Hearing Date and Time: March 29, 2011 at 9:45 a.m. (Eastern Time)
Response Deadline: March 22, 2011 at 4:00 p.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
Motors Liquidation Company, *et al.*,	Case No: 09-50026 (REG)
Debtors.	(Jointly Administered)

FLOWSERVE CORPORATION f/k/a THE DURIRON COMPANY'S RESPONSE TO DEBTORS' 208TH OMNIBUS OBJECTION TO CLAIMS (CONTINGENT CO-LIABILITY CLAIMS) (DOCKET NO. 8945)

TABLE OF CONTENTS

PAGES

TABLE OF AUTHORITIES

Pages

CASES

STATUTES

Flowserve Corporation f/k/a The Duriron Company ("**Flowserve**"), by its undersigned counsel, files this response (the "**Response**") to the above-captioned Debtors' 208th Omnibus Objection to Claims (Contingent Co-Liability Claims) (Docket No. 8945) (the "**Claim Objection**"). In support of this Response, Flowserve respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors incorrectly rely on two cases previously decided by this Court, *Chemtura* and *Lyondell*, to argue that Flowserve's proofs of claim (defined below) should be disallowed pursuant to 11 U.S.C. § 502(e)(1)(B) because it is a contingent, co-liability claim. However, the facts of those cases are clearly distinguishable from the facts here, and those cases are therefore inapposite. Flowserve's Proof of Claim is based on the Debtors' breach of a prepetition agreement. Flowserve is not seeking to enforce or collect on a general agreement that apportions liability for environmental damages. Nor has Flowserve asserted a statutory claim for contribution under CERCLA (defined below) or any other statute. The Debtors in these cases entered into a contract to assume Flowserve's liabilities, and therefore the Debtors alone are responsible for Flowserve's environmental costs. The Debtors and Flowserve are not co-liable to the United States Government, or any other entity, for the obligations set forth in the Settlement Agreements (defined below). Flowserve paid the Debtors $254,000, as well as other valuable consideration, to assume its liability. Moreover, the Debtors' liability is not contingent on any future act or circumstances. The liability was fixed by the Settlement Agreements. Only the amount needs to be determined. The proofs of claim Flowserve timely filed against the Debtors are for breach of contract only, not for common law or statutory indemnification or contribution.

2. Because the Debtors and Flowserve are not co-liable on the debt and the debt is not a contingent liability of the Debtors, 11 U.S.C. § 502(e)(1)(B) of the Bankruptcy Code is not applicable and the Claim Objection should be overruled.

THE FLOWSERVE CLAIMS AND THE CLAIM OBJECTION

A. Flowserve's Claims.

3. Flowserve and the Debtors are parties to multiple contracts pursuant to which the Debtors assumed liability for cleanup costs at two separate sites. The first is generally referred to as the Valleycrest Landfill Site and the second is generally referred to as the Cardington Road Landfill. Flowserve filed claims for damages it incurred when the Debtors' breached these contracts, which are described in greater detail below.

B. The Valleycrest Landfill Site.

4. The Valleycrest Landfill Site Group ("**VLSG**") is comprised of a group of potentially responsible parties ("**PRPs**") who are potentially liable under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("**CERCLA**") for the conditions of the North Sanitary Landfill Superfund Site (the "**Valleycrest Site**") in Dayton, Ohio. On January 21, 1995, the Ohio Environmental Protection Agency (the "**Ohio EPA**") issued a *Director's Final Findings and Orders* (the "**FFO**") with respect to the Site. The FFO provides for the evaluation and development of a Remedial Investigation and Feasibility Study (the "**RIFS**") for the Site.

5. In order to carry out the terms and conditions of the FFO and perform the RIFS, the original VLSG members entered into (i) the Valleycrest Landfill Site Participation Agreement, dated January 12, 1995, as amended by that certain First Amended Valleycrest Landfill Site Participation Agreement, dated May 22, 1998 (the "**Original Valleycrest Agreement**"), (ii) the Valleycrest Landfill Site Governmental Entity Participation Agreement, dated on or about January 5, 1999 (the "**Second Valleycrest Agreement**"), and (iii) the Amendment to the Second Agreement and the Original Agreement, dated on or about May 2000 (the "**Master Valleycrest Amendment**") (the Original Valleycrest Agreement, the Second Valleycrest Agreement, and the Master Valleycrest Amendment are referred to, collectively, as the "**VLSG Participation Agreements**"). The VLSG Participation Agreements are attached as

Exhibit A-2 to the proofs of claim filed by Flowserve based on the Valleycrest Site.

6. The VLSG Participation Agreements allocated a percentage share of the costs and expenses in developing the RIFS and performing the subsequent remediation to each member of VLSG. General Motors Corporation, now known as Motors Liquidation Company, *et al*. (the "**Debtors**" or "**GM**") and Flowserve are members of the VLSG and parties to the VLSG Participation Agreements. Pursuant to the VLSG Participation Agreements and specifically, the Master Valleycrest Amendment, Flowserve's allocated percentage of the costs related to the Valleycrest Site was 3.375%.

7. After entering into the VLSG Participation Agreements, on or about August 31, 2001, GM and Flowserve entered into a separate and independent Settlement Agreements (the "**Valleycrest Settlement Agreements**"). Pursuant to the terms of the Valleycrest Settlement Agreements, GM assumed all of Flowserve's responsibilities under the VLSG Participation Agreements. Flowserve agreed to pay -- and did pay -- to GM the sum of $254,000 and transferred other valuable consideration in the form of credits and litigation recoveries in exchange for GM's assumption of Floweserve's allocated liability. GM has not refunded, repaid or transferred back any amounts or rights it received from Flowserve under the VLSG Settlement Agreements.

C. The Cardington Road Landfill Site.

8. The Cardington Road Site Group ("**CRSG**") is also comprised of a group of PRPs who are potentially liable under CERCLA for the conditions of the Cardington Road/Sanitary Landfill Company Superfund Site in Moraine, Ohio (the "**Cardington Site**" and together with the Valleycrest Site the "**Sites**"). On March 15, 1996 the CRSG entered into a Site Participation Agreement to govern the performance and allocation of costs of the CRSG pursuant to a Consent Decree for performance of remedial action approved by the United States District Court (the "**CRSG Participation Agreement**", together with the VLSG Participation Agreements the "**Participation Agreements**"). The CRSG Participation Agreement is attached as Exhibit A-2 to Flowserve's Cardington proof of claim based on the Cardington Site.

9. The CRSG Participation Agreement allocated a percentage share of the costs and expenses in performing the subsequent remediation to each member of CRSG. The Debtors and Flowserve are members of the CRSG and parties to the CRSG Participation Agreement and Flowserve's allocated percentage of the costs related to the Cardington Site was .6451%. Flowserve and the Debtors previously funded certain environmental response activities at the Cardington Road Site and remedial construction was completed. In addition, long-term operation and maintenance has begun at the Cardington Site.

10. After entering into the CRSG Participation Agreement, on or about March 2, 2001, GM and Flowserve entered into a separate and independent Settlement Agreement (the "**Cardington Settlement Agreement**", together with the Valleycrest Settlement Agreements, the "**Settlement Agreements**"). Pursuant to the terms of the Cardington Settlement Agreement, GM assumed all of Flowserve's responsibilities under the CRSG Participation Agreement. Flowserve agreed to pay -- and did pay -- to GM the sum of $24,578.00 and transferred other valuable consideration in the form of credits and litigation recoveries in exchange for GM's assumption of Floweserve's allocated liability under the CRSG Participation Agreement. GM has not refunded, repaid or transferred back any amounts or rights it received from Flowserve under the Cardington Settlement Agreement.

D. The Proofs of Claims.

11. GM has breached the terms of the Settlement Agreements by failing to pay amounts due under the terms of those contracts. As a result of GM's breach of the Settlement Agreements and the damages caused by such breach, on November 25, 2009, Flowserve timely filed its proofs of claim in the respective amounts of $1,952,731.07 for the Valleycrest Site and $33,178.84 for the Cardington Site, which appear as claims numbered 47998 and 47997 on the Debtors' claims register (together, the "**Proofs of Claim**"). True and correct copies of the Proofs of Claim (including all attachments thereto) are attached hereto as **Exhibit A**. The Debtors' breach of the Settlement Agreements forms the basis of the claims set forth in the Proofs of Claim, not any potential co-liability under the Participation Agreements or by statute that may be

due and owing to a governmental entity or any other third party. The amounts claimed in the Proofs of Claim were calculated as follows:

(1) Actual Out Of Pocket Costs And Expenses Paid By Flowserve.

12. During the term of the Participation Agreements, each of the parties were issued periodic assessments by De Maximis, the VLSG and CRSG Coordinator of the Site work, to cover the costs and expenses (as defined in the Participation Agreements) incurred in connection with complying with the FFO, RIFS and the Participation Agreements. Assessments have been issued to and paid by Flowserve. Specifically, as of the date that Flowserve filed the Proofs of Claim, it had paid $9,401.00 (invoice dated May 8, 2009), $10,588.00 (invoice dated July 22, 2009), and $10,085.00 (invoice dated October 28, 2009) for a total of $30,074.00 under the VLSG Participation Agreement, for which the Debtors are liable to Flowserve only pursuant to the VLSG Settlement Agreements. Copies of those invoices are attached to Flowserve's Proof of Claim number 47998 (Exhibit A hereto) as Exhibit A-3.

13. After filing the Proofs of Claim, Flowserve received and paid additional assessments for the Valleycrest Site as follows:

(i) $3,219.00 (invoice dated January 15, 2010);

(ii) $8,460.00 (invoice dated April 7, 2010);

(iii) $6,023.00 (invoice dated July 8, 2010);

(iv) $3,622.00 (invoice dated September 21, 2010);

(v) $13,111.00 (invoice dated January 5, 2011); and

(vi) $6,911.00 (invoice dated March, 2011).

In addition to the amounts paid for the Valleycrest Site, Flowserve received and paid an invoice in the amount of $1,230.00 by De Maximis for costs at the Cardington Site. Accordingly, as of the date of this Response, Flowserve has paid a total of $72,650.00 for which the Debtors are

responsible pursuant to the Settlement Agreements. Copies of these additional invoices are attached hereto as **Exhibit B**.[1]

(2) The FFO And RIFS Related Expenses for the Valleycrest Site.

14. In addition, the VLSG, pursuant to the FFO, RIFS and the VLSG Participation Agreements, is required to complete the FFO, the RIFS and all related work. The VLSG has estimated that this work will be completed by February 2012 at a total cost of $1,032,617.[2] Flowserve's share of these costs, applying the 3.375% allocation pursuant to the VLSG Participation Agreements, was $34,850.82 at the time the proof of claim was filed.[3] Pursuant to the Settlement Agreements, Flowserve has a claim against the Debtors for these costs.

(3) Remediation Cost Expenses.

15. After completion of the RIFS, FFO, and related work, a remedy will be selected for the Valleycrest Site, which will be implemented at the Valleycrest Site. According to the VLSG, the estimated cost of implementing a remedy at the Valleycrest Site will be $55,935,000 (the "**VLSG Remediation Cost Estimate**"). Flowserve's share of the VLSG Remediation Cost Estimate, applying the 3.375% allocation pursuant to the VLSG Participation Agreements, is $1,887,806.25. Pursuant to the VLSG Settlement Agreements, the Debtors are responsible to Flowserve for these costs.

16. Similarly, the CRSG has estimated the cost of completion of the work at the Cardington Site at a cost of $5,143,209.00 (the "**CRSG Remediation Cost Estimate**"). Flowserve's share of the CRSG Remediation Cost Estimate, applying the .6451% allocation

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[1] A copy of the March 2011 invoice will be attached as a supplemental filing because it has not yet been received.

[2] The basis for this amount is set forth in the VLSG's proof of claim.

[3] As discussed above, additional expenses in the amount of $71,420 have been incurred and paid by Flowserve in connection with the FFO, RIFS and related work. Accordingly, the actual out of pocket expenses incurred by Flowserve have exceeded the estimates included in the poof of claim.

pursuant to the CRSG Participation Agreement, is $33,178.84. Pursuant to the CRSG Settlement Agreement, the Debtors are responsible to Flowserve for these costs.

D. The Claim Objection.

17. On January 28, 2011, GM filed the Claim Objection, wherein GM argues that Flowserve's Proofs of Claim should be disallowed pursuant to 11 U.S.C. § 502(e)(1)(B) because they are contingent, co-liability claims for contribution or reimbursement. GM has not disputed or contested Flowserve's right to an allowed claim and distribution based upon the actual out of pocket expenses Flowserve has paid, nor has GM disputed the calculations of the amount of the Proofs of Claim.

18. The Claim Objection should be overruled because GM has mischaracterized the basis of Flowserve's claims. There is no co-liability to any third party (including but not limited to government entities) on the part of GM and Flowserve related to obligations assumed by Flowserve under the Settlement Agreements. GM and Flowserve are not co-liable to anyone with respect to Flowserve's obligation under the Participation Agreements. Because co-liability on the claims does not exist, 11 U.S.C. § 502(e)(1)(B) does not apply, the Claim Objection should be overruled and the Proofs of Claim should be allowed. Moreover, the debt is not contingent; the Debtors' liability to Flowserve is fixed by the Settlement Agreements.

ARGUMENT

A. *Lyondell* And *Chemtura* Are Inapposite And Provide No Support For The Claim Objection.

19. The Claim Objection relies heavily upon two prior decisions issued by this Court: (1) *In re Lyondell Chemical Company, et al.*, No. 09-10023, 2011 WL 11413 (Bankr. S.D.N.Y. 2011, Jan. 4, 2011) ("***Lyondell***"); and (2) *In re Chemtura Corporation, et al.*, No. 09-11233, 2011 WL 109081 (Bankr. S.D.N.Y., Jan. 13, 2011) ("***Chemtura***"). Copies of the *Lyondell* and *Chemtura* decisions are attached hereto as **Exhibit C**. There are significant relevant factual differences in each those cases, rendering them distinguishable and not controlling in this case.

20. First, in both *Chemtura* and *Lyondell*, governmental agencies had filed claims seeking payment for the same claims that the creditors had asserted, which raised not only a possible but an actual risk of a duplicative payments by the debtors on the same claims. *See Lyondell*, 2011 WL 11413 at *13; *Chemtura*, 2011 WL 109081 at *2. Here, no governmental entity, or any other party, has filed or can file a claim related to the payments sought by Flowserve in its Proofs of Claim. GM's argeement with the government with respect to the Valleycrest Landfill Site relates to GM's liability under the VLSG Participation Agreements, not GM's liability to Flowserve under the VLSG Settlement Agreements.

21. Second, the governmental agencies involved in the *Lyondell* and *Chemtura* cases had already entered into binding agreements with the debtors related to the remediation at issue in those cases. *See Lyondell*, 2011 WL 11413 at *14; *Chemtura*, 2011 WL 109081 at *1. Here, GM has not entered into any agreements with governmental entities for the cleanup of the Sites or for any related matter that touches upon the obligations of GM to Flowserve set forth in the Settlement Agreements.

