

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

UNITED STATES OF AMERICA

and STATE OF ILLINOIS

Plaintiffs,

v.

TCI PACIFIC COMMUNICATIONS,
LLC.

Defendant.

Case No.

**REMEDIAL DESIGN/REMEDIAL ACTION
CONSENT DECREE**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the state of Illinois (the “State”), by and through the Attorney General of the state of Illinois and the Illinois Environmental Protection Agency (“IEPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9606 and 9607.

B. The United States and the State in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA, the United States Department of Justice (“DOJ”), IEPA, and the Attorney General of the State of Illinois for response actions at Operable Unit 4 (“OU4”) of the DePue /New Jersey Zinc/Mobil Chemical Corp. Superfund Site in DePue, Illinois (“Site”), together with accrued interest; and (2) performance of response actions by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State on May 25, 2021 of negotiations with TCI Pacific Communications, LLC (“TCI”) regarding the implementation of the Remedial Design and Remedial Action (“RD/RA”) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree (herein referred to as “CD” or “Decree”). The State has done so.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U. S. Fish and Wildlife Service, Midwest Division, on May 25, 2021 of negotiations with Potentially Responsible Parties (“PRPs”) regarding the release of hazardous substances that

may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant that has entered into this CD, TCI (“Settling Defendant” or “SD”), does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on April 1, 1997, 62 Fed. Reg. 15,594.

G. In response to a release or a substantial threat of a release of hazardous substances at or from OU4 of the Site, the State authorized Paramount Global (“Paramount”), formerly ViacomCBS Inc., as an indemnitor to TCI, to commence on July 23, 2015, a Pilot Study for the Site consistent with 40 C.F.R. § 300.430.

H. Paramount completed a Scoping Document Report for the Site on October 15, 2015.

I. Consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, the State published notice of completion of the Scoping Document and of the proposed plan for remedial action in June 2016. The State provided an opportunity for written and oral comments from the public on the proposed plan for Remedial Action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the State based the selection of the response action.

J. The decision by EPA on the Remedial Action to be implemented at the Site for OU4 is embodied in a final Record of Decision (“ROD”) executed by IEPA on May 17, 2017, and with which EPA gave its concurrence on June 23, 2017. The ROD includes IEPA’s explanation for any significant differences between the final plan and the proposed plan, as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. Based on the information presently available to EPA and the State, EPA and the State believe that the Work currently conducted under the Unilateral Administrative Order (“UAO”) and any future Work conducted after the Effective Date of the CD will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices. The Parties expect that Paramount, solely as an indemnitor to TCI, will perform the Work required by TCI under this CD.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith, and implementation of this CD will expedite the cleanup at OU4 of the Site and will avoid prolonged and complicated litigation between the Parties and that this CD is fair, reasonable, and in the public interest.

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

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and sections 106, 107 and 113(b) of CERCLA, and personal

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

III. PARTIES BOUND

2. This CD is binding upon the United States, upon the State, and upon SD and its successors and assigns. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of SD, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of SD's obligations under this Decree. SD's responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 74 (Modification).

3. In any action to enforce this Decree, SD may not raise as a defense the failure of any of their officers, directors, employees, agents, contractors, subcontractors, or any person representing SD to take any action necessary to comply with this Decree. SD shall provide notice of this CD to each person representing SD with respect to the Site or the Work. SD shall provide written notice of the CD to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work. SD shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Subject to the next sentence, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD, the following definitions shall apply:

“Affected Property” means all real property at OU4 of the Site and any other real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the RA, including the properties described and depicted in Attachment C as OU4.

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

“Consent Decree,” “CD,” or “Decree” means this consent decree and all appendices attached hereto (listed in Section XIX), and all deliverables incorporated into the Decree under ¶ 8.6(c) of the SOW. If there is a conflict between a provision in Sections I through XXIV and a provision in any appendix or deliverable, the provision in Sections I through XXIV controls.

“Date of Lodging” means the Day which this CD is filed with the United States District Court for the Central District of Illinois.

“Day” or “day” means a calendar day. In computing any period under this CD, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“The DePue Site OU4 Special Account” means the special account, within the EPA Hazardous Substance Superfund, established for the OU4 of the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“DOJ” means the United States Department of Justice.

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

“EPA” means the United States Environmental Protection Agency.

“Former Plant Site Area” or “FPSA” means the area in Operable Unit 3 (“OU3”) of the Site described as the Former Plant Site Area in the Record of Decision.

