

39 pages

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff,

v.

TEXTRON SYSTEMS CORPORATION

Defendant.

CIVIL ACTION NO. _____

**COMMONWEALTH OF
MASSACHUSETTS**

Plaintiff,

v.

TEXTRON SYSTEMS CORPORATION

Defendant.

CIVIL ACTION NO. _____

**CONSENT DECREE BETWEEN UNITED STATES OF AMERICA,
COMMONWEALTH OF MASSACHUSETTS
AND TEXTRON SYSTEMS CORPORATION**

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I. BACKGROUND

A. The United States of America, on behalf of the Departments of the Army (Army), the Air Force (Air Force) Veterans Affairs and Interior, and the National Oceanic and Atmospheric Administration, and the Environmental Protection Agency (EPA), filed a complaint in this matter against Textron Systems Corporation (TSC or Settling Defendant) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq.*; the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f, *et seq.*; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. ch. 21E (ch. 21E); and contracts, leases, licenses and permits in connection with the Massachusetts Military Reservation Site (MMR or the Site), at which Otis Air Force Base and Camp Edwards are located and which, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, were placed on the National Priorities List (NPL) of hazardous waste sites set forth at 40 C.F.R. Part 300, Appendix B, by publication in the *Federal Register* on November 21, 1989, 54 *Fed. Reg.* 48184. The United States, in its complaint, seeks, *inter alia*: 1) reimbursement of costs incurred or to be incurred and compensation for Natural Resource Damages, together with accrued interest; and 2) performance of studies and Response Activities by the Settling Defendant at the Site not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP), SDWA, and other applicable laws in connection with the Site.

B. The Commonwealth, on behalf of the Secretary of Energy and Environmental Affairs, also filed a complaint seeking compensation for Natural Resource Damages pursuant to CERCLA and ch. 21E.

C. The Army has notified all Federal and State Natural Resource Trustees, including the Departments of the Interior, Air Force and Veterans Affairs, the National Oceanic and Atmospheric Administration, and the Commonwealth of these negotiations with TSC concerning releases of hazardous substances by Settling Defendant that may have resulted in injury to the natural resources under Federal and State trusteeship.

D. The United States, including through the Army and EPA, has commenced investigations and studies, entered into contracts, issued administrative orders and performed other Response Activities at or in connection with the actual or threatened release of Hazardous Materials, as defined herein, at or from the Site.

E. The Parties agree to comply with and be bound by the terms of this Consent Decree (Decree). Neither the entry into this Decree, nor the actions undertaken in accordance with it, constitute an admission of liability. The Parties reserve the right to controvert in any subsequent proceedings, except to the extent such proceedings seek to implement or enforce this Decree, the validity of any findings of facts, conclusions of law or determinations made pursuant to this Decree. With respect to the Commonwealth, the Commonwealth is not bound, except as to its rights, obligations and covenants with respect to Natural Resource Damages related to the Site.

F. MMR is a 21,000 acre facility located on Cape Cod, in the towns of Bourne, Falmouth, Mashpee and Sandwich in Barnstable County, Massachusetts. Approximately 14,000 acres of MMR constitute the Training Ranges and Impact Area of Camp Edwards.

G. The Department of Defense (DOD) and its relevant branches, including the Army and Air Force, is financing and conducting CERCLA Response Activities at MMR pursuant to a Federal Facilities Agreement between EPA and DOD under Section 120 of CERCLA. These actions include CERCLA Response Activities in the portion of MMR known as the Impact Area and Training Ranges that are the responsibility of both the Departments of the Army and the Air Force. EPA's oversight of these activities will be financed, in part, by the money deposited in a Special Account that will receive payments from TSC under this Decree.

TSC will make payments into a Special Account pursuant to Section XI of this Decree. Monies deposited in this account will be spent pursuant to the terms of this Decree only.

H. EPA has issued a number of Administrative Orders requiring action at MMR, including:

1. On February 27, 1997, pursuant to Section 1431 of the SDWA, EPA issued Administrative Order SDWA I-97-1019, which required the National Guard Bureau to investigate contamination at and emanating from the Training Ranges and Impact Area. The National Guard Bureau, by itself, through its contractors, and through the United States Army Environmental Command (AEC), has conducted investigations and continues to conduct investigations under the terms of that order.

2. On January 7, 2000, EPA issued Administrative Order SDWA I-00-0014, which required the National Guard Bureau and the Massachusetts National Guard to undertake various Response Activities at the Training Ranges and Impact Area. The National Guard Bureau, by itself, through its contractors, and through the AEC has conducted Response Activities and continues to conduct Response Activities under the terms of that order. Those Response Activities are being selected in accordance with the requirements of the Administrative Order and the requirements of the Safe Drinking Water Act.

3. On March 15, 2002, EPA entered into Consent Order SDWA-01-2002-0009 with TSC under which TSC has undertaken investigatory and response activities at the J-3 Range. TSC has satisfied some of its obligations under that Consent Order.

1. Pursuant to this Decree, and to the extent that TSC is performing work that would otherwise be performed by the National Guard Bureau pursuant to one or more Administrative Orders issued to the National Guard Bureau by EPA, TSC is performing that work subject to supervision by EPA and the Army.

J. For some part of the period from 1968 to 1999, TSC or its predecessor engaged in developing and testing of munitions as a lessee (or sublessee), licensee or permittee, and contractor of the United States including the Departments of the Army and Air Force and others at ranges at MMR.

K. Munitions and other materials TSC used at the Training Ranges and Impact Area contained materials, including, without limitation, explosive compounds including trinitrotoluene (TNT) and Royal Demolition Explosive (RDX), hexahydro-1,3,5-trinitro-1,3,5-triazine, cyclotetramethylenetetranitramine, or octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine, commonly known as HMX or High Melting Explosive; propellant compounds; and metals.

L. The Army and EPA have determined that the Work required by this Decree is necessary to protect public health and the environment under the authorities herein.

M. Based on the information presently available to it, the Army has concluded that the Work, if conducted in accordance with the requirements of this Decree and its Appendix, will be properly and promptly conducted by TSC.

N. The Parties recognize the unique nature of both the Site and Settling Defendant's alleged contributions of Hazardous Materials to the Site. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j) and M.G.L. ch. 21E, and without limiting any rights or authorities of EPA, the Work to be performed by the Settling Defendant shall constitute a Response Activity taken or ordered by the President.