22. Finally, the creditors' theories of recovery in *Lyondell* and *Chemtura* were based upon the anticipated increase in allocated percentages of liability they would be responsible for if the debtors failed to fulfill their obligations under CERCLA. *See Lyondell*, 2011 WL 11413 at *13; *Chemtura*, 2011 WL 109081 at *2. As this Court has ruled, "this is the essence of co-liability." *Lyondell*, 2011 WL 11413 at *13. Flowserve's claim is not a claim for reimbursement for a potential increased allocation of responsibility. It is instead a contractual claim whereby GM agreed to be responsible to Flowserve only for Flowserve's share of the liability in consideration of a cash payment and other valuable consideration from Flowserve. Flowserve is not and has not filed a claim for any increase in its share of liability due to the failure of GM to satisfy its obligations under the Participation Agreements. Flowserve's Proof of Claim is limited to the cost allocations that the Debtors agreed to pay pursuant to the Settlement Agreements.

23. Accordingly, the Debtors' reliance on *Lyondell* and *Chemtura* is

misplaced, and the Proofs of Claim should be allowed.

B. 11 U.S.C. § 502(e)(1)(B) Does Not Apply To Flowserve's Proofs Of Claim.

24. 11 U.S.C. § 502(e)(1)(B) provides that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on … the claim of a creditor, to the extent that … such claim for reimbursement or contribution is contingent as of the time of the allowance or disallowance of such claim for reimbursement or contribution…." 11 U.S.C. §502(e)(1)(B). Courts interpreting this provision have generally held that three elements must be present before a claim will be disallowed. Specifically:

> (1) the claim must be contingent at the time it is allowed or disallowed;
>
> (2) the claim must be for reimbursement or contribution; and
>
> (3) the claimant must be co-liable with the debtor.

Lyondell, 2011 WL 11413 at *15.

25. If any one of these elements is missing, 11 U.S.C. § 502(e)(1)(B) does not apply and the claim should not be subject to disallowance. Here, the debt is not contingent and the Debtors and Flowserve are not co-liable. As this Court noted in *Lyondell*, the purpose of this section of the Bankruptcy Code is to protect a debtor from the risk of duplicative payments on the same underlying claim. *See id*. Moreover, when the risk of duplicative liability on the debtor's part for a claim does not exist, 11 U.S.C. § 502(e)(1)(B) does not apply. *See In re New York Trap Rock Corporation, et al.*, 153 B.R. 648, 651 (Bankr. S.D.N.Y. 1993). In other words, direct actions against a debtor, not actions for contribution for joint and several liability, should not be disallowed under 11 U.S.C. § 502(e)(1)(B). *Id*.

26. Flowserve's Proofs of Claim are not claims for contribution or reimbursement under CERCLA or any other law or instrument whereby parties have agreed to allocate their percentage of liability. Instead, they are claims for breach of contract by GM. The Debtors' liability to Flowserve may be unliquidated but is fixed by virtue of the Settlement Agreements. The fact that the claims are based upon environmental remediation is irrelevant for

purposes of allowance of the Proofs of Claim.

27. Although this Court previously held in *Lyondell* that a direct contractual claim should be disallowed under 11 U.S.C. § 502(e)(1)(B) because it was, in substance, a claim for reimbursement, the decision upon which this Court relied is also factually distinguishable from the facts surrounding Flowserve's claims for many of the same reasons that *Lyondell* and *Chemtura* are distinguishable. *See Lyondell*, 2011 WL 11413 at *16, n. 78, *citing Fine Organics Corp. v. Hexcel Corporation (In re Hexcel Corp.)*, 174 B.R. 807 (Bankr. N.D. Calif. 1994).

28. In *Hexcel*, Fine Organics Corporation ("**Fine Organics**") filed a claim in Hexcel Corporation's bankruptcy case seeking reimbursement for anticipated future remediation costs that it might incur. Fine Organics' claim was based on an asset purchase agreement it had entered into when purchasing certain real property from Hexcel. Prior to filing for bankruptcy protection, Hexcel had also executed an administrative consent order with the New Jersey Department of Environmental Protection & Energy (the "**NJDEPE**") pursuant to which Hexcel acknowledged that it was obligated to perform and pay for the remediation. Fine Organics was not a party to the administrative consent order but the asset purchase agreement stated that Hexcel was obligated to perform all obligations due and owing for remediation under the consent order. Hexcel had also submitted a cleanup plan and provided a $4 million letter of credit to the NJDEPE as financial assurance of its ability to fund the remediation. Fine Organics filed a proof of claim in the amount of $7.5 million for future expenses to remediate the site. Significantly, the bank that issued the $4 million letter of credit filed a surrogate proof of claim on behalf of NJDEPE for the same remediation costs and expenses. In addition, the NJDEPE had ordered Hexcel to remediate the site. *See Hexcel*, 174 B.R. at 808.

29. The *Hexcel* court ruled that Fine Organics' claim should be disallowed under 11 U.S.C. § 502(e)(1)(B) because it was a contingent co-liability claim which, if allowed, would subject Hexcel to duplicate payment on the same liabilities. *See Hexcel*, 174 B.R. at 812. Importantly the *Hexcel* court noted that had the Fine Organics' claim been allowed to stand, it would compete with the duplicate claim already filed on behalf of the NJDEPE. *Id.* In addition,

unlike GM, Hexcel had already been ordered to remediate the site and the cases upon which the *Hexcel* court relied analyzed direct actions for liability based upon provisions of CERCLA, not contractual obligations that existed between the parties and for which consideration had been paid to the debtor by the claimant.

30. *Hexcel* is therefore distinguishable and should not be relied upon when deciding whether Flowserve's Proofs of Claim should be disallowed. Although the United States Government and the Ohio EPA have each filed proofs of claims in GM's bankruptcy case, neither has asserted a claim for payment related to Flowserve's obligations and allocated percentage responsibility in connection with the Sites. Nor, upon information and belief, has any other governmental entity filed a claim to collect from the Debtors' estates for the amounts that have been included in Flowserve's Proofs of Claim. Thus there is no risk of payment on duplicate claims because Flowserve's claims are based entirely upon the contractual obligations owing by GM pursuant to the Settlement Agreements and not the Participation Agreements or any statutory liability. There is no co-liability or risk of duplicate claims.

31. Moreover, the Proofs of Claim do not assert claims for a contingent liability. A claim is contingent where it "has not yet accrued and ... is dependent upon some future event that may never happen." *In re Touch America Holdings, Inc.*, 381 B.R. 95, 107 (Bankr. D. Del. 2008). One frequently cited definition holds that "claims are contingent as to liability if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event." *In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex.1980), *aff'd*, 646 F.2d 193 (5th Cir. 1981) (*per curiam*). Here, it is beyond cavil that the Debtors are absolutely liable to Flowserve, as set forth in the Settlement Agreements. This case is therefore more analogous to the decision in *In re RNI Wind Down Corp.*, 369 B.R. 174 (Bankr. D. Del. 2007), discussed by this Court in *Lyondell*, in which the claim for the costs of defense was unliquidated but determined not to be contingent. As this Court noted, ". . . the right to advancement was a then-existing right (under the certificate of incorporation, by-laws and Delaware law), subject only to uncertainty at the time as to just how much the defense costs

would turn out to be." *Lyondell*, 2011 WL 11413 at *11, n. 41.

32. Moreover, as discussed above, Flowserve paid GM $278,578[4] and provided certain additional credits and other consideration to assume Flowserve's portion of the liability. Disallowing Flowserve's Proofs of Claim would serve as a disincentive for independent agreements like the Settlement Agreements for fear that the contract rights would have no meaning in a future bankruptcy proceeding. As this Court recognized in both *Chemtura* and *Lyondell*, the policy behind CERCLA is to encourage prompt and complete remediation of environmental damage. *See Chemtura* 2011 WL 109081 at *14; *Lyondell*, 2011 WL 11413 at *11. This can best be accomplished if one party, rather than multiple parties, takes on that responsibility. Essentially, invalidating a contract for which one party has paid substantial consideration to another party to assume its obligations is not the purpose of 11 U.S.C. § 502(e)(1)(B) when there is no risk of duplicative liability.

33. It must also be noted that Flowserve has not asserted a claim against GM for GM's share of the cleanup pursuant to the Participation Agreements. The VLSG filed that claim for the Valleycrest Site and, again, is based upon GM's independent responsibility as a PRP, not its independent liability for Flowserve's 3.375% share which is solely the subject of the VLSG Settlement Agreements. Flowserve's Proofs of Claim are based only upon the contractual obligations that GM undertook in the Settlement Agreements, and for which GM was paid $278,578 and other valuable consideration.

34. Finally, disallowing the Proofs of Claim would unjustly enrich GM after having negotiated the terms of the Settlement Agreements and accepting payment in the total amount of $278,578, as well as other valuable consideration from Flowserve for the obligations it assumed therein. Accordingly, if this Court is inclined to disallow or reduce the claims, Flowserve respectfully requests that the Court include in the claim amounts the $278,578 paid by Flowserve to GM as well as the value of the other consideration provided to GM for entering

[4] As discussed above, Flowserve paid GM $254,000 for the VLSG Settlement Agreement and $24,578 for the CRSG Settlement Agreement, for a total of $278,578.

into the Settlement Agreements plus the $72,650.00 of actual out of pocket expenses that Flowserve has paid as of the date of filing this Response.

CONCLUSION

35. The cases upon which GM relies in arguing that Flowserve's Proofs of Claim should be disallowed are fundamentally distinguishable. Flowserve's Proofs of Claim are not duplicative proofs of claim based upon co-liability with the Debtor to a third party. Moreover, GM's liability to Flowserve is not contingent; it is simply unliquidated. It is a claim for damages based upon a breach of contract. No other party has filed or could file a claim for the obligations that GM assumed in the Settlement Agreements. Accordingly, there is no risk of the Debtors making duplicate payments on the claims. Because both co-liability and the existence of a contingent claim -- two of the requisite elements for disallowance under 11 U.S.C. § 502(e)(1)(B) -- are missing here, the Proofs of Claim cannot be disallowed on that basis and the claims should be allowed in the amount and priority as filed. GM negotiated the terms of the Settlement Agreements and was paid for the obligations it assumed therein. As such, Flowserve is entitled to the benefit of its bargain and should receive distributions on the Proofs of Claim.

[Signature page to follow.]

WHEREFORE, Flowserve respectfully requests that this Court enter an order (i) overruling the Claim Objection as it relates to Flowserve's Proofs of Claim; (ii) allowing Flowserve's Proofs of Claim in the full amounts stated therein; and (iii) granting Flowserve such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

LOWENSTEIN SANDLER PC

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Attorneys For Flowserve Corporation f/k/a The Duriron Company

Dated: March 22, 2011
New York, New York

Exhibit A

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK | **PROOF OF CLAIM**

Name of Debtor:
MOTORS LIQUIDATION COMPANY F/K/A GENERAL MOTORS CORPORATION

Case Number:
09-50026 (REG)

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Flowserve Corporation f/k/a The Duriron Company

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:
Jeffrey G. Hamilton, Jackson Walker L.L.P.
901 Main Street, Suite 6000, Dallas, TX 75202

Court Claim Number:_____
(If known)

Telephone number:
(214) 953-6000

Filed on:_____

Name and address where payment should be sent (if different from above):
Robert L. Roberts, Jr., Vice President, Global Litigation Counsel
Flowserve Corporation, 5215 N. O'Connor Blvd., Suite 2300, Irving, Texas 75039

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Telephone number:
(972) 443-6537

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,952,731.07

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

✓ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Breach of Contract *
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$_____ **Annual Interest Rate**___**%**

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

* See attached Exhibit A

EXHIBIT
A

EXHIBIT A

Flowserve Corporation f/k/a The Duriron Company ("Flowserve") entered into a certain Settlement Agreement ("Settlement Agreement") with General Motors Corporation ("Debtor") dated August 31, 2001. A copy of the Settlement Agreement is attached hereto as Exhibit A-1.

The Valleycrest Landfill Site Group (the "VLSG") is comprised of a group of potentially responsible parties who are potentially responsible under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") for the conditions of the North Sanitary Landfill Superfund Site (the "Site") in Dayton, Ohio. On January 21, 1995, the Ohio Environmental Protection Agency (the "Ohio EPA") issued a Director's Final Findings and Orders with respect to the Site (the "FFO"). The FFO provides for the evaluation and development of a Remedial Investigation and Feasibility Study (the "RIFS") for the Site.

In order to carry out the terms and conditions of the FFO and perform the RIFS, the original VLSG members entered in the (i) Valleycrest Landfill Site Participation Agreement, dated January 12, 1995, as amended by that certain First Amended Valleycrest Landfill Site Participation Agreement, dated May 22, 1998 (the "Original Agreement"), and (ii) the Valleycrest Landfill Site Governmental Entity Participation Agreement, dated on or about January 5, 1999 (the "Second Agreement"), and (iii) the Amendment to Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement, dated on or about May 2000 (the "Master Amendment") (the Original Agreement, the Second Agreement, and the Master Amendment herein are referred to collectively as the "Participation Agreements"). The Participation Agreements are attached hereto as Exhibit A-2.

General Motors Corporation, now known as Motors Liquidation Company ("Debtor") is a member of the VLSG and a party to the Participation Agreements. The Participation Agreements allocated a percentage share of the costs and expenses in developing the RIFS and performing the subsequent remediation to each member of VLSG.

Pursuant to the terms of the Settlement Agreement, Debtor was to assume all liabilities of Flowserve related to the Valleycrest Landfill, including the development of the RIFS and the subsequent remediation. Pursuant to the Participation Agreements and specifically, the Master Amendment, Flowserve's percentage of costs related to the Valleycrest Landfill Site is 3.375%.[1]

Debtor has breached the terms of the Settlement Agreement by failing to pay amounts due under the terms of the Settlement Agreement. Debtor's breach of the Settlement Agreement has caused and will cause damages to Flowserve.

During the term of the Participation Agreement, each of the parties were issued periodic assessments by de maximis, the VLSG Coordinator of the Site work, to cover the costs and expenses (as defined in the Participation Agreement) incurred in connection with complying with the FFO, RIFS and the Participation Agreements. Assessments have been issued to and paid by Flowserve. Specifically, Flowserve has paid $9,401.00 (invoice dated May 8, 2009), $10,588.00

[1] See Exhibit D to the Master Amendment.

(invoice dated July 22, 2009), and $10,085.00 (invoice dated October 28, 2009). Copies of these invoices are attached hereto as Exhibit A-3. Pursuant to the Settlement Agreement, these assessments were the responsibility of Debtor. Debtor failed and refused to pay the assessments causing damage to Flowserve in the amount of $30,074.00.

In addition, the VLSG, pursuant to the FFO, RIFS and the Participation Agreements, is required to complete the FFO, the RIFS and related work. The VLSG has estimated that this work will be completed by February of 2012 at an estimated cost from January 1, 2010 to completion of the work is $1,032,617.[2] Therefore, Flowserve's share of these costs applying the 3.375% allocation is $34,850.82. Pursuant to the Settlement Agreement, Flowserve's share of these costs is the responsibility of Debtor.

After completion of the RIFS, FFO, and related work, a remedy will be selected for the Site which will be implemented at the Site. According to the VLSG, the estimated cost of implementing a remedy at the Site will be $55,935,000 (the "Remediation Cost Estimate").[3] Flowserve's share of the Remediation Cost Estimate applying the 3.375% allocation is $1,887,806.25. Pursuant to the Settlement Agreement, Flowserve's share of these costs is the responsibility of Debtor.