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

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between May 31, 2022 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing SD’s performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 12.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 22 (Access to Financial Assurance); (vi) in taking response action described in ¶ 56 because of SD’s failure to take emergency action under ¶ 5.6 of the SOW; (vii) in implementing a Work Takeover under ¶ 11; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under Section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XII (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with Section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after

March 31, 2022 on EPA's unreimbursed costs (including Past Response Costs) under Section 107(a) of CERCLA.

"IEPA" means the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

"Including" or "including" means "including but not limited to."

"Institutional Controls" means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office), non-Proprietary Controls (e.g., informational Institutional Controls such as a visible barrier, excavation advisory, JULIE, One Call system, database of properties, etc.), and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with OU4 of the Site; or (d) any combination thereof.

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

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

“Non-Settling Owner” means any person, other than SD, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Operable Unit 3” or “OU3” means the Site areas described as OU3 in the Record of Decision.

“Operable Unit 4” or “OU4” means the Site areas described as OU4 in the Record of Decision.

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

“Owner SD” means any SD that owns or controls any Affected Property, including TCI Pacific Communications, LLC. The clause “Owner SD’s Affected Property” means Affected Property owned or controlled by Owner SD.

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

“Parties” means the United States, the State of Illinois, and SD.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with OU4 of the Site through May 31, 2022, plus all interest on such costs accrued under Section 107(a) of CERCLA through such date.

“Performance Standards” or “PS” means the cleanup levels and other measures of achievement of the Remedial Action objectives, as set forth in the ROD.

“Plaintiffs” shall mean the United States and the State of Illinois.

“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 appropriate land records office.

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

“Record of Decision” or “ROD” means the EPA Record of Decision relating to OU4 at the Site signed on June 23, 2017, by the State of Illinois (with concurrence by EPA Region 5), and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” or “RA” means the remedial action selected in the ROD.

“Remedial Design” or “RD” means those activities to be undertaken by SD to develop final plans and specifications for the RA as stated in the SOW.

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

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

“Settling Defendant” or “SD” means TCI Pacific Communications, LLC.

“Site” means the DePue/New Jersey Zinc/Mobil Chemical Corp. Superfund Site, in DePue, Bureau County, Illinois. The Site is comprised of six operable units (“OUs”). The Site is depicted generally on the map attached as Appendix C.

“Site Related Material” or “SRM” means primary zinc processing slag previously generated by the former zinc smelting operations located at the Site and that has been used as fill

at certain properties within OU4. When present, SRM is usually found as a granular, gravel or stone-sized dark material, loose, distinct from the typical soil color and texture, sometimes mixed with broken/crushed ceramic retort, brick or other fill material.

“Scoping Document” means the document submitted by Paramount to the State of Illinois in 2015 pursuant to the November 6, 1995 Interim Consent Order filed in the Illinois Circuit Court for the Thirteenth Judicial District, Bureau County, Illinois, Chancery Division (95 CH 18), which included analysis of alternatives, and compared each alternative against the NCP’s nine criteria for evaluation of the remedial alternatives.

“State” means the State of Illinois and each department, agency, and instrumentality of the State of Illinois, including IEPA and the Attorney General of the State of Illinois.

“State Past Response Costs” means all costs, (including, direct, indirect, payroll, contractor, travel, and laboratory costs) that the State of Illinois paid at or in connection with OU4 of the Site through June 7, 2022, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a).

“State Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the State: (a) pays between June 7, 2022 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in reviewing and commenting on deliverables generated under this Decree; (ii) in overseeing SD’s performance of the Work; (iii) in assisting when requested by EPA, reviewing, or commenting on access or use restrictions under ¶¶12.b and 12.c; (iv) in securing, implementing, reviewing, commenting on, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in participating in community involvement activities; (vi) in enforcing this Decree, including all costs paid under Section XII

(Dispute Resolution) and all litigation costs; and (vii) in reviewing and commenting on periodic reviews in accordance with Section 121(c) of CERCLA. State Future Response costs that are contractor or laboratory costs, including contractor or laboratory indirect costs, shall collectively not exceed \$20,000 annually for OU4 of the Site. State Future Response Costs also includes all Interest accrued after June 7, 2022 on the State's unreimbursed costs (including State Past Response Costs) under Section 107(a) of CERCLA.

“Statement of Work” or “SOW” means the document describing the activities SD must perform to implement the RD, the RA, and O&M regarding the Site, which is attached as Appendix B.

