Trustees from Settlers, or any other person or entity, together with the proceeds and reinvestments thereof and additions thereto, shall be known as the ECC Site Trust Fund (the "Trust Fund" or "Trust").

SECOND: DISPOSITIVE PROVISIONS

The Trustees shall manage, invest and reinvest and distribute the Trust Fund as follows:

2.01. USE OF INCOME AND PRINCIPAL. During the term of the Trust, the Trustees shall use so much or all of the income and/or principal of the Trust Fund as is required to satisfy the Settlers' obligations set forth in the Consent Decree and as provided in this Trust Agreement.

2.02. PAYMENTS FROM THE TRUST FUND. To the extent not paid from other sources, the Trustees shall make from the Trust Fund (a) the payments required by Section V of the Consent Decree to be made by Settlers to have the Work performed, and (b) any other payments required to be made by Settlers in order to fulfill the terms of the Consent Decree. The Trustees shall also pay the expenses described in Sections 3.03, 3.04 and 3.09 and Article Four hereof from the Trust Fund.

Until the ECC Site Section 468B Trust Fund created pursuant to Section XXIII.B and Appendix E of the Consent Decree has terminated, the Trustees shall seek payment of any of the amounts described above from the ECC Section 468B Trust Fund before making such payments from the Trust Fund.

Any payments to the United States under this Section shall be by certified check issued by the Trustees, made payable to "EPA Hazardous Substances Superfund" and referencing on the check "Envirochem Site No. 30", and shall be sent by certified mail, return receipt requested, to EPA Region V, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, or to such other payee or address as the U.S. EPA designates in writing. Any payments to the State of Indiana under this section shall be made in the same manner, made payable to "Indiana Department of Environmental Management," and shall be sent to Indiana Department of Environmental Management, Attn: Cashier, 105 S. Meridan St., Indianapolis, Indiana 46206-6026, or to such other payee or address as the State designates in writing.

2.03. FUNDING THE TRUST. Settlers are obligated to ensure that the Trust has sufficient assets to satisfy the requirements of the Consent Decree. Within 7 business days of entry of the Consent Decree, the Trustees shall make demand in writing for Settlers to contribute to this Trust an amount equal to the difference between the amount anticipated to be received from the ECC 468B Trust Fund and \$5.7 million. When necessary to satisfy the purpose of this Trust as set forth in Section 1.01, the

Trustees shall make demand in writing upon Settlers for additional contributions to this Trust in amounts determined by the Trustees as necessary and in sufficient time to allow for uninterrupted progress of the Work or Additional Work consistent with the terms of the Consent Decree and whenever necessary to assure that the assets of the Trust do not fall below the sum of \$500,000 during the first four years that this Agreement is in effect. Each Settlor's additional contribution shall be in the same proportion as that established in Attachment 1 hereto, as may be modified pursuant to this Section.

If any Settlor shall ever be judicially adjudged a bankrupt and discharged from its debts and obligations, or defaults for any other reason on its obligations to pay under this Agreement, including specifically the obligations of the Consent Decree and this Trust Agreement (a "Discharged Party" or "Defaulting Party"), then the required contribution of such Discharged or Defaulting Party shall be reallocated by the Trustees among the remaining Settlers, with each such remaining Settlor assuming a share proportionate to its Individual Settlor Percentages excluding the Individual Settlor Percentage of any Discharged or Defaulting Party.

If after the effective date of this Trust Agreement, any person or entity qualifies as a Settlor by becoming a signatory to the Consent Decree approved by the parties to that Decree, and upon amendment of the Consent Decree to include the new Settlor as a Settling Defendant under the Decree, then the required

contribution and Individual Settlor Percentage of such new Settlor shall be calculated by the Trustees. The new Settlor's Individual Percentage will be applied prospectively to future payment obligations and retrospectively to determine the new Settlor's obligation for past payments. The amount due from the new Settlor for such past payments shall be paid within 30 days of receipt of notice from the Trustees of the amount due. In addition, following such qualification of a new Settlor, the required contributions and Individual Settlor Percentages of the existing Settlers shall be reduced pro rata according to the size of their Individual Settlor Percentages such that the new Individual Settlor Percentages of all Settlers total 100 percent. When the result of such recalculation of the existing Settlers' Individual Settlor Percentages is that existing Settlers are owed a credit on payments already made to the Trust, the Trustees shall elect, in their discretion, either to provide such existing Settlers with refunds from the Trust or with credit against any future payments still owed by the existing Settlers.

If funds are recovered through litigation instituted as provided in Section 4.09 of this Agreement, other than litigation to compel payment from an existing Settlor for failure to meet payment obligations under Sections 1.02 and 2.03 of this Agreement, the Trustees shall elect, in their discretion, either to distribute the funds recovered to the Settlers or to provide the Settlers with credit against any future payments still owed to or needed by the Trust to carry out its obligations, according

to the Settlers' Individual Settlor Percentages; provided, however, that if a Settlor withdraws from litigation pursuant to Section 4.09, such recovered funds are to be distributed or credited to the remaining Settlers pro rata according to their Individual Settlor Percentages.

The Trustees shall determine from time to time the amount necessary to satisfy reasonably anticipated future expenses necessary to fulfill the Settlers' obligations under the Consent Decree and this Trust Agreement. The Trustees shall then assess each Settlor a payment equal to each Settlor's Individual Settlor Percentage of the amount of anticipated future expenses.

2.04. PAYMENT TERMS. By its execution of this Trust Agreement, each Settlor agrees to satisfy all such contributions required under Attachment 1 hereto and any additional contribution demands made by the Trustees pursuant to Sections 2.02 and 2.03 within thirty (30) days of receipt of such written demand, it being understood and agreed that as to any required contributions which are not timely made, each late-paying Settlor will also be liable for and pay to the Trust interest on the unpaid amount, commencing on the 31st day after receipt of such written demand and ending on the date that payment is made, at the rate of 1 1/2% per month (or if such rate is determined to be usurious or otherwise impermissible, the highest rate permitted by law), together with expenses, attorneys' fees and costs incurred in collecting any past due amount.

