

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHARLES GEORGE TRUCKING COMPANY
INC., et al.,
Defendants.

Civil Action
No. 85-2463-WD

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

CHARLES GEORGE TRUCKING COMPANY
INC., et al.,
Defendants.

Civil Action
No. 85-2714-WD

CONSENT DECREE

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CONSENT DECREE

This Consent Decree is made and entered into by the United States of America ("United States") and the Commonwealth of Massachusetts ("Commonwealth") and certain Defendants and Third-Party Defendants. The Defendants and Third-Party Defendants who are participating in this settlement are listed in Appendix A to this Consent Decree and will be collectively referred to as the "Settling Defendants".

I. INTRODUCTION

A. Plaintiff United States filed a complaint in Civil Action No. 85-2463-WD on June 13, 1985 against, inter alia, the Charles George Land Reclamation Trust, Charles George Trucking Company, Inc., Charles George, Sr., Dorothy George, Charles George, Jr., James George, Dorothy G. Lacerte, Trustee, and

Ernest R. Dixon, Trustee, related to the Charles George Land Reclamation Trust Landfill Superfund Site (the "Site") located in Tyngsborough, Massachusetts. On June 8, 1989, the United States filed the First Amended Complaint (the "United States Complaint") naming an additional twenty-four (24) generator and transporter defendants and one defendant (C & J Trucking Co., Inc.) alleged to have received fraudulent transfers.

B. In the United States Complaint, the United States set forth claims on behalf of the United States Environmental Protection Agency ("EPA") pursuant to Sections 104(a), (b) and (e), and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604(a), (b) and (e), and 9607(a), as amended in 1986, and Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended in 1984, and also known as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g). The United States Complaint seeks recovery by the United States from certain Settling Defendants and other parties not participating in this settlement of Response Costs incurred and to be incurred in response to the release or threat of a release of hazardous substances into the environment from the Site. The Complaint also seeks other relief against parties not participating in the settlement.

C. The Commonwealth as Plaintiff filed a complaint in Civil Action No. 85-2714-WD on July 1, 1985 against the Charles George

Trucking Company, Inc., Charles George, Sr., Dorothy G. George, James George, Charles George, Jr., Dorothy G. LaCerte, Trustee, and Ernest G. Dixon, Jr., Trustee. In a First Amended Complaint filed on September 21, 1988, the Commonwealth as Plaintiff added the Charles George Land Reclamation Trust. On June 8, 1989, the Commonwealth as Plaintiff filed a Second Amended Complaint (the "Commonwealth Complaint"), which added the same twenty-four generator and transporter defendants and C & J Trucking Co., Inc., which the United States added in the United States Complaint. The United States and the Commonwealth actions were consolidated by the Court. In the Commonwealth Complaint, the Commonwealth as Plaintiff set forth claims against certain Settling Defendants and other parties not participating in this settlement for recovery of Response Costs incurred and to be incurred by the Commonwealth under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a), (Count I); recovery of Response Costs incurred and to be incurred under Section 5 of the Massachusetts Oil and Hazardous Material Release Prevention Act, Mass. Gen. Laws ch. 21E (hereafter, "Chapter 21E") (Count II); and damages and injunctive relief for nuisance (Count IV). The Commonwealth as Plaintiff set forth claims in the Commonwealth Complaint for damages for injury to and destruction or loss of Natural Resources, including costs of assessing and evaluating such injury, destruction or loss, under Section 107(a) of CERCLA,

42 U.S.C. § 9607(a) (Count I) and under Section 5 of Chapter 21E (Count II). The Commonwealth Complaint also sought other relief against parties not participating in the settlement. The Commonwealth as Plaintiff also claimed interest at the rate of 12% per year on the amount of the defendants' liability pursuant to Chapter 21E, Section 13 (Prayer for Relief, paragraph 2).

D. Certain of the Settling Defendants have asserted counterclaims and third-party claims against the United States and the Commonwealth in these actions.

E. Certain of the defendants sued a number of parties as third-party defendants in these actions. Certain of the third-party defendants are contributing toward the amount to be paid in settlement of the Plaintiffs' claims and all claims asserted against the third-party defendants in these actions. Those third-party defendants set forth in Appendix B are included in the term "Settling Defendants".

F. The United States, on behalf of the United States Coast Guard, and the Commonwealth, on behalf of the University of Massachusetts-Lowell, an agency of the Commonwealth, are contributing toward the amount agreed upon in settlement of the disputed claims.

G. The United States, the Commonwealth, and the Settling Defendants do not admit, and expressly deny, any alleged fact or liability arising out of the subject matter of the United States Complaint, Commonwealth Complaint or any complaint, counterclaim,

crossclaim, third-party claim, or any other claim in these consolidated actions, including any deemed claims which may exist in this action by virtue of the Case Management Order With Respect to Third-Party Defendants of the Court dated April 12, 1990, Paragraph II(A) ("Case Management Order"). The Parties agree that the Case Management Order did not provide for any deemed claims by the United States and the Commonwealth against the Settling Defendants or by the United States and the Commonwealth against each other.

H. Certain of the Settling Defendants performed pre-design activities at the Charles George Land Reclamation Trust Landfill Superfund Site pursuant to Administrative Order by Consent, U.S. EPA Docket No. I-89-1054.

I. The Parties agree that settlement of this case is in the public interest and is made in good faith, and that entry of this Consent Decree is fair, reasonable, in the public interest, and consistent with CERCLA. The Commonwealth and the Settling Defendants also agree that settlement in this case is consistent with Chapter 21E.

J. This Consent Decree was negotiated and executed by the Parties hereto in good faith and at arms-length to avoid the continuation of expensive and protracted litigation and is a fair and equitable settlement. The execution of this Consent Decree is not an admission by any Party of liability, nor is it an admission by any Party of any of the factual allegations which

are the subject of the complaints, crossclaims, counterclaims, third-party claims, or any deemed claims which may exist in this action by virtue of the Case Management Order and all Parties to this Consent Decree expressly deny liability and all such factual allegations.