O. The Parties recognize that Settling Defendant: 1) stepped forward to resolve its potential liability at the Site; 2) has provided extensive information with respect to its activities and Site conditions; 3) has performed work at the Site and made payments toward its anticipated obligations under this Decree in advance of settlement; 4) has agreed in this Consent Decree to contribute funds that will assist the United States in resolving contamination issues in areas in addition to those where Settling Defendant has been alleged to have operated at the Site; 5) is alleged to have operated only on a small portion of the Site (the J-1 and J-3 Ranges); and 6) was responsible for only a small fraction of the hazardous substances released at the Site. The Army and EPA, with the concurrence of the other federal entities to this settlement, have determined, after assessment of relevant factors, that the instant settlement with TSC presents an extraordinary circumstance within the meaning of Section 122(f)(6)(B) of CERCLA, 42 U.S.C. § 9622(f)(6)(B), and that the terms, conditions and requirements of the settlement are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the Site.

P. The Parties recognize, and the Court finds, that this settlement is the product of extensive, arms-length, good-faith negotiations; settlement will avoid protracted litigation, the result of which is uncertain; implementation of this Decree will expedite the cleanup of the Site; the settlement embodied in this Decree is fair, reasonable, and in the public interest, and that, by this Decree, Settling Defendant will pay its fair share for the claims of the United States and the Commonwealth settled herein. Upon entry of the Decree, and without further order of the Court, the actions by the United States and the Commonwealth shall be consolidated.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to, without limitation, 28 U.S.C. §§ 1331, 1345 and 1367; and 42 U.S.C. §§ 6973, and 9613(b) and has pendant jurisdiction for related State law claims. This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the Court's jurisdiction to enter and enforce this Decree.

III. PARTIES BOUND

2. This Decree applies to and is binding upon the United States, the Commonwealth and Settling Defendant, its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter its responsibilities under this Decree. With respect to the Commonwealth, the Commonwealth is not bound, except as to its rights, obligations and covenants with respect to Natural Resource Damages related to the Site.

3. Settling Defendant shall provide a copy of this Decree to each contractor hired to perform the Work (as defined herein) required by this Decree and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Decree. Settling Defendant or its contractors shall provide written notice of the Decree to all subcontractors hired to perform any portion of the Work required by this Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Decree. With regard to the activities undertaken pursuant to this Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Whenever terms listed below are used in this Decree, the following definitions shall apply. For any term not defined herein, the applicable statutory definition shall apply.

“Army” shall mean the United States Army and any successor departments or agencies thereof.

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

“Commonwealth” or “State” shall mean the Commonwealth of Massachusetts.

“Consent Decree” or “Decree” shall mean this Decree and the Appendix hereto as it may be amended in the future. In the event of conflict between this Decree and the Appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a Working Day. “Working Day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

“Air Force” shall mean the United States Air Force and any successor departments or agencies thereof.

“DOI” shall mean the United States Department of the Interior and any successor departments or agencies thereof.

“DVA” shall mean the United States Department of Veterans Affairs and any successor departments or agencies thereof.

“Effective Date” shall be the effective date of this Decree as provided in Section XXIII (Effective Date).

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Hazardous Material” shall mean (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any contaminant under Section 1401 of the SDWA, 42 U.S.C. § 300f(6); and any Hazardous Material under Mass. Gen. Laws ch. 21E (as defined below).

“MOA” shall mean that certain Memorandum of Agreement Concerning Natural Resource Damage Activities in Connection with the Massachusetts Military Reservation, by and among the Air Force, Army, DOI, DVA, and the Commonwealth.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“National Guard Bureau” is as defined in 10 U.S.C. § 10501, and any successor departments or agencies thereof.

“Natural Resource Damages” or “NRD” shall mean damages for injury to, the destruction of, or loss of “natural resources”, as that term is defined by 42 U.S.C. § 9601, including the reasonable costs of assessing such injury, destruction or loss resulting from a release of a hazardous substance, and natural resource damages to the extent such damages are allowed by M.G.L. ch. 21E § 5(a)(ii).

“NOAA” shall mean the National Oceanic & Atmospheric Administration, an agency of the United States Department of Commerce, and any successor departments or agencies thereof.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States, the Commonwealth and the Settling Defendant.

“Plaintiffs” shall mean the United States and the Commonwealth.

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

“Response Action” shall mean any action of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

“Response Activity” shall mean any action taken under the authority of CERCLA, RCRA, SDWA, ch. 21E and/or contracts, leases, licenses and permits in connection with the Site.

“Response Costs” shall mean costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) and costs incurred by the Commonwealth or the United States under their respective regulatory authorities mentioned in the definition of Response Activity, including but not limited to ch. 21E.

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

“Settling Defendant” shall mean TSC and, for the purposes of the Covenants in Section XVI and XVIII, its successors, assigns, officers, directors and employees (each in its capacity as such).

“Site” or “MMR” shall mean the Massachusetts Military Reservation, a 21,000 acre facility located on Cape Cod in the towns of Bourne, Falmouth, Mashpee and Sandwich in Barnstable County, Massachusetts, and all areas to which Hazardous Materials have migrated therefrom.

“Statement of Work” or “SOW” shall mean Appendix A to this Decree, and any modifications to that document made in accordance with this Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Decree.

“Trustees” shall mean all those persons or agencies designated pursuant to 42 U.S.C. § 9607(f) or under State law, by the President of the United States, the Governor of Massachusetts, or an Indian tribe, who may act on behalf of the public as trustees for natural resources.

“United States” shall mean the United States of America, including all of its agencies, departments or subdivisions, in their individual entity capacities, and as trustees of natural resources.

“Work” shall mean all Response Activities the Settling Defendant is required to perform under Appendix A.

V. GENERAL PROVISIONS

5. Objectives of the Parties.

a. The objectives of the United States and Settling Defendant in entering into this Decree are to:

i. protect public health, welfare or the environment at the Site by performing and funding Response Activities at the Site by the United States and Settling Defendant;

ii. reach a final settlement between the Settling Defendant and the United States with respect to the Site pursuant to Section 122(f)(6)(B) of CERCLA, 42 U.S.C. § 9622(f)(6)(B), which allows Settling Defendant to make a payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, § 348 of P.L. 105-85 (National Defense Authorization Act for Fiscal Year 1998) and other authorities cited in this Decree, for injunctive relief with regard to the Site and for Response Costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site; and

iii. to resolve Settling Defendant’s equitable share of Response Costs incurred and to be incurred at or in connection with the Site by the United States, including the Defense Environmental Restoration Account, Army, 10 U.S.C. § 2703(a)(2), and to provide for full and complete contribution protection for Settling Defendant pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5) and ch. 21E.