2.05. CONTRIBUTIONS FROM PARTIES OTHER THAN SETTLORS. The Trustees are authorized on behalf of Settlers to receive contributions to the Trust from persons or entities other than Settlers, including but not limited to contributions from the ECC 468B Trust Fund. Upon the receipt of such payments, the Trustees shall promptly deposit such payments into the Trust Fund.

2.06. NO TRANSFERABILITY OF INTEREST IN THE TRUST. The interest of Settlers in the Trust, and their obligation to provide funds under Section 2.03, is not transferable, except to a successor.

2.07. TIME OF TERMINATION OF TRUST. Subject to Section 2.08, this Trust shall terminate on the first to occur of (i) December 31, 2019, or (ii) the time immediately preceding the expiration of 21 years after the death of the survivor of the following persons: John Jordan Kyle or Marion S. Bernstein, or (iii) when the Work, or Additional Work, if any, required under the Consent Decree has been certified by the U.S. EPA as completed pursuant to the terms of the Consent Decree.

2.08. DISTRIBUTION OF TRUST FUND UPON TERMINATION. Upon termination of this Trust, the Trustees shall liquidate the assets of the Trust and thereupon distribute the entire remaining Trust Fund assets, including all accrued, accumulated and undistributed net income, to the Settlers in shares equal to their respective Individual Settlor Percentages determined pursuant to Section 2.03

at the time of termination. Discharged or Defaulting Parties, as described in Section 2.03 above, shall not be eligible to receive any distributions under this Section.

2.09. SETTLORS' RETAINED RIGHTS. For purposes of taking any action under this Trust which requires the consent of or direction from the Settlers, the Trustees may act only upon the consent of those Settlers having fifty-one percent (51%) or more of the Individual Settlor Percentages, as noted on Attachment 1, as those percentages may be adjusted (1) pursuant to Section 2.03 hereof, or (2) for purposes of this Section only, and subject to the exception set forth below, to reflect the removal of those Settlers not making a timely contribution as required by Sections 1.02 and 2.04 (hereafter referred to as "Non-Contributing Settlers"), provided that no Settlor shall lose the right to vote its Individual Settlor Percentage due to nonpayment of a contribution required under Sections 2.02, 2.03 and 2.04 if (a) within thirty (30) days of receipt of the Trustees' written demand for contribution, the Settlor furnishes the Trustees with a written resolution by the Settlers' governing board or board of directors acknowledging an intention to make payment and (b) either the required payment or the Settlers' final total payment is made within ninety (90) days of receipt of the Trustees' written demand. Non-Contributing Settlers that fail to satisfy the requirements of the immediately preceding clause shall regain

their status as Settlers and their appropriate Individual Settlor Percentage upon paying the required contribution and interest as provided in Sections 2.02, 2.03 and 2.04.

2.10. ACTIONS REQUIRING CONSENT OR DIRECTION OF SETTLORS.

The following actions require the written consent or direction of the holders of 67% of the Individual Settlor Percentages:

1. Any alteration, amendment or revocation of this Trust Agreement. Action under this paragraph may only be taken after notice of all Settlers as provided in Section 5.04; provided, however, that at all times prior to any such alteration, amendment, revocation or termination as provided in Section 2.07, the Trustees shall retain their authority under this Trust Agreement to make all provisions necessary to effectuate the terms of the Consent Decree, subject to Subparagraph (2) below; and provided, further, however, that the alteration or amendment shall not affect any Individual Settlor Percentage set forth on Attachment 1 except as may be explicitly authorized by Section 2.03; and

2. All other decisions stated herein which are to be made by the holders of 67% of the Individual Settlor Percentages.

2.11. METHOD OF VOTING. Voting on any matter required or permitted to be decided by the Settlers under this Trust Agreement shall take place by submission to the Trustees of a written statement by each Settlor participating in the vote that sets forth the Settlor's vote on the issue in question. The Trustees, or any Settlor(s) who initiate(s) a request for a vote on an issue, must provide written notice pursuant to Section 5.04 to all Settlers that the vote will be taken; such notice must describe the issue to be voted upon, list the address to which the Settlers' written voting statements must be submitted, and provide

a deadline of no less than thirty (30) days by which the Settlers must cast their votes. Written notice of the result of each vote, including a statement of how each Settlor voted, shall be provided to the Settlers by the Trustees.

No vote shall be effective unless at least fifty-one percent (51%) of the total Individual Settlor Percentages (exclusive of the shares of Non-Contributing Settlers who are not entitled to vote) shall have been cast unless a greater majority is required as otherwise set forth herein. If a quorum has not participated in a particular vote, the Trustees or any Settlor may call for a second vote within forty-five (45) days after the deadline for the initial vote expires. Notice of a second vote shall be given in the manner described in the second sentence of the preceding paragraph, and shall state the results of the initial vote and explain why a second vote is required.

Notwithstanding the terms of the preceding two paragraphs, a vote may be taken in the case of an emergency through a telephone poll of the Settlers conducted by the Trustees or the Settlers requesting approval of the Majority Settlers for a particular action. In such an emergency situation, written confirmation of the vote and its outcome shall be provided to each Settlor by the Trustees as soon as practicable after the vote.

2.12. DUTIES OF TRUSTEES. The Trustees shall act on behalf of the Settlers, subject to the provisions of this Agreement, in the performance of all duties or obligations required of the Settlers under the Consent Decree with respect to the conduct,

management, or supervision of the Work at the Envirochem Site. This Agreement shall not be construed to confer upon Trustees any authority to carry on any business for profit or to divide the gains therefrom among the Settlers.

