STATE OF VERMONT

SUPERIOR COURT
BENNINGTON UNIT

CIVIL DIVISION
Docket No. Bncv

STATE OF VERMONT, AGENCY OF NATURAL RESOURCES,
Plaintiff,

v.

SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION,
Defendant.

CONSENT ORDER AND FINAL JUDGMENT ORDER

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 10 V.S.A., Chapter 159. This Court also has personal jurisdiction over Saint-Gobain Performance Plastics Corporation (Settling Defendant). Solely for the purposes of this Consent Order and the underlying Pleadings by Agreement, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court. Settling Defendant shall not challenge the Consent Order or this Court's jurisdiction to enter and enforce this Consent Order.

II. PARTIES BOUND

2. This Consent Order is binding upon the State of Vermont and upon Settling Defendant and its successors and assigns. Any change in Settling Defendant's 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 Settling Defendant's responsibilities under this Consent Order.

3. Settling Defendant shall provide a copy of this Consent Order to each

contractor hired to perform the Site Work and to each person representing Settling Defendant with respect to the Site Work and shall condition all contracts entered into hereunder upon performance of the Site Work in conformity with this Consent Order. Settling Defendant or its contractors shall provide written notice of the Consent Order to all subcontractors hired to perform any portion of the Site Work. Settling Defendant shall nonetheless be responsible for ensuring that all contractors and subcontractors perform the Site Work in accordance with this Consent Order. Each contractor and subcontractor undertaking any activity involving or relating to the performance of the Site Work shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of 10 V.S.A. § 6615(d)(1)(C).

III. DEFINITIONS

4. Unless otherwise defined in this Consent Order, terms used in this Consent Order that are defined in 10 V.S.A. Chapter 159 (the Vermont Waste Management Act) or in the administrative rule entitled "Investigation and Remediation of Contaminated Properties Rule" (IROCPR), dated July 2017, shall have the meaning assigned to them by statute or rule.

5. Whenever terms listed below are used in this Consent Order or its appendices, the following definitions shall apply solely for purposes of this Consent Order:

"Affected Property" shall mean all real property at the Site and any other real property where the State determines, at any time, that access, land, water, or other resource-use restrictions, and/or Institutional Controls are needed to implement the Corrective Action.

"Consent Order" shall mean this Consent Order and all appendices attached hereto (listed in Section XXII). In the event of a conflict between this Consent Order and

any appendix, this Consent Order shall control.

"10/2/17 Consent Order" shall mean the agreement between the State and Settling Defendant, entered as a Consent Order by the Vermont Superior Court, Bennington Unit on October 2, 2017 in *State of Vermont, Agency of Natural Resources v. Saint Gobain Performance Plastics Corporation, Docket No. 205-7-17 Bncv* addressing response activities for Corrective Action Area I.

"Corrective Action" means those actions taken under this Consent Order to implement the Work, and other actions consistent with the Work taken in response to a release or threatened release of perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorohexanesulfonate acid (PFHxS), perfluoroheptanoic acid (PFHpA), or perfluorononanoic acid (PFNA) into the environment to prevent a threat or potential threat to present or future public health or welfare or the environment.

"Corrective Action Area I" means the area identified in Appendix B as Corrective Action Area I ("CAA I").

"Corrective Action Area II" means the area identified in Appendix B as Corrective Action Area II ("CAA II").

"Corrective Action Plan" or "CAP" shall mean the technical analysis and procedures which follow the selection of a remedy or remedies for Corrective Action Area I and Corrective Action Area II, Operable Units A and B and result in a detailed set of plans and specifications for implementation of the corrective action. A CAP shall incorporate the Site Work and the Water Extensions Work and be in conformance with the requirements of Appendix A and the IROCPR. Any consolidated CAP, as set forth in Appendix A, shall incorporate the provisions of the CAP for Corrective Action Area I, approved June 2018.

"Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal or Vermont State holiday, the period shall run until the close of business of the next day that is not a Saturday, Sunday, or federal or Vermont State holiday.

"Effective Date" shall mean the date upon which this Court enters this Consent Order as a Court order.

"Future Oversight Costs" shall mean that portion of Future Response Costs that the State incurs in monitoring and supervising Settling Defendant's performance of the Site Work to determine whether such performance is consistent with this Consent Order, including costs incurred in reviewing deliverables submitted pursuant to this Consent Order, as well as costs incurred in overseeing implementation of the Site Work or Water Extensions Works; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the State of Vermont pursuant to Section VI (Remedy Review), and ¶ 22 (Access to Financial Assurance), or the costs incurred by the State of Vermont in enforcing this Consent Order, including all costs incurred pursuant to Section XII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State of Vermont incurs in reviewing or developing deliverables submitted pursuant to this Consent Order, in overseeing implementation of the Site Work or Water Extensions Work, or otherwise implementing, overseeing, or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to ¶ 22 (Access to Financial Assurance), Section VI (Remedy Review), and Section XII (Dispute Resolution). Future Response Costs shall also include all Interim Response Costs.

Future Response Costs shall not include any costs incurred by the State in connection with Corrective Action Area II—Operable Unit C.

"Include" or "including" shall mean including but not limited to.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices, including reclassification of groundwater to Class IV that: (a) limit land, water, or other resource use to minimize the potential for human exposure to PFOA, PFOS, PFHxS, PFHpA, or PFNA at or in connection with Corrective Action Area I and/or II; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Corrective Action; or (c) provide information intended to modify or guide human behavior at or in connection with Corrective Action Area I and/or II.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs (a) paid by the State of Vermont in connection with Corrective Action Area II, Operable Units A and B, between November 30, 2018, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date but excluding Past Response Costs.

"Interest" shall mean the interest rate established at 12 V.S.A. § 2903(c) (interest on judgment liens) and 9 V.S.A. § 41a (pre-judgment interest).

"Operable Unit" means discrete areas established by the Secretary within Corrective Action Area I or II to make the response more efficient, for example, defining areas where "Water Extension Work" is planned to take place.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the Corrective Action as specified in

a Corrective Action Plan.

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

"Parties" shall mean the State of Vermont and Settling Defendant.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State of Vermont paid at or in connection with Corrective Action Area II through November 30, 2018.

"Performance Standards" shall mean the applicable and relevant cleanup levels or other measures of achievement of the Corrective Action objectives as set forth for each operable unit in Appendix A.

"PFAS" shall mean per-and polyfluoroalkyl substances.

"PFHxS" shall mean perfluorohexane sulfonic acid.

"PFHpA" shall mean perfluoroheptanoic acid.

"PFNA" shall mean perfluorononanoic acid.