“Supervising Contractor” means the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

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

“Unilateral Administrative Order” or “UAO” means the Order issued on January 23, 2020, to SD requiring implementation of the RD and RA outlined in the June 23, 2017, ROD.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including the U.S. Environmental Protection Agency (“EPA”).

“Waste Material” means (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 substance” under Section 3.215 of the Illinois

Environmental Protection Act (“Illinois Act”), 415 ILCS 5/3.215; (5) any “hazardous waste or waste under Section 3.220 of the Illinois Act, 415 ILCS 5/3.220; (6) any “waste” under Section 3.535 of the Illinois Act, 415 ILCS 5/3.53; and (7) any site-related material as defined in the ROD.

“Work” means all activities and obligations SD is required to perform under this CD, except the activities required under Section XVII (Records).

V. OBJECTIVES

5. The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions at OU4 of the Site by SD, to pay response costs of Plaintiffs, and to resolve the claims of Plaintiffs against SD.

VI. PERFORMANCE OF THE WORK

6. As applicable to the extent not already performed pursuant to the UAO, SD shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

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

8. SD’s obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several.

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

a. Nothing in this Decree limits EPA’s authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of

CERCLA and the NCP. Nothing in this Decree limits SD's rights, under Sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If, after consultation with IEPA and an opportunity for IEPA to comment, EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of Remedy, then SD shall implement the modification as provided in ¶ 9.c.

c. Upon receipt of notice from EPA that it has modified the Remedial Action as provided in ¶ 9.b and requesting that SD implement the modified Remedial Action, SD shall implement the modification, subject to its right to initiate dispute resolution under Section XII within 30 days after receipt of EPA's notice. SD shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or, if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The Remedial Action modification, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

10. **Compliance with Applicable Law.** Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP, 40. C.F.R. 300.700(c)(3)(ii).

11. **Work Takeover:**

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

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

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

VII. PROPERTY REQUIREMENTS

12. Agreements Regarding Access and Non-Interference.

a. To the extent that EPA- and IEPA-approved access agreements for Non-Settling Owner’s Affected Property have already been secured by SD or EPA prior to the Effective Date of the CD (“Existing Access Agreements”), this Section will not require further revision of the Existing Access Agreements.

b. SD shall, with respect to any Non-Settling Owner’s Affected Property for which EPA and IEPA-approved access agreements have not already been secured prior to the

Effective Date under the prior Subparagraph, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiffs, requiring such owner to provide Plaintiffs and SD, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner's property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;
- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree;
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls;
- (6) Verifying any data or information submitted to the United States or the State;
- (7) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW; and
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents.

c. Further, each agreement required under the preceding subparagraph must commit the owner to refrain from using its property in any manner that EPA determines will

pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following:

- (1) engaging in the following activities that could interfere with the Remedial Action: excavation and placement of new foundations which could cause the release of, or exposure to contaminants of concern at depths beyond the excavated wastes (if any);
- (2) using contaminated groundwater;
- (3) constructing new structures that may interfere with the Remedial Action: and
- (4) constructing new structures that may cause an increased risk of inhalation of contaminants.

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

e. SD shall provide to EPA a copy of each agreement required under ¶ 12.b. If SD cannot accomplish what is required through best efforts in a timely manner, it shall notify EPA, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, to obtain such access or use restrictions.

13. **Access and Non-interference by Owner SD.** The Owner SD shall: (a) provide Plaintiffs and SD, and their representatives, contractors, and subcontractors with access at all

reasonable times to OU3 and OU4 of the Site to conduct any activity regarding the Decree, including those listed in ¶ 12.b and (b) refrain from using the Former Plant Site Area on OU3 or OU4 of the Site in any manner that EPA determines will pose an unacceptable risk to human health or to the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 12.c

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

15. Notice to Successors-in-Title.

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

b. Owner SD shall, prior to entering into a contract to Transfer Owner SD's Affected Property, or 60 days prior to Transferring Owner SD's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

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

VIII. FINANCIAL ASSURANCE

17. To ensure completion of the Work required under Section VI, SD shall secure financial assurance, initially in the amount of 3 million dollars ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (2) be satisfactory to EPA. As of the Date of Lodging of this CD, the sample documents can be found under the "Financial Assurance – Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment,

letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. A surety bond guaranteeing payment and/or performance of the 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 EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by a SD that it meets the relevant test criteria of ¶ 19, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or
- f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a SD or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a SD; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 19.