THIRD: TRUSTEES

The appointment of successor Trustees, provisions governing resignation and compensation of the Trustees, and the general rules governing the relationship of the Trustees as among themselves and as to interested or third parties are as follows:

3.01. DESIGNATION OF TRUSTEES. The Trust Fund will be administered by four (4) Trustees. The original Trustees of the Trust are as follows:

1. Norman W. Bernstein
2. John M. Kyle, III
3. Timothy L. Harker
4. Roy O. Ball

3.02. REPLACEMENT OF TRUSTEES. A Trustee may resign at any time upon providing sixty (60) days prior written notice of such resignation to all other Trustees; provided, however, that each Trustee agrees to continue to serve for a reasonable period of time to provide an opportunity for a successor Trustee to be named and qualified hereunder. A successor or substitute Trustee will be selected by the holders of 67% of the Individual Settlor Percentages. The Settlers shall move promptly to fill any vacancies among the four Trustee positions.

Any individual Trustee shall cease to be a Trustee of this Trust upon the existence of an inability of the individual Trustee to perform hereunder, or upon his death, resignation or adjudication as an incompetent, or at such time as he becomes unable to discharge the duties of Trustee.

Any Trustee may be removed at any time with or without cause by the written agreement of the holders of 67% of the Individual Settlor Percentages. A new Trustee shall be selected in the same manner as if the Trustee had resigned.

Any successor Trustee shall qualify by a duly acknowledged acceptance of this Trust, delivered to the other Trustees and to Settlers. Any successor Trustee shall have all the rights, powers, duties and obligations herein granted to the original Trustees.

3.03. EXONERATION FROM BOND. No bond or other security shall be exacted or required of any Trustee appointed by this Trust Agreement. Following at least thirty (30) days prior written notice to Settlers, the Trustees may acquire and pay from the Trust Fund any accident, liability, or other insurance, bonds, etc., reasonably necessary for the administration of this Trust, including insurance protecting the Trustees themselves from liability to third persons or to any Settlor.

3.04. COMPENSATION. The compensation of the Trustees for services performed by them as Trustees in their capacity as Trustees shall be such amount as the Settlers may hereafter determine and shall be paid from the Trust Fund. In addition, the

Trustees shall be entitled to be reimbursed from the Trust Fund for out-of-pocket expenses reasonably incurred in connection with the administration of this Trust. Payment to any firm or entity performing services for the Trust in which a Trustee may have an interest shall be governed by Section 4.06.

3.05. TRUST PROCEDURES. The Trustees shall determine the procedures by which they shall perform their duties. The Trustees may form subcommittees or designate individual Trustees to carry out specific duties. Pursuant to Section 4.11 below, the Trustees may designate a third party or third parties to be responsible for the day-to-day operation and administration of the Trust Fund and the performance of the duties assigned to the Trustees under this Agreement or the Consent Decree. The Trustees may permit voting by proxy (which may be another Trustee or any representative of an absent Trustee, but the appointing Trustee shall not thereby be released from his fiduciary obligations), meetings by telephone, and such other procedures as they shall decide in their discretion are appropriate.

3.06. DECISIONS OF TRUSTEES. In all matters the decision of a majority of the Trustees entitled to vote thereon shall control. The Trustees may vote orally at meetings or in telephone conferences among the Trustees, or in writing by mail. It is recognized that, in accordance with Section 4.06, matters may arise in which a given Trustee may have or appear to have an interest. In that event, that Trustee shall disqualify himself

from participation in that matter. In the event of a deadlock on a matter requiring a vote by the Trustees, the Trustees shall refer the matter for decision by Settlers.

3.07. ACCOUNTS. The Trustees shall present an accounting to Settlers within 45 days of the end of each six (6) month period ending on June 30 and December 31 respectively following the effective date of the Consent Decree. If fewer than 90 days exist between the effective date of the Consent Decree and the date on which the first accounting period described in the preceding sentence expires, the accounting for that initial period of fewer than 90 days may be combined with the first full six-month accounting owed to Settlers by the Trustees. The Notice procedures in Section 5.04 below shall be followed with respect to all such accounting reports. Each accounting shall show the financial condition of the Trust Fund, including, without limitation, income and expenses of the Trust Fund for the reporting period (including expenses incurred pursuant to Sections 3.03 and 3.04), and shall also include a narrative account of all activities related to the Facility that were paid by the Trust Fund during the reporting period. Each accounting shall also include cash flow projections for the next accounting period.

At the request of the holders of 67% of the Individual Settlor Percentages, the accounting of the Trustees shall be submitted for such professional accounting examination as the Majority Settlers may deem appropriate. If any Settlor objects to

the Trustees' accounts, it shall deliver written notice of its objection to the Trustees, and the Trustees shall promptly respond in writing to such objection.

No later than February 14 in each year in which this Trust Agreement is in effect, the Trustees shall provide each Settlor with such information as may be necessary to calculate that Settlor's tax liability or eligibility for tax deductions in connection with the Settlor's contributions to the Trust Fund. In addition to the foregoing, within thirty (30) days after each of the contribution deadlines set forth in written demands issued by the Trustees pursuant to Section 2.03, the Trustee shall prepare and mail to each Settlor a Schedule K-1 listing all Settlers of this Trust and the total amount of the then-current contributions of each, together with each Settlor's percentage share of the total Trust assets contributed by all Settlers. The accounting and other information required to be provided herein, may be provided by a bank or other financial institution selected by the Trustees to extent delegated by the Trustees.

3.08. LIABILITY. Each Trustee shall be liable only for acts or omissions involving willful bad faith or reckless disregard of his or her duties under this Trust Agreement. No Trustee shall be responsible for the acts or omissions of any prior Trustee, successor Trustee, or Co-Trustee. Nor, in particular, shall any Trustee be liable in regard to the exercise

or nonexercise of any powers and discretionary acts delegated by the Trustee or Trustees pursuant to the provisions of this Trust Agreement.