The Work to be performed by Settling Defendant represents only a portion of any Response Activities that may be necessary to protect the public and the environment at the Site and entities other than TSC, including the Army, will remain available to perform Response Activities at the Site. Except as provided in Sections XVI (Covenants by the United States) and XIX (Effect of Settlement; Contribution Protection; Other Claims), nothing herein shall be construed as limiting the Army’s or EPA’s rights or exercise of jurisdiction under law. Nothing in this Decree shall limit the National Guard Bureau’s responsibilities under Orders issued by EPA.

b. This Decree affects the rights and defenses of the United States and Commonwealth only with respect to TSC, and not with respect to any other persons or parties or among their respective agencies, departments or subdivisions.

c. The objective of the Commonwealth and the Settling Defendant is to resolve all of the Commonwealth's claims against TSC for Natural Resource Damages related to the Site, but not to resolve any of the Commonwealth's other potential claims under any authority. Consistent with, and except as expressly specified in Sections XVIII (Covenants by the Commonwealth) and XIX (Effect of Settlement; Contribution Protection; Other Claims), nothing herein shall be interpreted as limiting the Commonwealth's rights or exercise of jurisdiction under law.

6. **Commitments by Settling Defendant.** Settling Defendant shall perform the Work, as provided in Section VII (Performance of the Work by Settling Defendant). Settling Defendant also shall reimburse the United States for Response Costs as provided in this Decree, and make such payments, as required below, to resolve its liability to the United States and the Commonwealth for Natural Resource Damages related to the Site.

7. **Compliance With Applicable Law.** Settling Defendant shall comply with all requirements of all Federal and State environmental laws, as set forth in the SOW. The activities conducted pursuant to this Decree, if approved by the Army, shall be considered to be not inconsistent with the NCP.

8. This Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. To the extent that any portion of the Work does not require a permit, that shall not excuse compliance with all substantive requirements of applicable law. Where any portion of the Work that is not on-Site requires a Federal or State permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Settling Defendant may seek relief under the provisions of Section XII (*Force Majeure*) of this Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required.

VI. DESIGNATION OF CONTRACTOR(S), PROJECT COORDINATOR, ARMY PROJECT MANAGER, AND EPA PROJECT MANAGER

9. Settling Defendant shall retain one or more contractors, or designate a TSC employee, to perform the Work and shall notify the Army and EPA of the name(s) and qualifications of each such contractor(s) or employee within thirty (30) days of the Effective Date. Settling Defendant shall also notify the Army and EPA of the name(s) and qualification(s) of any other contractor(s), subcontractor(s), or employee(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. The Army retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Settling Defendant, for good cause. If the Army disapproves of a selected contractor, Settling Defendant shall retain a different contractor and shall notify the Army of that contractor's name and qualifications within thirty (30) days of receiving written notice of disapproval.

10. TSC designates Greg Simpson as its Project Coordinator, who shall be responsible for administration of all actions by Settling Defendant required by this Decree. To

the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. The Army retains the right to disapprove of the designated Project Coordinator, for good cause. If disapproved, the Settling Defendant shall retain a different Project Coordinator and shall inform the Army and EPA of that person's name, address, telephone number, and qualifications within thirty (30) days of receiving written notice of disapproval. Receipt by Settling Defendant's Project Coordinator of any notice or communication from the Army or EPA pursuant to this Decree shall constitute receipt by Settling Defendant.

11. The Army has designated Kent Gonsler of the Impact Area Groundwater Study Program as the Army Project Manager and EPA has designated Lynne Jennings of the EPA Region 1 Office of Site Remediation and Restoration as the EPA Project Manager (the Project Managers). The Project Managers shall be responsible for overseeing TSC's implementation of the Work pursuant to this Decree. With respect to the Work under this Decree, the Project Managers shall have the same range of authority conferred on Federal on-scene coordinators under the NCP. Except as otherwise provided herein, TSC shall direct all required submissions to the Project Managers by certified mail, express mail, or other receipted delivery method. The United States may subsequently authorize electronic submissions.

12. The Army, EPA and TSC shall have the right, subject to this Section, to change their respective designated Project Managers or Project Coordinators. TSC shall notify the Army and EPA five Working Days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

13. Settling Defendant shall perform the Work at MMR described in the Statement of Work, attached as Appendix A hereto. Settling Defendant shall perform the Work in accordance with the SOW, and all plans, standards, specifications, and schedules set forth therein. The Work to be performed by TSC shall include all actions necessary to implement the Statement of Work and will generally include, but not be limited to, certain site restoration work at the J-3 Range, including the removal of certain buildings, equipment and structures. TSC completed the activities listed in Table 1 of Appendix A prior to the lodging of this Decree in order to assist the Army in expediting Response Activities.

VIII. ASSURANCE OF ABILITY TO COMPLETE WORK

14. EPA and the Army have determined that TSC has met the requirements to provide financial assurance.

15. In the event that the Army and EPA determine at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days of receipt of notice of that determination, provide such assurance in the form of a letter demonstrating that it meets the substantive elements of one of the financial assurance mechanisms specified in 40 C.F.R. §264.143, in the amount of \$1 million. Settling Defendant's

inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Decree.

16. Once it has commenced to perform the Work hereunder, Settling Defendant need not maintain financial assurance in an amount greater than 110% of the estimated cost to complete the remaining Work. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

17. Settling Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by the Army and EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

IX. REPORTING AND CERTIFICATION OF COMPLETION

18. **Reporting.** Settling Defendant shall submit a written progress report to the Army and EPA concerning actions undertaken during the previous thirty (30) days pursuant to this Decree and the SOW by the tenth Working Day of each month, beginning on the second full month following the Effective Date. The reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received pursuant to this Decree during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

19. **Completion of the Work.** Within ninety (90) days after Settling Defendant concludes that all phases of the Work have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and the Army.

20. **Final Report.** If, after the pre-certification inspection, the Settling Defendant contends that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Decree. The final report shall conform with the requirements set forth in the SOW. The final report shall include: a listing of quantities and types of Hazardous Materials removed from the Site or handled on-Site; a discussion of removal and disposal options considered for those materials; a listing of the ultimate destination(s) of those materials; as-built drawings; a presentation of the analytical results of all sampling and analyses performed pursuant to the SOW containing all relevant documentation generated during the Work (*e.g.*, manifests, invoices, bills, contracts, and permits). The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

21. **Certification of Completion.** At such time as TSC has satisfied the requirements of the SOW and the Army concludes that the Work has been performed in accordance with this Decree, the Army will so certify in writing to Settling Defendant. That certification shall constitute the Certification of Completion of the Work for purposes of this Decree, including, but not limited to, Section XVI (Covenants by the United States). Certification of Completion shall not affect any other obligation of the Settling Defendant under this Decree. Decisions made by the Army under this Paragraph shall not be binding on EPA unless concurred with in writing by EPA.

22. **Review by Army.** If, after review of the written report, and consultation with EPA, the Army determines that any portion of the Work has not been completed in accordance with this Decree, the Army will provide a notice to Settling Defendant in writing of the activities that shall be undertaken by Settling Defendant pursuant to this Decree to complete the Work; provided, however, that the Army may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are necessary to complete the Work as described in the SOW. The Army will set forth in the notice a schedule for performance of such activities consistent with the Decree or require the Settling Defendant to submit a schedule to the Army for approval. Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution).

