

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,  
 )  
 )  
 ) Plaintiff,  
 )  
 )  
 ) v.  
 )  
 ) PQ CORPORATION,  
 )  
 ) NYACOL PRODUCTS, INC.,  
 )  
 ) ROBERT M. LURIE, NANCY LURIE,  
 )  
 ) THOMAS L. O'CONNOR, and  
 )  
 ) GRACE O'CONNOR  
 )  
 )  
 ) Defendants.  
 )

CIVIL ACTION NO. \_\_\_\_\_

**98CV 10759 EFH**

THE COMMONWEALTH OF  
 MASSACHUSETTS,  
 )  
 )  
 ) Plaintiff,  
 )  
 )  
 ) v.  
 )  
 ) PQ CORPORATION,  
 )  
 ) NYACOL PRODUCTS, INC.,  
 )  
 ) ROBERT M. LURIE, NANCY LURIE,  
 )  
 ) THOMAS L. O'CONNOR, and  
 )  
 ) GRACE O'CONNOR,  
 )  
 )  
 ) Defendants.  
 )

CIVIL ACTION NO. \_\_\_\_\_

~~98CV 10760 EFH~~

**98CV 10760 EFH**

CONSENT DECREE

Nyanza Chemical Waste Dump Superfund Site Consent Decree

TABLE OF CONTENTS

I.	<u>BACKGROUND</u> . . . . .	3
II.	<u>JURISDICTION</u> . . . . .	8
III.	<u>PARTIES BOUND</u> . . . . .	9
IV.	<u>DEFINITIONS</u> . . . . .	10
V.	<u>REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCES DAMAGES</u> . . . . .	15
VI.	<u>PAYMENT OF INTEREST AND STIPULATED PENALTIES</u> . . . . .	21
VII.	<u>COVENANTS NOT TO SUE BY PLAINTIFFS</u> . . . . .	25
VIII.	<u>COVENANTS BY SETTLING DEFENDANTS</u> . . . . .	33
IX.	<u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> . . . . .	36
X.	<u>SITE ACCESS AND INSTITUTIONAL CONTROLS</u> . . . . .	38
XI.	<u>ACCESS TO INFORMATION</u> . . . . .	44
XII.	<u>RETENTION OF RECORDS</u> . . . . .	46
XIII.	<u>NOTICES AND SUBMISSIONS</u> . . . . .	47
XIV.	<u>APPENDICES</u> . . . . .	49
XV.	<u>RETENTION OF JURISDICTION</u> . . . . .	49
XVI.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> . . . . .	50
XVII.	<u>SIGNATORIES/SERVICE</u> . . . . .	51
XVIII.	<u>FINAL JUDGMENT</u> . . . . .	52

## Nyanza Chemical Waste Dump Superfund Site Consent Decree

### I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter in the United States District Court for the District of Massachusetts against PQ Corporation, Nyacol Products, Inc., Robert M. Lurie, and Thomas L. O'Connor ("Settling Defendants") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), and Section 7003 of the Solid Waste Disposal Act, 42 U.S.C. § 6973. In its complaint, the United States also alleges that Robert M. Lurie, Nancy Lurie, Thomas L. O'Connor, and Grace O'Connor are liable under Massachusetts General Laws c. 109A, the Uniform Fraudulent Conveyance Act, for the fraudulent conveyance of assets.

B. The United States in its complaint seeks recovery of the costs incurred and to be incurred by the United States on behalf of EPA for actions taken in response to the release or threatened release of hazardous substances, at the Nyanza Chemical Waste Dump Superfund Site in Ashland, Middlesex County, Massachusetts (the "Site").

C. In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), and the National Contingency Plan ("NCP"), 40 CFR § 300.520, EPA notified the Commonwealth of

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

Massachusetts ("Commonwealth") of its intention to take response actions at the Site and of its negotiation with potentially responsible parties ("PRPs"), including Settling Defendants and others, and has provided the Commonwealth with an opportunity to participate in such negotiations and to be a party to this Consent Decree.

D. The Commonwealth, on behalf of the Department of Environmental Protection ("DEP"), has also filed a complaint against Settling Defendants in this Court alleging that Settling Defendants are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E ("Chapter 21E"). The Commonwealth in its complaint seeks recovery of the costs incurred and to be incurred by the Commonwealth for actions taken in response to the release or threatened release of oil or hazardous materials at the Site. In its complaint, the Commonwealth also alleges that Robert M. Lurie, Nancy Lurie, Thomas L. O'Connor, and Grace O'Connor are liable under Massachusetts General Laws c. 109A, the Uniform Fraudulent Conveyance Act, for the fraudulent conveyance of assets.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") and the Fish and Wildlife Service of the United

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

States Department of the Interior ("DOI") in February 1992 of negotiations with PRPs, including Settling Defendants and others, regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship, and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. EPA notified the Massachusetts Secretary of Environmental Affairs in her capacity as state trustee for natural resources in August 1993 of negotiations with the PRPs and encouraged the trustee to participate in the negotiation of this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL") on September 8, 1983. The NPL is set forth at 40 C.F.R. Part 300, Appendix B.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site. EPA's RI/FS was conducted in four "Operable Units": Operable Unit 1 ("OU1") commenced in 1983, Operable Unit 2 ("OU2") commenced in 1987, Operable Unit 3 ("OU3") commenced in 1987, and Operable Unit 4 ("OU4") commenced in 1993.

I. On September 4, 1985, EPA signed a Record of Decision ("ROD") specifying the remedial action for OU1. On

## Nyanza Chemical Waste Dump Superfund Site Consent Decree

September 21, 1992, EPA signed an Explanation of Significant Differences ("ESD") for OU1. The OU1 remedy as modified by the ESD involved excavation and consolidation of contaminated soils, sediments and sludges located at the Site on and adjacent to the former Nyanza, Inc. property and placement of these materials under a cap located on that area of the Site known as Megunko Hill. EPA completed construction of the OU1 remedy in 1992. The OU1 remedy also specifies certain ongoing operation and maintenance activities.

J. EPA issued a ROD for OU2, addressing contaminated groundwater at the Site, on September 23, 1991. The selected remedy for OU2 is an interim remedy which requires extraction and treatment of groundwater for a minimum of five years to assess the remedial effectiveness of this procedure and additional studies. The OU2 ROD provides that, at the end of five years, EPA will determine whether additional remedial action is required to address groundwater contamination and will develop a final ROD. Based on data gathered since the OU2 ROD, EPA is currently reassessing whether to proceed with the OU2 remedy as planned.

K. EPA issued a ROD for OU3 on March 30, 1993. The OU3 ROD addresses contamination in the Continuing Source Areas, comprising the Eastern Wetland, Trolley Brook, Outfall Creek, and lower Raceway areas of the Site. The OU3 ROD provides for the excavation of contaminated sediments from the Continuing Source Areas, disposal of these sediments under a portion of the cap

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

constructed for OU1, and the development and implementation of institutional controls. This remedy is currently being designed.

L. The Commonwealth has had a reasonable opportunity to review and comment on the selected remedies for OU1, OU2, and OU3 and has given its concurrence on each of those RODs. Each of those RODs includes a responsiveness summary to the public comments. Notice of each final plan was published in accordance with Section 117(b) of CERCLA.

M. In addition to the three OUs described above, EPA has conducted several removal actions at the Site and the Commonwealth has conducted several short term response measures at the Site. EPA has also initiated various studies of the Sudbury River as part of its OU4 investigation, although it has not to date issued a Remedial Investigation report or a ROD for OU4. The Commonwealth has reviewed certain interim technical and scientific studies on contamination in the Sudbury River in connection with the OU4 investigation. EPA expects to conduct additional investigations and conduct additional response actions at the Site in connection with OU4 relating to the Sudbury River and in connection with a final remedy relating to groundwater.