18. SD shall, within 30 days of the Effective Date, seek EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, to EPA, and to the State.

19. If SD seeks to provide financial assurance by means of a demonstration or guarantee under ¶ 17.e or 17.f, SD must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least \$10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected SD or guarantor has:

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

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least \$10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

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

20. SD providing financial assurance by means of a demonstration or guarantee under ¶ 17.e or ¶ 17.f must also:

a. Annually resubmit the documents described in ¶ 19.b within 90 days after the close of the affected SD or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected SD or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected SD or guarantor in addition to those specified in ¶ 19.b; EPA may make such a request at any time based on a belief that the affected SD or guarantor may no longer meet the financial test requirements of this Section.

21. SD shall diligently monitor the adequacy of the financial assurance. If SD 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, SD shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 23 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

22. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 11.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 22.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected SD 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 ¶ 11.b, either: (1) EPA 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 Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 17.e or 17.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 60 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 22 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, 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 Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the DePue OU4 Special Account within the

Fund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

e. All EPA Work Takeover costs not paid under this ¶ 22 must be reimbursed as Future Response Costs under Section IX (Payments for Response Costs).

23. **Modification of Amount, Form, or Terms of Financial Assurance.** Beginning after the first Anniversary of the Effective Date, and no more than once per calendar year, SD may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA and the State in accordance with ¶ 18, and must include an estimate of the cost of the remaining 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. EPA will notify SD of its decision regarding the request. SD may initiate dispute resolution under Section XII regarding EPA's decision within 30 days after receipt of the decision. SD may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XII. Settling Defendants shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

24. **Release, Cancellation, or Discontinuation of Financial Assurance.** SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 5.11 (Certification of Work Completion) of the SOW; (b) in accordance with EPA'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 SD for Past Response Costs.** Within 60 days after the Effective Date, Settling Defendants shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$368,831.16. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Central District of Illinois shall provide to Settling Defendants instructions for making this payment, including a Consolidated Debt Collection System (“CDCS”) reference number. Settling Defendants shall make such payment at <https://www.pay.gov> in accordance with the FLU’s instructions, including references to the CDCS Number. Settling Defendants shall send notices of this payment to DOJ and EPA. If the payment required under this Paragraph is late, Settling Defendants shall pay, in addition to any stipulated penalties owed under Section XIII, an additional amount for Interest accrued from the Effective Date until the date of payment.

26. **Payments by SD for Future Response Costs.**

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Settling Defendants may initiate a dispute under Section XII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** SD shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 60 days after receipt of the bill. SD shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 72 and the purpose of the payment. SD shall send notices of this payment to DOJ and EPA.

c. **Unused Amount.** After EPA issues the Certification of RA Completion pursuant to ¶ 5.9 (Certification of RA Completion) of the SOW and a final accounting of the DePue OU4 Special Account (including crediting SD for any amounts received under ¶ 26.a (Periodic Bills)), any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

27. **Payments by SD to State for Future Response Costs.** Except as otherwise provided in the CD, SD shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send SD a bill requiring payment that includes an IEPA Cost Recovery invoice, which includes direct and indirect costs incurred by the State and its contractors and subcontractors on a quarterly basis. SD shall make all payments within 60 days after SD’s receipt of each bill requiring payment, except as otherwise provided in ¶ 26.a. SD shall make all payments to the State required by this Paragraph in accordance with ¶ 28.

28. **State Past Response Costs.** The State reserves the right to seek any outstanding State Past Response Costs it becomes aware of after the Effective Date. The SD shall pay to the State any outstanding State Past Response Costs within 30 days of the receipt of the invoice for such Past Response Costs. Payment shall be made by official bank check(s) made payable to “Treasurer, State of Illinois,” and designated on the check for the “Hazardous Waste Fund” in payment of State Past Response Costs. SD shall send the bank check(s) to Illinois EPA, Fiscal Services Section #2, P.O. Box 19276, Springfield, Illinois 62794-9276. A copy of the transmittal letter, check, and IEPA invoice shall be sent to the State Project Coordinator and the Attorney General’s Office as provided in Section XVIII Notices and Submissions.

29. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 25 and 26 in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

X. INDEMNIFICATION AND INSURANCE

30. SD’s Indemnification of the United States and the State:

a. The United States and the State do not assume any liability by entering into this CD or by virtue of any designation of SD as EPA’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify and save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD’s behalf or under its control, in carrying out activities under this CD, including, but not limited to, any claims arising from any

designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on negligent or other wrongful acts or omissions of SD, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this CD. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of SD in carrying out activities under this CD. Neither SD nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State, respectively, shall give SD notice of any claim for which the United States or the State plans to seek indemnification in accordance with this ¶ 30, and shall consult with SD prior to settling such claim.

31. SD covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between SD and any person for performance of Work or other activities on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between SD and any person for performance of Work or other activities on or relating to the Site, including, but not limited to, claims on account of construction delays.

32. **Insurance.** SD may use the insurance provided to EPA pursuant to the UAO if it satisfies the requirements set forth in this Paragraph. If the insurance obtained under the UAO does not satisfy the requirements set forth in this Paragraph, no later than 30 days after the Effective Date, SD shall secure a revised or new policy satisfying the requirements set forth in this Paragraph. The required insurance includes: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name the United States and the State as additional insured with respect to all liability arising out of the activities performed by or on behalf of SD under this Decree. SD shall maintain this insurance until the first anniversary after issuance of EPA's Certification of RA Completion under ¶ 5.9 of the SOW. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA in consultation with the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD needs to provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all

submittals to EPA under this Paragraph identify the DePue New Jersey Zinc/Mobil Chemical Corp. Superfund Site in Bureau County, Illinois and the civil action number of this case.

XI. FORCE MAJEURE

33. “Force majeure,” for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD’s contractors that delays or prevents the performance of any obligation under this CD despite SD’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that SD exercises “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 potential force majeure (a) as it is occurring and (b) following the potential 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 for which SD will or may claim a force majeure, SD shall notify EPA’s Project Coordinator by email. The deadline for the initial notice is 10 days after the date SD first knew or should have known that the event would likely delay performance. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD’s contractors or subcontractors knew or should have known. Within 15 days thereafter, SD shall send further notice to EPA and the State that includes: (i) a description of the event and its effect on SD’s completion of the requirements of the CD; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for SD to complete the requirements of the CD; (iv) a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting the claim of force majeure. Failure to comply

with the above requirements regarding an event shall preclude SD from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 33 and whether SD has exercised its best efforts under ¶ 33, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

35. EPA, after a reasonable opportunity for review and comment by the State, will notify SD of its determination whether SD is entitled to relief under ¶ 33, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. SD may initiate dispute resolution under Section XII regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, SD has the burden of proving that it is entitled to relief under ¶ 33 and that its proposed extension was or will be warranted under the circumstances.

36. The failure by EPA to timely complete any activity under the CD or the SOW is not a violation of the CD, provided, however, that if such failure prevents SD from timely completing a requirement of the CD, SD may seek relief under this Section.

XII. DISPUTE RESOLUTION

37. Unless otherwise provided in this CD, SD must use the dispute resolution procedures of this Section to resolve any dispute arising under this CD. SD shall not initiate a dispute challenging the ROD. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

38. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute (“Notice of Dispute”). Disputes arising under this CD must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless the parties to the dispute otherwise agree.

a. If the parties cannot resolve a dispute other than a dispute for State Future Response Costs by informal negotiations, the position advanced by EPA is binding unless SD initiates formal dispute resolution under ¶ 39.a.

b. If the parties cannot resolve a dispute regarding State Future Response Costs by informal negotiations, then the position advanced by the State shall be considered binding unless SD initiates formal dispute resolution for State Future Response Costs under ¶ 41.

39. Formal Dispute Resolution

a. Statements of Position. SD may initiate formal dispute resolution by serving on the United States, within 30 days after the conclusion of informal dispute resolution under ¶ 38, an initial Statement of Position regarding the matter in dispute. The United States’ responsive Statements of Positions is due within 60 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 30 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. Formal Decision. The Director of the Superfund & Emergency Management Division, EPA Region 5, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental

statements of position. This decision is binding upon SD unless it timely seeks judicial review pursuant to ¶ 40.

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

40. **Judicial Review.**

a. SD may obtain judicial review of the Formal Decision by filing, within 21 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 11; (iv) determinations about financial assurance under Section VIII; (v) EPA's selection of modified or further response actions; (vi) any other items requiring EPA approval under the CD; and (vii) any other disputes that the Court determines should be reviewed on the administrative record. For all these disputes, SD bears the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 40.b shall be governed by applicable principles of law.