X. EMERGENCY RESPONSE

23. In the event of any action or occurrence in connection with the performance of the Work by Settling Defendant or its contractors that causes or threatens a release of Hazardous Material from the Site that constitutes an emergency situation that may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, except as specified in this Section, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Project Managers and anyone they have designated, and take any action and provide any notice otherwise required by law. If none of these persons is available, Settling Defendant shall notify the Camp Edwards Duty Officer. Settling Defendant shall take such actions in consultation with the Project Managers or other available authorized officer and in accordance with all applicable provisions of Health and Safety Plans, Contingency Plans, and/or any other applicable plans or documents developed pursuant to the SOW or made available by EPA or the Army, or as otherwise required by law. In the event that Settling Defendant fails to take appropriate Response Activity as required by this Section, and the Army and/or EPA takes such action instead, Settling Defendant shall reimburse the Army and/or EPA all costs of the Response Activity not inconsistent with the NCP pursuant to Section XI (Payments).

24. In addition, Settling Defendant shall also notify the National Response Center at (800) 424-8802 and submit a written report to the Project Managers within seven (7) days after each such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

25. Nothing in the preceding Paragraph or in this Decree shall be deemed to limit any authority of the United States or the Commonwealth: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Material on, at, or from the Site, subject to Sections XVI (Covenants by United States), XVIII (Covenants by the Commonwealth) and XIX (Effect of Settlement; Contribution Protection; Other Claims)

XI. PAYMENTS

26. Payments

a. Within thirty (30) days of the Effective Date, Settling Defendant shall pay \$5,600,000.00 to the "Environmental Restoration, Army" account in accordance with information to be provided by the United States.

b. Within thirty (30) days of the Effective Date, Settling Defendant shall pay \$700,000.00 to the Impact Area and Training Ranges Special Account within the Hazardous Substance Response Trust Fund. As authorized by Section § 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), EPA shall use the retained balances in this Special Account to conduct or finance Response Actions at or in connection with the Site, and shall transfer any unused balance to the EPA Hazardous Substance Superfund. These funds shall be used in the first instance to conduct technical oversight or finance technical support of EPA oversight of work located in the area of MMR north of Connery Avenue. This payment is in addition to the \$100,000.00 TSC paid to this Special Account prior to the lodging of this Decree.

c. For purposes of this settlement only, in recognition of the separate negotiations carried out by the Commonwealth and the United States with TSC in this case, and without any determination or agreement as to which Federal or Commonwealth Trustees have jurisdiction over which injured natural resources, the Parties agree that the payments described in subparagraphs 26(d) and 26(e) shall be allocated and applied as provided in subparagraphs 26(d), 26(e) and 26(f), without prejudice to the covenants herein.

d. Within thirty (30) days of the Effective Date, Settling Defendant shall pay \$300,000.00 to the United States for Natural Resource Damages to be allocated as follows:

i. \$100,000.00 of the amount paid to the United States for Natural Resource Damages to be deposited in the NRDAR Fund (to be designated by the United States) on account of NRD assessment costs incurred or to be incurred by DOI in connection with the Site and may be used by DOI as authorized for NRD assessment costs recovered under CERCLA;

ii. \$ 25,000.00 of the amount paid to the United States for Natural Resource Damages to be deposited into the DARP Fund (to be designated by the United States) on account of NRD assessment costs incurred by NOAA in connection with the Site and may be used by NOAA as authorized for NRD assessment costs recovered under CERCLA; and

iii. \$175,000.00 of the amount paid to the United States for Natural Resource Damages to be deposited in the NRDAR Fund (to be designated by the United States) on account of NRD claims of the Department of Defense and shall be managed by DOI and used for restoration, replacement, or acquisition of equivalent of injured natural resources in connection with the Site in accordance with the MOA and Section 107(f) of CERCLA, 42 U.S.C. § 9607(f).

iv. The Commonwealth agrees not to assert a claim under the MOA, or otherwise assert any right, authority or control, with respect to the payment made to the Federal Trustees above under subparagraphs 26(d)(i) and (ii) of this Consent Decree.

e. Within thirty (30) days of the Effective Date, Settling Defendant shall pay \$1,000,000.00 by check payable to the Commonwealth of Massachusetts, with a reference to Natural Resource Damages Trust - Account 2000-6020, for Natural Resource Damages relating to contaminated groundwater related to the Site as alleged in the State's Complaint. Payment shall be sent to:

Executive Office of Energy and Environmental Affairs
Attn: Chief Financial Officer
100 Cambridge Street, Suite 900
Boston, MA 02114

and to be allocated as follows:

i. \$ 40,000.00 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020 on account of NRD assessment costs incurred by the Commonwealth in connection with the Site. This payment shall be deposited into this account and expended by the Commonwealth Trustee in accordance with its requirements as established under 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222. The United States agrees not to assert a claim under the MOA, or otherwise assert any right, authority or control, with respect to the payment made to the Commonwealth under this subparagraph 26(e)(i) of this Consent Decree.

ii. \$ 460,000.00 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020, and shall be managed by the Commonwealth Trustee and used for restoration, replacement, or acquisition of equivalent of injured natural resources in connection with the Site in accordance with M.G.L. ch. 21E and the requirements as established under 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222, and with VI (B)(last sentence) of the MOA. The United States agrees not to assert a claim under the MOA, or otherwise assert any right, authority or control, with respect to the payment made to the Commonwealth under this subparagraph 26(e)(ii) of this Consent Decree.

iii. \$500,000.00 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020, and shall be managed by the Commonwealth Trustee and used for restoration, replacement, or acquisition of equivalent of injured natural resources in connection with the Site in accordance with the MOA and Section 107(f) of CERCLA, 42 U.S.C. § 9607(f). The Commonwealth and the United States agree to resolve any disputes regarding the management and use of the funds subject to this subparagraph through the dispute resolution provisions of the MOA. In that process, the Commonwealth and the United States reserve their rights to raise any arguments regarding their respective jurisdiction and trusteeship over such funds.

f. Before any natural resource trustee expends funds received pursuant to subparagraph 26(d)(iii) or subparagraph 26(e)(iii) of this paragraph, it will publish a draft restoration plan or other comparable description of planned expenditures, including the amount and purpose of such expenditure, and provide notice of this publication to all other trustees at least thirty (30) days prior to such expenditure.

