

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, AND
ADMINISTRATOR, NEW JERSEY SPILL
COMPENSATION FUND,

Civil Action No. 2:26-CV-2846

Plaintiffs,

v.

FORD MOTOR COMPANY AND
THE BOROUGH OF RINGWOOD,

Defendants.

CONSENT DECREE

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I. BACKGROUND

1. Plaintiffs United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund (collectively referred to as “NJDEP”), filed a complaint in this matter under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and the New Jersey Spill Compensation and Control Act (“Spill Act”), N.J.S.A. 58:10-23.11 through 23.24.

2. The Plaintiffs in their complaint seek, inter alia: (1) reimbursement of costs incurred by EPA, the Department of Justice (“DOJ”), and NJDEP for response actions at the Ringwood Mines/Landfill Superfund Site in New Jersey (“Site”), together with accrued interest; and (2) performance by the defendants of a response action for Operable Unit 3 (“OU3”) of the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”) and state laws and regulations, as identified in this Consent Decree (“Decree”).

3. In accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified NJDEP on September 27, 2024 of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the OU3 Remedial Action for the Site, and EPA has provided NJDEP with an opportunity to participate in such negotiations and to be a party to this Decree.

4. In accordance with section 122(j)(1) of CERCLA, EPA notified the National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service (NJ Field Office), and New Jersey Department of Environmental Protection’s Office of Natural Resource Restoration on September 27, 2024 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under state and federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Decree.

5. The defendants that have entered into this Decree (“Settling Defendants”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

6. In accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40497.

7. In 1984, EPA entered into an Administrative Order on Consent (“AOC”) with Settling Defendant Ford to conduct a remedial investigation in accordance with 40 C.F.R. §300.430. In 1987, EPA issued a Unilateral Administrative Order (“UAO”) to Settling Defendant Ford to implement a feasibility study in accordance with 40 C.F.R. §300.430. That same year, EPA also issued a UAO to Settling Defendant Ford to conduct a removal action to address 7,000 cubic yards of paint sludge and associated soil from certain areas of the Site. In 1988, EPA issued

a Record of Decision selecting a long-term groundwater and surface water monitoring remedy (designated as Operable Unit 1) (“OU1 Record of Decision”). After five years collecting groundwater and surface water monitoring data, EPA determined that the OU1 remedy was completed in accordance with the OU1 Record of Decision. Thereafter, EPA deleted the Site from the NPL in 1994. 59 Fed. Reg. 54830 (November 2, 1994).

8. However, local residents identified additional paint sludge at the Site in 1995, 1998, and 2004, which was subsequently removed by Ford in each instance. In September 2005, EPA issued an AOC, CERCLA Docket No. 02-2005-2013, pursuant to sections 104, 107, and 122 of CERCLA, under which Ford agreed to perform a second remedial investigation. EPA also issued a UAO, CERCLA Docket No. 02-2005-2033, pursuant to section 106(a) of CERCLA to Settling Defendant Borough that same year, ordering it to participate and cooperate with Ford in implementing the second remedial investigation under the 2005 AOC.

9. Based on these discoveries of additional paint sludge, and in accordance with section 105 of CERCLA, EPA restored the Site to the NPL on September 27, 2006. 71 Fed. Reg. 56399 (September 27, 2006).

10. In May 2010, EPA issued a second AOC, CERCLA Docket No. 02-2010-2020, to Settling Defendant Ford under which Settling Defendant Ford agreed to perform an additional remedial investigation and feasibility study for certain areas of the Site. Again, EPA issued a concurrent UAO, CERCLA Docket No. 02-2010-2026, to Settling Defendant Borough ordering it to participate and cooperate with Settling Defendant Ford in implementing this latest remedial investigation and feasibility study.

11. In June 2014, EPA issued a Record of Decision selecting a capping remedy for the Peters Mine Pit, the Cannon Mine Pit, and the O’Connor Disposal Area, which are three source areas of contamination at the Site and are collectively designated as Operable Unit 2 (“OU2 Record of Decision”). The OU2 Record of Decision also provided for the option of a contingency remedy for the O’Connor Disposal Area.

12. In October 2014, EPA issued a third AOC, CERCLA Docket No. 02-2014-2025, to Settling Defendant Ford under which Settling Defendant Ford agreed to perform the remedial design for the OU2 remedy. Again, EPA issued a concurrent UAO, CERCLA Docket No. 02-2015-2001, to Settling Defendant Borough ordering it to participate and cooperate with Settling Defendant Ford in implementing the OU2 remedial design.

13. In April 2015, EPA issued an Explanation of Significant Differences (“ESD”) in accordance with section 117(c) of CERCLA documenting EPA’s decision to select the contingency remedy identified in the OU2 Record of Decision for the O’Connor Disposal Area. The ESD also documented wetland mitigation aspects of the contingency remedy.

14. On August 5, 2020, the United States District Court for the District of New Jersey entered the consent decree for the OU2 remedial action, executed by EPA, NJDEP, and the Settling Defendants. The OU2 remedial action consent decree provides for the implementation of the remedy selected in the OU2 Record of Decision.

15. In response to a release or a substantial threat of a release of hazardous substances at or from the Site related to Site-wide groundwater and mine water in the Peters Mine Pit Airshaft, designated Operable Unit 3 (“OU3”) of the Site, Settling Defendants completed a remedial investigation for OU3 on June 24, 2015, an “OU3 RI Report Addendum” on December 13, 2018, and a focused feasibility study for OU3 on December 18, 2019, in accordance with 40 C.F.R. § 300.430.

16. In accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), EPA published notice of the completion of the focused feasibility study for OU3 and of the proposed plan for remedial action for OU3 on January 30, 2020, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action for OU3. A copy of the transcript of the public meeting and comments received are available to the public as part of the administrative record upon which the Director of the Superfund and Emergency Management Division (“SEMD”), EPA Region 2, based the selection of the response action.

17. EPA selected a remedial action to be implemented for OU3 of the Site, which is embodied in a final Record of Decision (“OU3 Record of Decision”), executed on September 29, 2020, on which NJDEP has given its concurrence. The OU3 Record of Decision includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

18. EPA issued an AOC to Ford on September 30, 2021, CERCLA Docket No. 02-2021-2053, under which Ford is performing the remedial design for OU3. The Borough is cooperating with Ford and EPA in implementing the OU3 Remedial Design.

19. Based on the information currently available, EPA and NJDEP have each determined that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with the OU3 Record of Decision, the approved OU3 Remedial Design, this Decree, and its appendices. This Decree provides for the performance of the entire remedy selected in the OU3 Record of Decision. The Settling Defendants have reached an agreement among themselves, separate from this Decree, on an allocation of certain obligations imposed by this Decree. Plaintiffs, to facilitate settlement of potential contribution claims among the Settling Defendants and to expedite the implementation of the remedy selected in the OU3 Record of Decision, have agreed to the terms of this Decree that implement the Settling Defendants’ allocation. However, the Parties do not waive their position on the divisibility of the Site and whether liability under CERCLA is apportionable. Settling Defendants acknowledge that CERCLA and the Spill Act each impose joint and several liability.

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

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

II. JURISDICTION AND VENUE

21. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and section 113(b) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b) and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendants may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

III. PARTIES BOUND

22. This Decree is binding upon the United States and NJDEP and upon Settling Defendants and their successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of any Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Settling Defendants' obligations under this Decree. Settling Defendants' responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 87.

23. In any action to enforce this Decree, Settling Defendants may not raise as a defense the failure of any of their officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendants to take any action necessary to comply with this Decree. Settling Defendants shall provide notice of this Decree to each person representing Settling Defendants with respect to the Site or the Work. Settling Defendants shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

24. Nothing in this Decree limits any obligations that Settling Defendants have under other existing enforcement documents with or issued by EPA related to the Site.

IV. DEFINITIONS

25. Terms not otherwise defined in this Decree have the meanings assigned in CERCLA or in the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” or “Decree” means this consent decree and all appendices attached hereto (listed in Section XIX). If there is a conflict between a provision in Sections I through XXIV and a provision in any appendix or deliverable, the provision in Sections I through XXIV controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working

day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“FDIC” means the Federal Deposit Insurance Corporation.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between August 5, 2020 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendants’ performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 33.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 43 (Access to Financial Assurance); (vi) in taking response action described in ¶ 73 because of Settling Defendants’ failure to take emergency action under ¶ 4.4 of the SOW (Emergency Response and Reporting); (vii) in implementing a Work Takeover under ¶ 32; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XII (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after August 5, 2020 on EPA’s unreimbursed costs under section 107(a) of CERCLA. Future Response Costs does not include costs that Settling Defendants are currently obligated to pay under the consent decree for the remedial action for OU2, Civil Action No. 2:19-cv-12157, and the Administrative Settlement Agreement and Order on Consent for Remedial Design for OU3, CERCLA Docket No. 02-2021-2053.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means: (a) Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office); and (b) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (iii) provide information intended to modify or guide human behavior at or in connection with the Site; or (iv) any combination thereof.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“NJDEP” means the New Jersey Department of Environmental Protection and any successor departments or agencies of the State of New Jersey.

“NJDEP Future Cleanup and Removal Costs” means all costs, including direct and indirect costs, and State Interest on such costs, that NJDEP will incur after the Effective Date of the Consent Decree in connection with the Work.

“NJDEP Natural Resource Damages” means all claims arising from discharges at the Site that occurred prior to the effective date of this Decree, and that are recoverable by NJDEP as natural resource damages for injuries to natural resources under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 through -20; the Oil Pollution Act, 33 U.S.C. §§ 2701-2761; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601- 9675; the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 *et seq.*, or any other state or federal common law, statute, or regulation, and include:

a. The costs of assessing injury to natural resources, NJDEP Office of Natural Resource Restoration’s (“ONRR’s”) costs and fees, including costs and fees incurred to determine that Settling Defendants have complied with the requirements of this Decree (oversight costs), attorney’s fees, consultants and experts’ fees, other litigation costs, and interest, incurred prior to the Effective Date of this Decree; and

b. Compensation for the lost value of, injury to, or destruction of natural resources.

“NJDEP Natural Resource Damages” do not include:

a. Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;

b. Requirements to clean up any contamination as a result of discharges at the Site; or

c. The Settling Defendants’ continuing obligations to pay NJDEP’s oversight costs determined pursuant to N.J.A.C. 7:26C-4.7.

“NJDEP Past Cleanup and Removal Costs” means all costs, including direct and indirect costs, that NJDEP incurred before August 5, 2020 and the Effective Date of this Decree in connection with the Site, but not recoverable under the consent decree for the remedial action for OU2, Civil Action No. 2:19-cv-12157, and State Interest on such costs.

“Operation and Maintenance” or “O&M” means all activities required to operate, maintain, and monitor the effectiveness of the remedial action as specified in the SOW or in accordance with any EPA-approved O&M Plan.