41. **Formal Dispute Resolution for State Future Response Costs.** Formal dispute resolution for disputes concerning payment of State Future Response Costs shall be governed by this Paragraph.

a. Statements of Position Regarding State Future Response Costs. SD may initiate formal dispute resolution regarding State Future Response Costs by serving on the State, within 30 days after the conclusion of informal dispute resolution under ¶ 38, an initial Statement of Position regarding the matter in dispute. The State’s responsive Statement of Position is due within 90 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 30 days after receipt of the response. If appropriate, the State may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. The Chief of the IEPA Bureau of Land, in consultation with the Illinois Attorney General’s Office, will issue a final decision resolving the dispute based on the Statements of Position and reply, if any, served under ¶ 41.a. (Statement of Positions Regarding State Future Response Costs). This decision shall be binding on SD unless, not later than 21 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute and the relief requested. The State may file a response to the SD’s motion.

42. **Escrow Account.** For disputes regarding a Future Response Cost billing or State Future Response Cost billing, Settling Defendant shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of

the contested Future Response Costs or State Future Response Costs; and (c) send to EPA or the State, whichever is applicable, copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA or the State, whichever is applicable, may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendant shall cause the escrow agent to pay the amounts due to EPA or the State under ¶¶ 26 or 27, if any, by the deadline for such payment in ¶¶ 26 or 27, whichever is applicable. Settling Defendant responsible for any balance due under ¶¶ 26 or 27 after the payment by the escrow agent.

43. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this CD, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 46.

XIII. STIPULATED PENALTIES

44. Unless the noncompliance is excused under Section XI (Force Majeure), SD is liable to the United States for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX (Payments for Response Costs); (ii) to establish and maintain financial assurance in accordance with Section VIII (Financial Assurance); (iii) to establish an escrow account to hold any disputed Future Response Costs and State Future Response Costs under ¶ 42; (iv) to submit timely or adequate deliverables required under Section 8 of the SOW:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$4,000

b. For any failure to submit timely or adequate deliverables pursuant to the CD other than those specified in the preceding Paragraph:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$500
15th through 30th day	\$1,000
31st day and beyond	\$2,000

45. **Work Takeover Penalty.** If EPA commences a Work Takeover, SD is liable for a stipulated penalty in the amount of \$500,000.00. This stipulated penalty is in addition to the remedy available under ¶ 22 (Access to Financial Assurance) to fund the performance of the Work by EPA.

46. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate noncompliance with this Decree. Stipulated penalties accrue regardless of whether SD has been notified of its noncompliance, and regardless of whether SD has initiated dispute resolution under Section XII, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ 8.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies SD of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XII (Dispute Resolution), during the period, if any, beginning on the 31st day after the

date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or

c. (c) with respect to judicial review by this Court of any dispute under Section XII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

47. **Demand and Payment of Stipulated Penalties.** EPA may send SD a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed, and will notify SD if there is a simultaneous accrual of separate penalties for separate violations of this CD. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

48. **Demand and Payment of Stipulated Penalties.** The State may send SD a demand for stipulated penalties for any failure by SD to make any payment to the State for State Future Response Costs under ¶ 27. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed, and will notify SD if there is a simultaneous accrual of separate penalties for separate violations of this CD. However, penalties shall accrue as provided in ¶ 46 regardless of whether the State has notified SD of a violation.

49. SD shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt from the demand. SD may invoke the Dispute Resolution procedures under Section XII (Dispute Resolution) within 30 days after receipt of the demand. SD shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the

penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. SD shall make payment owed to EPA at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 72, and the purpose of the payment. SD shall send a notice of this payment to DOJ and EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by SD under the Decree. The SD shall make payment owed to the State by official bank check(s) made payable to “Treasurer, State of Illinois,” and designated on the check for the “Hazardous Waste Fund,” in payment of stipulated penalties and interest. SD shall send the bank check(s) to Illinois EPA, Fiscal Services Section #2, P.O. Box 19276, Springfield, Illinois 62794-9276. A copy of the transmittal letter, check, and IEPA invoice shall be sent to the State Project Coordinator and the Illinois Attorney General’s Office.

50. Nothing in this CD limits the authority of the United States to seek any remedy available by virtue of SD’s noncompliance with this CD or of the statutes and regulations upon which it is based, including penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States may not seek civil penalties pursuant to Section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided in this CD, except in the case of a willful noncompliance with this CD.

51. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this CD.