27. In the event that the payments required by this Section are not made within thirty (30) days of the Effective Date or any other payments required by this Decree including under Section XIV (Stipulated Penalties) are not made within thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance in accordance with 28 U.S.C. § 1961(a) and ch. 21E, §13, as applicable. The interest shall accrue through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties). The Settling Defendant shall make all payments required by this Paragraph in the manner described in this Section.

XII. FORCE MAJEURE

28. Settling Defendant agrees to perform all requirements of this Decree within the time limits established herein, unless performance is delayed by a *force majeure*. *Force majeure*, for purposes of this Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling

Defendant's contractors, that delays or prevents the performance of any obligation under this Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (1) as it is occurring and (2) following the potential *force majeure* event, such that the delay is minimized to the extent possible. *Force majeure* does not include financial inability to complete the Work; increased cost of performance; or failure to attain the specifications set forth or referenced in the SOW. This Section XII shall not apply to the payment to the Commonwealth required by Section XI.

29. If any event occurs or has occurred that may delay the performance of any obligation of Settling Defendant under this Decree, whether or not caused by a *force majeure* event, the Settling Defendant shall notify orally the Project Managers or, in their absence, the Alternate Project Coordinator or, in the event all designated representatives are unavailable, the Operations Center, Army Environmental Command, within five (5) Working Days of when Settling Defendant first has reasonable cause to expect delay. Within seven (7) Working Days thereafter, Settling Defendant shall provide, in writing to the Army and EPA, an 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 the effect of the delay; Settling Defendant's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which its contractors knew or should have known.

30. If the Army agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Decree that are affected by the *force majeure* event will be extended by the Army for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the Army does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, the Army will notify the Settling Defendant in writing of its decision. If the Army agrees that the delay is attributable to a *force majeure* event, the Army will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

31. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the Army's written 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* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to mitigate the effects of the delay, and that Settling Defendant complied with the requirements of this Section. If Settling Defendant carries this burden, the delay at issue shall not be deemed a violation of the affected obligation of this Decree identified to the Army and the Court.

XIII. DISPUTE RESOLUTION

32. **Dispute Resolution Generally.** Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the Army and TSC arising under this Decree. The procedures set forth in this Section shall not apply, however, to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Decree. If the Settling Defendant and the Army are unable to reach an agreement, the Army will issue Settling Defendant a written decision on the dispute in accordance with this Section which shall be incorporated into and become an enforceable part of this Decree subject only to a contrary decision by the Court. Decisions rendered by the Army under this Section, agreements reached between the Army and Settling Defendant and disputes resolved by the Court pertaining to the selection or adequacy of any response decision shall not effect the rights or exercise of jurisdiction by EPA under SDWA, RCRA, Administrative Orders or other relevant laws, or the dispute resolution provisions between NGB and EPA under the Administrative Orders. This Section XIII shall not apply to the payment to the Commonwealth required by Section XI.

33. A dispute shall be considered to have arisen when Settling Defendant sends the Army a written Notice of Dispute. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between Settling Defendant and the Army, which shall not exceed twenty (20) days from the time the dispute arises, unless the Army, at its sole discretion, extends informal negotiations for a specified time.

34. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, and regardless of whether the Army issues a written position, then the position advanced by Army shall be considered binding, unless, within fourteen (14) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States 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 relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 35 or Paragraph 36.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, the Army will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Army. The Army's Statement of Position shall include a statement of the Army's position as to whether formal dispute resolution should proceed under Paragraph 35 of 36. Within fourteen (14) days after receipt of the Army's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between the Army and Settling Defendant as to whether dispute resolution should proceed under Paragraph 35 or 36, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by the Army to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 35 and 36.

35. Formal dispute resolution for disputes pertaining to the adequacy of any Response Activity 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 Activity includes, without limitation: 1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Army under this Decree; and 2) the adequacy of the performance of Response Activities taken pursuant to this Decree but does not include the adequacy or appropriateness of any Response Activities selected by EPA pursuant to its Administrative Orders. Nothing in this Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the decisions of the United States with respect to the nature of a Response Activity set out in the SOW.

a. An administrative record of the dispute shall be maintained by the Army and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Army may allow submission of supplemental statements of position by the parties to the dispute.

b. The AEC Commander will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 35a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 35(c) and (d).

c. Any administrative decision made by the Army pursuant to Paragraph 35b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within ten (10) Working Days of receipt of the Army's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Army is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Army's decision shall be on the administrative record compiled pursuant to Paragraph 35(a).

36. Formal dispute resolution for disputes that do not pertain to adequacy of any Response Activity nor are otherwise accorded review on the administrative record shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 34, the Army will issue a final decision resolving the dispute. The Army's decision shall be binding on Settling Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant files with the Court and serves on the Army and counsel of record for the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Decree. The Army may file a response to Settling Defendant's motion.

b. Notwithstanding Section I (Background) of this Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

37. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Decree, not directly in dispute, unless the Army or the Court agrees otherwise. 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 Section XIV (Stipulated Penalties). Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with applicable provisions of this Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties may be assessed as provided in Section XIV (Stipulated Penalties) at the discretion of the United States, which shall not be subject to review in this matter.

XIV. STIPULATED PENALTIES

38. TSC shall, upon written demand by the Army, be liable for stipulated penalties of: \$2,500.00 per day to the Army if TSC fails to complete the Work required by Section VII in accordance with the requirements of the SOW, and the deadlines established therein, or make the payments required by Section XI; \$1,000.00 per day to the Army if TSC fails to meet the deadlines for the reports required pursuant to Section IX. TSC shall, upon written demand by EPA, be liable for stipulated penalties of \$1,000.00 per day to EPA if TSC fails to meet the deadlines for the reports required pursuant to Section IX, or make the payment required by Section XI. TSC shall, upon written demand by the Commonwealth, be liable for stipulated penalties of \$1,000.00 per day to the Commonwealth if TSC fails to meet the deadline for the payment required by Section XI.

39. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Settling Defendant corrects the violation or completes performance, whichever is applicable. Stipulated penalties shall not accrue from the date that Settling Defendant invokes the Section XIII (Dispute Resolution) until the date a final decision on the dispute is issued by the Army. All stipulated administrative penalties accruing under this Consent Decree shall be paid within thirty (30) days of the date the Army or EPA, as appropriate, sends Settling Defendant a written demand for payment.

40. Settling Defendant may dispute the Army's rights to the stated amount of penalties by invoking Section XIII (Dispute Resolution) of this Decree. The Settling Defendant may dispute the EPA's rights to the stated amount of stipulated penalties by direct application to the Court within ten (10) days of notifying EPA in writing that it is disputing the amount pursuant to this provision of this Decree. The resolution of any such dispute shall be governed by applicable principles of law. If Settling Defendant does not prevail upon resolution as provided above, all penalties shall be due to the Army or EPA (as applicable) within thirty (30) days of resolution of the dispute.