"PFOA" shall mean perfluorooctanoic acid.

"PFOS" shall mean perfluorooctane sulfonic acid.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the municipal land records**.**

"Response Costs" shall mean Past Response Costs, Interim Response Costs, and Future Response Costs.

"Secretary" shall mean the Secretary of the Agency of Natural Resources.

"Section" shall mean a portion of this Consent Order identified by a Roman

numeral.

"Settling Defendant" shall mean Saint-Gobain Performance Plastics Corporation.

"Site" shall mean any location in the Town of Bennington, Town of Shaftsbury, or the Village of North Bennington where the release of PFOA, PFOS, PFHxS, PFHpA, or PFNA associated with former operations at the Northside Drive or Water Street facilities has come to be located.

"Site Work" shall mean that portion of the work set forth in Appendix A, and detailed in the Corrective Action Plan, that is to be directly performed by Settling Defendant or its contractors in connection with the investigation and remediation of Corrective Action Area I—Operable Unit B, and Corrective Action Area II—Operable Unit B, including, as provided in this Consent Order including Appendix A, the installation, operation, and maintenance of point-of-entry treatment systems (POETs); the provision of alternative water supplies; and long-term monitoring and well-testing. Site Work shall not include the Water Extensions Work.

"Supervising Contractor" shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Site Work under this Consent Order.

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

"Validated Sample" shall mean a sample that is collected and analyzed in accordance with a workplan approved by the Secretary that addresses quality assurance

and quality control, which may be included in a sampling and analysis plan or a quality assurance program plan.

"Water Extension Work" shall mean that portion of the work in Corrective Action Area I—Operable Unit A, and Corrective Action Area II—Operable Unit A, as set forth in Appendix A, and detailed in a Corrective Action Plan, that Settling Defendant is obligated to fund under this Consent Order but that Settling Defendant will not be directly performing, specifically including the work associated with the extension of municipal water lines to homes in Corrective Action Area I—Operable Unit A or Corrective Action Area II—Operable Unit A, as described in Appendix B. Water Extension Work shall not include costs associated with operation and maintenance of municipal water line extensions once construction is complete.

"Work" shall mean all activities and obligations Settling Defendant is required to perform or pay for under this Consent Order, including all activities set forth in Appendix A and, upon approval, a Corrective Action Plan, except the activities required under Section XVIII (Retention of Records).

IV. GENERAL PROVISIONS

6. **Objectives of the Parties**. The objectives of the Parties in entering into this Consent Order are to provide for the investigation, design, and implementation of corrective actions in Corrective Action Areas I and II; to pay the State's Response Costs; and to resolve the State's claims against Settling Defendant under 10 V.S.A. §§ 1283, 6615, 6615d, and 6615e with respect to releases of PFOA, PFOS, PFHxS, PFHpA, or PFNA in Corrective Action Areas I and II.

7. **Commitments by Settling Defendant**. Settling Defendant shall pay for or perform the Work in accordance with this Consent Order, Appendix A, Appendix E,

and all deliverables approved by the State pursuant to this Consent Order. Settling Defendant shall pay the State for its Response Costs as provided in this Consent Order. Unless otherwise expressly provided in this Consent Order, Appendix A, or Appendix E, the Settling Defendant shall provide deliverables in the timeframes in the IROCPR unless the Secretary approves a modification to those timeframes in writing.

8. **Compliance with Applicable Law**. Nothing in this Consent Order limits Settling Defendant's obligations to comply with all applicable state and federal laws and regulations, including all applicable or relevant and appropriate requirements of all state and federal environmental laws. The activities conducted pursuant to this Consent Order, if approved by the Secretary, shall be deemed to be consistent with the IROCPR.

9. **Permits**.

a. Settling Defendant must submit timely and complete applications for all permits or approvals required by law or regulation in order to perform the Site Work, and take all other actions (including payment of fees) necessary to obtain such permits or approvals.

b. Settling Defendant shall timely notify the State's Project Coordinator, and provide the Coordinator with electronic copies, of all applications submitted under ¶ 9(a).

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

d. This Consent Order is not, and shall not be construed to be, a permit issued pursuant to any state statute or rule.

V. PERFORMANCE OF THE WORK

10. **Coordination and Supervision**.

a. **Project Coordinators**.

(1) Settling Defendant's Project Coordinator must be qualified as an "environmental professional" pursuant to § 35-201 of the IROCPR. Settling Defendant's Project Coordinator may not be an attorney representing Settling Defendant in this matter. Settling Defendant's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Site Work.

(2) The State shall designate and notify Settling Defendant of the State's Project Coordinator and Alternate Project Coordinator. The State may designate other representatives, which may include its employees, contractors, or consultants, to oversee the Site Work. Subject to the dispute resolution procedures set forth in Section XII, this oversight includes the authority to halt the Site Work or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of PFOA, PFOS, PFHxS, PFHpA, or PFNA.

(3) Settling Defendant's Project Coordinator shall meet with the State's Project Coordinator at a frequency determined by the State Project Coordinator.

b. **Supervising Contractor**. Settling Defendant's proposed

Supervising Contractor must have sufficient technical expertise to supervise the Site Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**.

(1) Settling Defendant shall designate, and notify the State, within 10 days after the Effective Date, of the name, contact information, and qualifications of the Settling Defendant's proposed Project Coordinator and Supervising Contractor.

(2) The State shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If the State issues a notice of disapproval, Settling Defendant shall, within 30 days, submit to the State a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. The State shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify the State of Settling Defendant's selection.

(3) Settling Defendant may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 10(c)(1) and 10(c)(2).

(4) Notwithstanding the procedures of ¶¶ 10(c)(1) and 10(c)(2), Settling Defendant has proposed, and the State has authorized Settling Defendant

to proceed, with the following Project Coordinator and Supervising Contractor:

Kirk Moline
C.T. Male Associates 50
Century Hill Drive
Latham, New York 12110

Ray Wuolo
Barr Engineering
4300 MarketPointe Drive, Suite 200
Minneapolis, Minnesota 55435

11. **Performance of Work in Accordance with Appendix A**.

a. Settling Defendant shall perform the Work as set forth in Appendix A and the approved CAP(s) until:

(1) all applicable Performance Standards identified in Appendix A have been achieved; and

(2) the Secretary has issued a Certification of Corrective Action Completion, provided, however, Settling Defendant may cease the portion of the Work associated with a particular operable unit upon the Secretary's issuance of a Certification of Corrective Action Completion for that particular operable unit. Likewise, Settling Defendant may not be required to perform further actions with respect to individual wells if Performance Standards have been achieved for such wells.