K. The Plaintiffs have undertaken and will continue to undertake Remedial Action, including operation and maintenance, at the Site which is embodied in three Records of Decision ("RODs"). The ROD for the first operable unit was signed on December 29, 1983, and selected installation of a permanent waterline. As part of the ROD process, a Draft Wide Angle 3D Vertical Seismic Profiling Survey was issued, a Remedial Action Master Plan was issued, and a two part Feasibility Study was conducted and issued. Construction of the permanent waterline is complete and it began operation in October 1988. The ROD for the second operable unit was signed on July 11, 1985, and selected the source control measures. Those measures included capping the landfill, installing a leachate collection system, and installing gas vents in the landfill. As part of the ROD process, a Source-Oriented Feasibility Study was conducted and issued. Construction of the components for the second operable unit was completed in October 1990 and January 1991. The ROD for the third operable unit was signed on September 29, 1988 and selected management of migration measures. These measures included extraction and treatment of contaminated groundwater and

leachate, residential well and groundwater monitoring, and collection and incineration of landfill vent gas emissions. Design of these remedial actions is proceeding. EPA conducted a Remedial Investigation and Feasibility Study for the Site which is embodied in a Draft Final Remedial Investigation Report and a Draft Final Feasibility Study Report issued in July, 1988. The Commonwealth installed a temporary waterline in December, 1982. The Commonwealth also operated and maintained the temporary waterline both before and after it was upgraded by EPA. The Commonwealth inspected the Site and responded to releases and threatened releases of hazardous materials from the Site from July, 1982 to November, 1988.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. The United States District Court for the District of Massachusetts ("Court") has jurisdiction over the subject matter of these actions and the parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331 and 1345, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), Section 7003 of RCRA, 42 U.S.C. § 6973, and has pendent jurisdiction over the claims arising under state law. This Court has personal jurisdiction over the Settling Defendants who, for purposes of this Consent Decree only, waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the Commonwealth, and the Settling Defendants and their heirs, successors, assigns, agents and trustees. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree. The corporate Settling Defendants are identified more particularly in Appendix C by place of incorporation.

IV. DEFINITIONS

3. This Consent Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601 as they exist at the date of entry of this Consent Decree, unless otherwise defined in this Consent Decree. With respect to the Commonwealth's claims under Chapter 21E or other claims brought under Chapter 21E, this Consent Decree also incorporates the definitions set forth in Chapter 21E as they exist at the date of entry of this Consent Decree, unless otherwise defined in this Consent Decree. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:

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

"Chapter 21E" shall mean the Massachusetts Oil and Hazardous Material Release Prevention Act, Massachusetts General Laws, Chapter 21E (1983 Mass. Stat. chapter 7, Section 5) as amended.

"Commonwealth" shall mean the Commonwealth of Massachusetts, including the Settling Commonwealth Agency, unless a particular agency or department is specified, in which case the reference shall be only to that agency or department.

"Consent Decree" shall mean this Decree, including the attached Appendices.

"Court" shall mean the United States District Court for the District of Massachusetts.

"DEP" shall mean the Massachusetts Department of Environmental Protection and any successor department or agency, and the predecessor agency, the Department of Environmental Quality Engineering and its predecessor agencies.

"DEP Administrative Record" shall mean the Administrative Record certified by the DEP to the Court on October 1, 1990, and as may be further supplemented.

"EOEA" shall mean the Massachusetts Executive Office of Environmental Affairs and any successor department or agency.

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

"EPA Administrative Record" shall mean the Administrative Record certified by the EPA to the Court on October 1, 1990, and as may be further supplemented pursuant to the provisions of the

National Contingency Plan, 40 C.F.R. Part 300 and any amendments thereto.

"Future Liability" shall mean liability for any additional Response Costs and Response Actions at the Site other than (1) Response Costs already incurred by the United States or the Commonwealth related to the Site and (2) those Response Actions set forth in the three Records of Decision ("RODs") for the Site, including operation and maintenance.

"Generated" shall mean the arrangement by any person by contract, agreement, or otherwise for disposal or treatment, or arrangement by any such person with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. With respect to claims under Chapter 21E, "generated" shall mean the arrangement by any person by contract, agreement, or otherwise, directly or indirectly, for the transport, disposal, storage or treatment of hazardous material to or in a site or vessel.

"Municipal Settling Defendants" shall mean the following Settling Defendants: the Massachusetts towns of Bedford, Bridgewater, Burlington, Chelmsford, Groveland, Hanson, North Reading, Tyngsborough, and Winchester; the Massachusetts cities of Malden and Revere; and the New Hampshire town of Milford.

"Natural Resources" shall have the meaning provided in

Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), and, when referring to the Commonwealth, shall also include all uses of the term in Chapter 21E.

"Natural Resource Damages" shall mean any "damages" as that term is defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6), including damages recoverable under Section 107(a)(4)(c) of CERCLA, 42 U.S.C. § 9607(a)(4)(c), and, with respect to the Commonwealth, shall also mean "damages" as that term is used in Section 5 of Chapter 21E, for injury to, destruction of, or loss of any and all Natural Resources as a result of releases or threats of release at or from the Site.

"Party" or "Parties" shall mean the United States, the Commonwealth, and each and every Settling Defendant.

"Plaintiffs" shall mean the United States on behalf of EPA and the Commonwealth on behalf of the DEP, and with respect to Natural Resource Damages, the United States on behalf of the Department of Interior and the National Oceanic and Atmospheric Administration and the Commonwealth on behalf of the EOE and the DEP.

"Records of Decision" or "RODs" shall mean the first record of decision for the Site signed on December 29, 1983, the second record of decision for the Site signed on July 11, 1985 and the third record of decision for the Site signed on September 29, 1988.

"Remedial Action" shall mean those Response Actions already

implemented at or related to the Site, and those Response Actions to be implemented at or related to the Site, including operation and maintenance, under the first record of decision for the Site signed on December 29, 1983, the second record of decision for the Site signed on July 11, 1985, the third record of decision for the Site signed on September 29, 1988, and any amendments or explanations of significant difference issued thereto.

"Response Action" or "Response Actions" shall include any actions of "response" as that term is defined in CERCLA, including operation and maintenance. With respect to the Commonwealth, Response Action shall also include any actions of "response" as that term is defined in Chapter 21E, including operation and maintenance, and actions taken by the Commonwealth at the Site pursuant to state law prior to the effective date of Chapter 21E.

"Response Costs" shall mean all direct and indirect costs for Response Actions incurred or to be incurred by any Party in connection with the Site, including without limitation the costs of any and all enforcement activities.

"Settling Commonwealth Agency" shall mean the University of Massachusetts-Lowell, any of its predecessor agencies including, but not limited to, the University of Lowell and the Lowell Technological Institute, and any successor department or agency.

"Settling Defendants" shall mean those Parties identified in Appendix A to this Consent Decree and does not include the United

States Coast Guard or the Settling Commonwealth Agency.

"Site" or "Charles George Site" shall mean the Charles George Land Reclamation Trust Landfill Superfund Site, encompassing approximately seventy (70) acres and located in Tyngsborough and Dunstable, Middlesex County, Massachusetts including all areas beyond those acres where Waste Materials originating from the Charles George Land Reclamation Trust Landfill are now or come to be located. The Charles George Land Reclamation Trust Landfill is depicted generally on the map attached as Appendix D to this Consent Decree.

"United States" shall mean the United States of America, and its agencies, departments and instrumentalities, including the United States Coast Guard.

"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 RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous material" or "oil" under Section 2 of Chapter 21E; and (5) any "hazardous waste" under Massachusetts General Laws Chapter 21C, Section 2.

V. GENERAL PROVISIONS

4. 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 and Settling Defendants. 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(b). The Court also finds that this Consent Decree was entered into in good faith, that it is a fair and equitable settlement, and that entry of this Decree is in the public interest and consistent with the purposes of CERCLA and Chapter 21E.