Accordingly, Flowserve's actual damages for Debtor's breach of contract are $1,952,731.07 plus interest, costs, and attorneys' fees. The actual damages consist of the following components: (a) $30,074.00 for assessments paid by Flowserve, (b) $34,850.82 for Flowserve's allocation of the cost to complete the RIFS; and (c) $1,887,806.25 for Flowserve's allocation of remediation costs.

Flowserve reserves the right to amend this Proof of Claim if additional information becomes available.

[2] The VLSG has filed a proof of claim for Debtor's share of the Valleycrest related costs. The VLSG's proof of claim contains support for the cost estimates promulgated by the VLSG which is the basis for the cost estimate for completion of the RIFS in Flowserve's proof of claim and is incorporated herein by reference.

[3] The VLSG has filed a proof of claim for Debtor's share of the Valleycrest related costs. The VLSG's proof of claim contains support for the cost estimates promulgated by the VLSG which is the basis for the cost estimate for the Valleycrest remediation in Flowserve's proof of claim and is incorporated herein by reference.

SETTLEMENT AGREEMENT

This Agreement is made and entered into on this 31st day of August, 2001, by and among General Motors Corporation ("GM") and Flowserve Corporation (f/k/a The Duriron Company, Inc.) ("FLOWSERVE-DURIRON").

RECITALS

WHEREAS, GM and FLOWSERVE-DURIRON have been identified as parties that may have liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), the Ohio Hazardous Waste Management Act, as amended, ORC §§ 3734 et seq. ("Ohio Superfund"), and other legal authorities in connection with the alleged arrangement for disposal of substances that are or may be regulated by any federal, state or local statute, rule, regulation, or decision of any administrative agency or court, including, without limitation, CERCLA and Ohio Superfund ("Hazardous Substances"), at and from Valleycrest/North Sanitary Landfill Superfund Site in Dayton, Ohio (the "Valleycrest Site"), including any contiguous off-site areas impacted by the Valleycrest Site; and

WHEREAS, GM and other parties, including FLOWSERVE-DURIRON, are currently funding certain response activities required at the Valleycrest Site, where a removal action is underway and a remedial investigation/feasibility study is also ongoing; and

WHEREAS, GM and FLOWSERVE-DURIRON believe that, to the extent provided by this Agreement, it is in their mutual best interests to reach agreement between themselves with regard to certain responsibilities and potential liabilities relating to the Valleycrest Site, as more specifically defined below; and

WHEREAS, GM and FLOWSERVE-DURIRON acknowledge and agree that the terms of this Agreement represent a good-faith settlement and compromise of disputed claims with

EXHIBIT
A-1

respect to the matters addressed herein, negotiated at arms-length, and that this settlement represents a fair, reasonable, and equitable resolution of the matters among the parties hereto.

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings set forth in this Agreement, and other good and valuable consideration contained herein, the parties hereto represent, warrant, and agree as follows:

OBLIGATIONS

1. Covered Matters. This Agreement addresses and settles those liabilities and potential liabilities collectively referred to hereinafter as "Covered Matters" and defined as follows:

   a. All liabilities, remedies, claims, duties, obligations, costs (including any claim for past costs), or penalties that FLOWSERVE-DURIRON and/or GM may or could have with respect to environmental conditions at, emanating from, or related to the Valleycrest Site, as defined herein, and which liabilities, remedies, claims, duties, obligations, costs (including any claim for past costs), or penalties are created under or by CERCLA, Ohio Superfund, the Resource Conservation and Recovery Act; 42 U.S.C. §§ 6901, et seq. ("RCRA"), or any other similar or remedial federal, state, or local statute, rule, or common law.

   b. Notwithstanding the above, this definition of "Covered Matters" does not include any claims for natural resource damages that may be brought pursuant to statute by a federal natural resources trustee or designee, or their assignees, or any private toxic tort claims relating to the Valleycrest Site.

2. Definition of Site. The Valleycrest Site means the former landfill located at 200 Valleycrest Drive in Dayton, Ohio (also known as the North Sanitary Landfill site), being

approximately 100 acres in size in the aggregate, but also including any and all contiguous off-site areas impacted the landfill, as placed on the NPL by EPA.

3. Release of FLOWSERVE-DURIRON. GM and its successors and assigns hereby release and forever discharge FLOWSERVE-DURIRON and its shareholders, officers, directors, employees, agents, successors and assigns, of and from any and all actions, courses of action, suits, sums of money, accounts, reckonings, bills, covenants, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands which GM ever had, now has, or hereafter can, shall, or may have against FLOWSERVE-DURIRON with respect to Covered Matters, except for rights granted by this Agreement.

4. Indemnification of FLOWSERVE-DURIRON. GM hereby agrees to protect, defend, indemnify, and save harmless FLOWSERVE-DURIRON from and against all Covered Matters and all claims, demands, and actions relating to Covered Matters. GM shall have the right and duty to defend any order, claim, or suit brought against FLOWSERVE-DURIRON for Covered Matters, even if one or more of the allegations of the order, claim, or suit are groundless, false or fraudulent, and GM may make such investigation and settlement of any order, claim, or suit as GM deems expedient. FLOWSERVE-DURIRON hereby acknowledges and certifies that other than as previously disclosed, it knows of no currently pending actions, causes of action, suits, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands against FLOWSERVE-DURIRON and relating to Covered Matters.

5. Payment by FLOWSERVE-DURIRON. In consideration for the obligations undertaken by GM pursuant to the terms of this Agreement, FLOWSERVE-DURIRON hereby agrees to pay to GM the following amounts subject to and in accordance with the terms and procedures for such payments set forth herein:

a. A cash amount to be paid by FLOWSERVE-DURIRON to GM of Two Hundred and Fifty-Four Thousand Dollars ($254,000.00) (the "Cash

Amount"). This Cash Amount shall be paid to GM in two equal payments. The first payment ($127,000), shall be made on or before October 15, 2001. The second payment ($127,000), shall be made on or before January 15, 2002. If either payment is made more than fifteen (15) days after its respective due date, simple interest of 0.75% shall be included per month for each month or fraction thereof that said payment is late; and

b. All payments made by FLOWSERVE-DURIRON to date regarding the Valleycrest Site or litigation concerning Covered Matters shall be credited to GM and become the property of GM. Any recovery related to the FLOWSERVE-DURIRON share of the cost recovery litigation shall be credited to GM and become the property of GM. The prior payments and the proceeds of the cost recovery litigation (the "Credit Amount") may be paid directly to or otherwise held by GM as soon as said funds become available after the effective date of this agreement.

c. It is the intent of GM and FLOWSERVE-DURIRON that in return for the total of the Cash Amount and the Credit Amount being paid by or on behalf of FLOWSERVE-DURIRON to GM, then GM forever releases, indemnifies, defends, protects, and replaces FLOWSERVE-DURIRON with respect to all Covered Matters for the Valleycrest Site as provided by the terms of this Agreement.

6. GM's Activities. GM will continue, individually or together with other parties, to complete the RI/FS and perform required removal and remedial activities at the Valleycrest Site, as to be determined by GM. If it chooses to do so, GM may notify EPA and the Ohio Environmental Protection Agency ("OEPA") of the existence and effect of this Agreement, and

that FLOWSERVE-DURIRON has paid for and extinguished its potential liabilities associated with the Valleycrest Site.

7. Assignment by FLOWSERVE-DURIRON. FLOWSERVE-DURIRON hereby assigns to GM all claims and demands of every kind and nature that FLOWSERVE-DURIRON may possess with respect to Covered Matters against each and every other person, entity, and potentially liable party at and for the Valleycrest Site. However, this reference to potentially liable parties is not intended to include any insurance carrier of FLOWSERVE-DURIRON, pursuant to Paragraph 18 below. FLOWSERVE-DURIRON agrees to execute any additional documents that GM may reasonably request to give full force and effect to these assignments.

8. Release of GM. FLOWSERVE-DURIRON and its successors and assigns hereby release and forever discharge GM and its shareholders, officers, directors, employees, agents, successors and assigns, of and from any and all actions, causes of action, suits, sums of money, accounts, reckonings, bills, covenants, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands which FLOWSERVE-DURIRON ever had, now has, or hereafter can, shall, or may have against GM with respect to Covered Matters, except for rights granted by this Agreement.

9. Transmittal of Claims. FLOWSERVE-DURIRON will notify GM by fax and/or express delivery of the existence of any claim, demand, order, notice, summons, or other process received hereafter by FLOWSERVE-DURIRON regarding any Covered Matters, as follows:

a. If a response is required within thirty (30) days of receipt, FLOWSERVE-DURIRON shall provide GM with written notice not later than ten (10) calendar days prior to any such response deadline for the claim, demand, order, notice, summons, or other process received by FLOWSERVE-DURIRON, provided, however, that FLOWSERVE-DURIRON itself received such claim, demand, order, notice, summons, or other process

more than ten (10) days prior to such response deadline to allow for timely compliance with this Paragraph 9.a.

b. If FLOWSERVE-DURIRON's receipt thereof is less than ten (10) days prior to the deadline for response, then FLOWSERVE-DURIRON shall seek a thirty (30)-day extension for response and shall provide a copy of the claim, demand, order, notice, summons, or other process and an acknowledgment of the thirty (30) day extension to GM not later than ten (10) days prior to the extended deadline for response.

c. Such notice and copies of whatever was received by FLOWSERVE-DURIRON shall be sent to GM in conformance with the notice provision set forth at paragraph 22 below.

d. GM shall promptly notify FLOWSERVE-DURIRON that it has assumed the defense of any matter so forwarded to it by FLOWSERVE-DURIRON and covered by this Agreement. GM will then proceed to defend said claim, demand, order, notice, summons, or other process pursuant to this Agreement.

e. If necessary and if reasonably requested by GM, FLOWSERVE-DURIRON shall reasonably cooperate in responding to discovery, allocation and information requests arising for many claim, demand, order, notice, summons, or other process sent to FLOWSERVE-DURIRON and for which GM has assumed the defense pursuant to this Agreement.

f. The failure of FLOWSERVE-DURIRON to abide strictly by the notice provisions contained herein does not excuse GM's obligations of indemnity or defense, except to the extent that actual and substantial prejudice to GM is documented.

10. Cooperation. After execution of this Agreement, and only if reasonably requested by GM, FLOWSERVE-DURIRON at its own expense will make available to GM reasonably accessible, non-privileged information that may be in FLOWSERVE-DURIRON's possession or control relating to alleged arrangements for disposal at the Valleycrest Site.

MISCELLANEOUS

11. No Third-Party Beneficiaries. The rights and obligations created under this Agreement shall inure solely to the benefit of the persons and entities specifically referred to as the parties to this Agreement. Nothing herein shall create, extinguish, or in any manner alter or affect the rights or duties of any third parties not parties to, or no in privity with the parties to, this Agreement.

12. Bankruptcy. Upon any future bankruptcy filing by GM, or by FLOWSERVE-DURIRON, respectively, performance of the defense, indemnity, payment, and any and all other obligations, duties and actions of the bankrupt party pursuant to this Agreement shall to the extent possible be deemed to have the priority status of administrative expenses pursuant to 11 U.S.C. Sections 503(b) and 507(a)(1). Upon the confirmation of a plan of bankruptcy reorganization for the bankrupt party, the reorganized party or any post-confirmation successor entity shall be bound by all duties created for said bankrupt party by this Agreement. The terms, benefits, and obligations of this Agreement for GM or for FLOWSERVE-DURIRON, respectively, shall not be terminated, modified, or discharged by any Chapter 11 bankruptcy resolution, and any plan of reorganization that may ever be proposed by GM or by FLOWSERVE-DURIRON respectively, in the future shall so provide.

13. Applicable Law. This agreement shall be interpreted and enforced according to the laws of the State of Ohio.

14. Execution of Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. No Admission of Liability. The execution of this Agreement shall not, under any circumstances, be construed as an admission by FLOWSERVE-DURIRON or GM of any fact or liability with respect to the Valleycrest Site, or with respect to any waste containing or constituting Hazardous Substances allegedly contributed to the site. This Agreement shall not constitute or be used as evidence, as an admission of any liability or fact, or as a concession of any question of law by the parties hereto, nor shall it be admissible in any proceeding except in an action to seek the enforcement of any terms of this Agreement.

16. Successors and Assigns Included as Parties. Wherever in this Agreement either GM or FLOWSERVE-DURIRON is named or referred to, the legal representatives, successors, and permitted assigns of such party shall covenants and agreements contained in this Agreement by or on behalf of either of the parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns, whether so express or not.

17. Assignment. GM may not assign its rights, duties, or obligations under this Agreement to any other person or entity without the express, written, and advance permission of FLOWSERVE-DURIRON, which permission may be withheld by FLOWSERVE-DURIRON in its sole and exclusive discretion.

18. Insurance. GM and FLOWSERVE-DURIRON do not hereby make any agreement or take any action that will prejudice them with regard to, nor transfer their respective rights concerning, their respective third-party insurance claims, coverages or recoveries.

19. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

20. Modification. Neither this Agreement, nor any provisions hereof, may be changed, waived, discharged, or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

21. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto among themselves as to the Covered Matters. As between FLOWSERVE-DURIRON and GM, any prior agreements as to Covered Matters are hereby canceled or superceded by this Agreement to the extent that they may be inconsistent herewith.

22. Notice Procedure. Notices required or otherwise given under this Agreement shall be directed as follows:

To GM:	Michelle T. Fisher, Esq. General Motors Corporation Legal Staff MC 482-C24-D24 300 Renaissance Center Detroit, MI 48243 Tel: (313) 665-4877 Fax: (313) 665-4896
To FLOWSERVE-DURIRON:	Robert L. Roberts, Jr., Esq. Flowserve Corporation 222 W. Las Colinas Blvd., Suite 1500 Irving, TX 75039 Tel: (972) 443-6537 Fax: (972) 443-6837

All notices or demands required or permitted under this Agreement shall be in writing and shall be effective if sent by express delivery or by registered or certified mail, postage prepaid and return receipt requested. Notices shall be deemed received at the time delivered. Any party may also give notice by facsimile transmission, which shall be effective upon confirmation by the party sending the notice that such facsimile transmission has been received by the party to whom the notice has been addressed. Nothing in this Paragraph 22 shall prevent the giving of notice in such manner as prescribed by the Federal Rules of Civil Procedure for the service of legal process. Either party may change its address by giving written notice thereof to the other party to this Agreement.

23. Remedies and Attorneys' Fees. In any action brought by a party hereto for breach of this Agreement or to enforce the rights and obligations of this Agreement, the prevailing party shall be entitled also to recover its reasonable attorney's fees. Equitable and

injunctive relief shall also be available to either party hereto upon breach of this Agreement by the other party.

24. Authorization. Each of the signatories signing below on behalf of his or her respective party to this Agreement represents that he or she is fully authorized to sign on behalf of that party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date appearing above and last written below.

GENERAL MOTORS CORPORATION

By: Don A. Schiemann
Name: Don A. Schiemann

Title: Attorney

Date: AUGUST 31, 2001

FLOWSERVE CORPORATION
(f/k/a/ THE DURIRON COMPANY, INC.)

By: Robt L Roberts
Name: Robert L. Roberts, Jr.