3.09. INDEMNITY OF TRUSTEES. Each Trustee, whether initially named or appointed as a successor Trustee, acts as a Trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustees or any of them hereunder in good faith, all persons shall look solely to the Trust and not to the Trustees personally. The Trustees shall not incur any liability, personal or corporate, of any nature in connection with any act or omission made in good faith in the administration of the Trust or otherwise pursuant to this Trust Agreement. Each Settlor agrees that the Trustees may use the funds in the Trust to purchase such insurance that is reasonably necessary to indemnify the Trustees from any and all liability that may arise out of this Trust, this Trust Agreement and the Trustee's good faith conduct as Trustees, excepting only such liability as may be imposed on the Trustees pursuant to Section 3.08. Additionally, the Trustees whether initially named or appointed as successor Trustees shall be indemnified and held harmless either by the Trust or by the Settlers, in the event insurance is unavailable or inadequate (in amount, scope of coverage or otherwise). This indemnification and hold harmless provision shall also cover all expenses reasonably incurred by such Trustee in defense of the aforementioned acts or omissions of the Trustees except that this indemnification shall not cover liability and expenses as may be imposed on the Trustees pursuant

to Section 3.08 hereunder. In the event a Trustee is sued for matters related to its service as Trustee, the Trust in the discretion of a disinterested majority of the Trustees (or if there be none, then by the vote of the Settlers) may be used to reimburse a Trustee for all or a portion of its expenses and costs of defending such suit, including reasonable attorneys' fees and the amount of any judgment or amount paid in settlement.

FOURTH: TRUSTEES' POWERS

The Trustees shall have, with respect to the Trust Fund, all powers granted to a Trustee or to a personal representative under the laws governing this Trust, except as limited by the following specific fiduciary powers, all of which are to be exercised by the Trustees in a fiduciary capacity in the best interests of this Trust and the Settlers, in the Trustees' discretion and in accordance with the terms of the Consent Decree, namely:

4.01. PAYMENT OF EXPENSES OF ADMINISTRATION. To incur and pay any and all charges, taxes and expenses upon or connected with the Trust Fund or in the discharge of their fiduciary obligations under this Trust Agreement.

4.02. INVESTMENT OF TRUST ESTATE. Consistent with this Trust's purpose as set forth in Section 1.01, to invest and reinvest all or any part of the Trust Fund, including any undistributed income therefrom, exclusively in the investments hereinafter listed: direct obligations of the United States, obligations guaranteed by agencies of the United States government, municipal or other bonds with at least an "A" rating,

trust funds which invest solely in United States direct or guaranteed obligations, bank accounts, certificates of deposit to the extent they are issued by banks insured by the federal government, and common trust funds or money market funds investing in short term insured or at least "A" rated municipal or other bonds.

Investments shall be sufficiently liquid to enable the Trust to fulfill the purpose of the Trust and to satisfy obligations as they become due. Nothing in this Section shall be construed as authorizing the Trustees to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Fund (or any part thereof) as may be reasonably prudent pending use of the Trust Fund for the purposes of this Trust.

4.03. EXTENSION OF OBLIGATIONS AND NEGOTIATION OF CLAIMS.

Except for the payment obligations set forth in Sections 1.02 and 2.04 or for such actions as may be inconsistent with the terms of the Consent Decree, and, subject to at least thirty (30) days' prior written notice to Settlers, the Trustees have the power to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as they shall determine to adjust, settle, compromise and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as they deem advisable.

4.04. REGISTRATION. To hold any bonds, securities and/or other property in the name of a nominee, in a street name, or by other title-holding device, with indication of a trust.

4.05. LOCATION OF ASSETS. To keep any property belonging to the Trust Fund at any place in the United States.

4.06. RETENTION AND REMOVAL OF PROFESSIONAL AND EMPLOYEE SERVICES. To employ attorneys, accountants, banks, custodians, engineers, contractors, clerks, investment counsel and agents or employees (including any firm or entity in which they may have an interest) as they shall deem advisable and to make such payments therefore as they shall deem reasonable for the implementation of the purposes of this Trust. The employment by the Trustees of a firm or entity in which a Trustee may have an interest shall not be deemed a conflict. In such a case, however, the Trustee having such an interest shall not participate in any decision regarding the compensation of such firm or entity. The Trustees shall have the authority to dismiss any agent, employee or professional for any reason or for no reason, except a reason prohibited by law.

Upon engagement of counsel by the Trustees, each Settlor agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Settlor, said counsel has a conflict of interest in performing legal services authorized by the Trustees and arising out of the ECC Site; (2) it will not claim or assert, either (a) based solely on said counsel's representation of any other person or entity in a matter pending as of the date of receiving notice of intent to

hire said counsel or in a matter subsequently commenced, or (b) based solely on said counsel's representation of the Trustees under the terms of this Agreement, that said counsel has a conflict of interest caused by the current or subsequent representation of the other person or entity unless the subject matter relating to said representation arises out of or is connected to the ECC Site and involves or could involve any confidential information or facts obtained from the Settlor during the term of this Agreement which have not been made available to other Settlers or their representatives; (3) in the event that any conflict develops in the performance of work authorized by the Trustees by said counsel and the performance of work authorized by a Settlor that has retained that counsel, the Settlor consents to that counsel's continued performance of the work authorized by the Trustees; and (4) if a Settlor fails to make any payments required by this Agreement, it will raise no objection to the continued representation by said counsel of the Trustees in connection with any legal services arising out of the ECC Site.