“OU3 Record of Decision” means the EPA decision document that memorializes the selection of the remedial action relating to OU3 of the Site signed on September 29, 2020, by the Director of SEMD, EPA Region 2, and all attachments thereto. The Record of Decision is attached as Appendix A.

“OU3 Remedial Action” means the remedial action selected in the OU3 Record of Decision.

“OU3 Remedial Design” means those activities to be undertaken by Settling Defendants to develop plans and specifications for implementing the OU3 Remedial Action as set forth in the SOW.

“Owner Settling Defendant” means the following Settling Defendant who owns and controls all or a portion of the Site: the Borough of Ringwood, New Jersey.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, the New Jersey Department of Environmental Protection, the Administrator of the New Jersey Spill Compensation Fund, and Settling Defendants.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the OU3 Record of Decision.

“Plaintiffs” means the United States and NJDEP.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, (also known as the Resource Conservation and Recovery Act).

“RPM” means the EPA Remedial Project Manager.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ 1.3 of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendants” means collectively Settling Defendant Borough and Settling Defendant Ford. As used in this Decree, this definition means all settling defendants, collectively, and each settling defendant, individually.

“Settling Defendant Ford” means Ford Motor Company.

“Settling Defendant Borough” means the Borough of Ringwood, New Jersey.

“Site” means the Ringwood Mines/Landfill Superfund Site, comprising approximately 500 acres, located in the Borough of Ringwood, Passaic County, New Jersey, and depicted generally on the map attached as Appendix C.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of New Jersey.

“State Interest” shall mean the interest rate established by R. 4:42 of the then-current edition of the New Jersey Court Rules.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendants must perform to implement and maintain the effectiveness of the OU3 Remedial Action.

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

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous waste” under N.J.A.C. §7:26G-5.

“Work” means all obligations of Settling Defendants under Sections VI (Performance of the Work) through IX (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 32.

V. OBJECTIVES

26. The objectives of the Parties in entering into this Decree are to protect public health and welfare and the environment through the design, implementation, and maintenance of a response action at the Site by Settling Defendants, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendants as provided in this Decree.

VI. PERFORMANCE OF THE WORK

27. Settling Defendant Ford shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the OU3 Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

28. Settling Defendant Borough shall develop, implement, operate, maintain, and monitor the effectiveness of the OU3 Remedial Action in accordance with the SOW, any modified SOW, and all EPA-approved, conditionally approved or modified deliverables as required by the SOW or modified SOW.

29. Nothing in this Decree, and no EPA approval of any deliverable required under this Decree, constitutes a warranty or representation by EPA or NJDEP that completion of the Work will achieve the Performance Standards.

30. **Modifications to the Remedial Action and Further Response Actions**

a. Nothing in this Decree limits EPA's authority to modify the OU3 Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendants' rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the OU3 Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the OU3 Remedial Action, and such modification is consistent with the Scope of the Remedy, then, upon receipt of notice from EPA and subject to their right to initiate dispute resolution under Section XII within 30 days, Settling Defendants shall implement the modification as provided in ¶ 30.d.

c. If EPA selects a further response action for the Site because a reopener condition in ¶ 71 is satisfied, then, upon receipt of notice from EPA and subject to their right to initiate dispute resolution under Section XII within 30 days, Settling Defendants shall implement the further response action as provided in ¶ 30.d.

d. Settling Defendants shall implement the modification or further response action, subject to their right to initiate dispute resolution. Settling Defendants shall modify the SOW, or related work plans, or both in accordance with the OU3 Remedial Action modification, further response action, or final resolution of the dispute, whichever applies. The OU3 Remedial Action modification or further response action, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

e. Notwithstanding any other provision in ¶ 30, any modification to implement an amendment to the OU3 Record of Decision that "fundamentally alters the basic features" of the OU3 Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) shall be considered a material modification under, and may only be implemented in accordance with, ¶ 87.

31. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendants' obligations to comply with all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU3 Record of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

32. **Work Takeover**

a. If EPA determines that Settling Defendants (i) have ceased to perform any of the Work required under this Section; (ii) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) are performing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a written notice of Work Takeover to Settling Defendants, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendants must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendants do not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Settling Defendants and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XII but shall terminate the Work Takeover if: (i) Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XII (Dispute Resolution), EPA is required to terminate the Work Takeover.

VII. PROPERTY REQUIREMENTS

33. **Agreements Regarding Access and Noninterference**

a. As used in this Section, "Affected Property" means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource-use restrictions; Institutional Controls; or any combination thereof, are needed to implement the OU3 Remedial Action.

b. Settling Defendants shall use best efforts to secure from the owner(s), other than an Owner Settling Defendant and Owner Settling Plaintiff NJDEP, of all Affected Property, an agreement, enforceable by Settling Defendants and by Plaintiffs, requiring such owner to provide Plaintiffs and Settling Defendants, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner's property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;
- (2) conducting investigations of contamination at or near the Site;

- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 33.b must commit the owner to refrain from using its property in any manner that EPA or NJDEP determines will pose an unacceptable risk to public health or welfare or the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the OU3 Remedial Action, including the following:

- (1) engaging in activities that could interfere with the OU3 Remedial Action:
- (2) using contaminated groundwater;
- (3) engaging in activities that could result in human exposure to contaminants in soils and groundwater:
- (4) constructing new structures that may interfere with the OU3 Remedial Action; and
- (5) constructing new structures that may cause an increased risk of inhalation of contaminants.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendants would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements.

e. Settling Defendants shall provide to EPA and NJDEP a copy of each agreement required under ¶ 33.b. If Settling Defendants cannot accomplish what is required through best efforts in a timely manner, they shall notify EPA and NJDEP and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendants or take independent action to obtain such access or use restrictions.

34. Access and Noninterference by Owner Settling Defendant and Owner Settling Plaintiff NJDEP. Owner Settling Defendant and Owner Settling Plaintiff NJDEP shall:
(a) provide Plaintiffs and Settling Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site to conduct any activity regarding the Decree, including those listed in ¶ 33.c; (b) refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment because of exposure to Waste Material, or will interfere with or adversely affect the

implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 33.c. and (c) record Institutional Controls if required by the OU3 Remedial Action.

35. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are appropriate, Settling Defendants shall cooperate with EPA's and NJDEP's efforts to secure and ensure compliance with such Institutional Controls.

36. Notice to Successors-in-Title

a. Owner Settling Defendant shall, within 15 days after the Effective Date, submit for EPA approval a notice to be recorded regarding its property at the Site in the appropriate land records. The notice must: (1) include a proper legal description of the property; (2) provide notice to all successors-in-title: (i) that the property is part of, or affected by, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Decree was filed, the name and civil action number of this case, and the Effective Date of the Decree. Owner Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Defendant shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier:

- (1) notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the Decree (identifying the name and civil action number of this case and the date the Court entered the Decree); and
- (2) notify EPA and NJDEP of the name and address of the proposed transferee and provide EPA and NJDEP with a copy of the notice that it provided to the proposed transferee.

37. Notwithstanding any provision of the Decree, EPA and NJDEP retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

VIII. FINANCIAL ASSURANCE

38. To ensure completion of the Work required under Section VI, Settling Defendant Ford shall secure financial assurance, initially in the following amounts, as follows: (i) \$1,229,000 ("Estimated Cost of the Work Excluding O&M"), for the benefit of EPA; and (ii) \$2,184,000 ("Estimated Cost of the O&M") for the benefit of NJDEP. The financial assurance

must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA, except that the financial assurance for the Estimated Cost of the O&M shall not be in the form provided in Paragraphs 38(e) or (f) and the financial assurance for the Estimated Cost of the Work Excluding O&M shall not be in the form provided in Paragraph 38(g); and (ii) for the Estimated Cost of the Work Excluding O&M, be satisfactory to EPA and, for the Estimated Cost of the O&M, be satisfactory to NJDEP. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendant Ford may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment to EPA of the Estimated Cost of the Work Excluding O&M, performance of the Work (excluding O&M), or both, and to NJDEP of the Estimated Cost of the O&M, that is issued by a surety company among those listed as acceptable sureties on federal bonds and licensed in the State of New Jersey as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit for the Estimated Cost of the Work Excluding O&M, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit, and whose letter-of-credit operations are regulated and examined by a federal or state agency; and an irrevocable letter of credit for the Estimated Cost of the O&M, payable to NJDEP or at the direction of NJDEP, that is issued by an entity that has the authority to issue letters of credit, and whose letter-of-credit operations are regulated and examined by a federal agency or the State of New Jersey, and licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey;

c. a trust fund for the Estimated Cost of the Work Excluding O&M, established for the benefit of EPA, that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and a trust fund for the Estimated Cost of the O&M, established for the benefit of NJDEP, that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated by the State of New Jersey and who is not the person responsible for conducting the remediation, including O&M;

d. a policy of insurance for the Estimated Cost of the Work Excluding O&M that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency; and a policy of insurance for the Estimated Cost of O&M that provides NJDEP with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the State of New Jersey and is licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey;

e. a demonstration by Settling Defendant Ford that it meets the relevant test criteria of ¶ 39, accompanied by a standby funding commitment that requires Settling Defendant

Ford to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover;

f. a guarantee to fund or perform the Work excluding O&M executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Settling Defendant; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 39;

g. a line of credit for the Estimated Cost of the O&M, payable to NJDEP or at the direction of NJDEP, that is issued by an entity that has the authority to issue lines of credit and whose line-of-credit operations are regulated and examined by a federal agency or the State of New Jersey, and licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey.

39. If Settling Defendant Ford seeks to provide financial assurance for the Estimated Cost of the Work Excluding O&M by means of a demonstration or guarantee under ¶ 38.e or 38.f, it must, within 30 days after the Effective Date:

a. demonstrate that:

(1) Settling Defendant Ford or its guarantor has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work Excluding O&M and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work Excluding O&M and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Settling Defendant Ford or its guarantor has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and

- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work Excluding O&M and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work Excluding O&M and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for Settling Defendant Ford or its guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of lodging of this Decree, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

40. If Settling Defendant Ford is providing financial assurance by means of a demonstration or guarantee under ¶ 38.e or 38.f, Settling Defendant Ford must also:

- a. annually resubmit the documents described in ¶ 39.b within 90 days after the close of Settling Defendant Ford's or the guarantor's fiscal year;
- b. notify EPA within 30 days after Settling Defendant Ford or the guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of Settling Defendant Ford or its guarantor in addition to those specified in ¶ 39.b; EPA may make such a request at any time based on a belief that Settling Defendant Ford or the guarantor may no longer meet the financial test requirements of this Section.

41. Settling Defendant Ford has selected, and EPA has found satisfactory, a surety bond as an initial form of financial assurance for the Estimated Cost of the Work Excluding O&M, and Settling Defendant Ford has selected, and NJDEP has found satisfactory, a surety bond as an initial form of financial assurance for the Estimated Cost of the O&M. Within 30 days after the Effective Date, Settling Defendant Ford shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance for the Estimated Cost of the Work Excluding O&M and NJDEP's approval of financial assurance for the Estimated Cost of the O&M, and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, to EPA, and to NJDEP.