N. In implementing the activities described above, the United States and the Commonwealth have incurred Past Response Costs and will incur Future Response Costs. The purpose of this Consent Decree is to provide for Settling Defendants' payment of

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

a portion of Past and Future Response Costs and Natural Resources Damages at the Site.

O. Settling Defendants and Lurie and O'Connor by agreeing to this Consent Decree do not admit any liability under federal or state law to the United States or to the Commonwealth or to any other person arising out of the transactions or occurrences alleged in the governments' complaints. Moreover, Settling Defendants and Lurie and O'Connor neither admit nor deny any conclusions of law or statements of fact contained herein.

P. The United States, the Commonwealth, Settling Defendants, and Lurie and O'Connor (collectively, the "Parties") affirm, and the Court by entering this Consent Decree finds, that settlement of this matter through this Decree is made in good faith, that the Decree will avoid expensive and protracted litigation among the Parties, that implementation of this Consent Decree will expedite the cleanup of the Site, and that the Decree is fair, reasonable, consistent with the purposes of CERCLA and Chapter 21E and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

**II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this Consent Decree pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b), and pendent subject matter jurisdiction over the claims arising under the laws of the



## Nyanza Chemical Waste Dump Superfund Site Consent Decree.

Commonwealth. This Court also has personal jurisdiction over the Parties to this Decree. The complaints state claims upon which, if proven, relief could be granted. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants and Lurie and O'Connor waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree and to resolve all disputes thereunder.

### III. PARTIES BOUND

2. This Consent Decree is binding upon the United States on behalf of EPA, DOI and NOAA, the Commonwealth on behalf of DEP and the Secretary of EOE, and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate status of PQ or NPI, or any change in the legal status of Lurie or O'Connor including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status, responsibilities, benefits, or rights of such Settling Defendant under this Consent Decree. Until this Consent Decree is terminated, Settling Defendants agree to provide their successors and assigns written notice of this Consent Decree and to provide to the United States and the Commonwealth, in accordance with Section XIII (Notices and Submissions) of this Decree, notice of such transfer to successors or assigns.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. With respect to the Commonwealth's claims under Chapter 21E, terms used in this Consent Decree which are defined in Chapter 21E or the regulations promulgated under Chapter 21E shall have the meanings assigned to them in Chapter 21E or such regulations to the extent they are not preempted by or inconsistent with CERCLA. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

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

B. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the Remedial Action has been completed at the Site in accordance with the requirements of CERCLA, the NCP, and the RODs for OU1, OU2, OU3, OU4 and any future final groundwater ROD at the Site.

C. "Chapter 21E" or "M.G.L. c. 21E" shall mean the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, codified at Massachusetts General Laws Chapter 21E, as amended.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

D. "Commonwealth" or "State" shall mean the Commonwealth of Massachusetts.

E. "Commonwealth Trustee" shall mean the Secretary of EOEAA, in her capacity as state trustee for natural resources.

F. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.

G. "Continuing Source Areas" shall mean those drainageways to the Sudbury River known as the Eastern Wetland, Trolley Brook, Outfall Creek and the lower Raceway, as more particularly described in the OU3 ROD.

H. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State Holiday, the period shall run until the close of business of the next working day.

I. "DEP" shall mean the Massachusetts Department of Environmental Protection and any predecessor or successor departments or agencies.

J. "EOEA" shall mean the Massachusetts Executive Office of Environmental Affairs and any successor departments or agencies.

K. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

L. "Federal Trustees" shall mean the Secretary of the Department of Commerce, acting through the National Oceanic and Atmospheric Administration ("NOAA"), and the Secretary of the Department of Interior ("DOI").

M. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States, the Commonwealth, or any other person will incur or pay in connection with the Remedial Action on and after the date of lodging of this Decree.

N. "Institutional Controls" shall mean deed restrictions and other requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater beneath the Site; 2) to limit human or animal exposure to Waste Material at the Site; 3) to ensure non-interference with the performance of the Remedial Action; and 4) to ensure the integrity and effectiveness of the Remedial Action.

O. "Interest" shall mean for payments owed to the United States, interest in accordance with 42 U.S.C. § 9607(a), at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of the Internal Revenue Code, 26 U.S.C. § 9507, compounded on a daily, monthly or annual basis; and for payments owed to the Commonwealth, the rate set forth in M.G.L. c. 21E, § 13.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

P. "Lurie and O'Connor" shall mean defendants Dr. Robert M. Lurie, his wife Nancy Lurie, Dr. Thomas L. O'Connor, and his wife, Grace O'Connor.

Q. "Natural Resources Damages" shall mean damages for injury to, destruction of, loss of, or lost use of natural resources at the Site under the trusteeship of DOI, NOAA or the Commonwealth Trustee, including the reasonable costs of assessing such injury, destruction, loss, or lost use.

R. "NPI" shall mean Nyacol Products, Inc., and its predecessor, Nyacol, Inc.

S. "Paragraph" shall mean a portion of this Consent Decree identified by an upper case letter or an arabic numeral, with or without a roman numeral.

T. "Parties" shall mean the United States, the Commonwealth, Settling Defendants, and Lurie and O'Connor.

U. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and/or the Commonwealth have incurred and paid in connection with the Site prior to the date of lodging of this Consent Decree, including the removal actions EPA has conducted at the Site, Remedial Action, and all short term response measures the Commonwealth has conducted at the Site, plus accrued interest on all such costs.

V. "Plaintiffs" shall mean the United States and the Commonwealth.

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

W. "PQ" shall mean PQ Corporation.

X. "Records of Decision" or "RODs" shall mean the EPA Records of Decision relating to Operable Unit 1 signed on September 4, 1985, and the Explanation of Significant Differences for OU1 signed on September 21, 1992; relating to Operable Unit 2 signed on September 23, 1991; relating to Operable Unit 3 signed on March 30, 1993; any Records of Decision signed in connection with OU4 and a future final groundwater remedy; and all attachments thereto. If EPA determines that one or more additional Operable Unit(s) should be created from the existing Operable Unit 1, 2, 3, or 4, "RODs" shall also mean such additional Operable Unit(s).

Y. "Remedial Action" shall mean all response actions at the Site set forth in and conducted in support of the existing and future Records of Decision identified in Paragraph 3.X, including operation and maintenance activities.

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

AA. "Settling Defendants" shall mean PQ Corporation, Nyacol Products, Inc., Robert M. Lurie, and Thomas L. O'Connor. In addition, for the purposes of Paragraph 12 (Covenants Not to Sue By Plaintiffs) and Paragraph 20 (Contribution Protection) but not for the purposes of Paragraphs 13 and 14 (Pre- and Post-Certification Reservations), "Settling Defendants" shall mean the officers, directors, and employees of PQ and NPI.

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

BB. "Site" shall mean the Nyanza Chemical Waste Dump Superfund site, including a parcel of approximately 35 acres formerly owned and operated by Nyanza, Inc. in Ashland, Massachusetts ("the Nyanza parcel"), the plume of contaminated groundwater emanating from the Nyanza parcel, the Continuing Source Areas, contaminated portions of the Sudbury River, and all those areas where Waste Material emanating from the Nyanza parcel is now or may come to be located. The Site is generally depicted on the diagrams at Appendix A.

CC. "United States" shall mean EPA, DOI, NOAA and the United States Department of Justice acting on behalf of EPA, NOAA and DOI.

DD. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any solid waste under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any "hazardous material" or "oil" under M.G.L. c. 21E, § 2.

**V. REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCES DAMAGES**

4. Payment of Response Costs and Natural Resources Damages to the United States and the Commonwealth.

A. Settling Defendants shall pay eight million dollars (\$8,000,000) plus Interest in three installments, as set forth below, to the United States and the Commonwealth in

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

reimbursement of Past and Future Response Costs and Natural Resources Damages in accordance with the procedures in this Section and the allocation set forth in Appendix B. Interest on the settlement amount and installments shall begin to accrue as of the date of lodging of this Consent Decree. The installments shall be paid as follows:

(1) Settling Defendants shall pay \$3,000,000 plus Interest on \$8,000,000 within thirty days after entry of the Consent Decree (the "first payment").