4.07. AUTHORITY TO REPRESENT SETTLORS. To represent Settlers with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority which has authority or attempts to exercise authority over the actions required by the Consent Decree or over any matter which concerns the Consent Decree or this Trust Agreement, provided that written notice of such matter is provided to the Settlers as soon as practicable. The provisions of this Section shall encompass, but

not be limited to, the Trustees' representation of Settlers in any Dispute Resolution procedures under Section XIII of the Consent Decree; in connection with the periodic reviews provided for in Section VIII of the Consent Decree; in any proceeding relating to force majeure as provided under Section XIII of the Consent Decree, and in any other proceedings or activities that have the potential of significantly affecting the amount of contributions owed by any Settlers to the Trust Fund. The foregoing authority to represent Settlers may be delegated by the Trustees to such persons as the Trustees designate. Any individual Settlor may, at its option, choose to represent itself directly in any such proceeding in lieu of being represented by the Trustees or their designee.

Nothing in this Section authorizes the Trustees to represent the Settlers in any matter that presents the potential for adjusting the Individual Settlor Percentages set forth in Attachment 1, except when such potential adjustments would be made pursuant to the provisions of Section 2.03.

4.08. ADVISORY COMMITTEES. To establish advisory committees composed of representatives of Settlers to serve for such period of time and for such purposes as the Trustees shall determine.

4.09. INSTITUTION OF LITIGATION. Subject to at least thirty (30) days prior written notice to the Settlers, unless emergency conditions require shorter advance notice, and solely in order to advance the purpose of the Trust Fund as described in

Section 1.01, to institute litigation in the name of the Trust on behalf of all Settlers, upon obtaining approval of or direction from the 67% of the Individual Settlor Percentage against any person or entity, including any person or entity that has failed, in whole or part, to make any payments owed in accordance with this Agreement or that has failed, in whole or part, to make any payments owed pursuant to the Environmental Conservation and Chemical Corporation Site Section 468B Trust Fund Agreement. The advance notice to Settlers by the Trustees regarding such litigation shall include an explanation of the proposed litigation's purpose and necessity, and a preliminary non-binding estimate of its anticipated cost. Settlers, by agreeing to this Trust Agreement, assign their right to such claims to the Trustees and authorize the Trustees to file suit in the name of the Trust upon obtaining the approval of the holders of 67% of the Individual Settlor Percentages concerning the institution of any such litigation; provided, however, that if the Trustees reach an affirmative decision not to institute such litigation or the holders of 67% of the Individual Settlor Percentages fail to approve such litigation, then nothing in this Section shall prevent any Settlor, at its option, from initiating such litigation in its own behalf.

Any Settlor may direct the Trustees to remove it as a party to any litigation initiated by the Trustees by providing written instructions to that effect to the Trustees; provided, however, that except as provided in the following sentence, nothing in this

Section limits the Trustees' entitlement to use of the Trust to pay the expenses incurred in such litigation. In the case of litigation proposed and commenced by the Trustees for the sole purpose of recovering damages or seeking some other type of affirmative monetary relief and not by way of defense, counterclaim or third party claim, (hereafter "a Trustee suit solely for monetary relief"), a Settlor that has directed the Trustees to remove it as a party to that suit will not be liable for any of the costs, fees or other expenses of the suit which are incurred after the date that the Trustees receive written notice that the Settlor will not be entitled to share in any amount recovered as a result of the suit. Whenever any Settlor has directed the Trustees to remove it as a party to a Trustee suit solely for monetary relief, the Trustees may not use the Trust to pay any fees, costs or other expenses incurred in connection with the suit after the date on which the Trustees received written notice that the Settlor has removed itself as a party to the suit. In such a case, the Trustees shall keep separate financial records regarding all fees, costs and other expenses incurred in connection with the suit after the date of receipt of written notice of a Settlor's withdrawal as a party, and those fees, costs and other expenses will be charged to the Settlers who remain parties to the suit in a share proportionate to their Individual Settlor Percentages as compared to the total Individual Settlor Percentages excluding the Individual Settlor Percentage of any Settlor who has removed itself as a party to the suit. Settlers

who remove themselves from litigation under the terms of this Section shall remain fully liable for all contributions owed to the Trust pursuant to Sections 1.02 and 2.03.

4.10. PERMITS AND APPROVALS. To apply for the issuance, assignment, or renewal of all necessary permits and approvals for performance of the Work (and Additional Work, if necessary) and to assure compliance with all obligations under such permits.

4.11. DELEGATION OF POWERS. To delegate to other persons such ministerial or other powers and duties as they may deem to be advisable.

4.12. DISCRETION IN EXERCISE OF POWERS. To do any and all other acts which they shall deem proper to effectuate the purposes to be served by this Trust Agreement.

4.13. POWERS OF TRUSTEES TO CONTINUE UNTIL FINAL DISTRIBUTION. The Trustees' powers shall continue until final distribution of the principal and income of the Trust Fund under Section 2.08, which shall occur as soon as possible after termination of the Trust.

FIFTH: MISCELLANEOUS

Miscellaneous Provisions applicable to this Trust Agreement are as follows:

5.01. HEADINGS. The section headings set forth in this Trust Agreement are inserted for convenience of reference only and shall be disregarded in the construction or interpretation of any of the provisions of this Trust Agreement.

5.02. PARTICULAR WORDS. Any word contained in the text of this Trust Agreement shall be read as the singular or plural as the context may require, and, unless otherwise specifically stated, the word "person" shall be taken to mean and include an individual, partnership, association, government entity, company, or corporation. Masculine gender shall include the feminine gender.

5.03. SEVERABILITY OF PROVISIONS. If any provision of this Trust Agreement or its application to any person or in any circumstances shall be held invalid or unenforceable, the application of such provision to any person in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Trust Agreement shall not be affected by such invalidity or unenforceability.