5. Except for any proceedings that may be instituted pursuant to Paragraph 23, 24, 26, or 28, and subject to the effective dates contained in Paragraph 22 and the reservations contained in Paragraph 27, this Consent Decree resolves all claims of the United States and the Commonwealth against the Settling Defendants under any theory to recover Response Costs or Natural Resource Damages, or to secure injunctive or administrative relief to compel performance of Response Actions, for this Site.

6. In consideration of the covenants not to sue provided herein, the Settling Defendants, the United States on behalf of the United States Coast Guard, and the Commonwealth on behalf of the Settling Commonwealth Agency shall pay principal amounts which total \$34,713,000 for Response Costs and \$1,178,350 for Natural Resource Damages. The total amount of \$34,713,000 to be paid for Response Costs is before application of the credit of \$525,000 provided for in Paragraph 14, making the total cash payments for Response Costs \$34,188,000. An additional \$200,000 will be paid for Natural Resource Damages by the accrual of

interest in that sum on the funds to be paid into the Escrow as set forth in Paragraph 7A, making the total for Natural Resource Damages \$1,378,350.

VI. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES BY SETTLING DEFENDANTS

7. A. On or before August 27, 1992, in accordance with the escrow agreement attached hereto as Appendix H ("Escrow Agreement"), the Settling Defendants listed in Appendices E and F shall execute the Escrow Agreement and establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms in a bank doing business in the Commonwealth of Massachusetts. Each Settling Defendant listed in Appendix E shall make its individual payment for Response Costs and Natural Resource Damages into the Escrow by August 27, 1992. Each Settling Defendant listed in Appendix F each shall make its respective payments for Response Costs and Natural Resource Damages in accordance with the schedules in Appendix F. Each Municipal Settling Defendant shall make its respective payment(s) in accordance with Paragraph 7B-E and Appendix G. The Escrow Agent shall be subject to prior approval by the Plaintiffs. The Escrow Agreement between the Settling Defendants and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the Court in connection with any litigation arising out of the Escrow Agreement. The Settling Defendants listed in Appendices E and F shall immediately notify Plaintiffs in writing of the creation and initial funding of the

Escrow and of each subsequent payment into the Escrow. This notice shall be sent to the United States and the Commonwealth at the addresses set forth in Paragraph 36. The fees, costs, and charges of the Escrow shall be paid as provided in the Escrow Agreement. Should any Settling Defendant, other than those Settling Defendants listed in Appendix G, fail to timely make its initial payment(s) into the Escrow by August 27, 1992, the Settling Defendants may elect, at their option, to make such payments as are necessary to fund the Escrow in accordance with Appendices E and F on or before September 15, 1992, and shall notify the Plaintiffs if they elect that option. Should the Settling Defendants fail to fund the Escrow, the Plaintiffs may either refrain from executing this Consent Decree or may elect to proceed with the settlement with the Settling Defendants who have paid their respective shares, and shall give written notice to the Settling Defendants of such election. The Settling Defendants listed in Appendices E and F guarantee that the interest to be earned on the Escrow between August 27, 1992, and the lodging of this Consent Decree with the Court will equal or exceed \$200,000. The Plaintiffs agree not to lodge the Consent Decree with the Court sooner than seventy-five (75) days after August 27, 1992. In the event the interest earned on the Escrow prior to the lodging of the Consent Decree with the Court does not equal or exceed \$200,000, the Settling Defendants listed in Appendices E and F agree to deposit in the Escrow within thirty

(30) days of lodging an amount of money sufficient to make up any shortfall, which payment shall be contributed pro rata by each Settling Defendant in Appendices E and F based on the amounts to be contributed by each Settling Defendant to Natural Resource Damages due under this Consent Decree. The \$200,000 in pre-lodging interest shall be considered an additional payment by those Settling Defendants for Natural Resource Damages.

B. On or before November 9, 1992, each Municipal Settling Defendant shall notify the United States and the Commonwealth in writing whether it will make a lump sum payment or ten annual payments ("ten payment plan") for Response Costs and Natural Resource Damages, and shall also designate in the written notice the date on which it will make its lump sum payment or its annual payments. The written notices shall be sent by the procedure specified in Paragraph 36. Any Municipal Settling Defendant which has not notified the Plaintiffs of its payment election by November 9, 1992 shall be deemed to have elected the ten payment plan and its payment date will be deemed to be July 1. On or before November 9, 1992, each Municipal Settling Defendant shall execute a signature page to this Consent Decree and to the Escrow Agreement. All payments by the Municipal Settling Defendants shall be paid to and collected by the Commonwealth as provided in Paragraphs 7C-E.

C. If the Consent Decree is entered on or before November 9, 1993, on the date designated for its payment pursuant to

Paragraph 7B, or seven (7) days after it receives notice of entry of this Consent Decree by the Court, whichever is later, each Municipal Settling Defendant electing a lump sum payment shall pay by certified or cashier's check(s) the entire principal amount it owes for Response Costs and Natural Resource Damages, as set forth in Appendix G. The date of entry is the date the Consent Decree is executed by the Court. If the Consent Decree is entered after November 9, 1993, within seven (7) days after it receives notice of entry of this Consent Decree by the Court, each Municipal Settling Defendant electing a lump sum payment shall pay by certified or cashier's check(s) the entire principal amount it owes for Response Costs and Natural Resource Damages, as set forth in Appendix G. Interest shall accrue at a rate of four percent (4%) per annum on any unpaid lump sum amount from the date of entry of this Consent Decree. If the Escrow has not been terminated pursuant to Paragraph 9 when any lump sum payment is due, the lump sum payment shall be made into the Escrow. Each Municipal Settling Defendant shall notify the Commonwealth when it makes any payment into the Escrow by sending copies of the transmittal letter and check(s) to the Commonwealth pursuant to Paragraph 36. If the Escrow has been terminated, the lump sum payment shall be made to the Commonwealth by sending a certified check or cashier's check referencing the Charles George Land Reclamation Trust Landfill Superfund Site, Site I.D. No. 2-0136, to: Chief, Environmental Protection Division, Office of the

Attorney General, One Ashburton Place, 19th floor, Boston, MA 02108.

D. If the Consent Decree is entered on or before November 9, 1993, on the date designated for its payment pursuant to Paragraph 7B, or seven (7) days after it receives notice of entry of this Consent Decree by the Court, whichever is later, each Municipal Settling Defendant electing the ten payment plan shall pay by certified or cashier's check(s) one-tenth of the principal amount it owes for Response Costs and Natural Resource Damages, as set forth in Appendix G. If the Consent Decree is entered after November 9, 1993, within seven (7) days after it receives notice of entry of this Consent Decree by the Court, each Municipal Settling Defendant electing the ten payment plan shall pay by certified or cashier's check(s) one-tenth of the principal amount it owes for Response Costs and Natural Resource Damages, as set forth in Appendix G. Interest on annual payments shall accrue on any unpaid principal amount from the date of entry of this Consent Decree at four percent (4%) per annum. Any Municipal Settling Defendant electing the ten payment plan may pre-pay all or any part of its outstanding principal balance without penalty at any time. After the initial payment, each Municipal Settling Defendant electing the ten payment plan shall pay one-tenth of the principal amount it owes for Response Costs and Natural Resource Damages, as set forth in Appendix G, together with four percent (4%) interest on the unpaid balance of

the principal amount on or before the designated annual date. If the Escrow has not been terminated pursuant to Paragraph 9 when any annual payment is due, annual payments shall be made into the Escrow. Each Municipal Settling Defendant shall notify the Commonwealth when it makes any payment into the Escrow by sending copies of the transmittal letter and check(s) to the Commonwealth pursuant to Paragraph 36. If the Escrow has been terminated, annual payments shall be made to the Commonwealth by sending a certified check or cashier's check referencing the Charles George Land Reclamation Trust Landfill Superfund Site, Site I.D. No. 2-0136, to: Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, 19th floor, Boston, MA 02108.