XIV. COVENANTS BY PLAINTIFFS

52. **Covenants for SD by the United States.** Subject to ¶ 55, the United States covenants not to sue or to take administrative action against SD under Sections 106 and 107(a) of

CERCLA and Section 7003 of RCRA regarding the Work, Past Response Costs, and Future Response Costs.

53. **Covenants for SD by the State.** Subject to ¶ 55, the State covenants not to sue or to take administrative action against SD under Section 107(a) of CERCLA, Section 7002 of RCRA, and the Illinois Environmental Protection Act regarding the Work, State Past Response Costs, and State Future Response Costs.

54. The covenants under ¶¶ 52 and 53: (a) take effect upon the Effective Date; (b) are conditioned on the satisfactory performance by SD of the requirements of this Decree; (c) extend to the successors of SD but only to the extent that the alleged liability of the successor of SD is based solely on its status as a successor of SD; and (d) do not extend to any other persons.

55. **General Reservations of Rights.** The United States and the State reserve, and this CD is without prejudice to, all rights against SD with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this CD, the United States and the State reserve all rights against SD with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on the ownership of the Site by SD when such ownership commences after signature of this CD by SD;
- d. liability based on the operation of the Site by SD when such operation commences after signature of this CD by SD and does not arise solely from SD's performance of the Work;

e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

f. liability for additional operable units at the Site or the final response action;

g. criminal liability;

h. liability for violations of federal or state law that occur during or after implementation of the Work; and

i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that are not covered by ¶ 9;

j. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs;

k. previously incurred costs of response above the amounts paid pursuant to ¶ 25 (Payment by SD for United States Past Response Costs);

l. Liability for costs incurred or to be incurred by The Department of Justice regarding the Site.

56. Subject to ¶ 52, nothing in this CD limits any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on or at, or from the Site, or to request a Court to order such action.

XV. COVENANTS BY DEFENDANTS

57. Covenants by SD.

a. Subject to ¶ 58, SD covenants not to sue and shall not assert any claim or cause of action against the United States or the State under CERCLA; Section 7002(a) of RCRA; the United States Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412; the Illinois Constitution; State law; or at common law regarding the Work, past response actions relating to the Site, Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs.

b. Subject to ¶ 58, SD covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs regarding the Work, past response actions relating to the Site, Past Response Costs, and Future Response Costs.

58. **SD's Reservation.** The covenants in ¶ 57 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 55.a through 55.l.

59. Nothing in this CD shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.

60. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION

61. The Parties agree and the Court finds that: (a) the complaint filed by the United States and the State in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each SD has, as of the Effective Date, resolved its liability to the United States within the meaning of Sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) SD is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or

as may be otherwise provided by law, for the “matters addressed” in this Decree. The “matters addressed” in this Decree are the Work, Past Response Costs, and Future Response Costs, provided however that if the United States exercises rights under the reservations in ¶ 55.a through 55.l, or the State exercises rights under the reservations in ¶ 55.a through 55.l, the “matters addressed” in this Decree will no longer include those response costs or response actions that are within the scope of the exercised reservations.

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

63. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SD shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or 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 XV (Covenants by Plaintiffs).

64. Nothing in this Decree diminishes the right of the United States under Section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Decree to obtain additional

response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

XVII. RECORDS

65. **SD Certification.** SD certifies that: (a) to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed or otherwise disposed of any documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA requests for information under Sections 104(e) and 122(e) of CERCLA, and Section 3007 of RCRA.

66. Retention of Records and Information

a. SD shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Certification Completion of the Work under SOW ¶ 5.8 (the “Record Retention Period”):

- (1) All records regarding SD’s liability under CERCLA regarding the Site;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, SD in the course of performing the Work.

b. SD shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.

c. At the end of the Record Retention Period, SD shall notify EPA that it has 90 days to request the SD Records subject to this Section. SD shall retain and preserve their

Records subject to this Section until 90 days after EPA's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

67. SD shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. SD shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

68. **Privileged and Protected Claims**

a. SD may assert that all or part of a record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the record, provided that SD complies with ¶ 66.b, and except as provided in ¶ 66.c.

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

c. SD shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including 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 SD is required to create or generate in accordance with this Decree.