Title: Associate General Counsel

Date: August 29, 2001

R082901F2

VALLEYCREST LANDFILL
SITE PARTICIPATION AGREEMENT

This Agreement is between and among the parties whose authorized representatives have executed this Agreement and the Director's Final Findings and Orders described herein (hereinafter the "Members").

WHEREAS, many other companies and individuals are Potentially Responsible Parties ("PRPs") pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, and its amendments ("CERCLA") for conditions at the Valleycrest Landfill site in Dayton, Ohio ("Site"); and

WHEREAS, the Members recognize that they desire to avoid litigation with the United States and the State of Ohio and have endeavored to arrive at an agreement with the State of Ohio and further arrive at an agreement among themselves to fund performance of necessary work at the Site; and

WHEREAS, the Members have jointly agreed to enter into Final Findings and Orders with the Ohio Environmental Protection Agency to provide for the development of a Remedial Investigation and Feasibility Study for the Site; without admitting any fact, responsibility, fault or liability in connection with the Site, and the Members wish to establish a framework for complying with the terms of the Final Findings and Orders, and to cooperate among themselves in this effort; and

WHEREAS, the Members may determine that it is in their interest to initiate litigation against some or all the PRP's which are not Members with the goal of arriving at an equitable allocation of the necessary costs of response which shall be incurred to comply with the Final Findings and Orders and to conduct any other necessary response activities in conformance with the requirements of the National Contingency Plan ("NCP").

NOW THEREFORE, in consideration of the foregoing and the promises and covenants contained herein, the Members mutually agree as follows:

1. DEFINITIONS.

1.1 The term "Final Findings and Orders" ("FFO") shall mean the Director's Final Findings and Orders entered into between the Ohio Environmental Protection Agency and the Members for the purpose of the development of a Remedial Investigation and Feasibility Study for the Site.

1.2 The term "Costs" shall include all costs incurred to satisfy the obligations pursuant to, and to otherwise comply with, the terms of the FFO, or to implement the purposes of this Agreement, including without limitation, the implementation of the Remedial Investigation and Feasibility Study ("RI\FS"), payment of project management costs, payment of the Ohio EPA's Past Costs and Oversight Costs in accordance with the FFO, and administrative costs and litigation costs of the Group.

1.3 To the extent that terms are defined within the FFO, said terms shall have the same meaning herein.

2. VALLEYCREST LANDFILL SITE GROUP.

The Members hereby organize and constitute themselves as the Valleycrest Landfill Site Group (sometimes referred to as the "Group"). Each Member whose authorized representative has executed the FFO and this Agreement is a Member of the Valleycrest Landfill Site Group. Peerless Transportation Co. shall be a Member, but shall have no vote (as provided in sub-section 4.3).

3. PURPOSE.

3.1 **General Purpose.** It is the purpose of this Agreement that the terms hereof shall control the manner and means by which the Members will undertake to satisfy their obligations pursuant to, and to otherwise comply with, the terms of the FFO; including without limitation, the implementation of the RI\FS, payment of Ohio EPA's Past Response Costs and Oversight Response Costs; and further to pursue whatever rights, claims and causes of action that the Members might have against others through litigation or otherwise.

3.2 **General Agreement of Members.** The Members individually and collectively agree to take all reasonably necessary actions to ensure that the obligations of the Members under the FFO shall be complied with, including the implementation of the RI\FS, and to fund all costs arising in connection with their undertakings, duties, and obligations pursuant thereto, and to fund the litigation as provided herein.

3.3 **Financial Obligations and Assurances.** Each Member warrants that it presently has or has the ability to obtain in a timely manner sufficient funds to satisfy its obligations under this Agreement. Upon any Member's default of an obligation hereunder, such defaulting Member shall pay the full balance of its obligations or projected obligations under this Agreement. Such payment upon default shall not terminate the Member's obligations hereunder, but rather shall constitute a non-interest bearing deposit against which future obligations shall be drawn.

3.4 **Bankruptcy.** Each Member agrees that in the event of its bankruptcy all obligations under this Agreement shall be entitled to an administrative expense priority for all purposes under the United States Bankruptcy Code , and each Member further agrees that it shall not object in any bankruptcy proceeding to treatment of obligations under this Agreement as an administrative expense.

EXHIBIT B

EXHIBIT A-2

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3.5 Fair Share. Each Member agrees that in any action brought to enforce its obligations under this Agreement it shall not contest the fairness of the cost allocation or other provisions of this Agreement.

3.6 Cooperation. The Members shall cooperate with each other to effectuate the purposes of this Agreement, shall attempt to make decisions by consensus, and shall attempt to resolve any disputes among them through good faith negotiation.

4. ORGANIZATION AND PROCEDURES.

4.1 Meetings. The Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings shall be called from time to time as determined necessary by the Members. Meetings of the Members may be called for any purpose at any time by any other three Members. Meetings may be held by telephone conference.

4.2 Notice of Meetings. Whenever feasible, written notice of the time, place and purpose of any meeting of the Members shall be given to each Member entitled to vote at such meeting. In the event a meeting is called on less than five (5) days written notice, the Members calling the meeting shall make a reasonable effort to provide notice in fact to every Member.

4.3 Voting. Each Member shall have a vote ("Voting Power") as follows:

(a) Each Member shall have a vote weighted in accordance with the Member's obligation to fund the activities contemplated under this Agreement;

(b) No Member may vote unless that Member has paid all financial contributions assessed, due and owing as of the last assessment made pursuant to this Agreement prior to such meeting. Any Member having an assessment due and owing that remains unpaid at the time of the meeting may not vote until such time as the Member makes payment of the full assessment and any penalties; and

(c) Unless otherwise specified herein, all issues shall be decided by a majority of the voting power of the Members as defined in this Section.

(d) Peerless Transportation Co. shall have no vote.

4.4 Voting by Proxy. A Member eligible to vote at a meeting may assign in writing its vote to another Member eligible to vote at the meeting.

4.5 Enumerated Powers of the Members. The powers, duties and responsibilities of the Members shall include, not to the exclusion of other powers, duties, and responsibilities enumerated in this Agreement the following:

(a) The Members shall negotiate with the Governments and other persons with respect to all matters relating to this Agreement and the FFO;

(b) The Members shall determine when a Member is in default of its obligations under this Agreement;

(c) The Members shall review and, as appropriate, approve invoices and bills for payment;

(d) The Members shall enter into contracts to achieve the purposes of this Agreement and the FFO;

(e) The Members shall direct the preparation of invoices to the Members in accordance with the provisions of Section 5 hereto.

(f) The Members shall direct the litigation in accordance with the provisions of Section 6 hereto.

The Members may direct that subcommittees of Members or other persons carry out or perform any activities which the Members may perform themselves.

4.6 Separate Counsel. Each Member reserves the right to select and retain its own counsel to represent such Member on any matter. All costs of such counsel shall be borne by the individual Member and shall not be Costs paid by the Members.

4.7 Providing Members with Information. Upon request from any Member, the Members shall make available to that Member any reports submitted to or by the Members in connection with the performance of the Members' obligations under this Agreement or the FFO.

5. FUNDING OF OBLIGATIONS UNDER THIS AGREEMENT

5.1 Allocation for Limited Purpose. The funding of work to be performed pursuant to this Agreement and the FFO, or "Costs" as defined herein, shall be accomplished in accordance with the provisions of this Section. The Members acknowledge that the allocation provided for herein is only for the purposes of funding the Costs incurred pursuant to this agreement, and the Members expressly reserve their right to assert a different allocation for funding of any other work which has been or will be performed in association with the Site or any other liability, if any. The Members agree that any amounts paid by any Member pursuant to this Agreement shall be considered in any future allocation for funding of any other work or liability in association with the Site, such that, at a minimum, the amounts paid by each Member

shall be credited against such Member's share pursuant to a final allocation of the costs of work performed at the Site or any other liability. The Members further agree that the funding shall be modified in accordance with the procedure set forth in Section 6 hereto.

5.2 Obligations Of The Members. The Members shall be severally liable for their respective percentage share, as set forth in Appendix A hereto, of the Costs. Within twenty (20) days of the effective date of this Agreement, the Members shall establish an Escrow Account to receive and hold monies from the Members in accordance with their obligations. Within sixty (60) days of the effective date of this Agreement, each Member shall pay an amount equal to its "First Year Payment" as set forth in Appendix A into the Escrow Account. The Members shall approve additional assessments and issue additional invoices to the individual Members as necessary to assume that the Escrow Account always has sufficient funds in it to finance the work to be performed in the next ninety (90) days.

5.3 Obligation of Peerless Transportation Co. Peerless Transportation Co. shall within sixty (60) days of the effective date of this Agreement pay twenty-thousand dollars ($20,000.00) into the Escrow Account established under sub-section 5.3. In addition, Peerless agrees to cooperate with the Members to provide such information to the Members as the Members deem appropriate to assist the Members in the identification of additional PRP's or to identify information regarding any PRPs' nexus with the Site, including without limitation, access to business records and documents, and present and past employees who might have information relevant to any PRPs' nexus to the Site.

5.4 Late Payments. Each Member shall have no less than thirty (30) days to make timely payment of any invoice or other obligation hereunder. The Members may declare in default any Member that has failed or refused to make timely payment of any invoice or other obligation hereunder. Upon such default such defaulting Member shall pay the full balance of its "share of $3,000,000" as set forth in Appendix A. In addition, in the event a Member fails or refuses to make timely payment of any obligation hereunder (including any amount due upon default), such Member shall be liable for interest on the amount due at a rate of 12% per annum, compounded monthly, with said interest being due on the first day after said payment is due, and on each monthly anniversary thereafter.

5.5 Enforcement Indemnity. In the event that the Members deem it appropriate to initiate action to enforce a Member's obligations under this Agreement, including without limitation litigation, and the position of the enforcing Members is substantially sustained, such other Member shall indemnify and hold harmless the Members for any and all costs, fees or expenses, including without limitation, attorneys fees and court costs, which the Members might incur in pursuing such action.

5.6 Accounting for Funds. The Members shall prepare, or shall cause to be prepared, on at least an annual basis, an accounting of monies received into the Escrow Account, spent and obligated, and a final accounting upon the termination of this Agreement.

5.7 Purpose of Funds. All monies provided by Members pursuant to this Agreement shall be used solely for the purposes of this Agreement and shall not be considered as payment for any fines, penalties, or monetary sanctions.

6. ASSIGNMENT OF CLAIMS AND LITIGATION BY MEMBERS AGAINST OTHER PRPs

6.1 Assignment Of Claims Against Others. The Members (individually) hereby assign to the Members (collectively) all rights, claims or causes of action arising from this Agreement or the FFO's or associated with the incurrence of response costs related to the Site, including without limitation, claims or causes of action for contribution; except that each Member shall retain whatever rights, claims or causes of action it may have with respect to its own insurance coverage or claims for contractual indemnity, whether by way of insurance contract or other contract. No such retained insurance or contractual indemnity claim shall in any way impair the ability of the Members, to pursue whatever rights, claims or causes of action the Members may have against entities not parties to this Agreement. The assignment hereunder shall not be affected by any Member's choice to opt-out of any litigation under sub-section 6.2 of this Agreement.

6.2. Litigation Against Other Persons. The Members may initiate, pursue or settle any litigation or claim they deem appropriate to preserve, assert or defend any and all rights, claims, or causes of action that the Members may have against any other entity, including without limitation, claims for response costs or contribution against entities not parties to this Agreement, or to enforce the obligations of a Member under this Agreement. The cost of any such action by the Members shall be Costs as provided herein. Any Member may, at its sole option and in its sole discretion, choose not to participate in any such action and, in such instance, shall not be obligated to fund any Costs associated with such action. In the event that any Member chooses not to participate in such action, the remaining Members may, but need not, arrive at a separate agreement with such opt-out Member regarding such Member's participation in the litigation and the costs and benefits thereof.

6.3 Waiver of Conflict Interest. In the event that the Members' determined that it would be in their interest to retain common counsel to initiate and pursue litigation as provided in Section 6 hereto, each Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Member, said counsel has a conflict of interest in performing legal services authorized by the Members and consistent with the Member's powers, duties and responsibilities; (2) it will not claim or assert that, based solely on said counsel's representation of the Members under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation of any other person or entity in a matter pending as of the date of receiving notice of intent to hire said counsel; (3) it will not claim or assert that, based solely on said counsel's representation of the Members under the terms of this Agreement, said counsel has a conflict of interest in any future representation of any person or entity, including representation of the Members in litigation against a Member to enforce the provisions of this Agreement or in a subsequent action to recover costs or pursue

claims for contribution; (4) in the event that any conflict develops in the performance of work authorized by the Members by said counsel and the legal services authorized by any Member that has retained that counsel, the Member consents to that counsel's continued performance of the work authorized by the Members.

7. CONFIDENTIALITY.

7.1 Shared Information. From time to time, the Members may elect to disclose or transmit to each other, directly or through counsel, such information as each Member, counsel or technical consultant retained for the Group deems appropriate for the sole and limited purpose of coordinating activities that are necessary and proper to carry out the purposes of this Agreement. Shared information may be disclosed to or transferred among the Members orally or in writing or by any other appropriate means of communication. The Members intend that no claim of work product privilege or other privilege be waived by reason of participation or cooperation pursuant to this Agreement.

7.2 Preservation of Privilege. Information disclosed by the Members to counsel may be disclosed to any other Member, and each Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of effectuating the purposes of this Agreement. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege.

7.3 Confidentiality of Shared Information.

(a) Each Member agrees that all shared information received from any other Member or its counsel, or technical consultant pursuant to this Agreement shall be held in strict confidence by the receiving Member and by all persons to whom confidential information is revealed by the receiving Member pursuant to this Agreement, and that such information shall be used only in connection with conducting such activities as are necessary and proper to carry out the purposes of this Agreement. In addition, Members may also disclose shared information to insurers, to the extent requested by insurers and required under the terms of the insurance contract, and so long as the insurers agree to maintain the confidentiality of the information in conformance with the provisions of this Agreement. In addition, Members may also disclose shared information to auditors or other accounting personnel, to the extent such disclosure is necessary and appropriate for the Members and the auditor or other accounting personnel to satisfy obligations of the Securities and Exchange Commission.

(b) Shared information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential" or with a similar legend. If such information becomes the subject of an administrative or judicial order requiring disclosure of such information by a Member, where the information will be unprotected by

10/30/97 THU 10:50 [TX/RX NO 8018]

confidentiality obligations, the Member may satisfy its confidentiality obligations hereunder by notifying the Member that generated the information or, if the information was generated by a technical consultant, by giving notice to said consultant and to the Members.

(c) Each Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any shared information or who participates in work on common projects or who otherwise assists any counsel or technical consultant in connection with this Agreement, is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person.

(d) The Members intend by this Section to protect from disclosure all confidential information and documents shared among any Members or between any Member and counsel, or any technical consultant to the greatest extent permitted by law regardless of whether the sharing occurred before execution of this Agreement and regardless of whether the writing or document is marked "Confidential."

(e) The confidentiality obligations of the Members under this Section shall remain in full force and effect, without regard to whether actions arising out of the Site are terminated by final judgment, and shall survive the termination of this Agreement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Agreement, or which is sought and obtained from a Member pursuant to applicable discovery procedures and not otherwise protected from disclosure.

8. DENIAL OF LIABILITY.

This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any Member, by Members as among themselves or by any other person not a Member. However, nothing in this Section is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against any party to this Agreement.