b. Following the completion of the extensions of municipal water lines associated with the Water Extension Work in Corrective Action Area I—Operable Unit A, Corrective Action Area II—Operable Unit A, and any extensions of municipal water lines in Corrective Action Area II—Operable Unit C, the State shall reclassify the groundwater within CAA I and CAA II in accordance with the Groundwater Protection Rule and Strategy as non-potable groundwater to prohibit future use of this groundwater for

human consumptive or other residential purposes in areas served by the municipal water line. To the extent allowed by law, the State may use its reclassification authority to develop well construction standards to the extent that such standards may avoid the consumption or use of water containing PFOA, PFOS, PFHxS, PFHpA, or PFNA.

c. All deliverables required to be submitted for approval under the Consent Order, Appendix A, or the IROCPR shall be subject to approval by the State in accordance with Appendix A and the IROCPR.

d. If Settling Defendant is required to undertake corrective action to address PFOA, PFOS, PFHxS, PFHpA, or PFNA in groundwater in areas outside the Corrective Action Areas covered by this Consent Order and settlement is reached, an amendment of this Consent Order or another settlement document is required. If consensus can be reached with respect to the selected remedy in such a case, the State will provide releases that are substantially in the same form as this agreement. Any remedy selection shall be governed by the Investigation and Remediation of Contaminated Properties Rule, and waterline extensions shall not be considered a presumptive remedy.

VI. REMEDY REVIEW

12. **Periodic Review**. Settling Defendant shall conduct, in accordance with the approved Corrective Action Plan, studies and investigations to support the State's review to ensure that the Corrective Action and Corrective Action Plan are protective of human health and the environment.

13. **State Selection of Further Response Actions**. If the State determines, at any time, that the Corrective Action or a Corrective Action Plan is not protective of human health and the environment, the State may determine that further response

actions or modifications to the Corrective Action Plan may be necessary in accordance with the requirements of the Vermont Waste Management Act and the IROCPR. The groundwater performance standard under this Consent Order shall be the applicable groundwater standard established for PFOA, PFOS, PFHxS, PFHpA, and PFNA pursuant to the IROCPR and/or Groundwater Protection Rule and Strategy. The soil performance standard under this Consent Order shall be the applicable direct contact soil screening level established pursuant to the IROCPR, which, as of the Effective Date, was 300 ppb for PFOA. If direct contact criteria have not been established by the Secretary for one or more of the covered PFAS at the time Settling Defendant seeks a certificate of corrective action completion, only the then existing direct contact criteria will need to be met to demonstrate compliance.

14. **Opportunity to Comment**. Settling Defendant will be provided with an opportunity to comment on any further response actions or modifications to the Corrective Action Plan proposed by the State as a result of the review to determine that the Corrective Action is protective of human health and the environment, and to submit written comments for the record.

15. **Settling Defendant's Obligation to Perform Further Corrective Actions**. If the State determines that further response actions at the Site may be necessary, the State may direct Settling Defendant to fund or perform such further corrective actions, but only if the reopener conditions in ¶¶ 56, 57, or 59 (State's Pre-Certification, Post-Certification, and General Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XII (Dispute Resolution) to dispute (a) the State's determination that the reopener conditions of ¶¶ 56 or 57 are satisfied, (b) the State's determination that the Corrective Action is not protective of

human health and the environment, or (c) the State's selection of the further response actions. Disputes regarding the State's determination that the Corrective Action is not protective or the State's selection of further corrective actions shall be resolved pursuant to ¶ 42 (Record Review). Settling Defendant reserves all rights and defenses it may have to an action brought by the State to compel additional response actions under one of the reservations provided in ¶ 59.

16. **Submission of Plans**. If Settling Defendant is required to perform further corrective actions pursuant to ¶ 15, it shall submit a Corrective Action Plan to the State for approval in accordance with the IROCPR. The Corrective Action Plan shall be submitted within 30 days of the State's request for such plan or, in the case that dispute resolution is triggered, within 30 days of any determination requiring Settling Defendant to perform further corrective action, unless otherwise agreed by the State. Settling Defendant shall implement the approved Corrective Action Plan in accordance with this Consent Order.

VII. ACCESS REQUIREMENTS

17. **Agreements Regarding Access and Non-Interference.** Settling Defendant shall, with respect to any Affected Property, use best efforts to secure from the owner of such property an agreement, enforceable by Settling Defendant and by the State, that such owner: (i) will provide the State and Settling Defendant — and their representatives, contractors, and subcontractors — with access at all reasonable times to such Affected Property to conduct any activity regarding the Consent Order, including those listed in ¶ 17(a) (Access Requirements); and (ii) will refrain from using such Affected Property in any manner that the State determines will pose an unacceptable risk to human health or to the environment due to exposure to PFOA,

PFOS, PFHxS, PFHpA, or PFNA or interfere with or adversely affect the implementation, integrity, or protectiveness of the Corrective Action.

a. **Access Requirements**. The following is a list of activities for which access may be required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the State of Vermont;

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

(4) Obtaining samples of water, air, or any other resource meant to be protected by the Corrective Action;

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

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in Appendix A;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 60 (Work Takeover);

(8) Assessing Settling Defendant's compliance with the Consent Order;

(9) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Order; and

(10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions.

18. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Settling Defendant would use to achieve the goal in a timely manner, including the cost of employing professional assistance to secure access. However, nothing herein shall obligate Settling Defendant to file litigation to obtain access to the Affected Property. If Settling Defendant is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the State, and include a description of the steps taken to comply with the requirements. If the State deems it appropriate, it may assist Settling Defendant, or take independent action, in obtaining such access. All costs incurred by the State in providing such assistance or taking such action constitute Future Response Costs to be reimbursed under Section IX (Payments for Response Costs).

VIII. FINANCIAL ASSURANCE

19. In order to ensure completion of the Site Work, within 30 days of the Effective Date, Settling Defendant shall secure financial assurance, initially in the amount of $ 3,000,000 ("Estimated Cost of the Work"), for the benefit of the State. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to the State. Settling Defendant may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Site

Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of the State, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of the State that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides the State with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in Vermont and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Settling Defendant that Settling Defendant meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

f. A guarantee to fund or perform the Site Work executed in favor of the State by one of the following: (1) a direct or indirect parent company of Settling Defendant; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the State's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of

this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

20. If Settling Defendant provides financial assurance by means of a demonstration or guarantee under ¶ 19(e) or 19(f), Settling Defendant shall also comply with, and shall ensure that its guarantors comply with, the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to the State of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) notification to the State no later than 30 days, in accordance with ¶ 21 after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). The State may also, based on a belief that an affected entity may no longer meet the financial test requirements of ¶ 19(e) or 19(f), require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post- closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Consent Order; (3) the terms "owner" and "operator" include Settling Defendant making a demonstration or obtaining

a guarantee under ¶ 19(e) or 19(f); and (4) the terms "facility" and "hazardous waste management facility" include the Site.