(2) Settling Defendants shall pay \$2,000,000 plus unpaid Interest on \$5,000,000 on or before the first calendar anniversary of the entry of the Consent Decree.

(3) Settling Defendants shall pay \$3,000,000 plus unpaid Interest on \$3,000,000 on or before the second calendar anniversary of the entry of the Consent Decree:

B. All payments to the United States for Past and Future Response Costs shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the USAO File number, the EPA Region and Site Spill ID Number 0115, DOJ Case Number 90-11-2-340, and the Nyanza Chemical Waste Dump Superfund Site Special Account. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Massachusetts following lodging of the Consent Decree. Any



**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XIII (Notices and Submissions) and to Chief, Search and Cost Recovery Office, U.S.E.P.A. (HBS), J.F.K. Federal Building, Boston, Massachusetts 02203. Of the total amount to be paid pursuant to this Consent Decree, all payments owed to EPA, as set forth in Appendix B, shall be deposited by the United States in the Nyanza Chemical Waste Dump Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site. Any balance remaining in said Special Account after completion of response actions at or in connection with the Site shall be deposited by the United States in the EPA Hazardous Substance Superfund.

C. All payments to the Commonwealth for Past and Future Response Costs shall be in the form of a certified check or cashier's check made payable to the "Commonwealth of Massachusetts" (to be credited to the Commonwealth's Environmental Challenge Fund in accordance with M.G.L. c. 29, § 2J) and referencing DEP Site No. 3-0216. The certified check shall be sent to:

Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108-1698  
Attn: Christine Peluso, Administrative Assistant

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

A copy of the check and any accompanying transmittal letter shall be sent to:

Chief, Cost Recovery Section  
Bureau of Waste Site Cleanup  
Department of Environmental Protection  
One Winter Street  
Boston, MA 02108.

D. Payment(s) to the Commonwealth Trustee for Natural Resources Damages for injury to groundwater shall be in the form of a certified check or cashier's check made payable to the "Commonwealth of Massachusetts" and referencing the name of the Site, the Nyanza Chemical Waste Dump Superfund Site. The certified check shall be sent to:

General Counsel  
Executive Office of Environmental Affairs  
Commonwealth of Massachusetts  
100 Cambridge Street  
Boston, MA 02202

and shall reference that the payment is for Natural Resources Damages for injury to groundwater at the Nyanza Site. Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and the Commonwealth as provided in Section XIII (Notices and Submissions).

E. All payments to the United States and the Commonwealth for Natural Resources Damages for injury to joint resources shall be in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198, DOJ number 90-11-2-340, the USAO number, and the

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

name of the Site, the Nyanza Chemical Waste Dump Superfund Site.

Settling Defendants shall forward the certified check by certified mail, return receipt requested, to:

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive  
Arlington, VA 22203

with a copy to:

Mark Barash  
Office of the Regional Solicitor  
U.S. Department of Interior  
One Gateway Center, Suite 612  
Newton Corner, MA 02158-2868

and

Anton Giedt  
Department of Commerce  
Office of General Counsel  
One Blackburn Drive  
Gloucester, MA 01930

and

General Counsel  
Executive Office of Environmental Affairs  
Commonwealth of Massachusetts  
100 Cambridge Street  
Boston, MA 02202

and shall reference that the payment is for Natural Resources Damages for resources under the joint trusteeship of the Federal Trustees and the Commonwealth Trustee with respect to the Nyanza Site. Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and the Commonwealth as provided in Section XIII (Notices and Submissions).

## Nyanza Chemical Waste Dump Superfund Site Consent Decree

DOI shall hold the funds recovered for Natural Resources Damages in an interest bearing account in its Natural Resource Damage Assessment and Restoration Fund. Such monies together with all interest accrued thereon shall only be spent for the restoration, replacement and/or acquisition of equivalent natural resources which have been injured, destroyed, or lost by the releases of hazardous substances from or at the Site, and for Trustee costs of assessing such injury, destruction or loss. Such expenditures shall be made in accordance with the provisions and procedures set forth in a Memorandum of Agreement entered into among the Federal Trustees, EPA, the Commonwealth Trustee, and DEP.

5. Settling Defendants intend to establish a settlement fund account (the "Fund"), which they intend will be a Qualified Settlement Fund under Internal Revenue Code Section 468B and Reg. § 1.468(B). In the event Settling Defendants establish such a Fund, the Fund agent and the terms of the Funding Agreement shall be subject to prior approval by Plaintiffs. The Funding Agreement between Settling Defendants and the Fund agent shall provide that the Fund agent shall submit to the jurisdiction and venue of this Court in connection with any litigation arising out of the Funding Agreement. The Funding Agreement shall provide that disbursement of the Fund shall be for the sole purpose of making the payments required under Paragraph 4 of this Consent Decree, and shall direct payment in accordance with the

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

allocation of settlement proceeds in Appendix B of this Consent Decree and in accordance with all procedural requirements in Paragraph 4 of this Consent Decree. Settling Defendants shall pay all fees, costs, taxes, and charges of the Fund, and those amounts will not be deducted from the monies required to be paid to Plaintiffs under this Consent Decree. All monies paid by Settling Defendants into the Fund shall remain in the Fund and may not be withdrawn by any person, except to make the payments required by Paragraph 4, or unless one of the following events occurs: (1) the United States or the Commonwealth withdraws its consent to the entry of this Consent Decree after the Decree has been lodged, pursuant to Paragraph 36; or (2) a final judicial determination is made that the Consent Decree will not be approved and entered. Monies paid into the Fund by Settling Defendants shall not be used to pay stipulated penalties, attorneys' fees, or other litigation costs of Settling Defendants. The existence of the Fund shall in no way alter Settling Defendants' obligations under this Consent Decree.

**VI. PAYMENT OF INTEREST AND STIPULATED PENALTIES**

6. Interest on Late Payments. In the event that any payments due to the United States or the Commonwealth required by Section V are not made when due, Interest shall continue to accrue on the overdue amount, through the date of payment.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

7. Stipulated Penalties.

A. If any amounts due to the United States or the Commonwealth under this Consent Decree are not paid by the required dates, Settling Defendants shall pay as a stipulated penalty, to the United States and/or to the Commonwealth, as appropriate, in addition to the Interest required by Paragraph 6, \$5,000 per day that any such payment is late.

B. For each day of each violation of Section XI (Access to Information) and Section XII (Retention of Records), the Settling Defendant who violated the provision shall pay as a stipulated penalty, \$2,000. Said Settling Defendant shall pay 70% of such penalty to the United States and 30% of such penalty to the Commonwealth, as provided in subparagraph 7.C. For each day of each violation of Section X (Site Access and Institutional Controls), NPI shall pay as a stipulated penalty, \$2,000. NPI shall allocate the payment of stipulated penalties for violation of Section X between the United States and the Commonwealth as provided in Appendix B, and shall make payment in accordance with the procedures in subparagraph 7.C.

C. Stipulated penalties are due and payable within 30 days of Settling Defendants' failure to make timely any payment due or to comply with any obligation under this Consent Decree. Stipulated penalties are in addition to, and not in lieu of, all other payments and Interest due under this Decree. All payments to the United States under this Paragraph shall be paid by

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**  
certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, and shall reference CERCLA Number 0115 and DOJ Case Number 90-11-2-340. Payments to the Commonwealth shall be paid by certified check or cashier's check made payable to the "Commonwealth of Massachusetts" (to be credited to the Commonwealth's Environmental Challenge Fund in accordance with M.G.L. c. 29, § 2J), shall reference the Nyanza Chemical Waste Site, DEP Site No. 3-0216, and shall be mailed to:

Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108-1698  
Attn: Christine Peluso, Administrative Assistant.

Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent, as applicable, to the United States as provided in Section XIII (Notices and Submissions); and to the Commonwealth by notice to:

Chief, Cost Recovery Section  
Bureau of Waste Site Cleanup  
Department of Environmental Protection  
One Winter Street  
Boston, MA 02108.

D. Penalties shall accrue as provided above regardless of whether the United States or the Commonwealth has notified Settling Defendants of the violation or made a demand for payment. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs,

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

E. If Settling Defendants fail to pay stipulated penalties when due, the United States or the Commonwealth, as applicable, may institute proceedings to collect the penalties, as well as interest. Interest on the unpaid stipulated penalties shall begin to accrue on the date said penalties are due at the following rates: (a) for penalties due the United States, at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, calculated, at EPA's discretion, on a daily, monthly or annual basis; (b) for penalties due the Commonwealth, at a rate of twelve (12) percent per year compounded annually.

8. If the United States or the Commonwealth must bring an action to collect any payment required by this Consent Decree, Settling Defendants shall reimburse the United States and the Commonwealth for all costs of such action, including but not limited to attorneys' fees. If the United States or the Commonwealth brings an action to collect payment of a stipulated penalty, Settling Defendants reserve any objection or defense they may have as to whether they violated the obligation for which the stipulated penalty is being sought.



## Nyanza Chemical Waste Dump Superfund Site Consent Decree

9. Payments made under Section VI shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to perform its obligations under this Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties due the United States that have accrued pursuant to this Consent Decree.

11. Notwithstanding any other provision of this Section, the Commonwealth may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties due the Commonwealth that have accrued pursuant to this Consent Decree.

### VII. COVENANTS NOT TO SUE BY PLAINTIFFS

12. A. In consideration of the payments that will be made and other obligations performed by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 13.A, 14.A, 16 and 17, the United States on behalf of EPA, DOI and NOAA covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 106 of CERCLA, and/or Section 7003 of the Solid Waste Disposal Act, 42 U.S.C. § 6973, for implementation of the Remedial Action, or pursuant to Section 107(a) of CERCLA relating to Past Response Costs, Future Response Costs, and Natural Resources Damages. In consideration of the payments that will be made and other obligations performed by Settling Defendants under

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

the terms of the Consent Decree, and except as specifically provided in Paragraphs 13.B, 14.B, 16, and 17, the Commonwealth on behalf of DEP and EOEA covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, or M.G.L. c. 21E, or the common law of nuisance, for implementation of the Remedial Action or reimbursement of Past Response Costs, Future Response Costs, and Natural Resources Damages. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the United States and the Commonwealth of the first payment required by Section V. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

B. In consideration of the payments that will be made and the other obligations performed by Settling Defendants under the terms of the Consent Decree, the United States on behalf of EPA, DOI and NOAA, and the Commonwealth on behalf of DEP and EOEA covenant not to sue or to take administrative action against Lurie and O'Connor pursuant to the Massachusetts Uniform Fraudulent Conveyance Act, M.G.L. c. 109A, for Past Response Costs, Future Response Costs, and Natural Resources Damages.

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

This covenant not to sue shall take effect upon the receipt by the United States and the Commonwealth of the first payment required by Section V. These covenants not to sue extend only to Lurie and O'Connor and do not extend to any other person.

13. Pre-certification reservations.

A. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that, in light of these previously unknown conditions or information together with any other relevant information, the Remedial Action is not protective of human health or the environment.

B. Commonwealth's Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of DEP, reserves, and this Consent Decree

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to M.G.L. c. 21E, seeking to compel Settling Defendants (1) to perform other response actions at the Site or (2) to reimburse the Commonwealth for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (1) or (2) of this Paragraph will not significantly delay or be inconsistent with the Remedial Action if, prior to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth, or

b. information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part,

and the DEP Commissioner, or his or her delegate, determines, pursuant to M.G.L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information, that response actions taken are not protective of health, safety, public welfare, or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

14. Post-certification reservations.

A. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that, in light of these previously unknown conditions or this information together with any other relevant information, the Remedial Action is not protective of human health or the environment.

B. Commonwealth's Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of DEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

M.G.L. c. 21E, seeking to compel Settling Defendants (1) to perform other response actions at the Site or (2) to reimburse the Commonwealth for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (1) or (2) of this Paragraph will not significantly delay or be inconsistent with the Remedial Action if, subsequent to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to the Commonwealth, are discovered or become known after the Certification of Completion, or

b. information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part, after the Certification of Completion, and the DEP Commissioner, or his or her delegate, determines, pursuant to M.G.L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken are not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

15. For purposes of Paragraph 13, the information and the conditions known to EPA and the Commonwealth shall include only that information and those conditions set forth in the Records of

## Nyanza Chemical Waste Dump Superfund Site Consent Decree

Decision of the Site for OU1, OU2 and OU3; the administrative records supporting the Records of Decision for OU1, OU2 and OU3 and removals performed up to the date of lodging of this Consent Decree; the post-ROD administrative records up to the date of lodging of this Consent Decree for OU1, OU2 and OU3; and sampling data and written discussions of such data generated by or received by EPA in connection with OU4, up to the date of lodging of this Consent Decree, which are compiled pursuant to the requirements of the NCP, 40 C.F.R. § 300.810, and which EPA considers or relies on in taking a response action.

Notwithstanding the previous sentence, the Commonwealth shall be deemed to have knowledge of only the information and conditions "known to EPA" as defined herein which are set forth in records which have been received by the Commonwealth for its review.

For purposes of Paragraph 14, the information and the conditions known to EPA and the Commonwealth shall include only that information and those conditions set forth in the Records of Decision, the administrative records supporting the Records of Decision, the administrative records supporting the removals performed in connection with the Site, and the post-ROD administrative records for the Records of Decision compiled by EPA pursuant to the requirements of the NCP, 40 C.F.R. § 300.810, prior to Certification of Completion of the Remedial Action.

### 16. Reservations concerning Natural Resources Damages.

Notwithstanding any other provision of this Decree, the United

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

States and the Commonwealth, on behalf of their respective Natural Resources Trustees, NOAA, DOI and EOE, reserve the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resources Damages, based on:

A. conditions with respect to the Site, unknown to the Federal Trustees or the Commonwealth Trustee at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of said natural resources at the Site, or

B. information received by the Federal Trustees or the Commonwealth Trustee after the date of lodging of this Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to the Federal Trustees or the Commonwealth Trustee at the date of lodging of this Decree.

For purposes of this Paragraph 16, the information and conditions known to the Federal Trustees shall be that information and those conditions known to EPA as defined in Paragraph 15. For purposes of this Paragraph 16, the information and conditions known to the Commonwealth Trustee shall be that information and those conditions known to the Commonwealth as defined in Paragraph 15.



**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

17. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 12 of this Decree. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

A. liability for failure by a Settling Defendant to meet a requirement of this Consent Decree;

B. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material at locations other than the Site;

C. criminal liability;

D. liability, if any, for any violations of federal or state law other than claims for which there are covenants not to sue in Paragraph 12;

E. liability for the disposal, release or threat of release of any Waste Material at the Site occurring after the date of lodging of the Consent Decree, except for those which result from migration of Waste Material existing at the Site prior to the date of lodging of this Consent Decree.