9. INSURANCE.

The Members do not intend hereby to make any agreement that will prejudice any Member with respect to its insurers and, by entering into this Agreement, anticipate that the actions taken pursuant to this Agreement will benefit such insurers.

10/30/97 THU 10:50 [TX/RX NO 8018]

10. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member without the prior written consent of the other Members.

11. ADVICE OF COUNSEL.

Each Member represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement.

12. NOTICE.

All notices, bills, invoices, reports, and other communications with a Member shall be sent to the representative designated by the Member on said Member's Valleycrest Landfill Site Participation Agreement Signatory Page. Each Member shall have the right to change its representative upon submission of written notice to the other Members.

13. EFFECTIVE DATE.

The effective date of this Agreement shall be the same as the effective date of the FFO.

14. TERMINATION.

This Agreement shall terminate and have no further effect upon completion of all obligations of the Members pursuant to the FFO or such other time as a Court may establish.

15. AMENDMENTS.

This Agreement may be amended only by a vote of at least two-thirds of the Voting Power of the Members at a meeting called for the purpose of considering such an amendment. Such amendment must be in writing. However, Sections 3, 4.3, 5.1 and 5.2 of this Agreement may be amended only by a unanimous vote of 100% of the Voting Power of the Members.

16. ADDITIONAL MEMBERS.

The Members may approve the entry into this Agreement of additional entities as Members after the effective date of the Agreement. The terms and conditions of participation of such additional entities shall be determined by the Members.

17. SEPARABILITY.

If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

18. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding of the Members with respect to its subject matter.

19. APPLICABLE LAW.

For purposes of enforcement or interpretation of the this Agreement, the Members agree that the laws of the State of Ohio shall be applicable, and further agree not to contest personal jurisdiction in any State or Federal Court in Ohio with respect to litigation brought to enforce or interpret this Agreement.

20. SEPARATE DOCUMENTS.

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

21. NO THIRD PARTY BENEFICIARIES.

This Agreement is made solely for the benefit of the parties hereto. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement by execution of the Valleycrest Landfill Site Participation Agreement Signatory Page. Each person signing the Valleycrest Landfill Site Participation Agreement Signatory Page represents and warrants that he or she has been duly

authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing. Each Member shall signify its consent and intent to enter into this Agreement by delivery of a completed and signed "Valleycrest Landfill Site Participation Agreement Signatory Page" to:

Karen Konicki, Esq.
AT&T Global Information Solutions Co.
1700 S. Patterson Blvd.
Dayton, OH 45479

VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT SIGNATORY PAGE

General Motors Corp hereby enters into and shall participate in the Valleycrest Landfill
(Member)
Site Participation Agreement:

Dated: January 12, 1995

Member: General Motors Corp.

Signature: Elizabeth A. Zatina

Name: Elizabeth A. Zating

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimile: _____

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VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT SIGNATORY PAGE

THE DURDON CO, INC. hereby enters into and shall participate in the Valleycrest Landfill
(Member)
Site Participation Agreement:

Dated: JANUARY 13, 1995

Member: THE DURDON COMPANY, INC.

Signature: [signature]

Name: RONALD F. SHUEF

Title: VICE PRESIDENT, SECRETARY AND GENERAL COUNSEL

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: ROBERT L. ROBERTS, JR

Title: ASSOCIATE COUNSEL

Address: 3100 RESEARCH BLVD.
KETTERING, OHIO 45420

Telephone: (513) 476-6139

Facsimile: (513) 476-6204

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VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT SIGNATORY PAGE

Dayton Walther hereby enters into and shall participate in the Valleycrest Landfill
(Member)
Site Participation Agreement: (as distributed December 22, 1994, with modifications discussed January 11, 1995)

Dated: January 12, 1995

Member: Dayton Walther

Signature: [signature]

Name: W.H. White

Title: President

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: John A. Magelnicki

Title: Manager Environmental Engineering

Address: 11878 Hubbard
Livonia, MI 48150

Telephone: 313-513-4472

Facsimile: 313-513-4480

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VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT SIGNATORY PAGE

CARGILL, INCORPORATED hereby enters into and shall participate in the Valleycrest Landfill
(Member)
Site Participation Agreement:

Dated: JANUARY 13, 1995

Member: CARGILL, INCORPORATED

Signature: LaRaye M. Osborne

Name: LaRaye M. Osborne

Title: Senior Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: LaRaye M. Osborne

Title: Senior Attorney

Address: Cargill, Incorporated
Law Department/MS 24
P. O. Box 5624
Minneapolis, MN 55440-5624

Telephone: 612/742-6374

Facsimile: 612/742-6349 or 612/742-7503

Street Address: 15407 West McGinty Road
Wayzata, MN 55391

[illegible]

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EXHIBIT C

Waste Management and Danis agree that their collective share of costs pursuant to the terms of this first Amended Site Agreement shall be 46% ("The New Members' Share").

As of November 21, 1997, the VLSG has paid $1,898,150 in past Costs at this site excluding the costs incurred in pursuing Waste Management and Danis as PRPs and certain other agreed upon excluded costs.

Accordingly, Waste Management and Danis agree to pay their 46% share of such past costs or $873,149, which amount will be due and payable on or before 30 days from the date of the execution of this Agreement.

Furthermore, Waste Management and Danis agree to pay The New Members' Share of 46% of all future costs as pursuant to the terms of this Amended Site Agreement.

EXHIBIT B
First Amended VLSG Participation Agreement

FIRST AMENDED
VALLEYCREST LANDFILL
SITE PARTICIPATION AGREEMENT

This First Amended Valleycrest Landfill Site Participation Agreement ("Amended Site Agreement) is between and among the parties whose authorized representatives have executed this Amended Site Agreement and the Director's Final Findings and Orders described herein (hereinafter the "Original Members"), and Waste Management Inc. Waste Management Of Ohio, Inc. and SCA Services of Ohio, Inc. (collectively "Waste Management") and Danis Industries Corporation, (hereinafter the "New Members"). The Original Members and the New Members shall be collectively referred to herein as the Valleycrest Landfill Site Group ("VLSG" or "VLSG Members").

WHEREAS, many other companies and individuals are Potentially Responsible Parties ("PRPs") pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, and its amendments ("CERCLA") for conditions at the Valleycrest Landfill site in Dayton, Ohio; as defined in the Final Findings and Orders dated January 31, 1995 with the OEPA ("Site"); and

WHEREAS, the VLSG recognizes that they desire to avoid litigation with the United States, the State of Ohio, and among themselves, and therefore arrive at an agreement among themselves to fund performance of necessary work at the Site; and

WHEREAS, the Original Members jointly agreed to enter into Final Findings and Orders dated January 31, 1995 with the Ohio Environmental Protection Agency to provide for the development of a Remedial Investigation and Feasibility Study for the Site; without admitting any fact, responsibility, fault or liability in connection with the Site; and

WHEREAS, the Original Members on or about January 12, 1995 jointly entered into the VLSG Site Participation Agreement to establish a framework for complying with the terms of the Final Findings and Orders, and to cooperate among themselves in this effort and now wish to amend said agreement to add Waste Management and Danis as New Members.

WHEREAS, the VLSG Members may determine that it is in their interest to initiate litigation against some or all the PRPs which are not Members of the VLSG with the goal of arriving at an equitable allocation of the necessary costs of response which shall be incurred to comply with the Final Findings and Orders and to conduct any other necessary and agreed upon response activities in conformance with the requirements of the National Contingency Plan ("NCP");

NOW THEREFORE, in consideration of the foregoing and the promises and covenants contained herein, the VLSG Members mutually agree as follows:

1. DEFINITIONS.

1.1 The term "Final Findings and Orders" ("FFO") shall mean the Director's Final Findings and Orders entered into between the Ohio Environmental Protection Agency and the Original Members for the purpose of the development of a Remedial Investigation and Feasibility Study for the Site attached hereto as Exhibit A.

1.2 The term "Valleycrest Site Agreement" shall mean the Agreement entered into on or about January 12, 1995 attached hereto as Exhibit B.

1.3 The term "Costs" shall include all past and future costs incurred to satisfy the obligations pursuant to, and to otherwise comply with, the terms of the FFO, or to implement the purposes of the Valleycrest Site Agreement and this Amended Site Agreement, including without limitation, the implementation of the Remedial Investigation and Feasibility Study ("RI/FS"), payment of project management costs, payment of the Ohio EPA's Past and Future Response Costs and Oversight Costs in accordance with the FFO, and administrative costs including attorneys fees and litigation costs of the VLSG.

1.4 To the extent that terms are defined within the FFO, said terms shall have the same meaning herein.

2. VALLEYCREST LANDFILL SITE GROUP

The Original and New Members hereby organize and constitute themselves as the Valleycrest Landfill Site Group (sometimes referred to as the "VLSG"). Each Member whose authorized representative has executed this Amended Site Agreement is a Member of the VLSG. Peerless Transportation Co. shall be a VLSG Member, but shall have no vote (as provided in subsection 4.3).

3. PURPOSE.

3.1 General Purpose. It is the purpose of this Amended Site Agreement that the terms hereof shall control the manner and means by which the VLSG will undertake to satisfy their obligations pursuant to, and to otherwise comply with, the terms of the FFO; including without limitation, the implementation of the RI\FS, payment of Ohio EPA's Past and Future Response Costs and Oversight Costs; and further to pursue whatever rights, claims and causes of action that the Original or New Members might have against other companies or individuals responsible or potentially responsible for conditions at the Valleycrest Landfill Site through litigation or otherwise.

3.2 General Agreement of Members. The Original and New Members individually and collectively agree to take all reasonably necessary actions to ensure that the obligations of the Original Members under the FFO and the Valleycrest Site Agreement shall be complied with, including the implementation of the RI/FS, and to fund all costs arising in connection with their undertakings, duties, and obligations pursuant thereto, and to fund litigation as provided herein.

3.3 Financial Obligations and Assurances. Each Original and New Member warrants that it presently has, or has the ability to obtain in a timely manner, sufficient funds to satisfy its obligations under this Amended Site Agreement. Upon any VLSG Member's default of an obligation hereunder, such defaulting VLSG Member shall pay the full balance of its past unpaid obligations and any current unpaid obligations under this Amended Site Agreement. Such payment upon default shall not terminate the VLSG Member's future obligations hereunder.

3.4 Bankruptcy. Each VLSG Member agrees that in the event of its bankruptcy all obligations under this Amended Site Agreement shall be entitled to an administrative expense priority for all purposes under the United States Bankruptcy Code , and each VLSG Member further agrees that it shall not object in any bankruptcy proceeding to treatment of obligations under this Amended Site Agreement as an administrative expense.

3.5 Fair Share. Each VLSG Member agrees that in any action brought to enforce its obligations under this Amended Site Agreement it shall not contest the fairness of the cost allocation or other provisions of this Amended Site Agreement.

3.6 Cooperation. The VLSG Members shall cooperate with each other to effectuate the purposes of this Amended Site Agreement, shall attempt to make decisions by consensus, and shall attempt to resolve any disputes among themselves through good faith negotiation.

3.7 Amended FFOs. The New Members shall execute an Amendment to the Final Findings and Orders in which they agree to be retroactively bound by the terms thereof.

4. ORGANIZATION AND PROCEDURES

4.1 Meetings. The VLSG Members may authorize or direct actions under this Amended Site Agreement only at meetings duly held and called for such purpose, which meetings shall be called from time to time as determined necessary by the VLSG Members. Meetings of the VLSG Members may be called for any purpose at any time by any three VLSG Members or any Member or Members holding 40% or more of the voting shares under this Agreement. Meetings may be held by telephone conference.

4.2 **Notice of Meetings.** Written notice of the time, place and purpose of any meeting of the VLSG Members shall be given to each VLSG Member entitled to vote at such meeting. In addition, in the event a meeting is called on less than five (5) days written notice, the VLSG Members calling the meeting shall make a reasonable effort to provide notice in fact to every VLSG Member. "Reasonable Efforts" may include, but ar not limited to, fax, phone or e-mail notification of the date, time, location and subject matter of such meeting.

4.3 **Voting.** Except as specifically stated otherwise in paragraph (d) below, each VLSG Member shall have a vote ("Voting Power") as follows:

(a) Each VLSG Member shall have a vote weighted in accordance with the VLSG Member's obligation to fund the activities contemplated under this Amended Site Agreement;

(b) No VLSG Member may vote unless that VLSG Member has paid all financial contributions assessed, due and owing as of the last assessment made pursuant to this Amended Site Agreement prior to such meeting. Any VLSG Member having an assessment due and owing that remains unpaid at the time of the meeting may not vote until such time as the VLSG Member makes payment of the full assessment and any penalties; and

(c) Unless otherwise specified herein, all issues shall be decided by a majority of the voting power of the VLSG Members as defined in this Section.

(d) Peerless Transportation Co. shall have no vote.

4.4 **Voting by Proxy.** A VLSG Member eligible to vote at a meeting may assign in writing its vote to another VLSG Member eligible to vote at the meeting.

4.5 **Enumerated Powers of the VLSG Members.** The powers, duties and responsibilities of the VLSG Members shall include, not to the exclusion of other powers, duties, and responsibilities enumerated in this Amended Site Agreement, the following:

(a) The VLSG Members shall negotiate with the OEPA, the U.S. EPA and/or any other governmental entity having jurisdiction regarding this Site and other persons with respect to all matters relating to the Amended Site Agreement and the FFO;

(b) The VLSG Members shall determine when a VLSG Member is in default of its obligations under this Amended Site Agreement;

(c) The VLSG Members shall review and, as appropriate, approve invoices and bills for payment,

(d) The VLSG Members shall enter into contracts to achieve the purposes of this Amended Site Agreement and the FFO;

(e) The VLSG Members shall direct the preparation of invoices to the Members in accordance with the provisions of Section 5 hereto.

(f) The VLSG Members shall direct the litigation in accordance with the provisions of Section 6 hereto.

The VLSG Members may direct that subcommittees of VLSG Members or other persons to carry out or perform any activities which the VLSG Members may perform themselves.

4.6 **Separate Counsel.** Each VLSG Member reserves the right to select and retain its own counsel to represent such VLSG Member on any matter. All costs of such counsel shall be borne by the individual VLSG Member and shall not be Costs paid by the VLSG Members.

4.7 **Providing Members with Information.** Upon request from any VLSG Member, the VLSG Members shall make available to that VLSG Member any reports submitted to or by the VLSG Members in connection with the performance of the VLSG Members' obligations under this Amended Site Agreement or the FFO.

5. FUNDING OF OBLIGATIONS UNDER THIS AMENDED SITE AGREEMENT

5.1 **Original Members Allocation for Limited Purpose.** As among the Original Members, the funding of work to be performed pursuant to the Valleycrest Site Agreement, this Amended Site Agreement and the FFO, or "Costs" as defined in Subsection 1.3, shall be accomplished in accordance with the provisions of this Section. The Original Members acknowledge that as among the Original Members, the allocation provided for herein is only for the purposes of funding the Costs incurred pursuant to the FFO, the Valleycrest Site Agreement and this Amended Site Agreement, and the Original Members expressly reserve the right to assert a different allocation among the Original Members for funding of any other work which has been or will be performed in association with the Site or other liability, if

any, beyond the FFO, the Valleycrest Site Agreement and this Amended Site Agreement. The Original Members agree that any amounts paid by any Original Member pursuant to the FFO, the Valleycrest Site Agreement and the Amended Valleycrest Site Agreement shall be considered in any future allocation for funding of any other work or liability in association with the Site, such that, at a minimum, the amounts paid by each Original Member shall be credited against such Original Member's share pursuant to a final allocation of the costs of work performed at the Site or any other liability. The Original Members further agree that the funding shall be modified in accordance with the procedure set forth in Section 5.2(c)(ii) and Section 6 hereto.