21. Settling Defendant shall diligently monitor the adequacy of the financial assurance. If Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant shall notify the State of such information within 7 days. If the State determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the State will notify Settling Defendant of such determination. Settling Defendant shall, within 30 days after notifying the State or receiving notice from the State under this Paragraph, secure and submit to the State for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The State may extend this deadline for such time as is reasonably necessary for Settling Defendant, in the exercise of due diligence, to secure and submit to the State a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendant shall follow the procedures of ¶ 23 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant's inability to secure and submit to the State financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, the obligation of Settling Defendant to complete or fund the Site Work in accordance with the terms of this Consent Order.

22. **Access to Financial Assurance**.

a. If the State issues a notice of implementation of a Work Takeover

under ¶ 60 then, in accordance with any applicable financial assurance mechanism, the State is entitled to require that any funds guaranteed be paid in accordance with ¶ 22(d).

b. If the State is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 22(d).

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 60, either: (1) the State is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Site Work; or (2) the financial assurance is provided under ¶ 19(e) or 19(f), then the State may demand an amount, as determined by the State, sufficient to cover the cost of the remaining Site Work to be performed. Subject to any defenses it may have, Settling Defendant shall, within 10 days of such demand, pay the amount demanded as directed by the State.

d. Any amounts required to be paid under this ¶ 22 shall be, as directed by the State: (i) paid to the State in order to facilitate the completion of the Site Work by the State or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (FDIC), in order to facilitate the completion of the Site Work by another person. If payment is made to the State, the State may deposit the payment into the Contingency Fund to be retained and used to conduct or finance response actions at or in connection with the Site. All State Work Takeover costs not

paid under this ¶ 22, and for which no valid defense is available to Settling Defendant, must be reimbursed as Future Response Costs under Section IX (Payments for Response Costs).

23. **Modification of Amount, Form, or Terms of Financial Assurance**. Settling Defendant may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the State, and must include an estimate of the cost of the remaining Site Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The State will notify Settling Defendant of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Settling Defendant may reduce the amount of the financial assurance mechanism only in accordance with: (a) the State's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XII (Dispute Resolution). Any decision made by the State on a request submitted under this Paragraph to change the form or terms (other than the amount) of a financial assurance mechanism shall be made in the State's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Order or in any other forum. Within 30 days after receipt of the State's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Settling Defendant shall submit to the State documentation of the reduced, revised, or alternative financial assurance mechanism.

24. **Release, Cancellation, or Discontinuation of Financial Assurance**. Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if the State issues a Certification of Work Completion under Appendix A; (b) in accordance with the State's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XII (Dispute Resolution).

IX. PAYMENTS FOR RESPONSE COSTS

25. **Payment by Settling Defendant for State's Past Response Costs**. Within 30 days after the Effective Date, Settling Defendant shall pay to the State $ 655,015 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 28 (Payment Instructions for Settling Defendant).

26. **Payments by Settling Defendant for Interim and Future Response Costs**. Settling Defendant shall pay to the State all Interim and Future Response Costs, which are not inconsistent with the Vermont Waste Management Act. The costs to be paid under this Paragraph shall not include any costs incurred by the State in connection with Corrective Action Area II—Operable Unit C.

a. **Periodic Bills**. The State will send Settling Defendant a monthly bill requiring payment that includes a cost summary, which includes Response Costs incurred by the Agency of Natural Resources and the Department of Health, and their contractors, subcontractors, and agents; the Attorney General's Office; and any other State agencies or departments that have incurred Response Costs. Settling Defendant shall make all payments within 30 days after Settling Defendant's receipt of each bill

requiring payment, except as otherwise provided in ¶ 29, in accordance with ¶ 28 (Payment Instructions for Settling Defendant).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Settling Defendant pursuant to ¶ 26(a) (Periodic Bills) shall be deposited in the Contingency Fund.

27. **Payment of Corrective Action Costs in Corrective Action Area II—Operable Unit C.** Within 30 days after the Effective Date, Settling Defendant shall pay to the State $3,700,000 for response costs incurred and to be incurred by the State to implement corrective action in Corrective Action Area II—Operable Unit C as identified in Appendix B. Payment shall be made in accordance with ¶ 28 (Payment Instructions for Settling Defendant). Upon payment of the $3,700,000, the State shall issue Settling Defendant a Certification of Corrective Action Completion for Corrective Action Area II—Operable Unit C.

28. **Payment Instructions for Settling Defendant**. All payments shall be made to the attention of:

Tracy LaFrance, Financial Operations Director
Administration and Innovation Division
Department of Environmental Conservation
1 National Life Drive, Davis 1
Montpelier, Vermont 05620-3802

29. **Contesting Interim or Future Response Costs**. Settling Defendant may submit a notice of dispute, initiating the procedures of Section XII (Dispute Resolution), regarding any Interim or Future Response Costs billed under ¶ 26 (Payments by Settling Defendant for Interim and Future Response Costs) if it believes that the State has made a mathematical error, included a cost item that is not within the definition of Interim or Future Response Costs, or if it believes the State incurred excess

costs as a direct result of State action that was inconsistent with a specific provision or provisions of the Vermont Waste Management Act. Such notice of dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the State pursuant to Section XIX (Notices and Submissions). Such notice of dispute shall specifically identify the contested Interim or Future Response Costs and the basis for objection. If Settling Defendant submits a notice of dispute, Settling Defendant shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Interim or Future Response Costs to the State, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC in the full amount of the contested Interim or Future Response Costs. Settling Defendant shall send to the State, as provided in Section XIX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Interim or Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, the identity of the bank and bank account number as well as a bank statement showing the initial balance of the escrow account. If the State prevails in the dispute, Settling Defendant shall pay the sums due (with accrued Interest) to the State within 7 days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to the State within 7 days after the resolution of the dispute. After such payment, Settling Defendant shall be disbursed any balance of the escrow account. All payments to the State under this Paragraph shall be made in accordance with ¶ 28 (Payment Instructions for Settling Defendant). The dispute-resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XII (Dispute

Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the State for its Interim or Future Response Costs.