5.04. NOTICES UNDER THIS AGREEMENT. Any notice required by this Trust Agreement to be given to Settlers shall be deemed to have been properly given when mailed, postage prepaid, by registered or certified mail, to the persons to be notified as set forth by the Settlers in their Attachment 2 forms submitted at the time of making their contributions to the Trust Fund. Any Settlor may change that address by delivering notice thereof in writing to the Trustees. The Trustees shall endeavor to maintain a current listing of all Settlers' addresses, and shall make that listing available upon request to any Settlor. Any notice required by this Trust Agreement to be delivered to any other person shall be deemed to have been properly delivered when mailed, postage

prepaid, by registered or certified mail, to the person to be notified at the last known address of such person, according to the records of the Trustees.

All notices and payments required to be transmitted to the Trustees shall be sent to the following address unless the Trustees notify the Settlers otherwise: Norman W. Bernstein; Shea & Gould, 1775 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

5.05. COUNTERPARTS OF AGREEMENT. This Trust Agreement has been executed for the convenience of the parties hereto in counterparts, any one of which for all purposes shall be deemed to have the status of an executed original and all of which shall constitute but one and the same instrument.

5.06. GOVERNING JURISDICTION. This Trust is initially an Indiana trust and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Indiana. The Trustees may, however, at any time, change the situs of this Trust to another jurisdiction if such change has the prior approval of the 67% of the Individual Settlor Percentages. In such event, this Trust shall become a trust existing under the laws of such new jurisdiction and shall thereafter be administered in accordance with the laws of such new jurisdiction.

5.07. SUCCESSORS. Except as provided in Section 2.06, this Trust Agreement and the obligations created hereby shall not be transferable or assignable by any party hereto, and if any successor entity succeeds to the obligations of any party hereto

by operation of law, then this Trust Agreement shall be in all respects fully binding upon, and enforceable against, such successor entity.

5.08. CONSTRUCTION WITH CONSENT DECREE. This Trust Agreement shall be construed and interpreted in the context of the Consent Decree, and to the extent that the provisions hereof may conflict with those of the Consent Decree, the Consent Decree shall control.

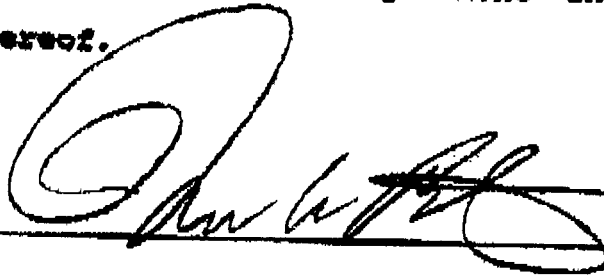
5.09. MISCELLANEOUS. The Settlers intend that this Trust be treated as a grantor trust for federal income tax purposes and that each Settlor, except any Discharged Party or Defaulting Party, shall be treated as the owner of that portion of the Trust equal to that Settlor's Individual Settlor Percentage as determined as of the end of each calendar year. The Trust shall operate on an accounting year which coincides with the calendar year. The interest of any Settlor in the Trust shall not be subject to anticipation or assignment nor to the claims of any creditor of any Settlor, and any interest reserved to any Settlor shall be made available to the Settlor only upon termination of this Trust pursuant to Section 4 herein.

5.10. NO ADMISSION. By executing this Trust Agreement, Settlers do not admit, accept or intend to acknowledge any liability or fault with respect to any matter arising out of or relating to the Envirochem Site.

5.11. EFFECTIVE DATE. The Trust Agreement shall be effective on the effective date of the Consent Decree. At such time, each Settlor that has submitted a signature page and has signed the Consent Decree shall be respectively deemed to have qualified as a Settlor under this Trust and shall be fully bound by its terms.

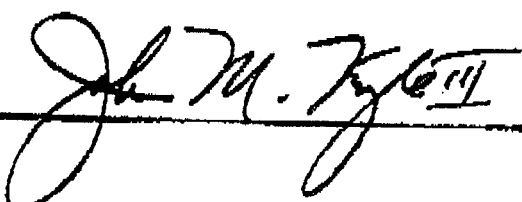
IN WITNESS WHEREOF, the undersigned, as Settlers, and the undersigned, as Trustees, have as of the day and year first above written, executed this Trust Agreement in agreement with the provisions thereof.

Attest:



Trustee

Attest:



Trustee

Attest:



Trustee

Attest:

Trustee

5.11. EFFECTIVE DATE. The Trust Agreement shall be effective on the effective date of the Consent Decree. At such time, each Settlor that has submitted a signature page and has signed the Consent Decree shall be respectively deemed to have qualified as a Settlor under this Trust and shall be fully bound by its terms.

IN WITNESS WHEREOF, the undersigned, as Settlers, and the undersigned, as Trustees, have as of the day and year first above written, executed this Trust Agreement in agreement with the provisions thereof.

Attest:

Timothy Harker

Trustee

Attest:

Trustee

Attest:

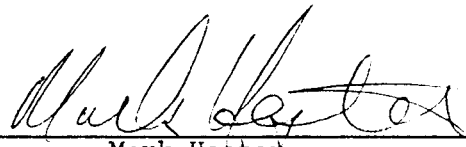
Trustee

Attest:

Trustee

SETTLOR'S CONSENT AND AUTHORIZATION

General Motors, by its duly authorized representative, hereby consents to the foregoing Trust Agreement and agrees to be bound by the terms and conditions thereof and be a Settlor thereof.