5.2 Allocation for New Members.

(a) The New Members agree to be retroactively bound by the FFO, and the Amended Valleycrest Site Agreement. Accordingly, the New Members agree to pay The New Members' Share of past Costs incurred by Original Members pursuant to the FFOs and the Valleycrest Site Agreement within thirty days of the execution of this Agreement. The amount of said past Costs and The New Members' Share thereof is set forth in Exhibit C.

(b) The New Members further agree to pay The New Members' Share as shown in Exhibit C for any future Costs incurred at the Site pursuant to the FFOs, the Valleycrest Site Agreement and this Amended Site Agreement.

(c) In the future,

(i) If one, some or all of the original VLSG Members enter(s) into an agreement to do additional work beyond that required by the FFO, (hereinafter "Additional Work Participating Original VLSG Member") including but not limited to, RD/RA work and any implementation of a remedy at the Site, and/or any additional removal action with (A) the Ohio EPA, (B) the U.S. EPA, (C) any other federal, state, or local government or government agency, (D) any other corporation, partnership, person, association, or entity, or (E) any combination of said agencies, corporations, partnerships, persons, or entities, or enter into an agreement to jointly defend against, settle, and/or satisfy any claims emanating from this Site **and** if, excluding the voting interest(s) of any New Member(s) that might be a party to such agreement, the Additional Work Participating Original VLSG

Member(s) possess(es) a majority voting interest under such future agreement (i.e., if the Additional Work Participating Original VLSG Member(s) excluding New Members, possess a majority voting interest under such future agreement), then the Additional Work Participating Original VLSG Members and the New Members agree that the New Members shall be liable for the costs of such additional work or of defending against, settling, and/or satisfying such claims in the amount of the New Members currently agreed upon percentage share as set forth in Exhibit C and without any adjustment except as specifically stated herein.

(ii) If one, some or all of the VLSG Members enter(s) into an agreement to do additional work beyond that required by the FFO, including but not limited to, RD/RA work and any implementation of a remedy at the Site and/or any additional removal action with (A) the Ohio EPA, (B) the U.S. EPA, (C) any other federal, state, or local government or government agency, (D) any other corporation, partnership, person, association, or entity, or enter into an agreement to jointly defend against, settle, and/or satisfy any claims emanating from this Site or (E) any combination of said agencies, corporations, partnerships, persons, or entities, **and** if for any reason, excluding the voting interest(s) of any New Member(s) that might be a party to such an agreement, the Additional Work Participating Original VLSG Member(s) do not possess a majority voting interest under such future agreement (i.e., if for any reason the Original Members do not possess a majority voting interest under such future agreement), then the Additional Work Participating Original VLSG Members and the Original Members agree that the New Members liability share for such additional work or of defending against, settling, and/or satisfying such claims shall be negotiated in good faith and agreed to at the time that such future agreement is executed. Under the provisions of this section, any participating VLSG member agrees that any amounts paid by such VLSG member pursuant to the FFO, the Valleycrest Site Agreement and the Amended Valleycrest Site Agreement shall be considered in any future allocation for funding of any other work or liability in association with the Site under this section, such that, at a minimum, the amounts paid by

any such VLSG Member shall be credited against such VLSG Member's share pursuant to a final allocation of the costs of work performed at the Site or any other liability pursuant to this Section.

5.3 **Obligations Of The Members.** The VLSG Members shall be severally liable for their respective percentage of Costs as set forth in Appendix A hereto. The Original Members have established an Escrow Account to receive and hold monies from the VLSG Members in accordance with their obligations. The VLSG Members shall approve assessments which shall represent their payment of Costs accrued pursuant to this Amended Site Agreement, and issue additional invoices to the individual VLSG Members as necessary to assure that the Escrow Account always has sufficient funds in it to finance the work that is scheduled to be performed within the next ninety (90) days.

5.4 **Obligation of Peerless Transportation Co.** Peerless Transportation Co. ("Peerless") has paid twenty-thousand dollars ($20,000.00) into the Escrow Account established under subsection 5.3. It is agreed that this $20,000 payment by Peerless shall accrue solely to the benefit of the Original Members. In addition, Peerless agrees to cooperate with the VLSG Members to provide such information to the VLSG Members as the VLSG Members deem appropriate to assist the Original Members in the identification of additional PRPs and/or to identify information regarding any PRPs' nexus with the Site by, without limitation, providing access to business records and documents, and providing acccess to present and past employees who might have information relevant to any PRP or any PRP's nexus to the Site.

5.5 **Late Payments.** Each VLSG Member shall have no less than thirty (30) nor more than 60 days to make timely payment of any invoice or other obligation hereunder. The VLSG Members may declare in default any VLSG Member that has failed or refused to make timely payment of any invoice or other obligation hereunder. In addition, in the event a VLSG Member fails or refuses to make timely payment of any obligation hereunder (including any amount due upon default), such VLSG Member shall be liable for interest on the amount due at a rate of 12 % per annum, compounded monthly, with said interest being due on the first day after said payment is due, and on each monthly anniversary thereafter.

5.6 **Enforcement of the Amended Site Agreement.** In the event that the VLSG Member(s) deem it appropriate to initiate action, including but not limited to litigation, to enforce a VLSG Member's obligations under this Amended Site Agreement, and the position of the enforcing VLSG Member(s) is substantially sustained, the defaulting VLSG Member shall indemnify and hold harmless the enforcing VLSG Member(s) for any and all costs, fees or expenses, including without limitation, attorneys fees and court costs, which the enforcing VLSG Members might incur in pursuing such action.

5.7 **Accounting for Funds.** On at least an annual basis, the VLSG Members shall prepare or shall cause to be prepared an accounting of monies received into the Escrow Account, spent and obligated. Upon the termination of this Amended Site Agreement, the VLSG Members shall prepare or shall cause to be prepared a final accounting statement..

5.8 **Purpose of Funds.** All monies provided by the VLSG Members pursuant to this Amended Site Agreement shall be used solely for the purposes of the Valleycrest Site Agreement and this Amended Site Agreement and shall not be considered as payment for any fines, penalties, or monetary sanctions.

6. ASSIGNMENT OF CLAIMS AND LITIGATION BY MEMBERS AGAINST OTHER PRPS

6.1 **Assignment Of Claims Against Other Generators.** Excepted as stated herein, the New Members (individually) hereby assign to the Original Members (individually and collectively) all rights, claims or causes of action arising from the incurrence of response costs, pursuant to the FFO, the Valleycrest Site Agreement and this Amended Site Agreement, including without limitation, claims or causes of action for contribution against any third party who is potentially responsible for response costs at the Site as a generator of hazardous substances disposed of at the Site, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3) (hereinafter "Generator PRPs"). It is further agreed that whether or not the Original Members are alleged to be liable for response costs at the Site on a basis other than as a Generator PRP, they shall be treated as a Generator PRP for all purposes under this Section 6. In addition, it is specifically agreed that any governmental PRP, whether it is allegedly liable as a Generator PRP and/or as a "Transporter" under Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4), or any other basis, shall be treated as a Generator PRP for all purposes under this Section 6. In addition, it is specifically agreed that Peerless shall be treated as a transporter and operator PRP for all purposes under this Section 6. Notwithstanding the above, each VLSG Member shall retain whatever rights, claims or causes of action it may have with respect to its own insurance coverage or claims for contractual indemnity, whether by way of insurance contract or other contract. No such retained insurance or contractual indemnity claim shall in any way impair the ability of the VLSG Members from pursuing whatever rights, claims or causes of action the Members may have against entities not parties to this Amended Site Agreement other than the insurers of the VLSG Members. However, nothing contained herein shall preclude any VLSG member from pursuing whatever rights, claims or causes of action the Member may have against its own insurer or co-insurer, irrespective of whether that insurer is also the insurer or co-insurer for a different VLSG Member as well. The assignment hereunder shall not be affected by any VLSG Member's choice to opt out of any litigation under subsection 6.2 of this Amended Site Agreement.

6.2 Litigation Against Other Generator PRPs. Except as specifically stated otherwise, the Original Members may originate, pursue, or settle any litigation or claim they deem appropriate to preserve or defend any and all rights, claims or causes of action that the Original Members may have against any third-party Generator PRP, including without limitation, claims for response costs or contribution. The cost of any such action brought by the Original Members against third-party Generator PRPs shall be shared costs as among the Original Members only. The New Members shall not share in any costs incurred by the Original Members in pursuing the third-party Generator PRP costs, nor shall they obtain any of the proceeds derived therefrom. Any Original Member may at its sole discretion choose not to participate in any action to pursue any third-party Generator PRP, and, in such instance, shall not be obligated to fund any costs associated with such action or entitled to share in any proceeds derived therefrom. In the event that any Original Member chooses not to participate in such Generator PRP action, the remaining Original Members may, but need not, arrive at a separate agreement with such an opted-out Original Member regarding such an Original Member's participation in the litigation and the costs and benefits thereof.

6.3 Assignment Of Claims Against Other Owner/Operator/Transporter PRPs. The Original Members (individually) hereby assign to the New Members (individually and collectively) all rights, claims or causes of action arising from the incurrence of response costs, pursuant to the FFO, the Site Agreement and this Amended Site Agreement, including without limitation claims or causes of action for contribution, as against any third-party who is potentially responsible for response costs at the site as an owner or operator of the Site or as a transporter of hazardous substances to the Site, pursuant to Sections 107(a)(1), (a)(2), and (a)(4) respectively, of CERCLA, 42 U.S.C. §§9607(a)(1), (a)(2), and (a)(4) (hereinafter "Owner/Operator/Transporter PRPs"). It is further agreed that whether or not the New Members are allegedly Generator PRPs as well as Owner/Operator/Transporter PRPs, the New Members will be treated as Owner/Operator/Transporter PRPs for all purposes under this Section 6. Notwithstanding the above, each VLSG Member shall retain whatever rights, claims or causes of action it may have with respect to its own insurance coverage or claims for contractual indemnity, whether by way of insurance contract or other contract. No such retained insurance or contractual indemnity claim shall in any way impair the ability of the VLSG Members, from pursuing whatever rights, claims or causes of action the VLSG Members may have against entities not parties to this Amended Site Agreement other than the insurers of the VLSG Members. However, nothing contained herein shall preclude any VLSG member from pursuing whatever rights, claims or causes of action the Member may have against its own insurer or co-insurer, irrespective of whether that insurer is also the insurer or co-insurer for a different VLSG Member as well. The assignment hereunder shall not be affected by any VLSG Member's choice to opt out of any litigation under subsection 6.4 of this Amended Site Agreement. In addition, this provision shall apply only to Danis, Waste Management and its subsidiaries and affiliate companies as of the date of execution of this Amended VLSG Site Agreement and their successors and assigns but shall not apply

to any company acquired or obtained in any fashion by Danis or Waste Management after the execution date hereof.

6.4 Litigation Against Other Owner/Operator/Transporter PRPs. The New Members may originate, pursue, or settle any litigation or claim they deem appropriate to preserve or defend any and all rights, claims or causes of action that the New Members may have against any other third-party Owner/Operator/Transporter PRP, including without limitation, claims for response costs or contribution. The cost of any such action brought by the New Members against such third-party Owner/Operator/Transporter PRPs shall be shared costs as among the New Members only. The Original Members shall not share in the third-party Owner/Operator/Transporter PRP costs, nor shall they obtain any of the benefits derived therefrom. Any New Member may at its sole discretion choose not to participate in any such Owner/Operator/Transporter PRP action, and, in such instance, shall not be obligated to fund any costs associated with such action or share in the proceeds derived therefrom.

6.5 Except as otherwise specifically stated in paragraph 6, if a third-party PRP is determined to be a Generator PRP and a Owner, Operator, and/or Transporter PRP at this Site, the parties hereto shall agree on an appropriate allocation of responsibility as to each category under Subsections 6.1 and 6.3

To the extent applicable, the provisions of paragraph 5(2)(c) shall apply to the rights created in paragraphs 6.3, 6.4 and 6.5.

6.6 Assignment Of Claims Against Others. The Original and New Members (individually) hereby assign to the VLSG Members (collectively) all rights, claims or causes of action arising from this Amended Site Agreement or the FFOs or associated with the incurrence of response costs related to the Site, including without limitation, claims or causes of action for contribution as modified in this Section 6; except that each VLSG Member shall retain whatever rights, claims or causes of action it may have with respect to its own insurance coverage or claims for contractual indemnity, whether by way of insurance contract or other contract. No such retained insurance or contractual indemnity claim shall in any way impair the ability of the VLSG Members to pursue whatever rights, claims or causes of action the VLSG Members may have against entities not parties to this Amended Site Agreement other than the insurers of the VLSG Members However, nothing contained herein shall preclude any VLSG member from pursuing whatever rights, claims or causes of action the Member may have against its own insurer or co-insurer, irrespective of whether that insurer is also the insurer or co-insurer for a different VLSG Member as well. The assignment hereunder shall not be affected by any member's choice to opt-out of any litigation under Subsection 6.7.

6.7 Litigation Against Other Persons. The VLSG Members may initiate, pursue, or settle any litigation or claim they deem appropriate to preserve, assert or defend any and all rights without limitation, claims for response costs or contribution against entities not parties to this Amended Site Agreement, except as stated otherwise in Section 6 herein, or to enforce the obligations of a VLSG Member under this Amended Site Agreement. The cost of any such action by the VLSG Members shall be Costs as provided in Subsection 1.3 except as otherwise stated herein. Any VLSG Member may, at its sole option and in its sole discretion, choose not to participate in any such action and, in such instance, shall not be obligated to fund any Costs associated with such action or entitled to share in any of the proceeds derived therefrom. In the event that any VLSG Member chooses not to participate in such action, the remaining VLSG Members may, but need not, arrive at a separate agreement with such opt-out VLSG Member regarding such VLSG Member's participation in the litigation and the costs and benefits thereof.

6.8 It is specifically agreed by each VLSG Member that it will cooperate with the other VLSG Members in regard to providing information including, but not limited to, documents and witnesses in regard to identifying, investigating and pursuing any potentially responsible party at this Site, irrespective of whether or not such VLSG Member will share in the proceeds derived from the pursuit of such PRPs under Paragraph 6.