**VIII. COVENANTS BY SETTLING DEFENDANTS**

18. A. Except as specifically provided in Paragraphs 18.B and 18.D, Settling Defendants hereby covenant not to sue and

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

agree not to assert any claims or causes of action against the United States, including any agency or department of the United States, the EPA Hazardous Substances Superfund, or the Commonwealth with respect to the Site or this Consent Decree, including, but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, or the Environmental Challenge Fund established pursuant to M.G.L. c. 29, § 2J, or any other provision of law; any claim pursuant to CERCLA Sections 107 and 113 or Chapter 21E; any claim under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings"; any claim under the Tucker Act, 28 U.S.C. § 1491, or at common law, arising out of or relating to access to, institutional controls on, or response activities undertaken at the Site; or any claims arising out of response activities at the Site. Settling Defendants also agree not to challenge the remedies selected in or the adequacy of the RODs. Settling Defendants and Lurie and O'Connor hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any agency or department of the United States, or the Commonwealth with respect to the Site or this Consent Decree, relating to or under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by P.L. 104-121 (March 29, 1996).

## Nyanza Chemical Waste Dump Superfund Site Consent Decree

B. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The reservation in this subparagraph applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

D. In the event that the United States or the Commonwealth exercises its rights pursuant to Paragraphs 13, 14, or 16 of this Consent Decree, and except as provided in Paragraph 22, Settling Defendants reserve the right to assert any claims and defenses that they may have with respect to the matters raised by the United States or the Commonwealth pursuant to Paragraphs 13, 14, or 16.

**IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, counterclaims, cross-claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party to this Decree.

20. The Parties hereto agree, and by entering this Consent Decree this Court finds, that as of the effective date of this Consent Decree, Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The Parties agree that Settling Defendants are also entitled to protection from contribution actions or claims to the extent provided by the laws

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

of Massachusetts, including M.G.L. c. 21E, § 3A(j)(2), and c. 231B, for "matters addressed" in this Consent Decree. The matters addressed in this Consent Decree are Past Response Costs, Future Response Costs, and Natural Resources Damages.

The Parties further agree that, pursuant to Section 113(f)(2) of CERCLA, the alleged liability of potentially responsible parties at the Site who are not Parties to this Decree shall be reduced by the amount recovered by the United States or the Commonwealth in this settlement.

21. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States and the Commonwealth within ten (10) days of service of the complaint on it. In addition, Settling Defendants shall notify the United States and the Commonwealth within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to the Site.

22. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

relief, recovery of response costs, Natural Resources Damages, 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, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenants Not to Sue by Plaintiffs).

**X. SITE ACCESS AND INSTITUTIONAL CONTROLS**

23. Commencing upon the date of lodging of this Consent Decree, so long as NPI, its sublessees, or its assigns are operating on or leasing part of the Site, NPI agrees to provide the United States, the Commonwealth, and their representatives, including, but not limited to, EPA and DEP and their respective contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of the Remedial Action and this Consent Decree, and access to which is controlled by NPI, its sublessees or its assigns, for the purposes of conducting any activity related to this Consent Decree or the implementation of the Remedial Action including, but not limited to:

- a. Monitoring the response actions;

Nyanza Chemical Waste Dump Superfund Site Consent Decree

- b. Verifying any data or other technical information;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Installing, repairing, or connecting to utilities and water lines at government expense and to the extent permitted by the capacity of the utilities and water lines;
- g. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by NPI or its agents, consistent with Section XI;
- h. Determining whether the property is being used in a manner that is prohibited by use restrictions or other Institutional Controls; and
- i. Conducting operation and maintenance activities for the Remedial Action;

provided, however, that any such activities shall be conducted in a manner designed to minimize to the extent practicable interference with NPI's use of its property or the conduct of its

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

business, and EPA or DEP will give notice to NPI to the extent practicable of their activities on NPI's property.

NPI shall incorporate the access rights set forth in Paragraph 23.a. though i. in any sublease, assignment or other transfer of its interest in the leasehold property or other property under its control.

24. Commencing upon the date of lodging of this Consent Decree, so long as NPI, its sublessees, or its assigns are operating on or leasing part of the Site, NPI agrees not to use any of its leasehold property, as described in Appendix C, or other property under its control, nor to allow any employees, agents, independent contractors, sublessees or assigns to use said property, in violation of any of the following restrictions:

- a. Groundwater underlying the property shall not be consumed or used in any way;
- b. No excavation, drilling or other intrusive activities or uses shall be conducted which will cause a release or threat of release of hazardous substances on the property currently owned by John J. Glynn, Jr., Trustee of the Environmental Restoration Engineering Trust, as described in Appendix C;
- c. No use or activity on the property shall be permitted that will disturb any of the



**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

remedial measures that have been or will be implemented pursuant to the RODs (Upon request, EPA or DEP will discuss with NPI to the extent practicable whether a specific proposed use or activity may disturb current or future remedial measures, once such measures have been developed);

- d. NPI shall comply with any additional or superceding activity or use covenants, conditions, or restrictions that EPA, after review and comment by the Commonwealth, determines are required to protect the Remedial Action, the public health, or the environment during or after implementation of the Remedial Action. Such activity or use covenants, conditions, or restrictions, shall be designed to minimize to the extent practicable interference with NPI's use of its property or the conduct of its business.

In the event that a grant by the owner of NPI's leasehold property of any activity or use covenant, condition, or restriction is or becomes necessary, NPI agrees to subordinate its interest in the leasehold property to the grantee or grantees of any such restrictions on said property, upon request. Until such time as any such grant has been recorded, if NPI seeks to

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

undertake any use or activity on the property which is prohibited or restricted by this Consent Decree, it may file a petition with EPA setting forth the nature of the use or activity, the reason why the use or activity is necessary, and any expected impact of the use or activity on the Remedial Action, the public health, and the environment. NPI may undertake the restricted use or activity only if EPA determines, in its sole and unreviewable discretion and after review and comment by the Commonwealth, to allow such use or activity to be implemented pursuant to an approved plan. Upon recording of a grant of Institutional Controls, any such approvals shall be subject to the process which may be contained in that grant, which process shall be made available to NPI so long as it is operating on the leasehold property. In the event that Plaintiffs negotiate grants of environmental restrictions with owner(s) of NPI's leasehold property, NPI shall be provided with an opportunity to participate in those negotiations during the term of its lease or period of its use and occupancy. In addition, any dispute resolution procedure which may be established in that grant of Institutional Controls shall also be available to NPI so long as it is operating on the leasehold property. Until such time as a dispute resolution procedure in such a grant is recorded, all disputes arising under Paragraph 24 a.-d. shall be subject to final resolution by the Director of the Office of Site Remediation and Restoration, EPA Region 1, after a reasonable

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

opportunity for DEP to review and comment; and after DEP has accepted assignment from the United States or EPA of such a grant, all disputes arising under Paragraph 24 a.-d. shall be subject to final resolution by the Division Director for Response and Remediation of the Bureau of Waste Site Cleanup, DEP, or such other DEP official as provided in such grant and any amendments thereto, after a reasonable opportunity for EPA to review and comment. The decision of the appropriate Director on the matter in dispute shall not be subject to judicial review.

NPI shall incorporate the restrictions set forth in Paragraph 24.a. through d. in any sublease, assignment or other transfer of its interest in the leasehold property or other property under its control.

25. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, Chapter 21E, and any other applicable statute or regulation. In the event NPI does not comply with the provisions of this Section, NPI shall reimburse the United States and the Commonwealth in accordance with the procedures in Paragraph 7.C. for all costs incurred by the United States and the Commonwealth in obtaining access or otherwise enforcing the provisions of this Section, including but not limited to attorneys' fees.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

XI. ACCESS TO INFORMATION

26. Settling Defendants shall provide to the United States and the Commonwealth, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to disposal or response activities at the Site or the liability of any person for the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, or correspondence.