42. Adequacy of Financial Assurance

a. Settling Defendant Ford shall diligently monitor the adequacy of the financial assurance. If Settling Defendant Ford becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant Ford shall notify EPA and NJDEP of such information within seven days. If EPA determines that the financial assurance for the Estimated Cost of the Work Excluding O&M provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, or if NJDEP determines that the financial assurance for the Estimated Cost of the O&M is inadequate or otherwise no longer satisfies the requirements of this Section, EPA or NJDEP, as appropriate, will notify Settling Defendant Ford of such determination. Settling Defendant Ford shall, within 30 days after notifying EPA and NJDEP or receiving notice from EPA or NJDEP under this Paragraph, secure and submit to EPA or NJDEP, as appropriate, for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA or NJDEP, as appropriate, may extend this deadline for such time as is reasonably necessary for Settling Defendant Ford, in the exercise of due diligence, to secure and submit to EPA or NJDEP, as appropriate, a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendant Ford shall follow the procedures of ¶ 44 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant Ford's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

b. Settling Defendant Ford shall submit to NJDEP annually from the date that the financial assurance for the Estimated Cost of the O&M is established under ¶ 41 an estimate of the future costs to operate, maintain and inspect the engineering controls components of the selected remedy implemented under this Decree. If Settling Defendant Ford is maintaining a trust fund, line of credit, surety bond, or a policy of insurance as financial assurance for the Estimated Cost of the O&M, Settling Defendant Ford shall also annually provide to NJDEP a written statement from the trustee, lender, surety, or insurance company confirming the current value of the mechanism and confirming that the mechanism shall continue to remain in effect for the next consecutive 12-month period.

43. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 32.b with respect to the Work excluding O&M, then, in accordance with any applicable financial assurance mechanism, including the related standby funding commitment, EPA may require that any funds guaranteed be paid in accordance with ¶ 43.f.

b. If EPA issues a notice of a Work Takeover under ¶ 32.b with respect to O&M, then NJDEP, in accordance with any applicable financial assurance mechanism is entitled to: (1) the performance of the O&M by another party; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 43.f.

c. If EPA or NJDEP is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Settling Defendant Ford fails to provide an

alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 43.f.

d. If, upon issuance of a notice of a Work Takeover under ¶ 32.b with respect to the Work excluding O&M, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work excluding O&M; or (2) the financial assurance is a demonstration or guarantee under ¶ 38.e or 38.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work excluding O&M to be performed. Settling Defendant Ford shall, within seven days after such demand, pay the amount demanded as directed by EPA.

e. If, upon issuance of a notice of a Work Takeover under ¶ 32.b with respect to O&M, NJDEP is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, for the O&M, then NJDEP is entitled to demand an amount, as determined by NJDEP, sufficient to cover the cost of the remaining O&M to be performed. Settling Defendant Ford shall, within ten (10) days of such demand, pay the amount demanded as directed by NJDEP.

f. Any amounts required to be paid under this ¶ 43 must be, as directed by EPA and/or NJDEP, as appropriate: (i) paid to EPA in order to facilitate the completion of the Work excluding O&M by EPA, and/or to NJDEP to facilitate the completion of the O&M by NJDEP, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work excluding O&M and/or the O&M by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

44. Modification of Amount, Form, or Terms of Financial Assurance. Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendant Ford may submit a request to change the form, terms, or amount of the financial assurance mechanism or mechanisms. Any such request must be submitted to EPA and NJDEP in accordance with ¶ 41, and must include an estimate of the cost of the remaining Work, including the O&M, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA, or NJDEP if the request concerns the Estimated Cost of the O&M, will notify Settling Defendant Ford of its decision regarding the request. Settling Defendants may initiate dispute resolution under Section XII regarding EPA's or NJDEP's decision, as appropriate, by the earlier of 30 days after receipt of EPA's or NJDEP's decision or 180 days after EPA's and NJDEP's receipt of the request. Settling Defendant Ford may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval, or NJDEP's approval if the request concerns the Estimated Cost of the O&M; or (b) in accordance with any resolution of a dispute under Section XII. Settling Defendant Ford shall submit to EPA or NJDEP, as appropriate, within 30 days after receipt of EPA's or NJDEP's approval, as appropriate, or

consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

45. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendant Ford may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA, in consultation with NJDEP, issues a Certification of Work Completion under ¶ 4.9 of the SOW (Certification of Work Completion); (b) in accordance with EPA's approval, in consultation with NJDEP, of such release, cancellation, or discontinuation of financial assurance for the Estimated Cost of the Work Excluding O&M, or NJDEP's approval, in consultation with EPA, of such release, cancellation, or discontinuation of financial assurance for the Estimated Cost of the O&M; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XII.

IX. INDEMNIFICATION AND INSURANCE

46. Indemnification

a. Plaintiffs do not assume any liability by entering into this Decree or by virtue of any designation of any Settling Defendant as EPA's and NJDEP's authorized representative under section 104(e)(1) of CERCLA. Settling Defendants shall indemnify and save and hold harmless Plaintiffs and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendants' behalf or under their control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendants as EPA's and NJDEP's authorized representatives under section 104(e)(1) of CERCLA. Further, each Settling Defendant agrees to pay Plaintiffs all costs they incur including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful acts or omissions of such Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under with this Decree. Plaintiffs may not be held out as parties to any contract entered into by or on behalf of Settling Defendants in carrying out activities under this Decree. The Settling Defendants and any such contractor may not be considered an agent of Plaintiffs.

b. Each Plaintiff shall give Settling Defendants notice of any claim for which such Plaintiff plans to seek indemnification in accordance with this ¶ 46, and shall consult with Settling Defendants prior to settling such claim.

47. Settling Defendants covenant not to sue and shall not assert any claim or cause of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendants shall indemnify and save and hold Plaintiffs harmless with respect to any claims for damages or reimbursement arising from or on account of any contract,

agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of work at or relating to the Site, including claims on account of construction delays.

48. **Insurance.** Settling Defendant Ford shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name Plaintiffs as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendants under this Decree. Settling Defendant Ford shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ 4.7 of the SOW (Certification of Remedial Action Completion). In addition, for the duration of this Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Decree. Prior to commencement of the Work, Settling Defendant Ford shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant Ford shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant Ford demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant Ford need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendants shall ensure that all submittals to EPA under this Paragraph identify the Ringwood Mines/Landfill Superfund Site, Ringwood, New Jersey and the civil action number of this case.

X. PAYMENTS FOR RESPONSE COSTS

49. **Payment for NJDEP Past Cleanup and Removal Costs.** Within 45 days after the Effective Date, Settling Defendant Ford shall pay to the State \$31,292.56 in reimbursement of NJDEP Past Cleanup and Removal Costs. Payment shall be made in accordance with ¶ 50.c (Payment of NJDEP Future Cleanup and Removal Costs).

50. Payments by Settling Defendant Ford for Future Response Costs and NJDEP's Future Cleanup and Removal Costs and Stipulated Penalties

a. **Periodic Bills.** On a periodic basis, EPA will send Settling Defendant Ford a bill for Future Response Costs, including an "e-Recovery Report" listing direct costs paid by EPA and DOJ, and related indirect costs. Settling Defendant Ford may initiate dispute resolution regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendant Ford must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendant Ford shall pay the bill, or if it initiates dispute resolution, the uncontested portion of the bill, if any, within 45 days after receipt of the bill. Settling Defendant Ford shall pay the contested portion of the bill determined to be owed, if any, within 45 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendant Ford shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link and including references to the Site/Spill ID and DJ numbers listed in ¶ 85 and the purpose of the payment. Settling Defendant Ford shall send notices of this payment to DOJ and EPA in accordance with ¶ 85.

c. **Payment of NJDEP Future Cleanup and Removal Costs and Stipulated Penalties.** Settling Defendant Ford shall reimburse NJDEP for all NJDEP Future Cleanup and Removal Costs. NJDEP will periodically bill Settling Defendant Ford for these costs. Settling Defendant Ford shall pay such amounts, and any stipulated penalties, to NJDEP by check made payable to the “Treasurer, State of New Jersey” and remitted with the applicable invoice furnished by NJDEP to the Division of Revenue and Enterprise Services at the address stated on said invoice or otherwise provided by Plaintiffs.

d. **Contesting NJDEP Future Cleanup and Removal Costs.**

- (1) Settling Defendant Ford may contest NJDEP Future Cleanup and Removal Costs by submitting a written request to NJDEP, within forty-five (45) days after the billing date indicated on the cost invoice Settling Defendant Ford received from NJDEP. Settling Defendant Ford shall include the following information in a request for an oversight cost review:
 - i. A copy of the invoice;
 - ii. Payment of all uncontested charges; and
 - iii. A list of the specific cost charges contested.
- (2) Settling Defendant Ford shall send to NJDEP, as provided in Section XVIII (Notices and Submissions):
 - i. a copy of the transmittal letter and check paying the uncontested NJDEP Future Cleanup and Removal Costs;
 - ii. the factual questions at issue in each of the contested charges;
 - iii. the name, mailing address, email address, and telephone number of the person making the request; and
 - iv. information supporting the request or other written documents relied upon to support the request.

- (3) If any information required by the above or the payment required by ¶ 50.d(1)ii is not included in the request for a cost review, NJDEP shall deny the request.
- (4) Upon NJDEP's receipt of a request for a cost review, NJDEP shall attempt to resolve any of the factual issues in dispute. If NJDEP determines that a billed cost was incorrect, NJDEP shall adjust the cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.
- (5) NJDEP's decision shall be binding on Settling Defendant Ford unless, within ten (10) days after receipt of the decision, Settling Defendant Ford files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Decree.
- (6) If NJDEP prevails in the dispute, Settling Defendant Ford shall pay the sums due (with accrued State Interest) to NJDEP within fourteen (14) days after the resolution of the dispute. If Settling Defendant Ford prevails concerning any aspect of the contested costs, Settling Defendant Ford shall pay that portion of the costs (plus associated accrued State Interest) for which it did not prevail to NJDEP within seven (7) days after the resolution of the dispute. All payments to NJDEP under this Paragraph shall be made in accordance with ¶ 50.c (Payment of NJDEP Future Cleanup and Removal Costs). The dispute procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Defendant Ford's obligation to reimburse NJDEP for NJDEP Future Cleanup and Removal Costs. If Settling Defendant Ford does not file a request for a cost review within forty-five (45) days after the billing date shown on the invoice for NJDEP's costs, the full amount of the costs shall be due and owing. If the invoice is not paid, NJDEP may avail itself of such remedies or sanctions available to NJDEP by virtue of Settling Defendant Ford's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 65 (Demand and Payment of Stipulated Penalties).

51. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶ 50.b in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

XI. FORCE MAJEURE

52. “Force majeure,” for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendants, of any entity controlled by them, or of their contractors that delays or prevents the performance of any Work despite Settling Defendants’ best efforts. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendants exercise “best efforts” to perform the Work includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that any adverse effects are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

53. Claims of Force Majeure.

a. If any event occurs for which Settling Defendants will or may claim a force majeure, they shall notify EPA’s Project Coordinator by email. The deadline for the notice is within 24 hours after Settling Defendants first knew or should have known that the event would likely delay or prevent performance. Settling Defendants are deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendants knew or should have known.

b. To assert a claim of force majeure, Settling Defendants must submit, within seven days after the notice under ¶ 53.a, a further notice to EPA and NJDEP that includes: (1) a description of the event and its effect on the implementation of the Work; (2) a description of all actions taken or to be taken to minimize the adverse effects of the event; (3) a description of and an explanation for the requested excuse or extension; (4) a statement as to whether, in the opinion of Settling Defendants, the event may cause or contribute to an endangerment to public health or welfare or the environment; and (5) all available proof supporting the claim of force majeure.

c. Failure to submit timely or complete notices under ¶ 53.a or 53.b regarding an event precludes Settling Defendants from asserting a claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure and whether Settling Defendants have exercised their best efforts under ¶ 52.

54. EPA, after a reasonable opportunity for review and comment by NJDEP, will notify Settling Defendants of its determination whether Settling Defendants are entitled to relief under ¶ 52, and, if so, the excuse of the obligation, or the extension of time for performance of the portion of the Work affected by the force majeure. Any such excuse or extension does not, of itself, excuse or extend the time for performance of any other Work. Settling Defendants may initiate dispute resolution regarding EPA’s determination. In any such proceeding, Settling Defendants have the burden of proving that they are entitled to relief under ¶ 52 and that their proposed excuse or extension is warranted under the circumstances.

55. The failure by EPA to timely complete any activity under the Decree is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendants from timely completing any Work, Settling Defendants may seek relief under this Section.

XII. DISPUTE RESOLUTION

56. Unless otherwise provided in this Decree, Settling Defendants must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendants shall not initiate a dispute challenging the OU3 Record of Decision. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

57. A dispute will be considered to have arisen when one or more parties sends a timely written notice of dispute (“Notice of Dispute”). A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute, or within 15 days in the case of a force majeure determination. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute arises, unless the parties to the dispute otherwise agree. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Settling Defendants initiate formal dispute resolution under ¶ 58. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

58. Formal Dispute Resolution

a. **Statements of Position.** Settling Defendants may initiate formal dispute resolution by serving on the Plaintiffs, within 20 days after the conclusion of informal dispute resolution under ¶ 57, an initial Statement of Position regarding the matter in dispute. New Jersey may elect in its sole discretion to participate in the dispute resolution procedures established in this paragraph by submitting a statement of position. One or both of the Plaintiffs’ responsive statement(s) of position are due within 20 days after receipt of the initial statement of position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 14 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** An EPA management official at the level of the Deputy Director of SEMD, EPA Region 2, or, at the sole discretion of EPA, someone occupying a higher position, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendants unless they timely seek judicial review under ¶ 59.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

59. **Judicial Review**

a. Settling Defendants may obtain judicial review of the Formal Decision by filing, within 20 days after receiving it, a motion with this Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the OU3 Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 32; (iv) determinations about financial assurance under Section VIII; (v) whether a reopener condition under ¶ 71 is satisfied, including whether the OU3 Remedial Action is not protective of public health or welfare or the environment; (vi) EPA's selection of modified or further response actions; (vii) any other items requiring EPA approval under the Decree; and (viii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendants bear the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 59.b is governed by applicable principles of law.

60. **Escrow Account.** For disputes regarding a Future Response Cost billing or NJDEP Future Cleanup and Removal Cost billing, Settling Defendant Ford shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC; (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs or NJDEP Future Cleanup and Removal Costs; and (c) send to EPA and NJDEP, in accordance with ¶ 85, copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA or NJDEP may, in either agency's unreviewable discretion, waive the requirement to establish the escrow account for its own costs. Settling Defendant Ford shall cause the escrow agent to pay the amounts due to EPA and/or NJDEP under ¶ 50, if any, by the deadline for such payment in ¶ 50. Settling Defendant Ford is responsible for any balance due under ¶ 50 after the payment by the escrow agent.

61. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 64.

XIII. STIPULATED PENALTIES

62. Unless the noncompliance is excused under Section XI (Force Majeure), Settling Defendants are liable to the United States and/or NJDEP, whichever party demands stipulated penalties as provided in Paragraph 64, for the stipulated penalties in this paragraph, subject to the following specifications. Settling Defendant Ford shall be liable for stipulated penalties

associated with all compliance milestones listed in ¶ 62.a. Settling Defendant Borough shall be liable for stipulated penalties associated with the compliance milestones listed in ¶¶ 62.a.(iii) and (v)-(ix) if Settling Defendant Borough failed to timely respond to submissions by Settling Defendant Ford to Settling Defendant Borough for its review provided there was a reasonable time period for Settling Defendant Borough to respond to submissions from Settling Defendant Ford.

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,500
15th through 30th day	\$3,000
31st day and beyond	\$4,500

a. for any failure:

(i) to pay any amount due under Section X;

(ii) to establish and maintain financial assurance in accordance with Section VIII;

(iii) to submit timely or adequate deliverables under Section 6 of the SOW;

(iv) award a remedial action contract in accordance with ¶ 7.2 of the SOW;

(v) submission of a satisfactory Remedial Action Work Plan in accordance with ¶¶ 4.1 and 7.2 of the SOW;

(vi) start of construction in accordance with ¶ 7.2 of the SOW;

(vii) submission of a satisfactory O&M plan in accordance with ¶ 6.7(h) of the SOW;

(viii) implementation of Institutional Controls in accordance with ¶ 7.2 of the SOW;
and

(ix) submission of a satisfactory Remedial Action Report in accordance ¶¶ 4.6(d), (e) and (f) and 7.2 of with the SOW:

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 62.a:

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

63. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendant Ford is liable for a stipulated penalty in the amount of \$1,000,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 43 (Access to Financial Assurance) to fund the performance of the Work by EPA.

64. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Separate penalties may accrue simultaneously for separate noncompliances with this Decree. Stipulated penalties accrue regardless of whether a Settling Defendant has been notified of its noncompliance, and regardless of whether a Settling Defendant has initiated dispute resolution under Section XII, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ 6.6 of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency;

b. with respect to a deficient initial submission under ¶ 6.6(a) of the SOW if the deficiency is corrected in the resubmitted submittal under ¶ 6.6(b) of the SOW;

c. with respect to a matter that is the subject of dispute resolution under Section XII, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that a Settling Defendant's reply thereto (if any) is received until the date of the Formal Decision under ¶ 58.b; or

d. with respect to a matter that is the subject of judicial review by the Court under ¶ 59, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

65. **Demand and Payment of Stipulated Penalties.** EPA may send a Settling Defendant a demand for stipulated penalties. NJDEP may also send Settling Defendant Ford demand for stipulated penalties for any failure to comply with ¶¶ 62.a.(i) or 62.a.(ii). The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. A Settling Defendant may initiate dispute resolution regarding EPA's demand, or NJDEP's demand under ¶ 62.a(i) or 62.a(ii), within the 45-day period. The Settling Defendant that receives a demand shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 45 days after receipt of the demand. The Settling Defendant that receives the demand shall pay the contested portion of the penalties determined to be owed, if any, within 45 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest or State Interest, as appropriate, accrued from the date of receipt of the demand through the date of payment. The Settling Defendant that receives the demand shall make payment to EPA at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID and DJ numbers listed in ¶ 85, and the purpose of the payment. The Settling Defendants shall send a notice of this

payment to DOJ and EPA, in accordance with ¶ 85. All payments to NJDEP under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 50.c. The payment of stipulated penalties and Interest or State Interest, as appropriate, if any, does not alter any obligation by Settling Defendants under the Decree.

66. Nothing in this Decree limits the authority of the United States or NJDEP: (a) to seek any remedy otherwise provided by law for Settling Defendants' failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendants' noncompliances with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

67. Notwithstanding any other provision of this Section, the United States, or NJDEP, may, in its unreviewable discretion, waive any portion of stipulated penalties owed to it that have accrued under this Decree and that it has demanded.

XIV. COVENANTS BY PLAINTIFFS

68. **Covenants for Settling Defendants by United States.** Subject to ¶¶ 71 and 72, the United States covenants not to sue or to take administrative action against Settling Defendants under sections 106 and 107(a) of CERCLA regarding the Site.

69. The covenants under ¶ 68: (a) take effect upon the Effective Date, except with respect to future liability, for which these covenants take effect upon Certification of Remedial Action Completion by EPA under ¶ 4.7 of the SOW; (b) are conditioned on the satisfactory performance by Settling Defendants of the requirements of this Decree; (c) extend to the successors of each Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant; and (d) do not extend to any other person.

70. **Covenants for Settling Defendants by NJDEP.** In consideration of the payment Settling Defendant Ford is making pursuant to ¶¶ 49 and 50.c, above, and except as otherwise provided in ¶ 72 (General Reservations), below, NJDEP covenants not to sue or take administrative action against Settling Defendants for reimbursement of NJDEP Past Cleanup and Removal Costs or NJDEP Future Cleanup and Removal Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

71. Plaintiffs' Pre- and Post-certification Reservations

a. Notwithstanding any other provision of this Decree, the United States and NJDEP reserve, and this Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendants to perform further response actions relating to the Site, to pay the United States or NJDEP for

additional costs of response, or any combination thereof. The United States or NJDEP may bring a claim under this reservation only if, at any time, conditions at the Site previously unknown to EPA or NJDEP are discovered, or information previously unknown to EPA or NJDEP is received, and EPA determines, based in whole or in part on these previously unknown conditions or information, that the OU3 Remedial Action is not protective of public health or the environment.

b. Before Certification of Remedial Action Completion, the information and the conditions known to EPA and NJDEP include only that information and those conditions known to EPA and NJDEP as of the date the OU3 Record of Decision was signed and set forth in the OU3 Record of Decision and the administrative record supporting the OU3 Record of Decision.

c. After Certification of Remedial Action Completion, the information and the conditions known to EPA and NJDEP include only that information and those conditions known to EPA and NJDEP as of the date of Certification of Remedial Action Completion and set forth in the OU3 Record of Decision, the administrative record supporting the OU3 Record of Decision, the post-OU3 Record of Decision administrative record, or in any information received by EPA and NJDEP in accordance with the requirements of this Decree prior to Certification of Remedial Action Completion.