6.9 Waiver of Conflict of Interest. In the event that the VLSG Members collectively determined that it would be in their interest to retain common counsel to initiate and pursue litigation as provided in Section 6 hereto, each VLSG Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of an Original Member or New Member, said counsel has a conflict of interest in performing legal services authorized by the VLSG Members and consistent with the individual VLSG Member's powers, duties and responsibilities; (2) it will not claim or assert that, based solely on said counsel's representation of the VLSG Members under the terms of the FFO, the Valleycrest Site Agreement, and this Amended Site Agreement, said counsel has a conflict of interest in connection with any representation of any other person or entity in a matter pending as of the date of receiving notice of intent to hire said counsel; (3) it will not claim or assert that, based solely on said counsel's representation of the VLSG Members under the terms of the Valleycrest Site Agreement or this Amended Site Agreement, said counsel has a conflict of interest in any future representation of any person or entity, including representation of the VLSG Members in litigation, against a VLSG Member to enforce the provisions of the Valleycrest Site Agreement and this Amended Site Agreement or in a subsequent action to recover costs or pursue claims for contribution; (4) in the event that any conflict develops in the performance of work authorized by the VLSG Members by said counsel and the legal services authorized by any VLSG Member that has retained that counsel, the VLSG Member consents to that counsel's continued performance of the work authorized by the VLSG Members.

7. CONFIDENTIALITY

7.1 Shared Information. From time to time, the VLSG Members may elect to disclose or transmit to each other, directly or through counsel, such information as each VLSG Member, counsel or technical consultant retained by the VLSG deems appropriate for the sole and limited purpose of coordinating activities that are necessary and proper to carry out the purposes of this Amended Site Agreement. Shared information may be disclosed to or transferred among the VLSG Members orally or in writing or by any other appropriate means of communication. The VLSG Members intend that no claim of attorney-client privilege, work product privilege or other privilege or immunity be waived by reason of participation or cooperation pursuant to this Amended Site Agreement.

7.2 Preservation of Privilege. Information disclosed by the VLSG Members to counsel may be disclosed to any other VLSG Member, and each VLSG Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of effectuating the purposes of this Amended Site Agreement. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege,

7.3 Confidentiality of Shared Information.

(a) Each VLSG Member agrees that all shared information received from any other VLSG Member or its counsel or technical consultant pursuant to the Valleycrest Site Agreement or this Amended Site Agreement shall be held in strict confidence by the receiving VLSG Member and by all persons to whom confidential information is revealed by the receiving VLSG Member pursuant to the Valleycrest Site Agreement or this Amended Site Agreement, and that such information shall be used only in connection with conducting such activities as are necessary and proper to carry out the purposes of this Amended Site Agreement. In addition, VLSG Members may also disclose shared information to insurers, to the extent requested by insurers and required under the terms of the insurance contract and so long as the insurers agree to maintain the confidentiality of the information in conformance with the provisions of this Amended Site Agreement. In addition, VLSG Members may also disclose shared information to auditors or other accounting personnel to the extent such disclosure is necessary and appropriate for the VLSG Members and the auditor or other accounting personnel to satisfy obligations of the Securities and Exchange Commission.

(b) Shared information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential" or with a similar legend. If such information becomes the subject of an administrative or judicial order requiring disclosure by a VLSG Member of such information in a manner that will render the confidentiality of the information unprotected, the VLSG Member may satisfy its confidentiality obligations hereunder by notifying the VLSG Member that generated the information or, if the information was generated by a technical consultant, by giving notice to said consultant and to the other VLSG Members.

(c) Each VLSG Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any shared information or who participates in work on common projects or who otherwise assists any counsel or technical consultant in connection with this Amended Site Agreement is familiar with the terms of this Amended Site Agreement and complies with such terms as they relate to the duties of such person.

(d) The VLSG Members intend by this Section to protect from disclosure all confidential information and documents shared among any VLSG Members or between any VLSG Member and counsel or any technical consultant to the greatest extent permitted by law regardless of whether the sharing occurred before execution of this Amended Site Agreement and regardless of whether the writing or document is marked "Confidential."

(e) The confidentiality obligations of the VLSG Members under this Section shall remain in full force and effect, without regard to whether actions arising out of the Site are terminated by final judgment, and shall survive the termination of this Amended Site Agreement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Amended Site Agreement, or which is sought and obtained from a VLSG Member pursuant to applicable discovery procedures and not otherwise, protected from disclosure.

8. DENIAL OF LIABILITY.

The original Site Agreement, this Amended Site Agreement and the FFOs shall not constitute, be interpreted, construed or used by any VLSG Members or by any other person

not a VLSG Member as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any VLSG Member. However, nothing in this Section is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Amended Site Agreement against any party to this Amended Site Agreement.

9. INSURANCE

The VLSG Members do not intend hereby to make any agreement that will prejudice any VLSG Member with respect to its insurers and, by entering into this Amended Site Agreement, anticipate that the actions taken pursuant to this Amended Site Agreement will benefit such insurers.

10. SUCCESSORS AND ASSIGNS.

This Amended Site Agreement shall be binding upon the successors and assigns of the VLSG Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning VLSG Member without the prior written consent of the other VLSG Members.

11. ADVICE OF COUNSEL

Each VLSG Member represents that it has sought and obtained the legal advice it deems necessary prior to entering into this Amended Site Agreement.

12. NOTICE.

All notices, bills, invoices, reports, and other communications with a VLSG Member shall be sent to the representative designated by the VLSG Member on said VLSG Member's Valleycrest Landfill Site Participation Amended Site Agreement Signatory Page. Each VLSG Member shall have the right to change its representative upon submission of written notice to the other VLSG Members.

13. EFFECTIVE DATE.

The effective date of this Amended Site Agreement shall be the same as the effective date of the FFO.

14. TERMINATION

Except as stated otherwise herein, this Amended Site Agreement shall terminate and have no further effect upon completion of all obligations of the VLSG Members pursuant to the FFO or such other time as a Court may establish.

15. AMENDMENTS

This Amended Site Agreement may be further amended only by a vote of at least two-thirds of the Voting Power of the VLSG Members at a meeting called for the purpose of considering such an amendment. Such amendment must be in writing. However, Section 3, and 6 and Subsections 4.3, 5.1, 5.2, 5.3, 5.4, and 22 of this Amended Site Agreement may be further amended only by a unanimous vote of 100% of the Voting Power of the VLSG Members.

16. ADDITIONAL MEMBERS.

The VLSG Members may approve the entry into this Amended Site Agreement of additional entities as VLSG Members after the effective date of the Amended Site Agreement. The terms and conditions of participation of such additional entities shall be determined by the VLSG Members.

17. SEPARABILITY.

If any provision of this Amended Site Agreement is deemed invalid or unenforceable, the balance of this Amended Site Agreement shall remain in full force and effect.

18. ENTIRE AGREEMENT.

This Amended Site Agreement constitutes the entire agreement and understanding of the VLSG Members with respect to its subject matter and no modification shall be effective unless it is in writing executed by an authorized representative of each VLSG Member.

19. APPLICABLE LAW.

For purposes of enforcement or interpretation of this Amended Site Agreement, the members agree that the laws of the State of Ohio shall be applicable, and further agree not to contest personal jurisdiction in any State or Federal Court in Ohio with respect to litigation brought to enforce or interpret this Amended Site Agreement.

20. SEPARATE DOCUMENTS.

This Amended Site Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. NO THIRD PARTY BENEFICIARIES.

This Amended Site Agreement is made solely for the benefit of the parties hereto. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies under or by reason of this Amended Site Agreement.

22. COVENANT NOT TO SUE.

In consideration of the mutual undertakings in this Agreement, each VLSG Member covenants not to sue the other VLSG Members or their officers, directors, shareholders, subsidiaries, affiliates, employees or agents with respect to any claims relating to matters covered by this Amended Site Agreement only except for (a) any claims relating to the enforcement of this Amended Site Agreement or (b) any claims among the VLSG Members expressly reserved pursuant to the FFOs and/or this Amended Site Agreement. The VLSG Members expressly reserve the right, jointly and severally, to take such actions as may be necessary to collect or compel the payment by any other VLSG Member of any amounts due and payable pursuant to this Amended Site Agreement. Until this Amended site Agreement is amended to provide otherwise, the VLSG Members expressly reserve, jointly and severally, all claims or causes of action among the VLSG Members that are outside the scope of the covenant not to sue in this Paragraph 22. In addition, this provision shall apply only to Danis, Waste Management and its subsidiaries and affiliate companiesas of the date of execution of this Amended VLSG Site Agreement and their successors and assigns but shall not apply to any company acquired or obtained in any fashion by Danis or Waste Management after the execution date hereof. It is specifically understood that Danis and Waste Management are not waiving any claims they now have or may have in the future against Peerless for any matters not covered by the January 12, 1995 VLSG Site Participation Agreement.

IN WITNESS WHEREOF, the VLSG Members hereto, which may be by and through their appointed counsel, enter into this Amended Site Agreement by execution of the Valleycrest Landfill Site Participation Amended Site Agreement Signatory Page. Each person signing the Valleycrest Landfill Site Participation Amended Site Agreement Signatory Page represents and warrants that he or she has been duly authorized to enter into this Amended Site Agreement by the company or entity on whose behalf it is indicated that the person is signing. Each VLSG Member shall signify its consent and intent to enter into

this Amended Site Agreement by delivery of a completed and signed "Valleycrest Landfill Site Participation Amended Site Agreement Signatory Page" to:

Vincent B. Stamp
Dinsmore & Shohl
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202

Appendix A

Participant	% Share
DanisWMX	46
Inland	13.932
Delco	6.966
Frigedaire	1.728
Cargill	6.966
Dayton Walther	6.966
NCR	6.966
Standard Register	6.966
Duriron	3.483

VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

Danis Industries Corporation hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: May 22, 1998

Member: Danis Industries Corporation

Signature: Gregory L. McCann

Name: Gregory L. McCann

Title: Senior Vice President, General Counsel and Secretary

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Gregory L. McCann

Title: Senior Vice President, General Counsel and Secretary

Address: P.O. Box 725, Dayton, OH 45401-0725

Telephone: (937) 220-4904

Facsimile: (937) 228-1194

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VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

FLOWSERVE CORPORATION
(FORMERLY DURIRON) hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: MAY 22, 1998

Member: FLOWSERVE CORPORATION (THE DURIRON CO., INC.)

Signature: Robert L. Roberts

Name: ROBERT L. ROBERTS JR.
Associate General Counsel
Flowserve Corporation

Title:

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: ROBERT L. ROBERTS JR.
Associate General Counsel
Flowserve Corporation

Title:

Address: 222 LBJ (CENTRAL) BLVD., SUITE 1500
IRVING, TX 75039

Telephone: (972) 443-6537

Facsimile: (972) 443-6537

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VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

The Standard Register Company (Member) hereby enters into and shall participate in the Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: May 27, 1998

Member: The Standard Register Company

Signature: [signature]

Name: Peter S. Redding

Title: President and Chief Executive Officer

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Kathryn A. Lamme

Title: Corporate Vice President, Secretary and Deputy General Counsel

Address: 600 Albany Street, Dayton OH 45408

Telephone: (937) 443-1540

Facsimile: (937) 443-3431

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VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

Cargill, Incorporated (Member) hereby enters into and shall participate in the Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: June 10, 1998

Member: Cargill, Incorporated

Signature: LaRaye M. Osborne

Name: LaRaye M. Osborne

Title: Senior Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: LaRaye M. Osborne

Title: Senior Attorney

Address: 15407 McGinty Road West, Law/24

Wayzata, MN 55391

Telephone: (612) 742-6374

Facsimile: (612) 742-6349

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VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

General Motors Corporation hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: June 15, 1998

Member: General Motors Corporation

Signature: Don A. Schiemann

Name: Don A. Schiemann

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Don A. Schiemann

Title: Attorney

Address: Legal Staff
General Motors Building
MC: 482-112-149
3044 W. Grand Blvd.
Detroit, MI 48202

Telephone: (313) 556-2175

Facsimile: (313) 974-5467

VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

NCR Corporation hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: June 5, 1998

Member: NCR Corporation

Signature: Paul M. Samson

Name: Paul M. Samson

Title: Senior Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Paul M. Samson

Title: Senior Attorney

Address: 101 W. Schantz Avenue, ECD2
Dayton, OH 45479

Telephone: 937.445.2908

Facsimile: 937.445.1933

VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

Dayton Walther / Kelley Hayes hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: 6.12.98

Member: Dayton Walther n/k/a Kelley Hayes

Signature: Susan C. Nystrom

Name: Susan C. Nystrom

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Susan C. Nystrom

Title: Attorney & Counselor

Address: 6339 Cherbourg Dr.
Indianapolis IN 46220

Telephone: 317. 254. 0297

Facsimile: 317. 254. 0298

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VALLEYCREST LANDFILL SITE
PARTICIPATION AMENDED SITE AGREEMENT SIGNATORY PAGE

Waste Management hereby enters into and shall participate in the
(Member)
Valleycrest Landfill Site Participation Amended Site Agreement:

Dated: 5/21/98

Member: Waste Management (as defined on page 1 herein

Signature: Kate Moerth

Name: Kate Moerth

Title: Litigation Counsel

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Waste Management, Inc.

Title: General Counsel

Address: 3003 Butterfield Rd
Oak Brook IL 60523

Telephone: 630-572-8800

Facsimile: 630-572-9130

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EXHIBIT A
Governmental Entity Agreement

VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT

This Valleycrest Landfill Site Governmental Entity Participation Agreement ("Agreement") is entered between and among: (1) the parties to the Valleycrest Landfill Site Participation Agreement ("Original Members"); (2) Waste Management Inc., Waste Management of Ohio, Inc., SCA Services of Ohio, Inc., and Danis Industries Corporation ("New Members"); and (3) Montgomery County, Ohio and the Montgomery County Solid Waste Management District and the members thereof, as set forth in Exhibit A ("Governmental Entity Members"). The Original Members, New Members and Governmental Entity Members shall be collectively referred to as the Valleycrest Landfill Site Group ("VLSG") or VLSG Members.

WHEREAS, many additional companies and individuals are Potentially Responsible Parties ("PRPs") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), for conditions at the Valleycrest Landfill Site in Dayton, Ohio ("Site"), as described in the Ohio Environmental Protection Agency's ("Ohio EPA") January 31, 1995 Final Findings and Orders ("FFO") concerning the Site (attached hereto as Exhibit B);

WHEREAS, the parties desire to avoid litigation with the United States, the State of Ohio, and among themselves, and therefore enter this Agreement to fund performance of certain necessary work at the Site;

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site the Original Members jointly agreed to the FFO for the purpose of conducting a Remedial Investigation and Feasibility Study ("RI/FS") for the Site;

WHEREAS, on or about January 12, 1995 the Original Members jointly entered into the Valleycrest Landfill Site Participation Agreement to establish a framework for complying with the terms of the FFO, and to cooperate among themselves in that effort;

WHEREAS, on or about May 22, 1998 the Original Members and New Members entered into the First Amended Valleycrest Landfill Site Participation Agreement, pursuant to which the New Members were added to the VLSG; and

WHEREAS, the VLSG Members, or certain of them, may determine that it is in their interest to initiate litigation against some or all of the PRPs that are not VLSG Members with the goal of arriving at an equitable allocation of the necessary costs of response which shall be incurred to comply with the FFO and conduct any other necessary and agreed upon response activities in conformance with the requirements of the National Contingency Plan ("NCP");

NOW THEREFORE, in consideration of the foregoing and the promises and covenants contained herein, the VLSG Members mutually agree as follows:

1. DEFINITIONS

1.1 The term "Valleycrest Site Agreement" shall mean the agreement entered into on or about January 12, 1995, a copy of which is attached hereto as Exhibit C.

1.2 The term "First Amended Valleycrest Site Agreement" shall mean the agreement entered into on or about May 22, 1998, a copy of which is attached hereto as Exhibit D.