X. DEFENSE, INDEMNIFICATION, AND INSURANCE

30. **Settling Defendant's Defense and Indemnification of the State**.

a. The State of Vermont does not assume any liability by entering into this Consent Order. The Settling Defendant shall defend, indemnify, save, and hold harmless the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Settling Defendant in connection with the performance of the Site Work or by a failure of Settling Defendant to fund the Account, as defined in Appendix E, for the Water Extension Work provided that all prerequisites to payment set forth in Appendix E have been met and Settling Defendant has still failed to fund the Account for the Water Extension Work. The State shall notify Settling Defendant in the eventof any such claim or suit, and Settling Defendant shall immediately retain counsel and provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any such claim or suit. The State shall have the right to approve all proposed settlements of such claims or suits. If the State withholds consent to settle any such claim, then Settling Defendant shall proceed with the defense of the claim but Settling Defendant's indemnification obligation shall be limited to the amount of the proposed settlement rejected by the State. The State shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out the Site Work. Neither Settling Defendant nor any such contractor shall be considered an agent of the State. Nothing herein shall require Settling Defendant to defend or indemnify the State with respect to any claims, causes of action, or alleged damages related to Corrective

Action Area II—Operable Unit C.

b. The State shall give Settling Defendant notice of any claim for which the State plans to seek defense or indemnification pursuant to this ¶ 29, and shall consult with Settling Defendant prior to settling such claim.

31. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, and any person for performance of the Site Work, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall defend, indemnify, save, and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or person for performance of the Site Work, including, but not limited to, claims on account of construction delays. Nothing herein shall require Settling Defendant to defend or indemnify the State with respect to any claims, causes of action, or alleged damages related to Corrective Action Area II—Operable Unit C.

32. **Insurance**. No later than 15 days before commencing any Site Work, Settling Defendant or its contractors or subcontractors shall secure and shall maintain until the first anniversary after issuance of the State's Certification of Corrective Action Completion pursuant to Appendix A, commercial general liability insurance with limits of $1,000,000.00, for any one occurrence, and automobile liability insurance with limits of $2,000,000.00, combined single limit, naming the State as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Order. In addition, for the duration of this Consent Order, Settling Defendant shall satisfy, or shall ensure that its contractors or

subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Site Work. Prior to commencement of the Site Work, Settling Defendant shall provide to the State certificates of such insurance and a copy of each insurance policy, including for all contractors and subcontractors. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date.

XI. FORCE MAJEURE

33. "Force Majeure," for purposes of this Consent Order, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, subcontractors, or agents, that delays or prevents the performance of any obligation under this Consent Order despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any Force Majeure (a) as it is occurring and (b) following the Force Majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

34. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order for which Settling Defendant intends or may intend to assert a claim of Force Majeure, Settling Defendant shall notify the State's Project Coordinator orally or, in his or her absence, the State's Alternate Project Coordinator or, in the event both of the State's Coordinators are unavailable, the Director of the Waste

Management and Prevention Division of the Agency of Natural Resources. Such notice must be given within 7 days of when Settling Defendant first believed that the event might cause a delay. Within 10 days after the initial notice, Settling Defendant shall provide the State a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or its effects; Settling Defendant's rationale for attributing such delay to a Force Majeure; and a statement as to whether Defendant believes such event may cause or contribute to an endangerment to public health, welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors, subcontractors, or agents knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting Force Majeure regarding that event, provided, however, that the State may, in its unreviewable discretion, excuse Settling Defendant's failure to submit timely or complete notices under this Paragraph. Where Force Majeure is asserted, Settling Defendant must also prove that it made all reasonable efforts to remove, eliminate, or minimize such cause of delay or damages, diligently attempted to perform the obligations from which it seeks to be excused, and timely fulfilled all non-excused obligations.

35. If the State agrees that the delay or anticipated delay is attributable to a Force Majeure, the time to perform the obligations affected by the Force Majeure will be extended by the State as necessary in the State's judgment to complete those

obligations. An extension of the time based on the Force Majeure shall not, of itself, extend the time to perform any other obligation. If the State agrees that the delay is attributable to a Force Majeure, the State will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

36. If the State does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, the State will notify Settling Defendant in writing of its decision.

37. If Settling Defendant elects to invoke the procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 days after receiving the State's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure, that the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the delay, and that Settling Defendant complied with the requirements of ¶ 33. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation of this Consent Order. However, Settling Defendant must complete the work affected by the delay within a timeline to be established by the State.

38. The State's failure to timely complete any obligation under the Consent Order or a Corrective Action Plan is not a violation of the Consent Order, provided, however, that if such failure prevents Settling Defendant from meeting one or more deadlines in the Consent Order or the CAP, Settling Defendant may seek relief under this Section.

XII. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Order. However, the procedures set forth in this Section shall not apply to actions by the State of Vermont to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

40. A dispute shall be considered to have arisen when one party sends the other a written notice of dispute. Any dispute regarding this Consent Order shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties.

41. **Statements of Position**.

a. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the State shall be binding unless, within 10 business days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by providing the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation.

b. Within 10 days after receipt of Settling Defendant's Statement of Position, the State shall provide Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation. Within 5 business days after receipt of the State's Statement of Position, Settling Defendant may provide a Reply.

42. **Record Review**. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the State under this Consent Order, and the adequacy of the performance of response actions taken pursuant to this Consent Order. Nothing in this Consent Order shall be construed to allow any dispute by Settling Defendant regarding the validity of Appendix A.

a. The State shall maintain an administrative record of the dispute. That record shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the State may allow submission of supplemental statements of position by the Parties.

b. The Director of the Agency of Natural Resources' Waste Management and Prevention Division will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 42(a). This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to ¶ 42(c).

c. The Director's decision shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court under this docket and served on all Parties within 10 business days after receipt of the State's decision. The review shall be conducted pursuant to Rule 75 of the Vermont Rules of Civil Procedure. The State may file an opposition to Settling Defendant's motion,

and Settling Defendant may file a Reply, as allowed by the Vermont Rules of Civil Procedure.

43. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way Settling Defendant's obligations under this Consent Order, except as provided in ¶ 29 (Contesting Interim or Future Response Costs), as agreed by the State, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 29. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Order. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

XIII. STIPULATED PENALTIES

44. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in ¶¶ 45 and 46 to the State for failure to comply with the requirements of this Consent Order specified below, unless excused under Section XI (Force Majeure). "Compliance" by Settling Defendant shall include completion of all activities and obligations, including payments, required under this Consent Order or any deliverable approved under this Consent Order, in accordance with all applicable requirements of law, this Consent Order, Appendix A, and any deliverables approved under this Consent Order or Appendix A and within the specified time schedules established by and approved under this Consent Order and Appendix A.