69. **Confidential Business Information (CBI) Claims.** SD may claim that all or part of a record provided to Plaintiffs under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, 40 C.F.R. § 2.203(b), and Sections 7 and 7.1 of the Illinois Act, 415 ILCS 5/7 and 7.1 (2022). SD shall segregate and shall clearly identify all records or parts thereof submitted under this Decree which they claim is CBI by labeling each page or each electronic file “claimed as confidential business information” or “claimed as CBI.” Records that SD claims to be CBI will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and 415 ILCS 5/7 and 7.1. If no CBI claim accompanies records when they are submitted to EPA, or if EPA and/or the State notifies SD that the records are not entitled to confidential treatment under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B and 415 ILCS 5/7 and 7.1, the public may be given access to such records without further notice to SD.

70. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

71. Notwithstanding any provision of this Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVIII. NOTICES AND SUBMISSIONS

72. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is

required to be sent by one Party to another under this Decree, it must be sent as specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ #90-11-3-11937/1

As to EPA:

Douglas Ballotti
Director
Superfund & Emergency Management
Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604
ballotti.douglas@epa.gov
Re: Site/Spill ID Number T05D501EC7

and:

Rose Guardino
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (SR-6J)
Chicago, Illinois 60604
Guardino.Rose@epa.gov
312-886-2407

**As to the Regional Financial
Management Officer:**

Chief of the Program Accounting/Analysis
Section
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (MF-10J),
Chicago, IL 60604.

As to EPA Cincinnati Finance Center:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State:

Charlene Falco
State Project Coordinator
Federal Site Remediation Section
Illinois Environmental Protection Agency
Mail Code #24
P.O. Box 19276
Springfield, Illinois 62794-9276
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As to SD

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XIX. APPENDICES

73. The following appendices are attached to and incorporated into this CD:

“Appendix A” is the OU4 ROD.

“Appendix B” is the SOW.

“Appendix C” is the description and/or map of the Site.

XX. MODIFICATIONS TO DECREE

74. Except as provided in ¶ 8 AND ¶ 8.6 of the SOW (Approval of Deliverables), non-material modifications to Sections I through XXIV and the Appendices must be in writing and are effective when signed (including electronically signed) by the Parties, and are effective

upon approval by the Court. Material modifications to Sections I through XXIV and the Appendices must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

XXI. SIGNATORIES

75. The undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Chief of the Environmental Bureau of the Illinois Attorney General's Office certify that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

XXII. PRE-ENTRY PROVISIONS

76. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 77 and ¶ 78, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

77. SD agrees not to oppose or appeal entry of this CD.

78. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

XXIII. INTEGRATION

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

XXIV. FINAL JUDGMENT

80. Upon entry of this CD by the Court, this CD constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for the DePue/New Jersey Zinc/Mobil Chemical Superfund Site

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

12/5/2023

Dated



PEDRO SEGURA
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

GREGORY K. HARRIS
United States Attorney

By: /s/ John D. Hoelzer
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United States Attorney's Office

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Signature Page for the DePue/New Jersey Zinc/Mobil Chemical Corp. Superfund Site

**DOUGLAS
BALLOTTI** Digitally signed by
DOUGLAS BALLOTTI
Date: 2023.09.27
14:38:43 -05'00'

Douglas Ballotti, Director
Superfund & Emergency Management
Division

U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604

RICHARD MURAWSKI Digitally signed by RICHARD
MURAWSKI
Date: 2023.09.19 16:03:36 -05'00'

Richard M. Murawski
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
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Chicago, Illinois 60604


Signature Page for the DePue/New Jersey Zinc/Mobil Chemical Corp. Superfund Site

FOR THE STATE OF ILLINOIS:

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Director
Illinois Environmental Protection Agency

9/20/23
Dated

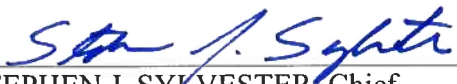


CHARLES W. GUNNARSON
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P.O. Box 19276
Springfield, Illinois 62794

KWAME RAOUL, Attorney General
Of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

9/21/23
Dated



STEPHEN J. SYLVESTER, Chief
Environmental Bureau North
Assistant Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Signature Page for CD regarding the DePue/New Jersey Zinc/Mobil Corp. Superfund Site

FOR TCI Pacific Communications LLC:

11-Sep-23

DocuSigned by:

Julie Laine

BB21809C929A412...

Name (print): Julie Laine

Title: Senior Vice President & Senior Deputy General Counsel
& Chief Compliance Officer

Address: 1701 John F. Kennedy Boulevard
Philadelphia, PA 19103

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

Name

(print): The Corporation Trust Company

Title:

Company: Corporation Trust Center

Address: 1209 Orange Street

Wilmington, DE 19801

Phone: 302-658-7581

Email: _____