27. Confidential Business Information and Privileged Documents.

A. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree, and covering areas of NPI's facilities to which Plaintiffs have obtained access, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), with respect to EPA, and M.G.L. c. 21E, § 12 and 310 C.M.R. § 40.0011, with respect to the Commonwealth. Documents or information determined to be confidential by EPA or the Commonwealth will be accorded the protection specified in the relevant federal or state statute or regulation. If no claim of confidentiality accompanies documents or information when they are submitted to the United States and the Commonwealth, or if the United States or the Commonwealth has notified Settling Defendants that the documents or information are not confidential

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

under the standards of Section 104(e)(7) of CERCLA or Section 12 of Chapter 21E, as the case may be, the public may be given access to such documents or information without further notice to Settling Defendants.

B. Settling Defendants may assert that certain documents, records and other information submitted to the United States or the Commonwealth pursuant to this Decree are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only.

C. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

Nyanza Chemical Waste Dump Superfund Site Consent Decree  
engineering data, or any other documents or information  
evidencing conditions at or around the Site.

**XII. RETENTION OF RECORDS**

28. Until 5 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

29. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the Commonwealth, Settling Defendants shall deliver any such records or documents to the United States or the Commonwealth. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law, in the manner provided in Paragraph 27, above; provided however, any document, record, or other information for which a Settling Defendant has asserted a privilege claim shall be retained until any challenge to the asserted claim is finally resolved.

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

30. To the best of its knowledge or belief, each Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth, whichever occurred earlier, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA and DEP requests for information pursuant to Chapter 21E, if any.

**XIII. NOTICES AND SUBMISSIONS**

33. Unless otherwise provided herein, whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, DEP, and Settling Defendants, respectively.

**As to the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

Washington, D.C. 20044  
Re: DOJ # 90-11-2-340

and as to EPA as specified below.

As to EPA:

Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
JFK Federal Building  
Boston, MA 02203-2211  
Re: Nyanza Chemical Waste Dump Superfund Site

Remedial Project Manager  
Massachusetts Superfund Section, HBO  
Office of Site Remediation and Restoration  
U.S. Environmental Protection Agency  
JFK Federal Building  
Boston, MA 02203-2211  
Re: Nyanza Chemical Waste Dump Superfund Site

As to the Commonwealth:

Chief, Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108-1698  
RE: Nyanza Chemical Waste Dump Superfund Site

and as to DEP as specified below.

As to DEP:

Office of General Counsel  
Department of Environmental Protection  
One Winter Street, 3rd Floor  
Boston, MA 02108  
RE: Nyanza Chemical Waste Dump Superfund Site

and

Remedial Project Manager  
Bureau of Waste Site Cleanup  
Department of Environmental Protection  
One Winter Street, 5th Floor  
Boston, MA 02108  
RE: Nyanza Chemical Waste Dump Superfund Site



Nyanza Chemical Waste Dump Superfund Site Consent Decree

As to Settling Defendants:

General Counsel  
PQ Corporation  
P.O. Box 840  
Valley Forge, PA 19482-0840

Mr. Robert Nehring  
Nyacol Products, Inc.  
Megunco Road  
P.O. Box 349  
Ashland, MA 01721

Paul Wallach, Esq.  
Hale and Dorr  
60 State Street  
Boston, MA 02109

Dr. Robert M. Lurie  
4 Tufts Road  
Lexington, MA 02173

Dr. Thomas L. O'Connor  
Passaconaway Road, RFD Box 216  
Albany, NH 03818

XIV. APPENDICES

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

Appendix A: Diagrams of the Site

Appendix B: Allocation of Settlement Proceeds and Certain Stipulated Penalties

Appendix C: Legal Descriptions of NPI Leasehold Property

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be subject to a thirty (30) day public comment period consistent with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Commonwealth may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in Court the Commonwealth's withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The Commonwealth reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. Settling Defendants and Lurie and O'Connor consent to the entry of this Consent Decree without further notice and agree not to challenge entry or the terms of the Decree.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

agreement may not be used as evidence in any litigation between the Parties.

**XVII. SIGNATORIES/SERVICE**

38. This Decree may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

39. Each undersigned representative of Settling Defendants, Lurie and O'Connor, the Attorney General for the Commonwealth of Massachusetts, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

40. Settling Defendants and Lurie and O'Connor shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and Lurie and O'Connor hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

Nyanza Chemical Waste Dump Superfund Site Consent Decree

XVIII. FINAL JUDGMENT

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, Settling Defendants, and Lurie and O'Connor. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS 22 DAY OF June, 1998.

*Edward F. Harrington*  
United States District Judge




Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

  
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

Cynthia S. Huber  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
(202) 514-5273

Donald Stern  
United States Attorney

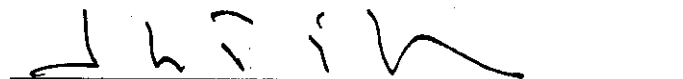
George B. Henderson  
Assistant United States Attorney  
District of Massachusetts

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

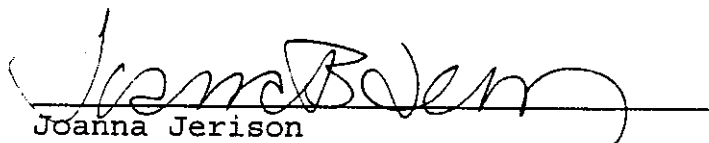
THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 1/16/98



John P. DeVillars  
Regional Administrator  
Region I  
U.S. Environmental Protection  
Agency  
John F. Kennedy Federal Building  
Boston, Massachusetts 02203



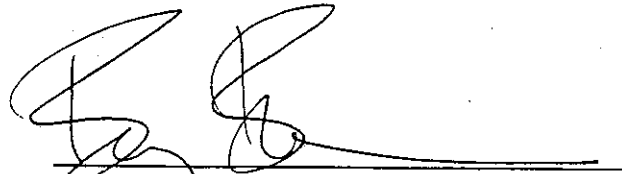
Joanna Jerison  
Senior Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
J.F. Kennedy Federal Building-RCC  
Boston, Massachusetts 02203

**Nyanza Chemical Waste Dump Superfund Site Consent Decree**

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 2/17/1998



Barry Breqn  
Director

Office of Site Remediation Enforcement  
Office of Enforcement and Compliance  
Assurance

U.S. Environmental Protection Agency  
Washington, DC 20460

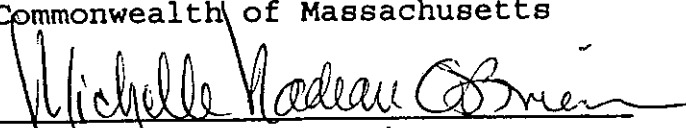
Nyanza Chemical Waste Dump Superfund Site Consent Decree

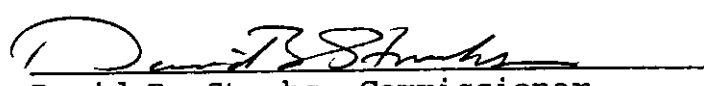
THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

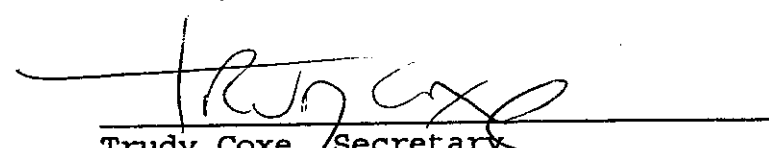
FOR THE COMMONWEALTH OF MASSACHUSETTS

Date: April 10, 1998

Scott Harshbarger  
Attorney General  
Commonwealth of Massachusetts

  
Michelle Nadeau O'Brien  
Assistant Attorney General  
Commonwealth of Massachusetts  
Office of the Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, MA 02108-1698

  
David B. Struhs, Commissioner  
Massachusetts Department of  
Environmental Protection  
One Winter Street  
Boston, MA 02108

  
Trudy Cox, Secretary  
Massachusetts Executive Office  
of Environmental Affairs  
100 Cambridge Street, 20th Floor  
Boston, MA 02202



Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR PQ CORPORATION

Date: Dec 12, 1997

Richard W. Kelso p  
Richard W. Kelso,  
President and Chief Executive  
Officer

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation  
2 Oliver Street, 6th Floor  
Boston, MA 02109

Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR NYACOL PRODUCTS, INC.