45. **Stipulated Penalty Amounts – Consent Order (Including Payments)**. The following stipulated penalties shall accrue per violation per day for the

failure to comply with any term of this Consent Order:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$500
15th through 30th day	$ 750
31st day and beyond	$ 1,000

46. **Stipulated Penalty Amounts - Corrective Action Plan**. The following stipulated penalties shall accrue per violation per day for failure to comply with, or submit timely deliverables pursuant to, an approved Corrective Action Plan:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$100
15th through 30th day	$ 250
31st day and beyond	$ 500

47. The provisions of Section XII (Dispute Resolution) and Section XIII (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant's submissions under this Consent Order or an approved Corrective Action Plan.

48. Following the State's determination that Settling Defendant has failed to comply with a requirement of this Consent Order or a Corrective Action Plan, the State

shall give Settling Defendant written notification of the same and describe the noncompliance. Settling Defendant shall have 10 days from the date of such notification to cure the deficiency identified by the State before penalties may begin to accrue. All penalties shall begin to accrue on the 10th day after the State provides Settling Defendant with notice of noncompliance and shall continue to accrue until the noncompliance is corrected or the activity completed. However, stipulated penalties shall not accrue: (a) with respect to a decision by the Director of the Waste Management and Prevention Division, under ¶ 42(b), during the period, if any, beginning on the 1st day after the State's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (b) with respect to judicial review by this Court of any dispute under Section XII (Dispute Resolution), during the period, if any, beginning on the 1st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order or a Corrective Action Plan.

49. All penalties accruing under this Section shall be due and payable to the State within 30 days after Settling Defendant's receipt from the State of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XII (Dispute Resolution) within the 30-day period. All payments to the State under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 28 (Payment Instructions for Settling Defendant).

50. Except as provided in ¶ 48, penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the State that is not appealed to this Court, accrued penalties determined to be owed shall be paid to the State within 15 days after the agreement or the receipt of the State's decision or order;

b. If the dispute is appealed to this Court and the State prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to the State within 60 days after receipt of the Court's decision or order, except as provided in ¶ 48;

c. If this Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by this Court to be owed to the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the State or to Settling Defendant to the extent that each prevails.

51. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows:
(a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 44 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 44 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due,

the State may institute proceedings to collect the penalties and Interest.

52. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete or fund the Work.

53. Nothing in this Consent Order shall be construed as prohibiting, altering, or in any way limiting the State's ability to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to 10 V.S.A. § 8221, provided, however, that the State shall not seek civil penalties pursuant to 10 V.S.A. § 8221 for any violation for which a stipulated penalty is provided in this Consent Order, except in the case of a willful violation of this Consent Order.

54. Notwithstanding any other provision of this Section, the State may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Order.

XIV. COVENANTS BY THE STATE

55. Except as provided in this Paragraph and in ¶¶ 56, 57 (State's Pre- and Post-Certification Reservations), and 59 (General Reservations of Rights), the State covenants not to sue or take administrative action relating to releases of PFOA, PFOS, PFNA, PFHxS, and PFHpA at the Site against Settling Defendant pursuant to 10 V.S.A. §§ 1283, 1410, 6610a, 6615, 6615d, 6615e, 6616, 8003, 8221 and 42 U.S.C. §§ 6972, 9607, 9659 or the common law, including claims for natural resource damages. In addition, the State covenants not to sue or take administrative action against Settling Defendant under any future law or regulation to compel Settling Defendant to pay for water line extensions for PFOA, PFOS, PFNA, PFHxS, and PFHpA at the Site except as provided for in this

Consent Order. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of Corrective Action Completion for Corrective Action Area I or II, or any individual Operable Unit of CAA I or II with respect to the specific Corrective Action Area or Operable Unit only, by the State pursuant to Appendix A. These covenants extend to Settling Defendant and any of its corporate successors; and corporate parents, subsidiaries, predecessors, or other corporate affiliates identified in Appendix F, but do not extend to any other person. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Order.

56. **State's Pre-Certification Reservations**. Notwithstanding any other provision of this Consent Order, the State reserves, and this Consent Order is without prejudice to, the State's right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further corrective actions relating to the Site and/or to pay the State for additional costs of response or penalties if, prior to Certification of Corrective Action Completion:

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

b. information, previously unknown to the State, becomes known, in whole or in part, and

c. the State determines that these previously unknown conditions or information together with any other relevant information indicate that the Corrective Action is not protective of human health or the environment.

57. **State's Post-Certification Reservations**. Notwithstanding any other provision of this Consent Order, the State reserves, and this Consent Order is without

prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further corrective actions relating to the Site and/or to pay the State for additional costs of response or penalties if:

a. subsequent to Certification of Corrective Action Completion:

(1) conditions at the Site, previously unknown to the State, are discovered, or

(2) information, previously unknown to the State, becomes known, in whole or in part, and

b. the State determines that these previously unknown conditions or this information together with any other relevant information indicate that the Corrective Action is not protective of human health or the environment.

58. For purposes of ¶ 56 (State's Pre-Certification Reservations), the information and the conditions known to the State will be limited to all factual information or quantitative data collected by the State and all factual information and quantitative data submitted to the State by Settling Defendant: for Corrective Action Area I, as of October 2, 2017, and for Corrective Action Area II, as of the effective date of this Consent Order. For purposes of ¶ 57 (State's Post-Certification Reservations), the information and the conditions known to the State shall include all information and those conditions known to the State as of the date of Certification of Corrective Action Completion for Corrective Action Area I or II, the administrative record supporting the Corrective Action Plan, and any information received by the State pursuant to the requirements of this Consent Order prior to said Certification of Corrective Action Completion.

59. **General Reservations of Rights**. The State reserves at all times the right to seek an order compelling Settling Defendant to perform its obligations under the Corrective Action Plan(s) and this Consent Order. The State reserves, and this Consent Order is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the State's covenants. Notwithstanding any other provision of this Consent Order, the State reserves all rights it may have against Settling Defendant with respect to:

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

b. liability arising from the past, present, or future disposal, release, or threat of release of PFOA, PFOS, PFNA, PFHxS, or PFHpA outside of the Site;

c. for Corrective Action Area II, liability arising from releases after the Effective Date of this Consent Order; for Corrective Action Area I, liability arising from releases after October 2, 2017;

d. criminal liability;

e. civil penalty liability;

f. liability for violations of federal or state law not expressly released as a part of this Consent Order; and

g. subject to the provisions of ¶¶ 13, 14, and 15, liability, prior to achievement of Performance Standards, for additional response actions that the State determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in an approved Corrective Action Plan.