72. **General Reservations.** Notwithstanding any other provision of this Decree, the United States and NJDEP reserve, and this Decree is without prejudice to, all rights against Settling Defendants regarding the following:

- a. liability for failure by Settling Defendants to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendants' ownership of the Site when such ownership commences after Settling Defendants' signature of this Decree;
- d. liability based on Settling Defendants' operation of the Site when such operation commences after Settling Defendants' signature of this Decree and does not arise solely from Settling Defendants' performance of the Work;
- e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Decree by Settling Defendants, other than as provided in the OU3 Record of Decision, under this Decree, or ordered by EPA;
- f. liability to the United States for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, and liability to the State of New Jersey for NJDEP Natural Resource Damages;
- g. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance

Standards or to carry out and maintain the effectiveness of the OU3 Remedial Action, but that are not covered by ¶ 30.b;

h. liability for failure to comply with applicable State laws, regulations, guidance, and rules subsequent to the Site being deleted by EPA from the NPL, including but not limited to, the Spill Act, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 *et seq.*, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Remediation Standards, N.J.A.C. 7:26D; and

i. criminal liability.

73. Subject to ¶¶ 68 and 79, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

XV. COVENANTS BY SETTLING DEFENDANTS

74. Covenants by Settling Defendants

a. Subject to ¶ 75, Settling Defendants covenant not to sue and shall not assert any claim against the United States or NJDEP under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the New Jersey State Constitution, the New Jersey Spill Act, or at common law regarding the Site.

b. Subject to ¶ 75, Settling Defendants covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs regarding the Site, NJDEP Past Cleanup and Removal Costs, NJDEP Future Cleanup and Removal Costs, or any direct or indirect claim for reimbursement from the Spill Compensation Fund, within the meaning of N.J.S.A. 58:10-23.11k or N.J.A.C. 7:11, or the Sanitary Landfill Facility Contingency Fund, within the meaning of N.J.S.A. 13:1E-107 or N.J.A.C. 7:1I, concerning the Site.

75. **Settling Defendants' Reservation.** The covenants in ¶ 74 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or NJDEP to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 71, and 72.a through 71.i.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION

76. The Parties agree and the Court finds that: (a) the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each Settling Defendant has, as

of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA, and to NJDEP within the meaning of section 113(f)(2) of CERCLA and section 7f.a.(2)(b) of the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(b); and (c) each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA and N.J.S.A. 58:10-23.11f.a.(2)(b), or as may be otherwise provided by law, for the “Matters Addressed” in this Decree. The contribution protection under the preceding sentence extends to the successors of each Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant. The Matters Addressed in this Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, including NJDEP Past Cleanup and Removal Costs, and NJDEP Future Cleanup and Removal Costs, provided, however, that if the United States brings a claim against Settling Defendants under a reservation in ¶ 71, ¶¶ 72.a through 72.g and 72.i, or if NJDEP brings a claim under a reservation in ¶ 72.h, the Matters Addressed in this Decree do not include those response costs or response actions or natural resource damages that are within the scope of the claim brought under the reservation.

77. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ, EPA, and NJDEP no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ, EPA and NJDEP within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify DOJ, EPA and NJDEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

78. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Settling Defendant by either Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or NJDEP in the subsequent proceeding were or should have been brought in the instant case.

79. Nothing in this Decree diminishes the right of the United States or NJDEP under section 113(f)(2) and (3) of CERCLA or the Spill Act to pursue any person not a party to this Decree to obtain additional response costs or response action, or cleanup and removal costs, and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2) of CERCLA or the Spill Act.

XVII. RECORDS

80. Until 10 years after EPA’s Certification of Work Completion under ¶ 4.9 (Certification of Work Completion) of the SOW, each Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that materially relate to its

liability under CERCLA or the Spill Act with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA or the Spill act with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

81. At the conclusion of the record retention period, each Settling Defendant shall notify EPA and NJDEP at least 90 days before the destruction of any such Records. Upon request by EPA or NJDEP, and except as provided in ¶ 83 (Privileged and Protected Claims), the Settling Defendant instead shall deliver any such Records to EPA, and, if requested, NJDEP.

82. Each Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records that materially relate to its potential liability under CERCLA and the Spill Act (other than identical copies) regarding the Site since notification of potential liability by EPA or the State since the Site was placed on the NPL again on September 27, 2006, and that it has fully complied with any and all EPA and NJDEP requests for information regarding the Site pursuant to sections 104(e) and 122(e)(3)(B) of CERCLA and section 3007 of RCRA, and state law.

83. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a Record requested by Plaintiffs is privileged or protected as provided under federal law and/or state law, in lieu of providing the Record, provided Settling Defendants comply with ¶ 83.b, and except as provided in ¶ 83.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiffs with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g. company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendants shall retain all Records that they claim to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any Record that evidences conditions at or around the Site; or (2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Decree.

84. **Business Confidential Claims** Settling Defendants may assert that all or part of a Record provided to Plaintiffs under this Section is business confidential to the to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. §2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Decree for which Settling Defendants assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of section 104(e)(7) of CECLA or 40 C.F.R Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

XVIII. NOTICES AND SUBMISSIONS

85. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in electronic writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent via email and/or as specified below. All notices under this Section are effective upon receipt. There is a rebuttable presumption that emailed notices are received on the same day that they are sent. Any Party may change the person or email and/or mail address applicable to it by providing notice of such change to all Parties.

As to DOJ: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-830/2

As to EPA: Joe Gowers, Remedial Project Manager
gowers.joe@epa.gov
Re: Ringwood Mines/Landfill Superfund Site
Spill ID #NJD980529739
and
Leena Raut, Assistant Regional Counsel
Raut.Leena@epa.gov
Re: Ringwood Mines/Landfill Superfund Site

As to the Regional
Financial Management cinwd_acctsreceivable@epa.gov
Officer: Re: Site/Spill ID # NJSFN0204232

As to NJDEP: Gary W. Wolf, II
Section Chief, Environmental Enforcement and
Environmental Justice Section
Department of Law and Public Safety, Division of Law,
Richard J. Hughes Justice Complex. P.O. Box 093
Trenton, N.J. 08625-0093
609-633-8713

and

Gwen Zervas
Director, Division of Remediation Management,
Department of Environmental Protection, 401 East State
Street Mail Code 401-406, P.O. Box 420
Trenton, N.J. 08625-0420

As to Settling Defendants: Chris R. Young
De maximis, Inc.
1550 Pond Road, Suite 120
Allentown, PA 18104
Telephone: 610-435-1151
Cell: 610-360-0659
cyoung@demaximis.com

XIX. APPENDICES

86. The following appendixes are attached to and incorporated into this Decree:

“Appendix A” is the OU3 Record of Decision.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

XX. MODIFICATIONS TO DECREE

87. Except as provided in ¶ 30 of the Decree and ¶ 6.6 of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIV and the Appendixes must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIV and the Appendixes must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court.

XXI. SIGNATORIES

88. The undersigned representative of the United States, the undersigned representative of NJDEP, and each undersigned representative of a Settling Defendant certifies

that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

XXII. PRE-ENTRY PROVISIONS

89. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 90 through ¶ 93, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

90. This Decree will be lodged with the Court for at least 60 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

91. NJDEP, in accordance with N.J.S.A. 58:10-23.11e.2, shall arrange for written notice of this Decree to all other potentially responsible parties of whom NJDEP had notice as of the date NJDEP published notice of the proposed settlement in this matter in the New Jersey Register. NJDEP shall publish notice of this Decree in the New Jersey Register and on NJDEP's website for public comment for a period of 60 days. In accordance with N.J.S.A. 58:10-23.11e.2, such notice shall include the following information: a) the caption of this case; b) the name and location of the Site; c) the name of the Settling Defendants; d) a summary of the terms of this Decree; and e) that there are 60 days to comment on the proposed Decree.

92. NJDEP reserves the right to withdraw or withhold its consent to this Decree if NJDEP receives information that discloses facts or considerations that indicate to NJDEP in its sole discretion, that the Decree is inappropriate, improper, or inadequate.

93. Settling Defendants agree not to oppose or appeal the entry of this Decree.

XXIII. INTEGRATION

94. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

XXIV. FINAL JUDGMENT

95. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Federal Rules of Civil Procedure 54 and 58 among the Parties.

SO ORDERED this ____ day of _____, 20__.

United States District Judge

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

FOR THE UNITED STATES:

3/19/2026
Dated

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

/s/ Mae Bowen
Mae Bowen
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division Environmental Enforcement
Section
P.O. Box 7611
Washington, DC 20044-7611
Mae.bowen@usdoj.gov

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

**Pat
Evangelista**

Digitally signed by
Pat Evangelista
Date: 2025.09.30
17:56:36 -04'00'

Pat Evangelista
Director, Superfund and Emergency
Management Division
U.S. Environmental Protection Agency
Region 2

**LEENA
RAUT**

Digitally signed
by LEENA RAUT
Date: 2025.09.30
16:59:07 -04'00'

Leena Raut
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007

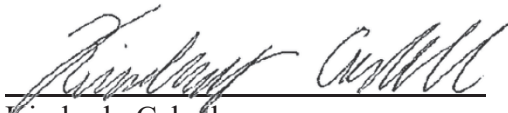
Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

**FOR THE NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

9/30/2025
Dated



David E. Haymes
Assistant Commissioner
Contaminated Site Remediation and
Redevelopment, NJDEP

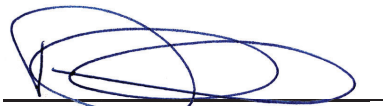


Kimberly Cahall
Chief Advisor, Legal and Regulatory
Affairs
Chief Enforcement Officer
Office of Enforcement Policy, NJDEP

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

**FOR THE NEW JERSEY SPILL
COMPENSATION FUND:**

9/30/2025
Dated



David E. Haymes
Administrator
New Jersey Spill Compensation Fund

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

**FOR MATTHEW J. PLATKIN,
ATTORNEY GENERAL OF NEW
JERSEY:**

Attorney for the New Jersey Department of
Environmental Protection and Administrator
of the New Jersey Spill Compensation Fund


9/30/2025
Dated

/s/ Debra Allen
Debra Allen
Deputy Attorney General
25 Market Street, P.O. Box 093
Trenton, NJ 08625
Debra.Allen@law.njoag.gov

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

FOR: Ford Motor Company

Sep-30-2025
 Dated _____

Name: David J. Witten  _____
22B1409E26D7402...
 Title: Assistant Secretary
 Address: One American Road, Dearborn, MI
 48126

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to execute the Rule 4 waiver of service. This Settling Defendant understands that (i) it does not need to file an answer to the complaint until after it has executed the waiver of service or otherwise has been served with the complaint; and (ii) the time within which this Settling Defendant must file its answer is as set forth in the Federal Rules of Civil Procedure and any applicable local rules of this Court, or as ordered by the Court.

Name: David J. Witten
 Title: Assistant Secretary
 Company: Ford Motor Company
 Address: One American Road
 Dearborn, MI 48126
 Phone: 313-845-8476
 email: dwitten@ford.com

Signature Page for Consent Decree in *U.S. et al. v. Ford Motor Co., et al.* (D.N.J.)