E. If the Escrow or the Commonwealth, whichever is applicable, does not receive from any Municipal Settling Defendant any lump sum payment or any annual payment, plus any accrued interest, when due, that Municipal Settling Defendant shall be deemed in default. With respect to any such Massachusetts Municipal Settling Defendant which is in default, the Commonwealth may elect, pursuant to Massachusetts General Laws Chapter 58, Section 20A, to deduct the payment amount plus any accrued interest, from the local aid appropriation to be made to that Massachusetts Municipal Settling Defendant for the next fiscal year by the General Court of Massachusetts. The Massachusetts Municipal Settling Defendants further agree to

support the principle, and to support legislation if necessary to accomplish this result (subject to appropriate wording), that any such deductions from local aid shall, without further appropriation, be used by the Commonwealth for Response Costs or Natural Resource Damages at the Site.

8. All funds paid into the Escrow by the Settling Defendants shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraphs 10A, 10B, 20, and 21, 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 41; (2) the Consent Decree has been voided pursuant to Paragraph 42; or (3) the Plaintiffs elect not to proceed with the settlement for the reasons set forth in Paragraph 7A. If one of these events occurs, all amounts paid into the Escrow shall be returned to the Settling Defendants together with interest accrued on the amounts.

9. Within five (5) days after the period for filing an appeal has run following approval and entry of this Consent Decree by the Court, if no appeal is filed; or, if an appeal to entry of the Consent Decree is filed, within five (5) days after all appeals have been exhausted, the Settling Defendants shall cause all principal amounts and any penalties paid into Escrow, plus all interest accrued on these amounts, to be disbursed from the Escrow to the Plaintiffs in accordance with Paragraphs 10A,

10B, 20, and 21. After such disbursements, the Escrow shall be terminated. To the extent the Escrow is invested in securities which have not matured on the date the Escrow is to be disbursed, the Escrow Agent, upon notice to the Plaintiffs, may extend the date for disbursing funds invested in those securities to five (5) days after maturity to allow for an orderly liquidation of funds to the Plaintiffs.

10. Pursuant to the terms of Paragraph 9, the Escrow Agent shall:

A. Pay to the United States the principal amounts set forth in Appendix J for Response Costs that have been paid into the Escrow, plus any penalties and interest accrued thereon consistent with Paragraph 7A, in the form of a certified check or checks or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing Charles George Landfill Superfund Site, EPA identification number 1-16 and DOJ case number 90-11-3-91 in reimbursement of Response Costs. The Escrow Agent shall forward the check(s) to:

EPA Region I
Attn: Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

and shall send copies of the check(s) to the United States as specified in Section XIV (Notices and Submissions).

B. Pay to the Commonwealth the principal amounts set forth in Appendix J for Response Costs that have been paid into the Escrow, plus any penalties and interest accrued thereon

consistent with Paragraph 7A-E in the form of a certified check or checks or cashier's check or checks in reimbursement of Response Costs. The check(s) shall be made payable to the Commonwealth of Massachusetts and shall reference the Charles George Land Reclamation Trust Landfill Superfund Site, Site I.D. No. 2-0136. The Escrow Agent shall forward the check(s) to:

Chief, Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

and shall cause copies of each such check and of any transmittal letter accompanying the check to be sent to:

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

11. The Settling Defendants listed in Appendix F shall make payments to the Escrow in accordance with the payment schedule in Appendix F. All payments made by the Settling Defendants in accordance with the schedule in Appendix F after disbursement of the Escrow shall be made to the United States as specified in Paragraph 10A.

12. Each Settling Defendant listed in Appendix F shall pay interest on the subsequent payments required to be made to the United States by Paragraphs 7A and 11, at the rate specified for interest on investments of the Hazardous Substance Superfund pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) on August 27, 1992 which is 5.7%, and such interest shall be

compounded each federal fiscal year. Interest on the payments shall begin to accrue on August 27, 1992.

13. If the United States or the Commonwealth must bring an action to collect any payment required under this Section, the Settling Defendants so sued shall reimburse the United States or the Commonwealth for all costs of such action, including but not limited to, attorneys' fees.

14. Pursuant to an Administrative Order by Consent, U.S. EPA Docket No. I-89-1054 ("the Order"), certain Settling Defendants, including those listed in Appendix I, agreed to conduct studies and investigations for use in planning and directing the response action to be undertaken at the Site. The United States, the Commonwealth and the Settling Defendants agree that the group of Settling Defendants in Appendix A which include Defendants listed in Appendix I shall be entitled to a credit towards the amount to be paid to the United States in settlement by that group in the total amount of \$525,000.00 for the work performed by them pursuant to the Order. By their signature to this Consent Decree, the Settling Defendants listed in Appendix I certify that they have incurred costs in the amounts set forth in Appendix I for the work performed by them pursuant to the Order. The United States further agrees that no further work is required to be performed under that Order by any signatory to the Order, and that no claim will be made by the United States that the signatories to the Order have in any way failed to satisfy their

obligations under the Order.

VII. PENALTIES FOR LATE PAYMENTS BY SETTLING DEFENDANTS

15. A. If the initial principal payments into the Escrow required by Paragraph 7A from each Settling Defendant listed in Appendices E and F of this Consent Decree are not made by August 27, 1992, any Settling Defendant failing to make its payment shall pay stipulated penalties to the Plaintiffs in the following amounts for each day that payment into the Escrow is not made:

<u>Days of Delay</u>	<u>Penalty Per Violation Per Day</u>
1-5	\$ 1,500/day
6-14	\$ 5,000/day
15-30	\$ 10,000/day
Beyond 30 Days	\$ 15,000/day

The Plaintiffs shall divide equally any stipulated penalties paid pursuant to this subparagraph.

B. If any subsequent payment required by Paragraph 7A, 11 or Appendix F of this Consent Decree is not made to the United States by the dates specified therein, any Settling Defendant failing to make such payment shall pay stipulated penalties to the United States, as appropriate, in the following amounts for each day that payment to the United States is not made:

<u>Days of Delay</u>	<u>Penalty Per Violation Per Day</u>
1-10	\$ 750/day
11-20	\$ 1,500/day
21-30	\$ 5,000/day
Beyond 30 Days	\$ 7,500/day

C. Any Settling Defendant which fails to make a payment required by the Consent Decree shall pay no more than one penalty

per day regardless whether the payment was for Response Costs, Natural Resource Damages, or both.