60. **Work Takeover**.

a. In the event the State determines that Settling Defendant: (1) has ceased implementation of any portion of the Site Work; (2) is seriously or repeatedly deficient or late in its performance of the Site Work; or (3) is implementing the Site Work in a manner that may endanger human health or the environment, the State may issue a written notice ("Work Takeover Notice") to Settling Defendant. Any Work Takeover Notice will specify the grounds upon which it was issued and will provide Settling Defendant a period of 10 days within which to remedy the circumstances set forth in the notice.

b. If, after expiration of the 10-day notice period specified in ¶ 60(a), Settling Defendant has not remedied to the State's satisfaction the circumstances giving rise to the State's issuance of the relevant Work Takeover Notice, the State may at any time thereafter assume the performance of all or any portion(s) of the Site Work the State deems necessary ("Work Takeover"). The State will notify Settling Defendant in writing (which writing may be electronic) if the State determines that a Work Takeover is warranted. Funding of Work Takeover costs is addressed under ¶ 22 (Access to Financial Assurance).

c. Settling Defendant may invoke the procedures set forth in ¶ 42 (Record Review) to dispute the Work Takeover. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, the State may in its sole discretion commence and continue a Work Takeover until the earlier of (1) the date that Settling Defendant remedies, to the State's satisfaction, the circumstances giving rise to the State's issuance of the Work Takeover

Notice, or (2) the date that a final decision is rendered in accordance with ¶ 42 (Record Review) requiring the State to terminate such Work Takeover.

61. Notwithstanding any other provision of this Consent Order, the State retains all authority and reserves all rights to take any and all response actions authorized by law.

XV. COVENANTS BY SETTLING DEFENDANT

62. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the State with respect to the Work, past response actions regarding the Site, Past Response Costs, Interim Response Costs, or Future Response Costs. This includes, but is not limited to:

a. any claims arising under state law regarding the Work, past response actions regarding the Site, Past Response Costs, Interim Response Costs, Future Response Costs, Settling Defendant's Past Response Costs, Settling Defendant's Interim Response Costs, Settling Defendant's Future Response Costs, and this Consent Order; and

b. any claims arising out of response actions at or in connection with the Site, including claims under the United States Constitution, the Vermont Constitution, or at common law.

63. Except as provided in ¶ 70 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the State brings a cause of action or issues an order to compel corrective action pursuant to any of the reservations in Section XIV (Covenants by the State), other than in ¶¶ 58(a) (claims for failure to meet a requirement of the Consent Order), 58(d) (criminal liability), and 58(f) (violations of federal/state law during or after implementation of the Work), but only to the extent

that Settling Defendant's claims arise from the same response action, response costs, or damages that the State is seeking pursuant to the applicable reservation. With respect to Corrective Action Area II—Operable Unit C, the covenants in this Section also shall not apply in the event that the State fails to implement required corrective action in that Operable Unit. Nothing herein shall limit or preclude Settling Defendant from filing suit against the State with respect to Corrective Action Area II—Operable Unit C based upon the alleged failure of the State to implement required corrective action in that Operable Unit.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION

64. Except as provided in ¶¶ 66 and 67 (protection from contribution), nothing in this Consent Order shall be construed to create any rights in, or grant or deny any cause of action to, any person not a Party to this Consent Order. This Consent Order shall not create any third-party beneficiary status to any person who is not a party to this Consent Order. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, and nothing herein shall be construed as any admission of or any evidence of any fault, wrongdoing, or liability by Settling Defendant in this action or any other action or proceeding. The Parties recognize that Settling Defendant is entering into this Consent Order notwithstanding that there may be other sources of PFAS in Corrective Action Area I and Corrective Action Area II. Nothing in this Consent Order diminishes the right of the State to pursue any Person not a party hereto to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection.

65. The State and Settling Defendant will stipulate to the dismissal with

prejudice of the case titled "*Saint-Gobain v. State of Vermont*," *Docket No. 717-12-17 Wncv,* and Settling Defendant will not file any other challenge to Vermont standards of 20 ppt for PFOA, PFOS, PFHxS, PFHpA, or PFNA, or challenge the 20 ppt standard(s) in any dispute or action arising under this Consent Order or the 10/2/17 Consent Order, provided, however, that nothing herein or in the 10/2/17 Consent Order shall be deemed an admission or acknowledgment by Settling Defendant that a 20 ppt standard is necessary or appropriate for PFOA, PFOS, PFHxS, PFHpA, or PFNA, or as a limitation on Settling Defendant's ability to challenge the appropriateness of a 20 ppt standard in any proceeding other than those described above, or any current or future standard other than a 20 ppt standard for PFOA, PFOS, PFHxS, PFHpA, or PFNA;

66. This Consent Order constitutes a judicially approved settlement pursuant to which Settling Defendant has, as of the Effective Date and subject to satisfactory completion of the Work, resolved liability to the State for alleged PFOA, PFOS, PFHxS, PFHpA, and PFNA at the Site within the meaning of 10 V.S.A. §§ 1283 and 6615 for the matters addressed in this Consent Order.

67. This Consent Order constitutes a judicially approved settlement pursuant to which Settling Defendant has, as of the Effective Date and subject to satisfactory completion of the Work, resolved liability to the State for alleged PFOA, PFOS, PFHxS, PFHpA, and PFNA at the Site within the meaning of 10 V.S.A. § 6615, and Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or contribution claims as provided by any and all applicable laws, for the "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are the Work, Past Response Costs, and Interim and Future Response Costs.

68. Settling Defendant shall, with respect to any suit or claim brought by it for

matters addressed in this Consent Order as described above (namely, the Work, Past Response Costs, and Interim and Future Response Costs), notify the State in writing no later than 15 days prior to the initiation of such suit or claim.

69. Settling Defendant shall, with respect to any suit or claim brought against it for matters addressed in this Consent Order as described above (namely, the Work, Past Response Costs, and Interim and Future Response Costs), notify in writing the State within 10 days after service of the complaint on Settling Defendant. In any such action, Settling Defendant shall notify the State within 10 days after service or receipt of any Motion for Summary Judgment on such claim and within 10 days after receipt of any order from a court setting such a case for trial.

70. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim against the State 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 State 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 XIV (Covenants by the State).

XVII. ACCESS TO INFORMATION

71. Settling Defendant shall provide to the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Settling Defendant's possession or control or that of its contractors or

agents relating to activities at the Site or to the implementation of this Consent Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Defendant shall also make available to the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

72. **Privileged or Protected Claims**.

a. Settling Defendant may assert that all or part of a Record requested by the State is privileged or protected as provided under applicable law, in lieu of providing the Record, provided Settling Defendant complies with ¶ 72(b).