41. (a) All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendant's receipt from the Army or EPA, as applicable, of a demand for payment of the penalties, unless, in the case of a demand from the Army, Settling Defendant invokes the Dispute Resolution procedures under Section XII (Dispute Resolution) or, in the case of a demand from EPA, Settling Defendant makes direct application to the Court as provided in Paragraph 40. (b) All payments to the Army, EPA or the Commonwealth under this Section shall be paid as specified in Paragraphs 26(a), (b) or (e), as applicable.

42. If Settling Defendant fails to pay stipulated penalties when due, the United States or the Commonwealth, as applicable, may institute proceedings to collect the penalties, as well as interest pursuant to 28 U.S.C. § 1961(a) or ch. 21E, §13, as applicable. Settling Defendant shall pay interest pursuant to 28 U.S.C. § 1961(a) or State law, as applicable, on the unpaid balance, which shall begin to accrue on the date of the demand made pursuant to Paragraph 38.

XV. CERTIFICATION OF SETTLING DEFENDANT

43. Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a Hazardous Material at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all requests for information regarding the Site by the United States pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927.

XVI. COVENANTS BY THE UNITED STATES

44. Pursuant to Section 122(f)(6)(B) of CERCLA, 42 U.S.C. § 122(f)(6)(B), in consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Decree, and except as specifically provided in this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613; Section 7003 of RCRA, 42 U.S.C. § 6973; Section 1431 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300i; ch. 21E; Mass. Gen. Laws, ch. 21C; for Natural Resource Damages and for performance of work and for recovery of past Response Costs and future Response Costs, except as expressly reserved herein; and covenants not to sue or take administrative action against Settling Defendant for damages pursuant to state law other than ch. 21E; Mass. Gen. Laws, ch. 21C and common law and any and all claims relating to or arising under any contract, lease, license or permit related to TSC's activities at the Site. These covenants not to sue shall take effect upon receipt of the payments required by Section XI (Payments). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations to the United States under this Decree.

45. **General reservations of rights.** The United States reserves, and this Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the covenant not to sue. Notwithstanding any other provision of this Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure to meet a requirement of this Decree;
- b. liability for criminal acts or fraud;
- c. liability arising from the past, present, or future disposal, release, or threat of release of Hazardous Material outside of the Site;
- d. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a Hazardous Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendant, other than as provided in the SOW, the Work, or otherwise ordered by the Army.

46. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against the Settling Defendant in this action or in a new action or to issue an administrative order to the Settling Defendant seeking to compel the Settling Defendant to perform Response Activities relating to the Site, and/or to reimburse the United States for additional costs of response, if any of the findings contained in Section XV is found to be materially inaccurate.

47. **Work Takeover.** In the event the Army determines that Settling Defendant has ceased implementation of any material portion of the Work; is seriously or repeatedly deficient or late in performance of material aspects of the Work; is implementing the Work in a manner which may cause an endangerment to human health or the environment; or is reasonably likely to cause the Army to incur penalties for failure to timely or adequately comply with Administrative Orders, the Army may assume the performance of all or any portions of the Work as it, in consultation with EPA, determines necessary to cure deficiencies. Settling Defendant may invoke the procedures set forth in Section XIII (Dispute Resolution), to dispute the Army's determination that takeover of the Work is warranted under this Paragraph to cure such deficiencies. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall not be considered costs covered by the Covenant Not to Sue by the United States, unless Settling Defendant prevails in any related dispute resolution proceeding.

48. Notwithstanding any other provision of this Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all Response Activities authorized by law.

XVII. COVENANTS BY THE SETTLING DEFENDANT

49. **Covenant Not to Sue the United States.** Settling Defendant may be able to recover certain costs, but agrees not to seek to recover, under or through its Government contracts, \$2,630,000.00 of the costs it has incurred, or will incur in connection with the Site. TSC and the Defense Contract Management Agency may and expect to enter into an advance agreement governing payments under contracts consistent with this paragraph. Nothing in this Decree shall constitute an acknowledgment or agreement by the United States and TSC that TSC does or does not have a right to recover said costs pursuant to prior Government Contracts. Subject to the reservations in this Section, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or actions against the United States with respect to the Site, the Work, or this Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States, related to the Site under CERCLA Sections 107 or 113 or RCRA Section 7002; Section 1431 of SDWA; or Mass. Gen. Laws ch. 21E or 21C, or

c. any claims for damages arising out of Response Activities at or in connection with the Site, including any claim under the United States Constitution, the Massachusetts Constitution, the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

These covenants not to sue shall not apply: in the event that the United States brings an action or issues an order pursuant to the reopener provisions or reservations set forth in the previous Section, but only to the extent that Settling Defendant's claims arise from the same Response Activity, Response Costs, or damages that the United States is seeking pursuant to the applicable provisions.

50. **Covenant Not to Sue the Commonwealth.** Settling Defendant hereby covenants not to sue and agrees not to assert any claims or actions against the Commonwealth with respect to Natural Resource Damages related to the Site, including, without limitation, claims with respect to Natural Resource Damages pursuant to CERCLA and M.G.L. ch. 21E.

51. **Settling Defendant's Reservation of Rights.**

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

b. In the event a claim other than for Natural Resource Damages is asserted against TSC by the Commonwealth (or by third-parties asserting a claim in contribution deriving from claims by the Commonwealth) with respect to alleged contamination at the Site, nothing herein will be construed to either create or preclude claims or defenses asserted by TSC (or by the United States in the event TSC asserts a claim or defense against the United States) in connection with such claim by the Commonwealth or a third-party.

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

53. Upon the vesting of the Covenants Not to Sue by the United States and the Commonwealth, Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, for contribution, against any person that has resolved its liability to the United States with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense or claim that Settling Defendant may have against any person if such person asserts a claim or action relating to the Site against Settling Defendant. This paragraph shall not modify the Settling Defendant's covenant not to sue the Commonwealth in paragraph 50.

XVIII. COVENANTS BY THE COMMONWEALTH

54. In consideration of the payment that will be made to the Commonwealth by the Settling Defendant under the terms of the Decree, and except as specifically provided in this Section, the Commonwealth covenants not to sue or to take administrative action against Settling Defendant for Natural Resource Damages related to the Site, including, without limitation, claims for NRD relating to contaminated groundwater related to the Site, and claims with respect to Natural Resource Damages pursuant to CERCLA and M.G.L. ch. 21E. This covenant shall take effect upon TSC's payment to the Commonwealth under Section XI.

55. **Commonwealth's Reservation of Rights.** Subject to paragraphs 57(a) and 57(b), the Commonwealth reserves, and this Decree is without prejudice to, all rights against Settling Defendant with respect to all matters other than Natural Resource Damages related to the Site, including (a) response actions under ch. 21E against any person including TSC; and (b) Response Activities against any person including TSC; and (c) those matters listed in paragraph 45 of this Decree.