By: 
Mark Hester

Company: General Motors Corporation

Title: Attorney

Date: September 15, 1989

ATTACHMENT 1

NAME OF COMPANY	PAYMENT EXPECTED TO BE DUE PURSUANT TO SECTION 1.02*	PERCENTAGE
Ahlstrom Filtration, Inc. (Southern Specialties)	38,731	1.6418%
ALCOA (Aluminum Company of America Warrick Operations and Rea Magnet Wire Company)	126,563	5.3652%
American Telephone & Telegraph Company (and its subsid- iaries, including Western Electric Co., Inc.)	54,416	2.3067%
A. O. Smith Corporation	23,145	0.7692%
Arvin Industries, Inc.	119,637	5.0716%
Batesville Casket Company, Inc.	50,096	2.1236%
Beazer Materials and Services, Inc. (Koppers Company, Inc.)	59,004	2.5013%
Bemis Company, Inc. (Bemis Bag)	61,137	2.5917%
Bridgestone/Firestone, Inc. (Firestone Industrial Products)	64,029	2.7143%
Carpenter Body Works, Inc.	18,018	0.7638%
Chase Packaging Corporation (Chase Bag Company)	11,269	0.4777%
The Cincinnati Varnish Company (FOY-Johnston, Inc.)	26,209	1.1111%
Emhart Industries, Inc. (USM and Bailey)	56,147	1.9562%
Federal-Mogul Corporation	24,791	1.0509%
Federal-Mogul Corporation (Switches, Inc.)	3,438	0.1457%
Ford Motor Company	84,629	3.5875%
Freightliner Corporation	92,797	3.4039%
General Electric Company including RCA	117,222	4.9692%
General Motors Corporation (GKC-Delco Electronics/Delco)	277,329	11.7563%
H C Industries, Inc.	10,929	0.4633%
Honeywell, Inc.	72,372	3.0679%
Jones Chemicals, Inc.	104,001	3.8788%
The Kendall Company	76,342	3.2362%
Kimberly-Clark Corporation (Brown-Bridge Division)	50,127	2.1249%
Kurpees Coatings, Inc. (Louisville Varnish Company)	19,978	0.8469%
Lenk Company	92,515	3.9218%
Ludlow Corporation	114,673	4.3313%
Marathon Petroleum Company (Marathon Oil)	30,081	0.9572%
Marathon Pipe Line Company	37,161	1.2574%
Mobil Oil Corporation	88,065	3.7332%

Potter Paint Company of Indiana, Inc.....	16,163	0.4732%
Pratt & Lambert, Inc.....	60,451	2.5626%
RCA with GE.....	54,878	2.3264%
Solvents Recovery Service of New England & New Jersey (SRS and on behalf of C.R. Bard, Inc.).....	119,502	5.0659%
Standard Paints, Inc.....	11,010	0.3608%
Stolle Corporation.....	13,854	0.5873%
Union Carbide Chemicals and Plastics Company, Inc. (Union Carbide Corporation).....	78,584	3.3313%
Waste Research & Reclamation Company, Inc.....	56,996	2.2042%
Whittaker Corporation (Dayton Coatings and Chemicals).....	22,687	0.9617%

* Subject to final adjustment based on payments actually received from the 468B Trust Settlers

ATTACHMENT 2

ENVIRONMENTAL CONSERVATION AND CHEMICAL CORPORATION SITE
TRUST FUND

CONTRIBUTION FORM

TO: Environmental Conservation and Chemical Corporation Site
Trust Fund Trustees

1. The undersigned hereby contributes \$ _____ to the
Environmental Conservation and Chemical Corporation Site Trust
Fund.

2. For purposes of receiving any notices pursuant to Section
5.04 of the Trust Agreement, the address of the undersigned or its
authorized agent to receive said notices shall be as follows until
written notice to the contrary is delivered to the Trustees:

The undersigned does not hereby admit, accept, or intend to
acknowledge any liability or fault with respect to any matter
arising out of or relating to the Environmental Conservation and
Chemical Corporation Site.

Company

Signatory

Title of Signatory

Date

EXHIBIT D TO THE AFFIRMATION OF NORMAN W. BERNSTEIN
AND
CERTIFICATE OF SERVICE OF OBJECTION AND AFFIRMATION IN
SUPPORT OF OBJECTION

Notice of Assessment

Please take notice that on this 16th day of April 2009, pursuant to Sections 1.02, 2.03 and 2.04 of the Environmental Conservation and Chemical Corporation Trust Fund Agreement, the Trustees of the Environmental Conservation and Chemical Corporation Trust Fund (the "Trust"), hereby request payment to the Trust by each Trust Settlor of the amount set forth in Attachment 1.

Each payment may be made by check or by wire transfer. Wire transfer instructions are set forth below.

Name of Bank: Citibank N.A.
Bank Address: 1101 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
ABA Routing: #254070116
Account Number: 15183841
Account Name: Environmental Conservation Chemical
Corporation Trust Fund
Attention: Marilyn McKinnon

In order to insure proper credit of a wire transfer, please ask your bank to obtain and provide to you a "Fed. Reference Number" for your wire transfer.

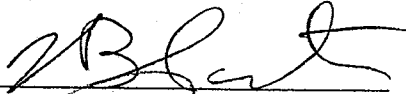
As provided in the Trust, each payment must be accompanied by a completed "Contribution Form". A copy of the form is attached as Attachment 2 to this Notice.


In the event payment is made by wire transfer, the Contribution Form should be sent to the offices of N.W. Bernstein & Associates LLC, 800 Westchester Avenue, Suite N319, Rye Brook, New York, 10573 accompanied by a copy of the wire transfer instruction that you sent to your bank and the Fed. Reference Number that you received from your bank. In that way, we can be sure that you receive credit for the wire transfer that you have sent.

In the event payment is made by check, the check should be made payable to the "Environmental Conservation and Chemical Corporation Trust Fund". The Contribution Form should physically accompany the check and both the check and contribution form should be sent to N.W. Bernstein & Associates, LLC at 800 Westchester Avenue, Suite N319, Rye Brook, New York, 10573.

The payment is due within thirty (30) days of your receipt of this notice.

Thank you.