FOR: Borough of Ringwood, New Jersey

9/30/25

Dated



Name:

Title:

Address:

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to execute the Rule 4 waiver of service. This Settling Defendant understands that (i) it does not need to file an answer to the complaint until after it has executed the waiver of service or otherwise has been served with the complaint; and (ii) the time within which this Settling Defendant must file its answer is as set forth in the Federal Rules of Civil Procedure and any applicable local rules of this Court, or as ordered by the Court.

Name: SCOTT HECK

Title: BOROUGH MANAGER

Company: BOROUGH OF RINGWOOD

Address: 60 MARGARET KING AVE.

RINGWOOD, NJ 07456

Phone: 973-475-7101

email: SHECK@RINGWOODNJ.NET

Appendix A

OU3 Record of Decision

The OU3 Record of Decision is available at <https://semspub.epa.gov/src/document/02/615708>

Appendix B

Statement of Work

**REMEDIAL ACTION
OPERABLE UNIT THREE
RINGWOOD MINES/LANDFILL SUPERFUND SITE
STATEMENT OF WORK**

Borough of Ringwood, Passaic County, New Jersey

EPA Region 2

STATEMENT OF WORK

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1. INTRODUCTION

1.1 Purpose of SOW. This SOW sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendants' responsibilities for community involvement.
- Section 3 (Coordination and Supervision) contains the provisions for selecting the Supervising Contractor and Project Coordinators regarding the Work.
- Section 4 (Remedial Action) sets forth requirements regarding the completion of the OU3 Remedial Action, including primary deliverables related to completion of the OU3 Remedial Action.
- Section 5 (Reporting) sets forth Settling Defendants' reporting obligations.
- Section 6 (Deliverables) describes the contents of the supporting deliverables and the general requirements regarding Settling Defendants' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the OU3 Remedial Action.
- Section 8 (State Participation) addresses State participation.
- Section 9 (References) provides a list of references, including URLs.

1.3 The Scope of the Remedy for this SOW includes the actions described in the "Selected Remedy" Section of the Operable Unit 3 Record of Decision ("OU3 Record of Decision") of the Ringwood Mines/Landfill Superfund Site ("Site"). The design of the remedy for OU3 is being addressed under EPA Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 02-2021-2053, dated September 30, 2021, pursuant to CERCLA Sections 104, 107 and 122 ("the OU3 RD ASOC"). The OU3 Remedial Action for Site-wide groundwater includes the following actions: (1) installation of wells in the Peters Mine Pit (PMP) Area and O'Connor Disposal Area (OCDA) of the Site to allow for the in-situ treatment of the groundwater contaminants; (2) implementation of a long-term groundwater monitoring plan to monitor contaminant concentrations and biogeochemical parameters from groundwater monitoring wells located in and downgradient of the PMP Area, Cannon Mine Pit (CMP) Area and the OCDA; (3) a sentinel monitoring well network will be established to provide advanced warning of any movement of groundwater contamination toward any drinking water resources; (4) implementation of a long-term surface water monitoring plan which will provide for surface water monitoring in and downstream of the Site brooks to confirm that Site-related contaminants are not threatening downstream receptors,

including the Wanaque Reservoir; and (5) establishment of a Classification Exception Area/Well Restriction Area as an institutional control to restrict future withdrawal and use of Site groundwater which contains contaminants at concentrations in excess of New Jersey Groundwater Quality Standards. In addition, the OU3 Remedial Action for the PMP Airshaft includes the following actions: (1) permanent closure of the PMP Airshaft using conventional mine shaft closure technology; (2) the introduction of granular activated carbon (GAC) and resin to the base of the airshaft prior to permanent closure in order to provide for the adsorption of organic contaminants; (3) the treatment of displaced water through filtration and GAC prior to discharge to groundwater within the same general locations, pursuant to the substantive requirements of N.J.A.C. 7:14A-7.5; and (4) off-site disposal of groundwater.

- 1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (“Decree”), have the meanings assigned to them in CERCLA, in such regulations, or in the Decree, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

- 2.1 As requested by EPA, Settling Defendants shall conduct community involvement activities under EPA’s oversight as provided for in, and, in accordance with, this Section. Such activities must include designation of a Community Involvement Coordinator (“CI Coordinator”) and implementation of a technical assistance plan.

2.2 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the Remedial Investigation and Feasibility Study phase, EPA developed a Community Involvement Plan (“CIP”) for the Site. In accordance with 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP, including, if applicable, any Technical Assistant Grant (“TAG”) and any use of the Technical Assistance Services for Communities (“TASC”) contract.
- (b) **Settling Defendants’ Community Involvement Coordinator.** As requested by EPA, Settling Defendants shall, within 15 days, designate and notify EPA of Settling Defendants’ CI Coordinator. Settling Defendants may hire a contractor for this purpose. Settling Defendants’ notice must include the name, title, and qualifications of the Settling Defendants’ CI Coordinator. Settling Defendants’ CI Coordinator shall coordinate his/her activities with EPA’s CI Coordinator,

provide support regarding EPA's community involvement activities, and, as requested by EPA's CI Coordinator, provide draft responses to the public's inquiries including requests for information or data about the Site. The Settling Defendants' CI Coordinator has the responsibility to ensure that when they communicate with the public, the Settling Defendants protect any "Personally Identifiable Information" ("PII") (e.g. sample results from residential properties) in accordance with "EPA Policy 2151.0: Privacy Policy."

- (c) As requested by EPA, Settling Defendants shall participate in community involvement activities, including participation in: (1) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site (with interpreters present for community members with limited English proficiency); (2) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or internet notification; and (3) the presentation of information regarding the OU3 Remedial Action. Settling Defendants' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) any Community Advisory Groups, (2) any TAG recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Settling Defendants' responsibilities for community involvement activities. All community involvement activities conducted by Settling Defendants at EPA's request are subject to EPA's oversight. EPA maintains a community information repository at the Ringwood Public Library, which houses one copy of the administrative record. The administrative record, along with other documents in the Site file, are also available online at: <https://www.epa.gov/superfund/ringwood-mines>.
- (d) **Information for the Community.** As requested by EPA, Settling Defendants shall develop and provide to EPA and NJDEP information about implementation of the remedy including: (1) any validated data from monitoring of impacts to communities as provided in the Community Impact Mitigation Plan under ¶ 6.7(f); (2) results from unvalidated sampling as provided under ¶ 6.7(e)(7); (3) a copy of the Community Impact Mitigation Plan required under ¶ 6.7(f); (4) schedules prepared under Section 7; (5) dates that Settling Defendants completed each task listed in the schedules; and (6) digital photographs of the Work being performed, together with descriptions of the Work depicted in each photograph, the purpose of the Work, the equipment being used, and the location of the Work. The EPA Remedial Project Manager ("RPM") may use this information for communication to the public via EPA's website, social media, or local and mass media. The information provided to EPA should be suitable for sharing with the public and the education levels of the community. Translations should be in the dominant language(s) of community members with limited English proficiency.

3. COORDINATION AND SUPERVISION

3.1 Selection of Project Coordinators and Supervising Contractor

- (a) Settling Defendants' Project Coordinator and Supervising Contractor each:
 - (i) must have sufficient technical expertise to carry out their responsibilities;
 - (ii) may not be attorneys representing any Settling Defendant in this matter;
 - (iii) may not be the same person; and (iv) may not have a conflict of interest regarding the project. The Supervising Contractor must have a quality assurance system that complies with the most recent version of Quality Systems for Environmental Data and Technology Programs -- Requirements with Guidance for Use (American National Standard), ANSI/ASQC E4 (Feb. 2014).
- (b) Settling Defendants shall notify EPA, within 10 days after the Effective Date, of the name, title, contact information, and qualifications of their proposed Project Coordinator and Supervising Contractor.
- (c) EPA, in consultation with NJDEP, shall issue a notice of disapproval and/or authorization to proceed regarding any proposed Project Coordinator and Supervising Contractor, as applicable. Any EPA disapproval must be based on the criteria under ¶ 3.1(a).
- (d) Notwithstanding ¶¶ 3.1(a) through 3.1(c), Settling Defendants have proposed, and EPA has authorized Settling Defendants to proceed, regarding the following Project Coordinator and Supervising Contractor: Chris R. Young, De maximis, Inc.
- (e) Settling Defendants shall follow the procedures of ¶¶ 3.1(a) through 3.1(c): (1) to select an alternate Project Coordinator or Supervising Contractor, as applicable, if EPA, in consultation with NJDEP, issues a notice of disapproval; or (2) to change their Project Coordinator or Supervising Contractor.
- (f) Settling Defendants may assign other representatives, including other contractors, to assist in coordinating the Work.

3.2 EPA has designated Joe Gowers as its RPM. EPA may, with notice to Settling Defendants, designate an alternate RPM. EPA may designate other representatives including contractors or consultants to oversee the Work.

3.3 NJDEP shall designate and notify the Parties of its Project Coordinator. NJDEP may designate other representatives including contractors or consultants to oversee the Work.

3.4 Project Coordinator and RPM Responsibilities

- (a) Settling Defendants' Project Coordinator shall communicate with the RPM at least monthly.
- (b) The RPM has the authorities described in the NCP, 40 C.F.R. § 300.120.

- (c) NJDEP's Project Coordinator may participate in any meeting or inspection in which the RPM participates. Settling Defendants shall notify NJDEP reasonably in advance of any such meetings or inspections.

3.5 Notice of Authorization to Proceed. Upon the approval of the OU3 Remedial Design, EPA shall issue a Notice of Authorization to Proceed regarding the OU3 Remedial Action.

4. REMEDIAL ACTION

4.1 Remedial Action Work Plan ("RAWP"). Settling Defendant Ford shall submit a RAWP for EPA approval and to NJDEP that includes:

- (a) A proposed OU3 Remedial Action Construction Schedule Gantt chart;
- (b) An updated Health and Safety Plan that covers activities during the OU3 Remedial Action; and
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** Settling Defendants shall hold a preconstruction conference with EPA, NJDEP, and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Settling Defendants shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Communications.** During the construction portion of the OU3 Remedial Action in line with the OU3 Record of Decision and ¶1.3 above (OU3 Remedial Action Construction), Settling Defendants shall communicate weekly (or at an alternative frequency as agreed to with EPA) with EPA, NJDEP, and others as directed or determined by EPA, to discuss construction progress and issues. Settling Defendants shall distribute an agenda and list of attendees to all Parties prior to each meeting or telephone call. Such meetings may be virtual. Settling Defendants shall prepare minutes of the meetings or calls and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Work. NJDEP may also attend this inspection. At EPA's request, the Supervising Contractor or other designee shall accompany EPA, its representative, or NJDEP during inspections.