16. Stipulated penalties due prior to termination of the Escrow shall be paid into the Escrow. Stipulated penalties due to the United States after termination of the Escrow shall be paid as specified in Paragraph 10A. Stipulated penalties shall accrue from the due date of the payment regardless of whether either Plaintiff has notified the Settling Defendant of its overdue payment. The Settling Defendant responsible for stipulated penalties shall pay any stipulated penalties that have accrued within fifteen (15) days after receipt of a demand by either Plaintiff for payment. Such demand shall be sent by certified mail or overnight courier to each Settling Defendant's designated agent for notice on the signature page to this Consent Decree.

17. Payments made under Paragraphs 13, 15 and 16 shall be in addition to such other remedies or sanctions available to either Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section. Failure of any Settling Defendant to make subsequent payments under Appendices F and G shall not void the Consent Decree and its covenants as to the remaining Parties to the Consent Decree nor shall it give rise to an action under the Consent Decree against any Party that is not in default of its payment obligations.

VIII. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES ON BEHALF OF THE UNITED STATES COAST GUARD

18. A. Within a reasonable time after the effective date of this Consent Decree, the United States on behalf of the United States Coast Guard shall cause to be transferred to the EPA Hazardous Substances Superfund as reimbursement for Response Costs, the amount of \$2,600,800 as specified in Paragraph 10A.

B. Within a reasonable time after the effective date of this Consent Decree, the United States on behalf of the United States Coast Guard shall cause to be transferred to the Department of Interior ("DOI") the amount of \$60,078.00 and to the National Oceanic and Atmospheric Agency ("NOAA") the amount of \$28,372.00 as reimbursement for Natural Resource Damages as specified in Paragraph 21.

C. Any payments under this Consent Decree which may require disbursements by the United States Coast Guard are subject to the availability of appropriated funds. No provision of this Decree shall be interpreted as, or constitute a commitment or requirement that the United States Coast Guard obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. The failure of the United States Coast Guard to make payments as provided herein shall not void the Consent Decree and its covenants as to the remaining Parties nor shall it give rise to an action under the Consent Decree against any Party that is not in default of its payment obligations.

IX. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES ON BEHALF OF SETTLING COMMONWEALTH AGENCY

19. A. Within a reasonable time after the effective date of this Consent Decree, the Commonwealth on behalf of the Settling Commonwealth Agency shall pay to the DEP \$459,540.00 for Response Costs and \$15,000.00 for Natural Resource Damages, a total of \$474,540.00.

B. DEP shall place the funds referred to in Paragraph 19.A into an interest-bearing account. In the event that there is any dispute as to which account DEP shall deposit the funds into, the Attorney General of the Commonwealth shall have final approval to determine the account into which the funds shall be deposited. Throughout the duration of any appeals to this Consent Decree, DEP shall ensure that the funds and any accrued interest are segregated and may not be withdrawn by any person, except to make the payments required by Paragraph 19.C, or unless one of the events listed in Paragraph 8 occurs. If one of the events listed in Paragraph 8 occurs, DEP shall cause all such funds paid to it pursuant to Paragraph 19.A and any accrued interest thereon to be paid to the General Fund of the Commonwealth.

C. If none of the events referred to in Paragraph 8 occurs, then DEP shall, within the time periods specified in Paragraph 9, cause the funds paid pursuant to Paragraph 19.A to be disbursed to be used for Response Costs and Natural Resource Damages at the Site pursuant to instructions from the Attorney General of the Commonwealth.

D. Payment by the Commonwealth to the DEP shall be made in accordance with applicable state law, and shall be subject to the availability of appropriated funds. Reasonableness of the time of payment by the Commonwealth to the DEP shall be determined by applicable state law and availability of appropriated funds. The failure of the Commonwealth on behalf of the Settling Commonwealth Agency to make payment as provided herein, or the failure of DEP to pay or disburse the payment as provided in Paragraph 19.B or 19.C, shall not void the Consent Decree and its covenants as to the remaining Parties nor give rise to an action under the Consent Decree against any Party that is not in default of its payment obligations.

X. DISBURSEMENT OF NATURAL RESOURCE DAMAGES BY ESCROW AGENT

20. Pursuant to the terms of Paragraph 9, the Escrow Agent shall pay to the Commonwealth the principal amounts set forth in Appendix J for Natural Resource Damages that have been paid into the Escrow, plus any penalties and interest accrued thereon consistent with Paragraph 7A-E, in the form of a certified or cashier's check(s) payable to the Commonwealth of Massachusetts, and referencing the Charles George Reclamation Trust Landfill Superfund Site, for Natural Resource Damages. These check(s) shall be sent to:

Chief, Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108

21. Pursuant to the terms of Paragraph 9, the Escrow Agent

shall pay to the United States the principal amounts set forth in Appendix J for Natural Resource Damages that have been paid into the Escrow, plus any penalties and interest accrued thereon consistent with Paragraph 7A, in the form of a certified or cashier's check made payable to NOAA/DARP Program in the amount of \$118,752.00, ~~and a certified or cashier's check made payable to United States Fish & Wildlife Service in the amount of \$252,348.00.~~ The checks shall reference the Charles George Landfill Superfund Site. The Escrow Agent shall forward the checks to:

United States Fish & Wildlife Service
Department of Interior
NRD Assessment Fund
Office of Regional Solicitor
c/o Mark Barash
One Gateway Center, Suite 612
Newton Corner, Massachusetts 02158

National Oceanic & Atmospheric Agency
DARP Program
Office of General Counsel
Northeast Region
c/o Regional Attorney
Gloucester, Massachusetts 01930

and shall send copies of the checks to the United States as specified in Section XIV (Notices and Submissions).

XI. COVENANTS NOT TO SUE BY PLAINTIFFS

22. A. Covenants by the United States. Except as specifically provided in Paragraphs 23, 24, 25, 27, 28, and 32 of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendants; their officers, directors, employees, agents, parents, successors,

subsidiaries, or affiliated corporations whose liability is based on Waste Material generated or transported by said Settling Defendant to the Site, or is based on ownership or operation of the Site by said Settling Defendant; the predecessors of Settling Defendants, and their officers, directors, employees and agents; those subsidiaries and affiliated corporations set forth in Appendix C; and the Commonwealth including the Settling Commonwealth Agency and officers, trustees, employees or agents of the Commonwealth or the Settling Commonwealth Agency, for Response Costs, for Natural Resource Damages, or for other relief under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, in connection with the Site, or for contribution with respect to such Response Costs, Natural Resource Damages, or other relief pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1).