W.C. Blanton, Trustee


Norman W. Bernstein, Trustee

ATTACHMENT 1

Company Name	Percentage	\$500,000
A.O. Smith Corporation	0.8191	\$4,096
Ahlstrom Filtration, Inc. (Southern Specialties)	1.7482	\$8,741
ALCOA (Aluminum Co. of America Warrick Operations and Rea Magnet Wire Company)	5.7128	\$28,564
American Telephone & Telegraph Co. (& its subsidiaries, including Western Electric Co., Inc.)	2.4562	\$12,281
Arvin Industries, Inc.	5.4002	\$27,001
Batesville Casket Company, Inc.	2.2612	\$11,306
Beamis Company, Inc. (Beamis Bag)	2.7596	\$13,798
Beazer Materials and Services, Inc. (Koppers Company, Inc.)	2.6633	\$13,317
Bridgestone/Firestone, Inc. (Firestone Industrial Products)	2.8902	\$14,451
Chase Packaging Corporation (Chase Bag Company) (Union Camp)	0.5086	\$2,543
Cintech Industrial Coatings, Inc. (Cincinnati Varnish)(Foy-Johnston, Inc.)	1.1832	\$5,916
Daimler Trucks North America LLC (formerly Freightliner, LLC)	3.6244	\$18,122
Emhart Industries, Inc. (USM and Bailey)	2.0830	\$10,415
Exxon Mobil (Mobil Oil Corporation)	3.9752	\$19,876
Ford Motor Company	3.8200	\$19,100
General Electric Company including RCA	5.2913	\$26,456
General Motors Corporation (GKC-Delco Electronics/Delco)	12.5182	\$62,591
H C Industries, Inc.	0.4933	\$2,467
Honeywell, Inc.	3.2667	\$16,333
Jones Chemical, Inc.	4.1302	\$20,651
Kimberly-Clark Corporation (Brown-Bridge Division)	2.2626	\$11,313
Kurpees Coatings, Inc. (Louisville Varnish Company)	0.9019	\$4,509
Ludlow Corporation (Tyco International Ltd.)	4.6120	\$23,060
Marathon Ashland Petroleum, LLC (Marathon Oil/Marathon Pipe Line Co.)	2.3581	\$11,790
Pratt & Lambert, Inc.	2.7288	\$13,644
RCA with GE	2.4771	\$12,385
S.C. Johnson, Inc. (Drackett-Lenk)	4.1761	\$20,880
Solvents Recovery Srv NJ (SRS & C.R. Bard)	1.5050	\$7,525
Standard Paints, Inc.	0.3841	\$1,921
Stolle Corporation	0.6254	\$3,127
The Kendall Company	3.4460	\$17,230
Union Carbide Chemicals and Plastics Company, Inc. (Union Carbide Corporation)	3.5473	\$17,736
Waste Research & Reclamation Company, Inc.	2.3471	\$11,736
Whittier Corporation (Dayton Coatings and Chemicals)	1.0241	\$5,120
	100.0005	\$500,000

ATTACHMENT 2

ATTACHMENT 2

ENVIRONMENTAL CONSERVATION AND CHEMICAL CORPORATION SITE
TRUST FUND

CONTRIBUTION FORM

TO: Environmental Conservation and Chemical Corporation Site Trust Fund Trustees

1. The undersigned hereby contributes \$ _____ to the Environmental Conservation and Chemical Corporation Site Trust Fund (by certified check or wire transfer).

2. For purposes of receiving any notices pursuant to Section 5.04 of the Trust Agreement, the address of the undersigned or its authorized agent to receive said notices shall be as follows until written notice to the contrary is delivered to the Trustees:

The undersigned does not hereby admit, accept, or intend to acknowledge any liability or fault with respect to any matter arising out of or relating to the Environmental Conservation and Chemical Corporation Site.

Company

Signatory

Title of Signatory

Date

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

GENERAL MOTORS
CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

CERTIFICATE OF SERVICE

I, Kathryn Whisenhunt, hereby certify that on this 18th day of June 2009, I caused a true copy of the Limited Objection of the Environmental Conservation and Chemical Corporation Site Trust Fund ("The Trust") to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-sponsored purchaser dated June 18, 2009, and the accompanying Affirmation in support thereof to be served on all registered parties through the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York and to the following via e-mail (where applicable) or by facsimile (where no e-mail address was available) and by first class mail as follows:

Weil, Gotshal & Manges LLP
Attn: Harvey R. Miller, Esq.,
Stephen Karotkin, Esq.,
Joseph H. Smolinsky, Esq.
767 Fifth Avenue
New York, NY 10153

Cadwalader, Wickersham & Taft, LLP
Presidential Task Force
Attn: John J. Rapisardi, Esq.
One World Financial Center
New York, NY 10281

Kramer Levin Naftalis & Frankel LLP
Attn: Gordon Z. Novod, Esq.,
Thomas Moers Mayer, Esq.
1177 Avenue of the Americas
New York, NY 10036

Cleary Gottlieb Steen & Hamilton, LLP
Attn: James L. Bromley, Esq.
One Liberty Plaza
New York, NY 10281

Cohen, Weiss and Simon, LLP
Attn: Babette Ceccotti, Esq.
330 W. 42nd Street
New York, NY 10036

Vedder Price, P.C.
Attn: Michael J. Edelman, Esq.,
Michael L. Schein, Esq.
1633 Broadway, 47th Floor
New York, NY 10019

Office of the United States Trustee for the
Southern District of New York
Attn: Diana G. Adams, Esq.
33 Whitehall Street, 21st Floor
New York, NY 10004

U.S. Attorney's Office
S.D.N.Y.
Attn: David S. Jones, Esq.,
Matthew L. Schwartz, Esq.
86 Chambers Street, 3rd Floor
New York, NY 10007

/s/ Kathryn Whisenhunt

Kathryn Whisenhunt
An Employee of N.W. Bernstein & Associates, LLC