Date: 12/15/97

Robert J. Nehring  
Robert J. Nehring  
President

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Paul G. Wallach, Esq.  
Hale & Dorr  
60 State Street  
Boston, MA 02109

Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR ROBERT M. LURIE

Date:

12/17/97

Robert M. Lurie  
Robert M. Lurie

Agent Authorized to Accept Service on Behalf of Above-signed Party:


Leonard Freiman, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333

Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR THOMAS L. O'CONNOR

Date: December 17, 1997

  
Thomas L. O'Connor

Agent Authorized to Accept Service on Behalf of Above-signed Party:

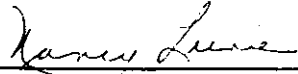
Leonard Freiman, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333

Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR NANCY LURIE

Date: 12/17/97

  
\_\_\_\_\_  
Nancy Lurie

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Leonard Freiman, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333

Nyanza Chemical Waste Dump Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Nyanza Chemical Waste Dump Superfund Site.

FOR GRACE O'CONNOR

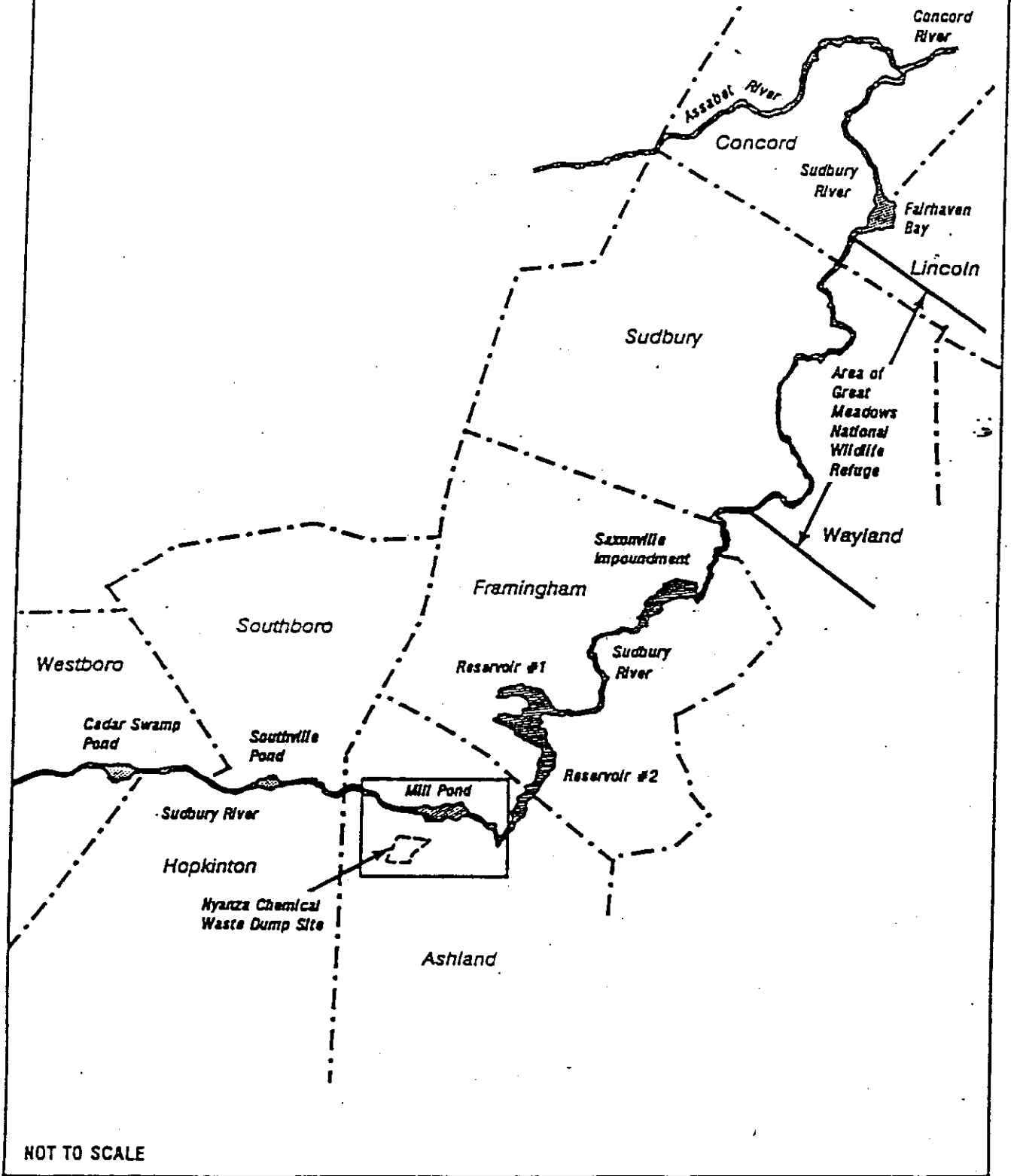
Date: 12/17/97

Grace O'Connor  
Grace O'Connor

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Leonard Freiman, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333

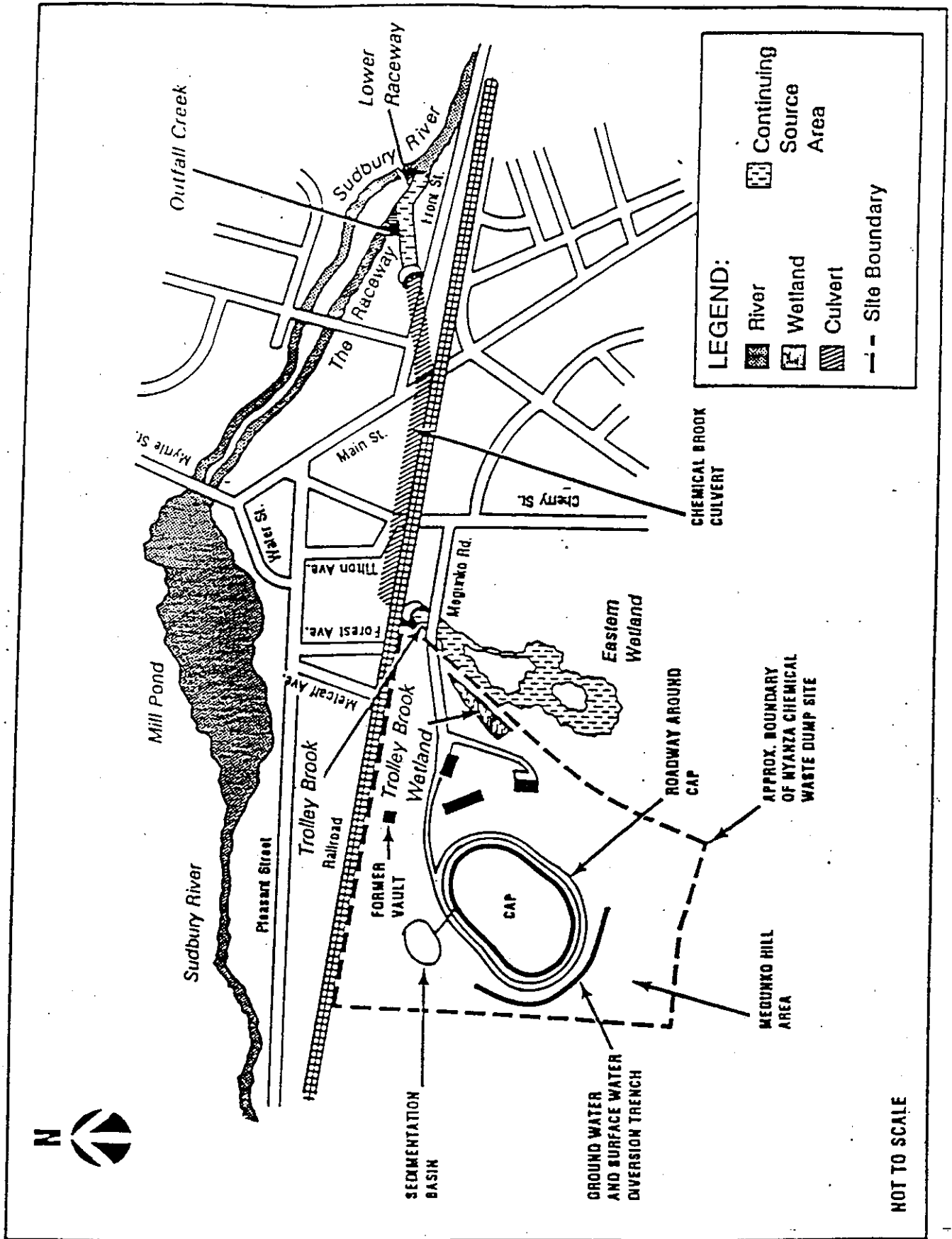
United States v. PQ Corporation, et al.  
Consent Decree  
Appendix A  
Diagrams of the Site  
(Source: Operable Unit 3 Record of Decision)