- (2) If required by EPA, Settling Defendants shall provide on-site office space for EPA personnel to perform their oversight duties. The minimum office requirements are a private office with at least 150 square feet of floor space, an office desk with chair, a four-drawer file cabinet, wireless internet access, and sanitation facilities.
- (3) Settling Defendants shall provide personal protective equipment, if needed, for EPA and NJDEP personnel and any oversight officials to perform their oversight duties.
- (4) Upon notification by EPA of any deficiencies in the OU3 Remedial Action Construction, Settling Defendants shall take all necessary steps to correct the deficiencies and/or bring the OU3 Remedial Action Construction into compliance with the approved Final OU3 Remedial Design, any approved design changes, and/or the approved RAWP. If applicable, Settling Defendants shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Permits

- (a) As provided in CERCLA § 121(e), and Section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- (b) Settling Defendants may seek relief under the provisions of Section XI (Force Majeure) of the Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 4.3(a) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Decree or this SOW constitutes a permit issued under any federal or state statute or regulation.

4.4 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Settling Defendants shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all

applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report under CERCLA § 103 or Section 304 of the Emergency Planning and Community Right-to-know Act (“EPCRA”), Settling Defendants shall immediately orally notify the authorized EPA officer and NJDEP’s assigned Project Coordinator/Alternate Project Coordinator.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 4.4(a) and ¶ 4.4(b) is the RPM, the EPA Chief of the Eastern New York Remediation Section (if the RPM is unavailable), or the National Response Center at (800) 424-8802 (if neither the RPM or the EPA Chief of the Eastern New York Remediation Section is available).
- (d) For any event covered by ¶ 4.4(a) and ¶ 4.4(b), Settling Defendants shall:
 - (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and
 - (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.5 Off-Site Shipments

- (a) Settling Defendants may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with CERCLA § 121(d)(3), and 40 C.F.R. § 300.440. Settling Defendants will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Settling Defendants obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) Settling Defendants may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility’s state and to the RPM. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendants also shall notify the state environmental official, referenced above, and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendants

shall provide the notice after the award of the contract for OU3 Remedial Action construction and before the Waste Material is shipped.

- (c) Settling Defendants may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with CERCLA § 121(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the OU3 Record of Decision. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

4.6 Remedial Action Construction Completion

- (a) For purposes of this ¶ 4.6, “Remedial Action Construction” comprises, for any Remedial Action that involves the construction and operation of a system to achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.
- (b) **Inspection of Constructed Remedy.** Settling Defendants shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by Settling Defendants and EPA and/or their representatives. A reinspection must be conducted if requested by EPA. NJDEP may also attend these inspections.
- (c) **Shakedown Period.** There shall be a shakedown period of up to one year for EPA to review whether the remedy is functioning properly and performing as designed. Settling Defendants shall provide such information as EPA requests for such review. After the completion of EPA’s review, in consultation with NJDEP, EPA shall confirm in writing to the Settling Defendants that the remedy is functioning properly.
- (d) **Remedial Action Report.** Following the shakedown period, Settling Defendants shall submit a “Remedial Action Report” requesting EPA’s determination that OU3 Remedial Action Construction has been completed. The Remedial Action Report must: (1) include statements by a registered professional engineer and by Settling Defendants’ Project Coordinator that the construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (June 2022), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM

9200.3-105 (Feb. 2017); and (5) be certified in accordance with ¶ 6.5 (Certification).

- (e) If EPA, in consultation with NJDEP, determines that OU3 Remedial Action Construction is not complete, EPA shall so notify Settling Defendants. EPA's notice must include a description of, and schedule for, the activities that Settling Defendants must perform to complete OU3 Remedial Action Construction. EPA's notice may include a schedule for completion of such activities or may require Settling Defendants to submit a proposed schedule for EPA approval. Settling Defendants shall perform all activities described in the EPA notice in accordance with the schedule.
- (f) If EPA, in consultation with NJDEP, determines, based on the initial or any subsequent Remedial Action Report, that OU3 Remedial Action Construction is complete, EPA shall so notify Settling Defendants in writing.

4.7 Certification of Remedial Action Completion

- (a) **Monitoring Report.** Settling Defendants shall submit a Monitoring Report to EPA requesting EPA's Certification of Remedial Action Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendants' Project Coordinator that the OU3 Remedial Action is complete; (2) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (June 2022), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (3) contain monitoring data to demonstrate that Performance Standards have been achieved; and (4) be certified in accordance with ¶ 6.5 (Certification).
- (b) If EPA, in consultation with NJDEP, concludes that the OU3 Remedial Action is not Complete, EPA shall so notify Settling Defendants. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Settling Defendants to submit a schedule for EPA approval. Settling Defendants shall perform all activities described in the notice in accordance with the schedule.
- (c) If EPA, in consultation with NJDEP, concludes, based on the initial or any subsequent Monitoring Report requesting Certification of Remedial Action Completion, that the OU3 Remedial Action is Complete, EPA shall so certify in writing to Settling Defendants. This certification will constitute the Certification of Remedial Action Completion for purposes of the Decree, including Section XIV of the Decree (Covenants by Plaintiffs). Certification of Remedial Action Completion will not affect Settling Defendants' remaining obligations under the Decree.

4.8 Periodic Review Support Plan (“PRSP”). Settling Defendants shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that Settling Defendant shall conduct to support EPA’s reviews of whether the OU3 Remedial Action is protective of human health and the environment in accordance with CERCLA § 121(c) (also known as “Five-year Reviews”). Settling Defendants shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

4.9 Certification of Work Completion

- (a) **Work Completion Inspection.** Settling Defendants shall schedule an inspection for the purpose of obtaining EPA’s Certification of Work Completion. The inspection must be attended by Settling Defendants and EPA and/or their representatives. NJDEP may also attend this inspection.
- (b) **Work Completion Report.** Following the inspection, Settling Defendants shall submit a report to EPA requesting EPA’s Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendants’ Project Coordinator that the Work, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 6.5 (Certification). If the Monitoring Report submitted under ¶ 4.7(a) includes all elements required under this ¶ 4.9(b) to show that all Work has been completed, then the Monitoring Report suffices to satisfy all requirements under this ¶ 4.9(b).
- (c) If EPA, in consultation with NJDEP, concludes that the Work is not complete, EPA shall so notify Settling Defendants. EPA’s notice must include a description of the activities that Settling Defendants must perform to complete the Work. EPA’s notice must include specifications and a schedule for such activities or must require Settling Defendants to submit specifications and a schedule for EPA approval. Settling Defendants shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA, in consultation with NJDEP, concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Settling Defendants. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VII (Property Requirements), and XVII (Records) of the Decree; (3) Institutional Controls obligations as provided in the Institutional Controls Implementation and Assurance Plan (“ICIAP”) prepared under the OU3 RD ASAOC; and (4) reimbursement of EPA’s Future Response Costs and NJDEP’s Future Cleanup and Removal Costs under Section X (Payments for Response Costs) of the Decree.

5. REPORTING

5.1 Progress Reports. Commencing with the month following lodging of the Decree and until EPA approves the OU3 Remedial Action Construction Completion, Settling Defendant Ford shall submit progress reports to EPA and NJDEP on a monthly basis, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Decree;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Settling Defendants;
- (c) A description of all deliverables that Settling Defendants submitted to EPA;
- (d) A description of all activities relating to OU3 Remedial Action Construction that are scheduled for the next six weeks;
- (e) An updated OU3 Remedial Action Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Settling Defendants have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the CIP during the reporting period and those to be undertaken in the next six weeks.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, Settling Defendant Ford shall notify EPA of such change at least seven days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. Settling Defendants shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. As provided in ¶ 85 of the Decree, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the Remedial Action Schedule, as applicable. Settling Defendants shall

submit all deliverables to EPA and NJDEP in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5” by 11”, Settling Defendants shall also provide EPA and NJDEP with paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data contained in any deliverable should be submitted in standard regional Electronic Data Deliverable (“EDD”) format. Region 2’s “Comprehensive Electronic Data Deliverable Specification Manual 4.0” (March 2016) explains the systematic implementation of EDD within EPA Region 2 and provides detailed instructions of data preparation and identification of data fields required for data submissions. Additional Region 2 EDD guidance and requirements documents, including the “Electronic Data Deliverables Valid Values Reference Manual” and tables, the “Basic Manual for Historic Electronic Data,” the “Standalone EQUIS Data Processor User Guide,” and EDD templates, can be found at <https://www.epa.gov/superfund/region-2-superfund-electronic-data-submission>. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in either the ESRI shapefile or computer-aided design (CAD) file format; and (2) as both (i) unprojected geographic coordinates in decimal degree format using North American Datum 1983 (“NAD83”) or World Geodetic System 1984 (WGS84) as the datum, and (ii) in NJ State Plane Feet. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (“FGDC”) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (“EME”), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Settling Defendants does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this paragraph must be signed by the Settling Defendants’ Project Coordinator, or other responsible official of the Settling Defendants, and must contain the following statement:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

6.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Decree or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.6(a), Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendants to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.6(a) (Initial Submissions) or ¶ 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Decree; and (2) Settling Defendants shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.6(a) or ¶ 6.6(b) does not relieve Settling Defendants of any

liability for stipulated penalties under Section XIII (Stipulated Penalties) of the Decree.

6.7 Supporting Deliverables. Settling Defendants shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Settling Defendants shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 9 (References)). Settling Defendants shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan (“HASP”).** The HASP describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Settling Defendants shall develop the HASP in accordance with EPA’s *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration (“OSHA”) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover activities during the OU3 Remedial Action and, as appropriate, be updated to cover activities after OU3 Remedial Action completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (b) **Emergency Response Plan (“ERP”).** The ERP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (“SPCC”) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 or EPCRA § 304; and
 - (5) A description of all necessary actions to ensure compliance with ¶ 4.4 of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

- (c) **Field Sampling Plan (“FSP”).** The FSP addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Settling Defendants shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan (“QAPP”).** The QAPP must include a detailed explanation of Settling Defendants’ quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Settling Defendants shall develop the QAPP in accordance with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014, and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002). Settling Defendants shall collect, produce, and evaluate all environmental information at the Site in accordance with the approved QAPP.
- (e) **Site Wide Monitoring Plan (“SWMP”).** The purpose of the SWMP is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the OU3 Remedial Action; to obtain information regarding contamination levels to determine whether Performance Standards are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as

higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement);