XIX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION; OTHER CLAIMS

56. Except as provided in this Section, nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. This settlement does not discharge any of the potentially liable persons other than the Settling Defendant unless expressly provided herein, but it reduces the potential liability of the others by the amount of the settlement. 42 U.S.C. § 9613(f)(2).

57. Contribution Protection.

a. **By the United States.** The Parties agree, and by entering this Decree this Court finds, that the Settling Defendant is entitled pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, as of the Effective Date, to protection from contribution actions or claims by any

person not a party to this Decree, as well as by any person who is a Party to this Decree to the extent that person has not resolved all of its potential claims against TSC, for matters addressed in this Decree. Except to the extent limited by paragraph 55, for the purpose of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), matters addressed by the Decree shall include all claims or potential claims as to which the United States has provided a covenant not to sue or to take administrative action in paragraph 44.

b. The contribution protection referred to in the preceding paragraph shall extend to matters arising out of claims by the United States (and not the Commonwealth) under authorities in that Paragraph. Except to the extent the Commonwealth's claims are resolved herein, nothing herein will abridge the ability of the Commonwealth to assert any affirmative claims (as opposed to contribution claims) it may have under these authorities or to seek contribution for matters not arising under claims settled by the United States. For example, such affirmative claims by the Commonwealth (as opposed to contribution claims) that do not derive from claims by the United States may include: claims for Response Costs, injunctive relief, or administrative actions pursuant to the Commonwealth's independent authority as a sovereign to protect human health and the environment.

c. **By the Commonwealth.** The Parties agree, and by entering this Decree this Court finds, that pursuant to ch. 21E, § 3A(j)(2) and Section 113 of CERCLA, 42 U.S.C. § 9613, Settling Defendant is entitled, as of the effective date of this Decree, to protection from claims brought pursuant to ch. 21E, regarding matters addressed in this Decree, for cost recovery, contribution, and equitable share for Natural Resource Damages at the Site as to those persons receiving notice and an opportunity to comment on this Decree in accordance with ch. 21E, § 3A(j)(2) and Section 113 of CERCLA, 42 U.S.C. § 9613. Settling Defendant's failure to provide timely and adequate notice to one person shall not effect its rights as against any other person who received such notice. For purposes of the Commonwealth's contribution protection, matters addressed by this Decree shall mean all claims or potential claims for which the Commonwealth has provided a covenant not to sue or to take administrative action in paragraph 54. Pursuant to ch. 21E, § 3A(j)(2), the ninety (90) day comment period shall commence thirty (30) days after the date of lodging of this Consent Decree.

d. The contribution protection afforded Settling Defendant by this paragraph 57 shall not be deemed to limit contribution protection rights of the Settling Defendant under any other applicable law.

58. Settling Defendant agrees to notify the United States and the Commonwealth in writing no later than sixty (60) days prior to the initiation of any suit or claim for contribution brought by it for matters related to this Decree. Settling Defendant also agrees to notify in writing the United States within ten (10) days of service or receipt of a complaint against it, Motion for Summary Judgment or any order from a court setting such a case for trial.

59. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth 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 based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the ability of Settling Defendant or this Court to enforce the covenants not to sue set forth in Sections XVI (Covenants by the United States) and XVIII (Covenants by the Commonwealth).

60. By entering into this Decree, the United States and the Commonwealth assume no liability for any injuries or damages to persons or property resulting from any acts or omissions of Settling Defendant, nor shall the United States or the Commonwealth be deemed a party to any contract entered into by Settling Defendant or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Decree nor shall Settling Defendant be deemed an agent of the United States or the Commonwealth.

61. No selection of a Response Activity pursuant to this Decree shall give rise to any right to judicial review.

XX. ACCESS TO INFORMATION

62. Settling Defendant shall provide to the Army and EPA, upon request, copies of all documents and information within its, or its contractors' or agents', possession or control relating to activities at the Site or to the implementation of this Decree, 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 related to the Work. Settling Defendant shall also make available to the Army and 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.

63. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Decree to the extent permitted by and in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* Documents or information determined to be confidential will be afforded the protection specified in FOIA and its implementing regulations. If no claim of confidentiality accompanies documents or information when they are submitted, or if the United States has notified Settling Defendant that the documents or information are not confidential under FOIA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the United States with the following: 1) the title of the document,

record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Decree shall be withheld on the grounds that they are privileged.

64. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXI. RETENTION OF RECORDS

65. Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate to its performance of the Work or the liability of TSC or any person with respect to the Site, regardless of any corporate retention policy to the contrary, until 5 years after receipt of notification pursuant to Section IX (Reporting and Certification of Completion), or as required by law, whichever is longer. Settling Defendant shall also require its contractors to comply with the same requirements in connection with work performed under this Decree. In lieu of the foregoing, TSC may produce such documents and information to the Army and EPA with reasonable notice. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Decree shall be withheld on the grounds that they are privileged.

66. Settling Defendant hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since March 15, 2002, and that it has fully complied with any and all requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), Section 3007 of RCRA, 42 U.S.C. 6927, and other authorities.

XXII. NOTICES AND SUBMISSIONS

67. Whenever, under the terms of this Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, including as to the United States, the Army or EPA, it shall be directed to the individuals at the addresses specified

below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Decree with respect to the United States, the Army, EPA and the Commonwealth and the Settling Defendant, respectively.

As to the United States: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-975/2

As to the Army: Chief, Army Environmental Law Division
Suite 400
901 North Stuart Street
Arlington, VA 22203-1837

As to EPA: Director, Office of Environmental Stewardship
United States Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114

William Walsh-Rogalski, Esq.
Counsel for Special Projects
United States Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114

As to the Commonwealth: Matthew Brock, Esq.
Assistant Attorney General
Office of the Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108

Alicia McDevitt, Esq.
Deputy General Counsel
Executive Office of Energy and Environmental
Affairs
100 Cambridge Street
Suite 900
Boston, MA 02114

As to the Chief Financial Officer: Executive Office of Energy and Environmental Affairs
Attn: Chief Financial Officer
100 Cambridge Street, Suite 900
Boston, MA 02114

As to the Settling Defendant: Greg Simpson
Settling Defendant's Project Coordinator
Textron, Inc.
40 Westminster Street
Providence, RI 02903-2596

and, Jamieson M. Schiff, Esq.
Senior Environmental Health & Safety Counsel
Textron, Inc.
40 Westminister Street
Providence, RI 02903-2596

and, Robert C. Kirsch, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

XXIII. EFFECTIVE DATE

68. The effective date of this Decree shall be the date upon which this Decree is entered by the Court.

XXIV. RETENTION OF JURISDICTION

69. This Court retains jurisdiction over both the subject matter of this Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Decree 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 Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution) hereof.