B. Covenants by the Commonwealth. Except as specifically provided in Paragraphs 23, 24, 25, 26, 27, and 32 of this Section, the Commonwealth covenants not to sue, seek injunctive relief, or take administrative action against the persons listed below under Section 107 of CERCLA, 42 U.S.C. § 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), Section 5 of Chapter 21E, state common law, and applicable state contribution law, with respect to the following:

- (a) Response Costs for the Site:
- (b) Natural Resources Damages at or from the Site;

(c) contribution with respect to Response Costs for the Site;

(d) contribution with respect to Natural Resource Damages at or from the Site.

The persons to whom this covenant applies are:

(a) Settling Defendants;

(b) the officers, directors, employees, agents, trustees, parents, successors, subsidiaries or affiliated corporations whose liability is based on Waste Material generated or transported by said Settling Defendant, or whose liability arises directly from ownership or operation of the Site by said Settling Defendant;

(c) the predecessors of Settling Defendants, and their officers, directors, employees, and agents;

(d) those subsidiaries and affiliated corporations set forth in Appendix C;

(e) the United States for all liability arising out of the generation or transport of Waste Material to the Site by the United States; and

(f) the Commonwealth, including its officers, trustees, employees, and agents.

C. Except with respect to Future Liability, these covenants not to sue shall take effect as to each Settling Defendant listed in Appendix E upon entry of the Consent Decree by the Court and upon receipt by the Plaintiffs from the Escrow Agent pursuant to Paragraphs 10A, 10B, 20, and 21 of the full amount required to be paid by that Settling Defendant, including any penalties on late payments due under Paragraphs 15 or 16. Except with respect to Future Liability, these covenants not to sue shall take effect as to a Settling Defendant listed in Appendices F and G upon receipt in full from that Settling Defendant of the payments required

pursuant to Appendices F and G, including any interest, penalties and late payments due under Paragraphs 12, 15 or 16. With respect to any Future Liability of Settling Defendants listed in Appendix E, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action, which certification shall be made after a reasonable opportunity for review and comment by DEP. With respect to any Future Liability of Settling Defendants listed in Appendices F and G, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action, which certification shall be made after a reasonable opportunity for review and comment by DEP, or upon payment of the full amount required from that Settling Defendant pursuant to Paragraph 7B-E and 11, including any interest, penalties and late payments due under Paragraphs 12, 15 or 16, whichever occurs later.

D. Except with respect to Future Liability, these covenants not to sue shall take effect as to the United States and the Commonwealth upon the date of entry of this Consent Decree by the Court. With respect to any Future Liability of the United States or the Commonwealth, these covenants not to sue shall take effect upon EPA's certification of completion of the Remedial Action.

23. Pre-certification reservations. Notwithstanding any other provisions of this Consent Decree, the United States, and the Commonwealth if pursuing Response Actions jointly with the United States, reserve, and this Consent Decree is without

prejudice to, the right to institute proceedings under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, and with respect to the Commonwealth, Chapter 21E, Chapter 231B, and state common law, including state law of contribution, in this action or in a new action seeking to compel any or all of the Settling Defendants, or any parents, successors, subsidiaries, or affiliated corporations whose liability is based on Waste Material generated or transported by said Settling Defendant to the Site, or is based on ownership or operation of the Site by said Settling Defendant; or the subsidiaries or affiliated corporations set forth in Appendix C, to: (1) perform Response Actions at the Site other than those necessary to implement the RODs, and (2) reimburse the United States and the Commonwealth for Response Costs other than those incurred in connection with Response Actions necessary to implement the RODs if, prior to EPA's certification of completion of the Remedial Action, which certification shall be made after a reasonable opportunity for review and comment by DEP:

- (i) conditions at the Site, previously unknown to the United States or the Commonwealth, are discovered after entry of this Consent Decree, or
- (ii) information, previously unknown to the United States or the Commonwealth, is received after entry of this Consent Decree,

and the EPA Administrator or his or her delegate finds, after a reasonable opportunity for review and comment by DEP, based on these previously unknown conditions or this information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

24. Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States, and the Commonwealth if pursuing Response Actions jointly with the United States, reserve, and this Consent Decree is without prejudice to, the right to institute proceedings under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, and with respect to the Commonwealth, Chapter 21E, Chapter 231B, and state common law, including state law of contribution, in this action or in a new action seeking to compel any or all of the Settling Defendants, or any parents, successors, subsidiaries, or affiliated corporations whose liability is based on Waste Material generated or transported by said Settling Defendant to the Site, or is based on ownership or operation of the Site by said Settling Defendant; or the subsidiaries or affiliated corporations set forth in Appendix C, to: (1) perform Response Actions at the Site other than those necessary to implement the RODs, and (2) reimburse the United States and the Commonwealth for additional Response Costs other than those incurred in connection with Response Actions necessary to implement the RODs

if, subsequent to EPA's certification of completion of the Remedial Action, which certification shall be made after a reasonable opportunity for review and comment by DEP:

- (i) conditions at the Site, previously unknown to the United States or the Commonwealth, are discovered after certification of completion of the Remedial Action, or
- (ii) information, previously unknown to the United States or the Commonwealth, is received after certification of completion of the Remedial Action,

and the EPA Administrator or his or her delegate finds, after a reasonable opportunity for review and comment by DEP, based on these previously unknown conditions or this information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

25. A. For purposes of Paragraph 23, the information and conditions known to the United States or the Commonwealth is comprised of that information and those conditions set forth in the Records of Decision for the Site, the EPA and DEP Administrative Records supporting the Records of Decision, any materials filed in Court by the Plaintiffs or the Settling Defendants on or before October 25, 1991 pursuant to judicial proceedings on remedy selection, any materials designated by the Settling Defendants for inclusion in the EPA Administrative

Record as a result of the remand process (including the EPA site file) or which were the subject of any motion to supplement the EPA Administrative Record filed in Court, all discovery produced or taken in the case, information contained in or documents submitted with filings to the Court, and any documents or information directly related to the Site in the actual possession of EPA Region I, DEP or the Army Corps of Engineers as of the date of entry of this Consent Decree.

B. For purposes of Paragraph 24, the information and conditions known to the United States or the Commonwealth is comprised of that information and those conditions described in Paragraph 25A, any additional documents and information submitted to the designated project manager or generated by the United States or the Commonwealth for inclusion in the post-ROD record compiled by EPA pursuant to the National Contingency Plan ("NCP") on or before the date of certification of completion of the Remedial Action, and any documents or information directly related to the Site in the actual possession of EPA Region I, DEP or the Army Corps of Engineers as of the date of certification of completion of the Remedial Action.

26. Reservation of Commonwealth for Natural Resource Injury.

A. Notwithstanding any other provision of this Consent Decree, the Commonwealth reserves the right to institute proceedings against Settling Defendants under CERCLA, Chapter 21E

or state common law in this action or in a new action, seeking recovery of Natural Resource Damages based on conditions or information with respect to the Site unknown to the Commonwealth at the date of entry of this Consent Decree that together with known conditions or information, reveal to the Commonwealth that there is injury to, or destruction of, or loss of Natural Resources of a type that was unknown to the Commonwealth, or of a magnitude substantially greater than was known to or could have been reasonably anticipated by the Commonwealth, on the date of entry of this Consent Decree.