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

c. Settling Defendant will produce to the State upon request, and will not assert claims of privilege or protection against the State (but reserves any such claim as against all other persons or parties, and reserves all trade-secret and business-

confidential claims as described below), information regarding: (1) any quantitative data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Settling Defendant is required to create or generate pursuant to this Consent Order.

73. **Trade-Secret and Business-Confidential Claims**. Settling Defendant may assert that all or part of a Record provided to the State under this Section or Section XVIII (Retention of Records) is either a trade secret or business confidential to the extent permitted by and in accordance with 10 V.S.A. § 6615c(f). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Order for which Settling Defendant asserts such claims. Records determined to be confidential will be afforded the protection specified in 10 V.S.A. § 6615c(f) and 1 V.S.A. § 317(c)(9). If no claim of confidentiality accompanies Records when they are submitted to the State or if the State has notified Settling Defendant that the Records are not confidential, the public may be given access to such Records without further notice to Settling Defendant.

74. If relevant to the proceeding, validated sampling or monitoring data generated during the performance of the Work and reviewed and approved by the State shall be admissible as evidence, without objection, in any proceeding under this Consent Order.

75. Notwithstanding any provision of this Consent Order, the State retains all of its information-gathering and inspection authorities and rights, including enforcement actions related thereto, under the Vermont Waste Management Act, and any other

applicable statutes or rules.

XVIII. RETENTION OF RECORDS

76. Until 10 years after the State's Certification of Work Completion for Corrective Action Area I and II under Appendix A, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability or potential liability under the Vermont Waste Management Act with respect to the Site. Settling Defendant must also retain all Records that relate to the liability or potential liability of any other person under the Vermont Waste Management Act with respect to the Site. Settling Defendant must also retain, and instruct its contractors, sub-contractors, and agents to preserve, for the same period of time specified above, all non-identical copies of the final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, and copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record-retention requirements shall apply regardless of any corporate retention policy to the contrary.

77. At the conclusion of this record-retention period, Settling Defendant shall notify the State at least 30 days prior to the destruction of any such Records, and, upon request by the State, and except as provided in ¶ 72 (Privileged or Protected Claims), Settling Defendant shall deliver any such Records to the State. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its liability or potential liability regarding the Site since

notification of potential liability by the State and that it has fully complied or is working in good faith towards compliance with any and all State requests for information regarding the Site.

XIX. NOTICES AND SUBMISSIONS

78. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Order must be in writing unless otherwise specified. Whenever, under this Consent Order, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified in Appendix G. Any Party may change the person and/or address applicable to it by providing notice of such change to the other Party. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Order regarding such Party.

XX. RETENTION OF JURISDICTION

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

XXI. WAIVER

80. The failure of any Party at any time to require performance by the other

Party of the provisions of this Consent Order will not be deemed a waiver of that provision or a waiver of any other provision of this Consent Order and will in no way affect the right to require such performance from such other Party at any time thereafter.

XXII. APPENDICES

81. The following appendices are attached to and incorporated as terms of this Consent Order:

"Appendix A" is Corrective Action Work Items and Schedule.

"Appendix A1" is Appendix A of the 10/2/17 Consent Order in *State of Vermont, Agency of Natural Resources v. Saint-Gobain Performance Plastics Corporation, Docket No. 205-7-17 Bncv* that is incorporated by reference.

"Appendix B" is the map of the area designated as Corrective Action Area I, including Operable Units A and B, and Corrective Action Area II, including Operable Units A, B, and C.

"Appendix C" is the Comparative Evaluation of Corrective Action Alternatives: Bennington, Vermont for Corrective Action Area I.

"Appendix C1" is the Comparative Evaluation of Corrective Action Alternatives: Bennington, Vermont for Corrective Action Area II.

"Appendix D" is the Agency of Natural Resources Record of Decision and Selection of Remedy for Corrective Action Area I.

"Appendix D1" is the Agency of Natural Resources Record of Decision and Selection of Remedy for Corrective Action Area II.

"Appendix E" is the form Agreement for Payment for Expansion of Municipal Water Lines in Corrective Action Area II.

"Appendix F" is a list of Settling Defendant's related entities for purposes of the covenant not to sue in Paragraph 55.

"Appendix G" is a list of contacts for purposes of providing notice under this Consent Order.

XXIII. MODIFICATION

82. Settling Defendant may request that the Secretary modify any deadline established in the Consent Order or any work plan required by the Consent Order. Because circumstances may make it difficult for Settling Defendant to comply with deadlines at times, including but not limited to the timeline of deliverables set forth in Appendix A, the Secretary will grant requests for extensions made by Settling Defendant provided that such requests are not unreasonable. When making a request for an extension, Settling Defendant shall propose an alternative deadline and provide a brief justification for why the change is necessary.

83. All material modifications to this Consent Order shall be in writing, signed by the State and Settling Defendant, and shall be effective only upon approval by this Court. A modification shall be considered material if it fundamentally alters the Parties' obligations.

84. Non-material modifications to this Consent Order shall be in writing and shall be effective when signed by duly authorized representatives of the State and Settling Defendant. Any modification agreed to by the Parties that does not fundamentally alter the Parties' obligations is a non-material modification.

85. If for any reason the Court should decline to approve this Consent Order, including Appendix A, in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in

any litigation between the Parties.

86. If for any reason the Court should decline to approve this Consent Order, including Appendix A, in the form presented, the 10/2/17 Consent Order shall remain in effect.

XXIV. FINAL JUDGMENT

87. This Consent Order constitutes the final, complete, and exclusive agreement and understanding between the Parties regarding the settlement embodied in the Consent Order. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Order.

88. Upon entering this Consent Order, including Appendix A, in the form presented, this Consent Order supersedes, incorporates, and replaces the 10/2/17 Consent Order in *State of Vermont, Agency of Natural Resources v. Saint Gobain Performance Plastics Corporation, Docket No. 205-7-17 Bncv*, except that Appendix A of the 10/2/17 Consent Order is incorporated by reference into this Consent Order, unless expressly modified.

89. Upon entry of this Consent Order by the Court, this Consent Order shall constitute a final judgment between the State and Settling Defendant.

NOW THEREFORE, the Court so ORDERS and ENTERS this Consent Order as FINAL JUDGMENT

THIS _____ DAY OF _____ 20____.

_____

Hon.
Vermont Superior Court Judge,
Bennington Unit