- (7) A plan to immediately provide to EPA any unvalidated sampling data from Community Areas as defined in ¶ 6.7(f) affected by the remedy that exceed removal management levels or three times remedial cleanup levels, whichever is lower; and
 - (8) A plan to expedite sampling and analysis in Community Areas as defined in ¶ 6.7(f) affected by the remedy (particularly in situations where EPA determines that unvalidated sampling data indicates substantial exceedances of cleanup standards), including procedures for expedited analysis, validation, and communication of sampling results to affected communities.
- (f) **Community Impact Mitigation Plan (“CIMP”).** The CIMP describes all activities to be performed to address concerns of communities: (1) to reduce and manage the impacts from remedy implementation (*e.g.*, air emissions, traffic, noise or odor) to residential areas, schools, playgrounds, healthcare facilities, or recreational or impacted public areas (“Community Areas”) from and during remedy implementation, (2) to conduct monitoring in Community Areas of impacts from remedy implementation, (3) to expeditiously communicate validated remedy implementation monitoring data, (4) to make adjustments during remedy implementation in order to further reduce and manage impacts from remedy implementation to affected Community Areas, and (5) to expeditiously restore community resources damaged during remediation such as roads and culverts, and (6) to mitigate the economic effects, if any, that the OU3 Remedial Action will have on the community by structuring remediation contracts to allow more local business participation. The CIMP should contain information about impacts to Community Areas that is sufficient to assist the RPM in performing the evaluations recommended under the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (March 2020), pp. 53-56.
- (g) **Construction Quality Assurance Plan (“CQAP”) and Construction Quality Control Plan (“CQCP”).** The purpose of the CQAP is to describe planned and systemic activities that provide confidence that the OU3 Remedial Action construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the CQCP is to describe the activities to verify that OU3 Remedial Action construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQAP/CQCP (“CQA/CP”) must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/CP;
 - (2) Describe the Performance Standards required to be met to achieve Completion of the OU3 Remedial Action;

- (3) Describe the activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/CP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/CP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/CP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (h) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the OU3 Remedial Action. Settling Defendants shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Performance Standards required to be met to implement the OU3 Record of Decision;
 - (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Performance Standards;
 - (ii) analysis of vulnerability and additional resource requirements should a failure occur;
 - (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and
 - (iv) community notification requirements; and

- (5) Description of corrective action to be implemented in the event that Performance Standards are not achieved; and a schedule for implementing these corrective actions.
- (i) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy as delineated in the OU3 Record of Decision and ¶1.3 above. Settling Defendants shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). Upon consultation with and approval by EPA and NJDEP, the O&M Manual may be submitted as part of the O&M Plan.

7. SCHEDULES

- 7.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Remedial Action Schedules set forth below. Settling Defendants may submit proposed revised Remedial Action Schedules for EPA approval, in consultation with NJDEP. Upon EPA's approval, the revised Remedial Action Schedules supersede the Remedial Action Schedules set forth below, and any previously-approved Remedial Action Schedules.

7.2 Remedial Action Schedules

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Designate proposed Project Coordinator and Supervising Contractor	3.1	Prior to or within 10 days after the Effective Date of the Decree
2	Commence to Implement ICIAP		30 days after EPA Notice of Authorization to Proceed with ICIAP
3	Award Remedial Action contract		120 days after EPA Notice of Authorization to Proceed with OU3 Remedial Action
4	RAWP	4.1	150 days after EPA Notice of Authorization to Proceed with OU3 Remedial Action
5	Pre-Construction Conference	4.2(a)	14 days after EPA Approval of RAWP but may be extended to due to permit equivalency conditions in consultation with NJDEP
6	Start of Construction		45 days after EPA Approval of RAWP but may be extended due to permit equivalency conditions in consultation with NJDEP
7	Completion of Construction		As defined in the RAWP schedules
8	Inspection of Constructed Remedy	4.6(b)	21 days after completion of construction
9	Remedial Action Report	4.6(d), 4.6(e), 4.6(f)	365 days after Inspection of Constructed Remedy
10	Implement Operation & Maintenance and Monitoring Requirements		As per schedules in the EPA approved O&M Plan and Site-Wide Monitoring Plan
11	Monitoring Report	4.7	In accordance with ¶ 4.7
12	Work Completion Report	4.9(b)	In accordance with ¶ 4.9(b)
13	Periodic Review Support Plan	4.8	Three years after Start of OU3 Remedial Action Construction

8. STATE PARTICIPATION

- 8.1 Copies.** Settling Defendants shall, at any time they send a deliverable to EPA, send a copy of such deliverable to NJDEP. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Settling Defendants, send a copy of such document to NJDEP.
- 8.2 Review and Comment.** NJDEP will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA notice to proceed under ¶ 3.5
- (b) Any EPA approval or disapproval under ¶ 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (c) Any approval or disapproval of the Construction Phase under ¶ 4.6 (Remedial Action Construction Completion), any disapproval of, or Certification of Remedial Action Completion under ¶ 4.7 (Certification of Remedial Action Completion), and any disapproval of, or Certification of Work Completion under ¶ 4.9 (Certification of Work Completion).

8.3 If EPA has issued a notice of Work Takeover Notice under ¶ 32 of the Decree with respect to the O&M portion of the Work, then after expiration of the time period within which Settling Defendants must remedy the circumstances giving rise to such notice as specified in ¶ 32 of the Decree, if Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to the notice, NJDEP may at any time thereafter assume the performance of all or any portion(s) of the O&M portion of the Work as EPA deems necessary.

9. REFERENCES

9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 9.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).

- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).
- (o) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (p) Institutional Controls: Third-Party Beneficiary Rights in Proprietary Controls, OECA (Apr. 2004).
- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (u) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (v) Close Out Procedures for National Priorities List Sites, OLEM 9320.0-23 (June 2022).
- (w) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).

- (x) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).
- (y) Construction Specifications Institute’s MasterFormat2020, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (z) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (aa) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175446.pdf>.
- (bb) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175449.pdf>.
- (cc) EPA’s Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaosc.org/_HealthSafetyManual/manual-index.htm.
- (dd) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (ee) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (ff) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (gg) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (hh) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (ii) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.
- (jj) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency’s Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.

- (kk) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf.

9.2 A more complete list may be found on the following EPA web pages:

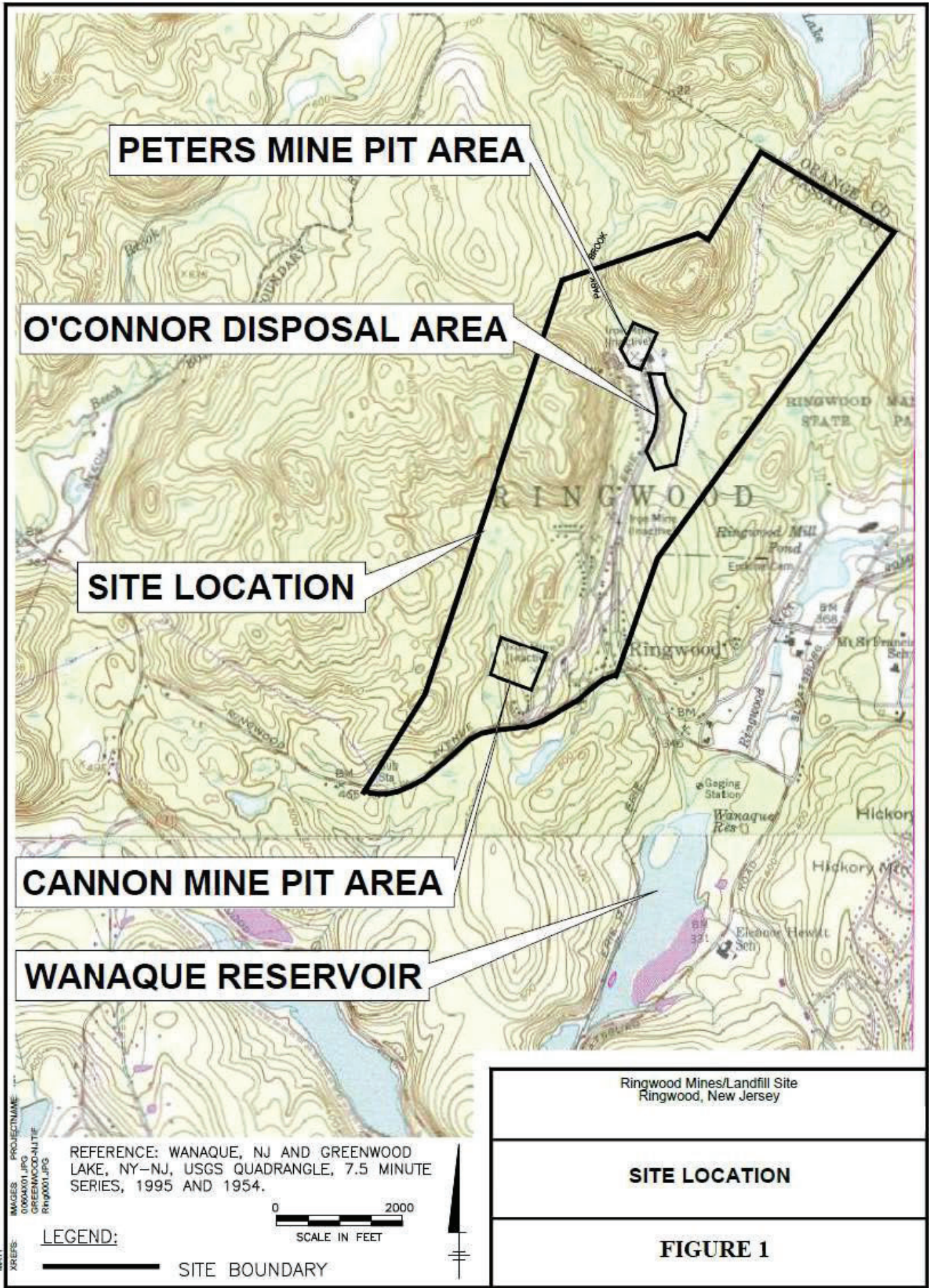
- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) Search Superfund Documents at <https://www.epa.gov/superfund/search-superfund-documents>; and
- (c) Test Methods Collections at: <https://www.epa.gov/measurements/collection-methods>.

9.3 For any regulation or guidance referenced in the Decree or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Settling Defendants receive notification from EPA of the modification, amendment, or replacement.

Appendix C

Site Figure

CITY:MAHWAH DIV:GROUP:ENVCAD DB:JUG LD:(Op) PC:(Op) PM:(Rep) TM:(Op) LVR:(Op)CMP:OFF=REF
G:ENVCAD:View:swm:ACT:PRE:TRM:TCIF:att:swm:NJ:NJ:00000:4:2013:00:03:2014:02:03:W:FIG:01 - SITE LOCATION MAP.dwg
MATT
XREFS: IMAGES: PROJECTNAME: GREENWOOD-NU1F Ring001.JPG
LAYOUT: 1 SAVED: 2/28/2018 2:44 PM AC:ADVER: 18.18 (LMS TECH) PAGESETUP: -- PLOTSTYLETABLE: ARCADIS.CTB PLOTTED: 2/28/2018 2:44 PM BY: WASLEWSKA



PETERS MINE PIT AREA

O'CONNOR DISPOSAL AREA

SITE LOCATION

CANNON MINE PIT AREA

WANAQUE RESERVOIR

REFERENCE: WANAQUE, NJ AND GREENWOOD LAKE, NY-NJ, USGS QUADRANGLE, 7.5 MINUTE SERIES, 1995 AND 1954.

LEGEND:
— SITE BOUNDARY

0 2000
SCALE IN FEET



Ringwood Mines/Landfill Site Ringwood, New Jersey
SITE LOCATION
FIGURE 1