B. For the purposes of Paragraph 26A, the conditions and information known to the Commonwealth shall be as set forth in Paragraph 25A, including the conditions and information set forth in the Commonwealth's Offer of Proof on Natural Resource Damages filed in Court on December 20, 1990.

27. General reservation of rights as to Settling Defendants. The United States and the Commonwealth each 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. claims based on a failure by Settling Defendants to satisfy any requirement of the Consent Decree;
- B. claims for criminal liability;
- C. claims arising from the past, present, or future disposal, release or threat of release of Waste

Material by any Settling Defendant at sites other than the Charles George Site; however, the United States and the Commonwealth do not reserve any claims with respect to the Charles George Site for Waste Materials transported to the Charles George Site from other sites, and such claims are covered by the covenants in Paragraph 22, and the other provisions of this Consent Decree;

- D. claims arising from the past, present, or future disposal, release or threat of release of Waste Material taken from the Charles George Land Reclamation Trust Landfill by any Settling Defendant; and
- E. claims arising from future transport to or disposal of additional Waste Material at the Charles George Site by any Settling Defendant; except that migration of Waste Material currently existing at the Site shall not be considered future disposal.

28. United States' reservations concerning Natural Resource injury. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of its natural resource trustees, reserves the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages with respect to this Site,

based on (1) conditions unknown to the United States at the date of entry of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources of a type that was unknown to the United States at the date of entry of this Consent Decree; or (2) information received by the United States after the date of entry of the Consent Decree which indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown to the United States at the date of entry of this Consent Decree.

XII. COVENANTS BY SETTLING DEFENDANTS

29. A. Covenants by Settling Defendants as to the United States. Settling Defendants hereby covenant not to sue or assert any claims or causes of action against the United States with respect to the Site, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund pursuant to Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any claim against the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, related to the Site; any rights to seek judicial or administrative review of the RODs and of any actions taken to implement the RODs; or any other claims arising out of response activities at the Site, including but not limited to any deemed claims which may exist in this action by virtue of the Case Management Order. The Settling

Defendants reserve the right, in the event the United States institutes any proceedings pursuant to Paragraphs 23, 24 or 28 to assert all defenses, setoffs or counterclaims to such proceedings. Nothing in this covenant by the Settling Defendants, or in the covenants contained in Paragraph 22, shall bar a claim for contribution by the Settling Defendants against the United States or the United States against the Settling Defendants in the event proceedings are instituted pursuant to Paragraphs 23, 24, 26 or 28 with respect to liability arising from such proceedings. Nothing in this Consent Decree shall be deemed to constitute pre-authorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). The United States reserves the right to assert all defenses, setoffs, counterclaims, claims under Fed. R. Civ. P. 14, or crossclaims, in response to any claim for contribution by any Settling Defendant.

B. Covenants by Settling Defendants as to the Commonwealth.

Settling Defendants hereby release and covenant not to sue or assert any claims or causes of action against the Commonwealth, including its officers, trustees, employees and agents, with respect to the Site which were brought or could have been brought in this action, including, but not limited to, any claim under Chapter 21E, the Massachusetts Tort Claims Act (Mass. Gen. Laws. Ch. 258), set-off, recoupment, state common law, or any other provision of state law, any claim against the Commonwealth under

Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, federal common law, or any other provision of federal law, any claims arising out of regulation or response activities at the Site, any claims arising out of alleged generation to, transport to, ownership of, or operation of the Site, or any other legal theory, and any deemed claims which may exist by virtue of the Case Management Order, except that Settling Defendants reserve the right in the event the Commonwealth institutes any proceedings pursuant to Paragraphs 23, 24 or 26, to assert all defenses, setoffs or counterclaims to such proceedings. Nothing in this covenant by the Settling Defendants, or in the covenants contained in Paragraph 22 or elsewhere in this Consent Decree, shall bar a claim for contribution by the Settling Defendants against the Commonwealth, to the extent such a claim exists at law or in equity, or the Commonwealth against the Settling Defendants in the event proceedings are instituted pursuant to Paragraphs 23, 24, 26 or 28 with respect to liability arising from such proceedings. The Commonwealth reserves the right to assert all defenses, setoffs, counterclaims, claims under Fed. R. Civ. P. 14, or crossclaims, in response to any claim for contribution by any Settling Defendant.

30. Settling Defendants, hereby release any and all claims against each other, and any other persons or entities other than the United States or the Commonwealth to whom the covenants in Paragraph 22 apply, arising out of response activities at the

Site or otherwise related to the Site or this litigation, except that this release shall not apply in any proceedings instituted pursuant to Paragraphs 23, 24, 26 or 28. The Settling Defendants are free to assert in proceedings initiated pursuant to Paragraphs 23, 24, 26 or 28, or in other proceedings, claims against each other, or against any other person or entity with respect to liability arising from such proceedings.

Notwithstanding the foregoing provisions of this Consent Decree, the Settling Defendants other than the Municipal Settling Defendants, Turner Trucking and Salvage Company ("Turner Trucking") and Refuse Energy Systems Co. ("RESCO") covenant not to sue or assert claims for contribution against the Municipal Settling Defendants, Turner Trucking, RESCO, or any persons (other than transporters, except Turner Trucking and RESCO, and other than parties to this case who are not Settling Defendants) whose liability is based on Waste Material transported to the Site and generated solely by residences within the cities and towns listed in Appendix G, with respect to liability arising from proceedings instituted pursuant to Paragraphs 23, 24, 26 or 28, and the Municipal Settling Defendants, Turner Trucking and RESCO likewise covenant not to sue or assert claims for contribution against the remaining Settling Defendants with respect to liability arising from proceedings instituted pursuant to Paragraphs 23, 24, 26 or 28.

31. Settling Defendants, the United States, and the

Commonwealth do not, by this Consent Decree, release any claims against any person or entity other than those covered by the terms of this Consent Decree.

32. Notwithstanding any terms of this Consent Decree, Paragraphs 22, 30, and 33 shall not extend or apply to third-party defendant Jordan Birger, his heirs, successors or assigns.

XIII. CONTRIBUTION PROTECTION

33. A. Upon entry of this Consent Decree, with regard to claims for contribution the Parties hereto agree and the Court finds that the Settling Defendants, the United States, the Commonwealth and any other persons or entities to whom the covenants in Paragraphs 22 and 29 apply, are entitled to the protection from contribution actions or claims for matters addressed in this Consent Decree as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). The Parties agree and the Court finds that the Settling Defendants, the United States, the Commonwealth and any other persons or entities to whom the covenants in Paragraphs 22 and 29 apply are also entitled to such protection from contribution to the extent provided by the law of Massachusetts, including Mass. Gen. Laws Chs. 21E and 231B.

B. In the event proceedings are instituted pursuant to Paragraphs 23, 24, 26 or 28, the contribution protection referred to in Paragraph 33A shall not apply to bar claims for contribution made by a Settling Defendant, the United States or the Commonwealth with respect to claims made by the United States

or the Commonwealth in such proceedings.