XXV. APPENDIX AND ATTACHMENTS

70. That certain "Statement of Work," dated as of July 2007 (the "Statement of Work" or "SOW") is attached to and incorporated into this Decree as Appendix A.

XXVI. COMMUNITY RELATIONS

71. Settling Defendant shall cooperate with the United States and the Commonwealth in providing information regarding the Work to the public during the performance of the Work and through one year after Certification of Completion. As requested by the United States, Settling Defendant shall participate in the preparation of information regarding the Work for dissemination to the public and in public meetings that may be held or sponsored by the United States to explain activities at or relating to the Site.

XXVII. MODIFICATION

72. Schedules specified in this Decree for completion of the Work may be modified by agreement of the Army and the Settling Defendant. All such modifications shall be made in writing.

73. No material modifications that fundamentally alter the basic features of the Work described in this Decree and the Appendix with respect to scope, performance or costs, shall be made unless agreed to in writing by the United States and the Settling Defendant and with the approval of the Court. Prior to providing its approval to any modification, the United States will provide opportunity for review and comment if and to the extent required by CERCLA or other relevant Federal statutes and regulations promulgated thereto. Non-material modifications may be made by written agreement between the Army, after consultation with EPA, and Settling Defendant, which shall be part of the Administrative Record and provided to the Court in the event of further litigation in this case concerning the Settlement or the Work. Nothing herein shall prevent the United States from providing additional opportunity for review or comment prior to any modification.

74. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Decree.

XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

75. This Consent Decree shall be lodged with the Court and subject to a public notice and comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. Section 9622(d)(2), 28 C.F.R. Section 50.7, and M.G.L. ch. 21E § 3A(j)(2). The United States will provide notice of the lodging of this Decree in the Federal Register, along with instructions for the submission of comments.

a. The United States reserves the right to withdraw from or withhold its consent to this Consent Decree if: (i) Comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate; or (ii) the Commonwealth withdraws from or withholds its consent to this Consent Decree.

b. The Commonwealth reserves the right to withdraw from or withhold its consent to this Consent Decree if: (i) the United States withdraws from or withholds its consent to this Consent Decree; (ii) comments received disclose facts or considerations which show that

the Consent Decree violates state law, or if comments received disclose facts or considerations which show that the Consent Decree's termination of the rights of third parties by operation of M.G.L. ch. 21E, Section 3A(j)(2) would render the Consent Decree unfair; or (iii) without limiting the foregoing, comments received by the State pursuant to the public comment period disclose facts or considerations relating to the State's recovery of Natural Resource Damages that show the Consent Decree is inappropriate, improper, or inadequate.

c. Settling Defendant consents to the entry of this Decree without further notice.

76. If for any reason the Court should decline to approve this Decree 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.

XXIX. SIGNATORIES/SERVICE

77. Each undersigned representative of Settling Defendant, the Commonwealth and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party represented to this document. To the extent permitted by the Local Rules of this District, the Parties that are signatories to this Decree waive service of the complaints.

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

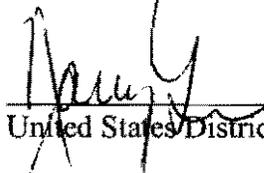
79. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaints in this action unless or until the Court expressly declines to enter this Decree.

XXX. FINAL JUDGMENT

80. This Decree and its attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Decree.

81. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States, the Commonwealth and the Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 58.

SO ORDERED THIS 21 DAY OF Feb, 2008



United States District Judge

THE UNDERSIGNED PARTY enters into this Decree relating to claims asserted against Textron Systems Corporation in connection with the Massachusetts Military Reservation.

FOR THE UNITED STATES OF AMERICA



RONALD J. TENPAS
Acting Assistant Attorney General



STEVEN R. BAER, Senior Counsel
DAVID L. GORDON, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-2794
(202) 514-4180 fax
steven.baer@usdoj.gov
david.l.gordon@usdoj.gov

MICHAEL J. SULLIVAN
United States Attorney
GEORGE B. HENDERSON, II
Assistant United States Attorney
United States Courthouse
1 Courthouse Way - Suite 9200
Boston, Massachusetts 02210
(617) 748-3282
george.henderson2@usdoj.gov

THE UNDERSIGNED PARTY enters into this Decree relating to claims asserted against Textron Systems Corporation in connection with the Massachusetts Military Reservation.

28 Sept 07

Date



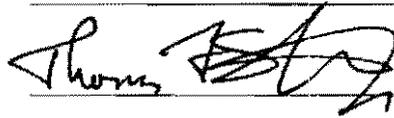
Name (print): Allison A. Polchek, Colonel

Title: Chief, Environmental Law Division
United States Army

Address: 901 North Stuart Street
Suite 700
Arlington, VA 22203-0700

28 Sept 07

Date



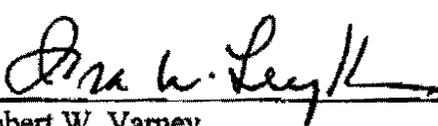
Name (print): Thomas Strunck, Lieutenant Colonel

Title: Environmental Law Division
United States Army

Address: 901 North Stuart Street
Suite 700
Arlington, VA 22203-0700

THE UNDERSIGNED PARTY enters into this Decree relating to claims asserted against Textron Systems Corporation in connection with the Massachusetts Military Reservation.

9/21/07
Date

 Acting for
Robert W. Varney
Regional Administrator, Region 1
U.S. Environmental Protection Agency
One Congress Street
Boston, MA 02114

THE UNDERSIGNED PARTY enters into this Decree relating to claims asserted against Textron Systems Corporation in connection with the Massachusetts Military Reservation.

9/20/07
Date

FOR THE COMMONWEALTH OF MASSACHUSETTS

Signature: 

Name (print): Ian A. Bowles

Title: Secretary of Energy and Environmental Affairs

Address: 100 Cambridge Street

Suite 900

Boston, MA 02114

9/26/07
Date

Signature: 

Name (print): Matthew Brock

Title: Assistant Attorney General

Address: Environmental Protection Division

One Ashburton Place

Boston, MA 02108

THE UNDERSIGNED PARTY enters into this Decree relating to claims asserted against
Textron Systems Corporation in connection with the Massachusetts Military Reservation.

FOR TEXTRON SYSTEMS CORPORATION

9/27/07
Date

Signature: Carl B. Buzawa
Name (print): Carl Buzawa, Esq.
Title: Vice President, Contracts and Legal
Address: Textron Systems Corporation
201 Lowell Street
Wilmington, MA 01887-2941

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

Name (print): Robert C. Kirsch
Title: Attorney
Address: Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Ph. Number: (617) 526-6000