NOT TO SCALE



Figure 3  
 Nyanza Chemical Waste Dump Site  
 Principal Features and Continuing Source Areas





All payments under Paragraph 7.B. of the Consent Decree of Stipulated Penalties for violation of Section X (Access and Institutional Controls) shall be allocated as follows:

When the United States is grantee of a grant of environmental restrictions on Site property leased by NPI, or when no such grant of environmental restrictions is recorded, 70% to the United States (EPA) and 30% to the Commonwealth, to be paid in accordance with the procedures in Paragraph 7.C;

On or after the effective date of an assignment from the United States to the Commonwealth (or DEP) of a grant of environmental restrictions on Site property leased by NPI, 70% to the Commonwealth and 30% to the United States (EPA), to be paid in accordance with the procedures in Paragraph 7.C;

When the United States and the Commonwealth (or DEP) are joint grantees of a grant of environmental restrictions on Site property leased by NPI, 60% to the United States (EPA) and 40% to the Commonwealth, to be paid in accordance with the procedures in Paragraph 7.C.

**United States v. PQ Corporation, et al.**  
**Consent Decree**  
**Appendix C**  
**Legal Descriptions of NPI Leasehold Property**

For the purposes of Paragraphs 23 and 24 of the Consent Decree, NPI's leasehold property shall be those parcels described below, plus all other on-Site property or facilities that NPI leases or otherwise has the right to use and occupy.

EXHIBIT D  
INDENTURE OF LEASE

THIS INDENTURE OF LEASE made as of the 19th day of February, 1981, by and between:

Landlord: MCL DEVELOPMENT CORPORATION,  
a Massachusetts corporation  
having a usual place of business  
at One Speen Street, Framingham,  
Massachusetts (the "Landlord")

and

Tenant: NYACOL, INC., a Massachusetts  
corporation having a usual place  
of business at Megunko Road,  
Ashland, Massachusetts (the  
"Tenant").

WITNESSETH:

ARTICLE I

Premises

Section 1. The Landlord hereby leases to Tenant,  
and the Tenant hereby leases from Landlord, upon and  
subject to the conditions hereinafter expressed, those  
certain premises located in Ashland, Middlesex County,  
Massachusetts, described in Schedule "A" hereto annexed  
and hereby made a part hereof as though fully set forth  
herein with the appurtenances thereon and thereto; but  
specifically excluding from this lease (Landlord hereby  
acknowledges that Landlord has no interest therein except  
as otherwise expressly provided in Article VIII, Section  
12 hereof) all the buildings, the effluent system, items  
of fixtures, equipment and machinery now or hereafter  
located in or on said land and structures, however the  
same may be affixed, and belonging to Tenant. The land  
and the appurtenances not belonging to Tenant will some-  
times hereinafter collectively be referred to as the  
"demised premises".

RECORDS  
1977 1 508 881 1855 Aug 11 '97 10:00  
SCHEDULE "A"

That certain parcel of land located in Ashland, Middlesex County, Massachusetts being more particularly bounded and described as follows:

- SOUTHEASTERLY by Parcel "D" as shown on a plan of land entitled "Plan of Land Ashland, Mass. Scale: 1" = 60 ft. dated Feb. 28, 1979 prepared by Connorstone, Inc." recorded in Middlesex South Registry of Deeds in Book 13792, Page 186, 313.96 feet;
- SOUTHWESTERLY by Megunko Road extension, 300 feet, more or less;
- NORTHWESTERLY by other land of the Landlord, 315 feet, more or less;
- NORTHEASTERLY by land now or formally of Boston & Albany Railroad, 300 feet, more or less.

Together with the following rights and appurtenances:

- A. To use Lot 5 (WAY), Easement "H" and the easterly portion of Lot 2, along the easterly boundary thereof, to a width of thirty (30) feet, all as shown on a plan of land entitled "Plan of Land in Ashland, Mass.; Scale: 1" = 60 feet, Feb. 9, 1977; Scofield Brothers, Inc., Registered Land Surveyors, 1071 Worcester Road, Framingham, Mass.", recorded with said Deeds in Book 13236, Page 546, for all purposes for which streets or ways are commonly used in the Town of Ashland, including, without limitation, use for ingress and egress by persons, automobiles, trucks or otherwise, and use for all utility purposes, including, without limitation, the installation, construction, maintenance, use, repair, replacement, improvement, reconstruction and restoration of wires, pipes, conduits and

A-1

appurtenances for the transmission of sanitary sewerage, storm sewerage, water, gas, electricity, steam, telephone, effluent and other utilities in, under, over, across or upon the ground:

- B. To maintain, on or in such portions of Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5, as shown on the aforesaid plan recorded with said Deeds in Book 13236, Page 546, in the locations now situated thereon, all the buildings, structures, improvements, plumbing, wiring, equipment and other property constituting or used in the operation of the effluent system, so-called, located therein including, without limitation, the portion of said land on which filter beds, tanks, settling basins and other components included in or operated in connection with said effluent system and the right to enter on such land for the purposes authorized under the Indenture of Lease under which the aforesaid premises and these appurtenant rights are demised;
- C. To use any and all utility lines, pipes and the like now or hereafter located on any of said Lots 1, 2, 3, 4 and 5 in common with others entitled thereto;
- D. To the extent the same may be lawfully exercised, to discharge from any improvements now or hereafter located on the demised premises process or cooling water over said Lot 1 to the brook located northerly of the premises demised hereunder upon land now or formerly of the Boston & Albany Railroad and the right to install in or on said Lot 1 such pipes, conduits or other fixtures and equipment as is necessary in the judgment of the Tenant to exercise the foregoing rights.

A-2

LEASE

THIS INDENTURE OF LEASE, executed as of the 20th day of February 1997, by and between John J. Glynn, Jr., Trustee of Environmental Restoration Engineering Trust under a declaration of trust dated November 30, 1984 and recorded with Middlesex South District Registry of Deeds as Instrument #104 of December 3, 1984 ("Landlord") and Nyacol Products, Inc., a Delaware Corporation with a usual place of business at Megunco Road, PO Box 349, Ashland, Massachusetts, ("Tenant").

WITNESSETH

ARTICLE I

PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the warehouse portion (5720 square feet, more or less) of the building commonly known as the Derby building on Megunco Road, Ashland, Middlesex County, Massachusetts and being more particularly described as a portion of Lot 15 on a plan entitled "Plan of Land, Ashland Massachusetts" by Connorstone, Inc. dated April 6, 1979 and recorded with Middlesex South District Registry of Deeds as Plan No. 258 of 1983 ("Premises"). The Tenant shall enjoy joint use of the loading dock.