34. In no event will any Party seek recovery in contribution or otherwise from any other Party for Response Costs or Natural Resource Damages that are resolved by this Consent Decree.

35. Settling Defendants agree that with respect to any suit or claim for contribution brought by any one or more of them individually or jointly 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 any of 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 them. 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 any state or federal court setting a case for trial.

XIV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Consent Decree, written notice is required to be given 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, the University of Massachusetts-Lowell and the Settling Defendants, respectively.

As to the United States

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-3-91

As to NOAA and DOI

United States Fish & Wildlife Service
Department of Interior
NRD Assessment Fund
Office of Regional Solicitor
c/o Mark Barash
One Gateway Center, Suite 612
Newton Corner, Massachusetts 02158
Re: Charles George Superfund Site

National Oceanic & Atmospheric Agency
DARP Program
Office of General Counsel
Northeast Region
c/o Regional Attorney
Gloucester, Massachusetts 01930
Re: Charles George Superfund Site

As to EPA

Chief, Superfund Office
Office of Regional Counsel
EPA Region I
JFK Federal Building (RCS)
Boston, MA 02203
Re: Charles George Superfund Site

As to the Commonwealth

Chief, Environmental Protection Division
Department of the Attorney General
One Ashburton Place

Boston, MA 02108
Re: Charles George Superfund Site

As to the DEP:
Office of the General Counsel
Department of Environmental Protection
One Winter Street
Boston, MA 02108
Re: Charles George Superfund Site

As to the University of Massachusetts - Lowell:
Office of the Chancellor
University of Massachusetts - Lowell
One University Avenue
Lowell, MA 01854
Re: Charles George Superfund Site

As to Settling Defendants
The agent for notice designated by each Settling Defendant on its signature page to this Consent Decree.

XV. RETENTION OF RESPONSE AUTHORITY

37. Except for the covenants not to bring certain actions set forth in Paragraph 22, this Consent Decree shall not be construed to limit the authority of the United States or the Commonwealth to take any and all response actions relating to the Charles George Site authorized by federal or state law.

XVI. COMPLIANCE WITH OTHER LAWS

38. This Consent Decree shall not be construed to in any way relieve Settling Defendants or any other person or entity from the obligation to comply with any federal, state or local law except as otherwise herein provided.

XVII. RETENTION OF JURISDICTION

39. The Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this

Consent Decree for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Decree.

XVIII. EFFECTIVE DATE

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

XIX. PUBLIC COMMENT

41. This Consent Decree shall be subject to a thirty (30) day public comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). The Commonwealth does not waive any rights it has under existing law to withdraw its consent to the entry of this Consent Decree if any comments received during the public comment period demonstrate that the Consent Decree violates state law. Settling Defendants consent to the entry of this Consent Decree without further notice. Neither the United States nor the Commonwealth shall move for entry of this Consent Decree until after the close of the public comment period and consideration of any comments received.

42. If for any reason the Court should affirmatively decline to approve this Consent Decree in the form presented, or

if its approval and entry of this Consent Decree is subsequently vacated, this Consent Decree and the settlement embodied herein shall be voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. APPENDICES

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

"Appendix A" is the list of Settling Defendants.

"Appendix B" is the list of Third Party Defendants.

"Appendix C" is the list of the Settling Defendants' state of incorporation and list of subsidiaries or affiliated corporations for purposes of Paragraph 22.

"Appendix D" is the depiction of the Charles George Land Reclamation Trust Landfill.

"Appendix E" is the list of Settling Defendants, other than the Municipal Settling Defendants, making a lump sum payment.

"Appendix F" is the list of the Settling Defendants, other than the Municipal Settling Defendants, making payment over time and each payment schedule.

"Appendix G" is the list of Municipal Settling Defendants and each payment schedule.

"Appendix H" is the Escrow Agreement.

"Appendix I" is the list of the Defendants who performed or funded work under the Administrative Order by Consent.

"Appendix J" is the Structure of Disbursements to the Plaintiffs Pursuant to Paragraphs 10, 20, and 21.

XXI. SIGNATORIES/SERVICE

44. Each undersigned representative of a Settling Defendant to this Consent Decree 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.

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

THE FOREGOING Consent Decree among the United States of America,
the Commonwealth of Massachusetts, and Settling Defendants in
United States v. Charles George Trucking Company, Inc., et al.,
Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.) is hereby APPROVED
AND ENTERED THIS ____ DAY OF _____, 199_.

DOUGLAS P. WOODLOCK
United States District Judge
District of Massachusetts

Consent Decree in United States v. Charles George Trucking Company, Inc., et al., Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.)

FOR THE UNITED STATES OF AMERICA

Date: _____

Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

Cynthia S. Huber, Senior Attorney
Robert H. Oakley, Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

David W. Zugschwerdt, Attorney
Environmental Defense Section
U.S. Department of Justice
Washington, D.C. 20530

Consent Decree in United States v. Charles George Trucking Company, Inc., et al., Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.)

Date: _____

Herbert H. Tate, Jr.
Assistant Administrator
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: _____

Ceil Price
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: _____

Julie Belaga
Regional Administrator
U.S. Environmental Protection Agency,
Region I
One Congress Street
Boston, Massachusetts 02203

Date: _____

Marcia J. Lamel
RuthAnn Sherman
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region I
One Congress Street
Boston, Massachusetts 02203

Consent Decree in United States v. Charles George Trucking Company, Inc., et al., Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.)

FOR THE COMMONWEALTH OF MASSACHUSETTS

Date: _____

Deirdre H. Robbins
Assistant Attorney General
Environmental Protection Division
One Ashburton Place
Boston, Massachusetts 02108

Date: _____

Daniel S. Greenbaum, Commissioner
Department of Environmental Protection
Commonwealth of Massachusetts
One Winter Street
Boston, Massachusetts 02108

FOR THE COMMONWEALTH OF MASSACHUSETTS
NATURAL RESOURCE TRUSTEE

Date: _____

Susan Tierney, Secretary
Executive Office of Environmental
Affairs
Commonwealth of Massachusetts
100 Cambridge Street, 20th Floor
Boston, Massachusetts 02202

Consent Decree in United States v. Charles George Trucking Company, Inc., et al., Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.)

FOR THE COMMONWEALTH OF MASSACHUSETTS,
on behalf of the UNIVERSITY OF
MASSACHUSETTS-LOWELL

Date: _____

Nancy E. Preis
Special Assistant Attorney General
P.O. Box 324
Cambridge, Massachusetts 02238

Date: _____

E. K. Fretwell, President
University of Massachusetts
250 Stuart Street
Boston, Massachusetts 02116

Signature Page for the Consent Decree in United States v. Charles George Trucking Company, Inc., et al., Civ. Nos. 85-2463-WD and 85-2714-WD (D. Mass.)

_____, SIGNATORY PARTY
Company Name (Please type)

Date: _____

By: _____
Name: (Please type)
Title: (Please type)

Agent for Notice: _____
(Please type all information)

Address: _____

Telephone: _____

Fax: _____

Signatory Party Tax I.D. No.: _____