1.3 The term "Costs" means all expenses incurred on and after January 12, 1995 to satisfy obligations pursuant to the FFO or to otherwise comply with the terms of the FFO, to implement the purposes of this Agreement, including without limitation implementing the RI/FS for the Site, to reimburse the Ohio EPA's past and future response costs and oversight costs in accordance with the FFO, and to reimburse related project management and administrative costs under this agreement, including attorneys fees of a similar nature, but excluding fees or expenses of attorneys or other persons which relate to litigation, efforts to search for and identify additional PRPs or efforts to add Members to the VLSG.

1.4 To the extent that other terms used in this Agreement are defined within the FFO, such terms shall have the same meaning herein.

2. VALLEYCREST LANDFILL SITE GROUP

The Original Members, New Members and Governmental Entity Members hereby organize and constitute themselves as the VLSG. Each entity whose authorized representative has executed this Agreement is a VLSG Member. Peerless Transportation Company shall be a VLSG Member, but shall have no vote (as provided in Subsection 4.3 hereof).

3. PURPOSE

3.1 General Purpose. This Agreement shall control: (a) the manner and means by which the VLSG Members will undertake to satisfy their obligations pursuant to the FFO and to otherwise comply with the terms of the FFO, including without limitation the implementation of the RI\FS and payment of Ohio EPA's past and future response costs and oversight costs; and (b) the manner in which the VLSG Members, or certain of them, will pursue through litigation or other means whatever such rights, claims and causes of action that the Original, New or Governmental Entity Members might have against other companies or individuals responsible or potentially responsible for conditions at the Site.

3.2 Financial Obligations and Assurances. Each VLSG Member warrants that it presently has, or has the ability to obtain in a timely manner, sufficient funds to satisfy its obligations under this Agreement, the Valleycrest Site Agreement on the First Amended Valleycrest Site Agreement (collectively "the Three Agreements"). Upon any VLSG Member's default of an obligation hereunder, such defaulting VLSG Member shall pay the full balance of its past unpaid obligations and any current unpaid obligations under this Agreement. Such payment upon default shall not terminate the VLSG Member's future obligations hereunder.

3.3 Bankruptcy. Each VLSG Member agrees that in the event of its bankruptcy all obligations under this Agreement shall be entitled to an administrative expense priority for all purposes under the United States Bankruptcy Code , and each VLSG Member further agrees that it shall not object in any bankruptcy proceeding to treatment of obligations under this Agreement as an administrative expense.

3.4 Fair Share. Each VLSG Member agrees that in any action brought to enforce its obligations under any of the Three Agreements it shall not contest the fairness of the underlying cost allocation or other provisions thereof.

3.5 Cooperation. The VLSG Members shall cooperate with each other to effectuate the purposes of this Agreement, shall attempt to make decisions by consensus, and shall attempt to resolve any disputes among themselves through good faith negotiation.

3.6 Amended FFO. The Governmental Entity Members agree to execute an amendment to the FFO, the effect of which will be to bind them to the terms of the FFO.

4. ORGANIZATION AND PROCEDURE

4.1 Meetings. The VLSG Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings shall be called from time to time as determined necessary by the VLSG Members. Any three VLSG Members or any Member or Members holding 40% or more of the voting shares under this Agreement may call such a meeting, which may be held by telephone conference. The Governmental Entity Members shall constitute a single VLSG Member for purposes of this Agreement.

4.2 Notice of Meetings. Written notice of the time, place and purpose of any meeting of the VLSG shall be given to each VLSG Member entitled to vote at such meeting. In addition, in the event a meeting is called on less than five (5) days written notice, the VLSG Member(s) calling the meeting shall make a reasonable effort to provide notice in fact to every VLSG Member. A "reasonable effort" may include, but is not limited to, facsimile, telephone or electronic-mail notification of the date, time, location and subject matter of such meeting.

4.3 Voting. Except as specifically stated otherwise in paragraph (d) of this Subsection 4.3, at VLSG meetings each VLSG Member shall have a vote as follows:

(a) Each VLSG Member shall have a vote weighted in accordance with the VLSG Member's percentage-based obligation to pay the Costs as defined in Subsection 1.3 hereof;

(b) A Member may not vote if it has a past due assessment hereunder or has failed to pay the interest due as a result of such a past due assessment.

(c) All matters brought before the VLSG for decision shall be decided by a majority vote of the VLSG Members, weighted in the manner specified in paragraph (a) of this Subsection 4.3.

(d) Peerless Transportation Company shall have no vote.

4.4 Voting by Proxy. A VLSG Member eligible to vote at a meeting may by written instrument assign its right to vote to another VLSG Member eligible to vote at the meeting.

4.5 Enumerated Powers of the VLSG Members. In addition to other powers, duties and responsibilities enumerated in this Agreement, the VLSG Members shall have authority to:

(a) Negotiate with the Ohio EPA, the U.S. Environmental Protection Agency ("U.S. EPA"), any other governmental entity having jurisdiction regarding the Site and other persons with respect to all matters relating to this Agreement and the FFO;

(b) Determine when a VLSG Member is in default of its obligations under any of the Three Agreements;

(c) Review and, as appropriate, approve payment of invoices and bills for services to the VLSG;

(d) Enter into contracts to achieve the purposes of this Agreement and the FFO;

(e) Prepare invoices to the VLSG Members in accordance with the provisions of Section 5 hereof; and

(f) Initiate and direct litigation in accordance with the provisions of Section 6 hereof.

The VLSG may establish subcommittees of VLSG Members to carry out or perform activities arising under this Agreement.

4.6 Separate Counsel. Each VLSG Member reserves the right to select and retain its own counsel to represent such VLSG Member in any matter. All fees and expenses of such counsel shall be borne by the individual VLSG Member and shall not be Costs paid by the VLSG Members.

4.7 Providing Members with Information. Upon the request of any VLSG Member, the VLSG shall make available to that Member any reports submitted to or by the VLSG Members in connection with the performance of the VLSG's obligations under any of the Three Agreements or the FFO.

5. FUNDING OBLIGATIONS

5.1 Governmental Entity Members. The Governmental Entity Members' liability for payment of the Costs is as follows:

(a) The Governmental Entity Members shall pay seven (7) percent of the Costs as defined in Subsection 1.3 of this Agreement, up to and not exceeding seven (7) percent of Costs in the amount of $4,000,000, such that the collective maximum liability of the Governmental Entity Members for the Costs shall not exceed $280,000. The Original Members and New Members expressly waive any right to seek Costs from the Governmental Entity Members in excess of $280,000 and will not contend in any legal proceeding that the liability of the Governmental Entity Members exceeds $280,000.

(b) The provisions of Subsection 5.1(a) are subject to the following additional terms and conditions:

(i) The allocation provided in Subsection 5.1(a) is only for the purpose of funding the Costs and does not address allocation of liability, if any, for other costs of response concerning the Site ("Future Costs"), including, but not limited to, costs of response incurred in complying with any U.S. EPA administrative order on consent or under 42 U.S.C. § 9606 regarding the Site (as used herein, the terms "response costs" and "costs of response" have the same meaning as in 42 U.S.C. §§ 9601(25) and 9607).

(ii) If after the date of this Agreement the percentage share of the Costs of one or more Original or New Members is reduced due to a reallocation of liability for the Costs, the Governmental Entity Members shall receive no credit or refund against amounts due or paid hereunder. By way of example only, if, after the date of this Agreement, liability for a share of the Costs is agreed to or imposed upon a PRP who as of such date was not a party to any of the Three Agreements, and as a result thereof the respective percentage share of the Costs of one or more Original or New Members is reduced, the

Governmental Entity Members' seven (7) percent share of the Costs (up to but not exceeding $280,000) shall not be diminished.

(iii) The parties expressly reserve the right to assert any positions they deem appropriate regarding allocation of liability for Future Costs to any party or other entity. By way of example, but not limitation, nothing in this Agreement shall prejudice any position the Governmental Entity Members may assert regarding: (A) application of U.S. EPA's Announcement and Publication of the Policy for Municipality and Municipal Solid Waste; CERCLA Settlements at NPL Co-Disposal Sites, 63 Fed. Reg. 8197 (Feb. 18, 1998) ("Municipal Settlement Policy") to determine the extent of their liability, if any, for Future Costs; or (B) the manner in which the Governmental Entity Members' payment of the Costs pursuant to the percentage-based allocation method otherwise provided herein should be credited if a unit cost-based allocation method, such as the method underlying the Municipal Settlement Policy, were applied to determine the Governmental Entity Members' liability, if any, for Future Costs; provided that the Governmental Entity Members' expressly waive application of the Municipal Settlement Policy to determine their share of the Costs, which is instead determined as specified in Subsection 5.1(a). By way of further example, but not limitation, nothing in this Agreement shall prejudice any position the Original Members or New Members may assert regarding the inapplicability of the Municipal Settlement Policy in determining the Governmental Entity Members' liability for costs of response or the manner in which the Governmental Entity Members' payments pursuant to the percentage-based allocation method provided herein would be credited in the event that the Governmental Entity Members' liability for Future Costs is determined using a unit cost-based allocation method.

(iv) The Original Members and New Members agree to use their best efforts to include in all future settlements with other PRPs a covenant not to sue the Governmental Entity Members for contribution due to the payment of Costs by such other PRPs.

(c) Within thirty (30) days of execution of this Agreement, the Governmental Entity Members agree to pay $132,536.00, which is the Governmental Entity Members' share of the Costs incurred from January 12, 1995 through November 21, 1997.

(d) With respect to Costs incurred after November 21, 1997 and prior to the effective date of this Agreement, the Governmental Entity Members shall pay their respective share within forty-five (45) days of receipt of a statement regarding such Costs.

(e) With respect to Costs incurred on and after the effective date of this Agreement, the Governmental Entity Members agree to pay their share thereof according to the scheduling provisions of this Agreement.

(f) The Governmental Entity Members agree that all amounts paid by any Original or New Member pursuant to the FFO, the Valleycrest Site Agreement or the First Amended Valleycrest Site Agreement shall be considered in any future allocation concerning costs of response at the Site, insofar as such allocation includes the Costs, such that the amounts paid by each Original and New Member pursuant to the FFO, the Valleycrest Site Agreement or the First Amended Valleycrest Site Agreement shall be credited against such Original or New Member's share pursuant to a final allocation of such costs of response.

5.2 Original Members and New Members. The Original Members and New Members shall be severally liable for their respective percentage shares of the Costs as set forth in Exhibit E.

5.3 Peerless Transportation Company ("Peerless"). Peerless has paid twenty-thousand dollars ($20,000) into the Escrow Account referred to in Subsection 5.4. It is agreed that this $20,000 payment by Peerless shall accrue solely to the benefit of the Original Members. In addition, Peerless agrees to cooperate by providing to the VLSG Members such information as they deem appropriate to assist the VLSG in the identification of additional PRPs and/or to identify information regarding any PRP's usage of, involvement with or other relationship to the Site. Such cooperation shall include, by way of example and without limitation, access to business records and documents and past and present employees.

5.4 Assessments. The Original Members have established an Escrow Account to receive and hold monies provided by the VLSG Members. The VLSG Members shall approve assessments which shall represent their respective obligations for payment of Costs pursuant to this Agreement and/or other agreements that apply variously to them and which taken together comprise the Three Agreements, and issue additional invoices to the individual VLSG Members as necessary to assure that the Escrow Account always has sufficient funds to finance the work that is scheduled to be performed during the next ninety (90) days under the FFO and the Three Agreements.

5.5 Late Payments. Except where otherwise specified, each VLSG Member has sixty (60) days to make timely payment of any invoice or other obligation hereunder. The VLSG Members may declare in default any VLSG Member that has failed or refused to make timely payment of any such invoice or other obligation. In addition, in the event a VLSG Member fails or refuses to make timely payment of any obligation hereunder (including any amount due upon default), such VLSG Member shall be liable for interest on the amount due at a rate of 12 % per annum, compounded monthly, with such interest being due on the first day after the payment is due, and on each monthly anniversary thereafter.

5.6 Enforcement. In the event that the VLSG deems it appropriate to initiate measures to enforce a VLSG Member's obligations under any of the Three Agreements, including but not limited to litigation, and the position of the VLSG is substantially sustained as a result of such enforcement measures, the defaulting VLSG Member shall indemnify the VLSG and hold it harmless for any and all costs, fees or expenses, including without limitation attorneys fees and court costs, which the VLSG Members might incur.

5.7 Accounting for Funds. On at least an annual basis, the VLSG shall prepare or cause to be prepared an accounting of monies the VLSG received, disbursed and obligated. Upon termination of this Agreement, the VLSG Members shall prepare or shall cause to be prepared a final accounting statement.

5.8 Purpose of Funds. All monies provided by the VLSG Members pursuant to the Three Agreements shall be used solely for the purposes thereof, and shall not be considered as payment of any fines, penalties or monetary sanctions.

6. ASSIGNMENT OF CLAIMS AND LITIGATION BY MEMBERS AGAINST OTHER PRPS

6.1 Assignment Of Claims Against Other PRPs. Except as stated herein, the Governmental Entity Members (individually) hereby assign to the other VLSG Members (individually and collectively) all rights, claims or causes of action arising from the incurrence of Costs pursuant to the Three Agreements and the FFO, including without limitation claims or causes of action for contribution against any third party who is potentially responsible for Costs at the Site, and that assignment, together with similar assignments under any of the Three Agreements, shall be deemed to have been made for the benefit of all VLSG Members so that all VLSG Members (individually and collectively) are the assignees of all such third-party claims of all VLSG Members. Notwithstanding the immediately preceding sentence, the Governmental Entity Members shall retain all rights, claims or causes of action they may have with respect to insurance coverage or contractual indemnity, as against any party other than a VLSG Member, whether by way of insurance contract or other contract, or for costs of response other than the Costs. The assignment hereunder shall not be affected by any VLSG Member's choice to opt out of any litigation under Subsection 6.2 of this Agreement.

6.2 Litigation Against Other PRPs. Except as specifically stated otherwise, the Original Members and New Members may, as they deem appropriate, originate, pursue, defend or settle any litigation or claim that they may have against any third-party PRP, including claims for Costs assigned under Subsection 6.1 above. The Governmental Entity Members shall not share in any expense incurred in connection with such litigation or claims, nor shall they obtain any of the proceeds derived therefrom.

6.3 VLSG Member Cooperation. Each VLSG Member agrees to cooperate with the other VLSG Members for the purpose of identifying, investigating and pursuing any PRP at the Site, including providing access to pertinent documents and witnesses, irrespective of whether such VLSG Member will share in the proceeds derived from the pursuit of such PRPs under Subsection 6.2.

6.4 Waiver of Conflict of Interest. In the event that the VLSG Members collectively determine that it would be in their interest to retain common counsel for matters arising under this Agreement, each VLSG Member agrees that it will not claim or assert, based solely on said counsel's past, present or future representation of the VLSG or any Original, New or Governmental Entity Member, that said counsel has a conflict of interest: (1) in performing legal services authorized by the VLSG; (2) in representation of any other person or entity in a matter pending as of the date of receiving notice of intent to hire said counsel; (3) in representation of the VLSG in litigation against a VLSG Member to enforce the provisions of any of the Three Agreements; or (4) in litigation to recover costs of response or pursue claims for contribution regarding the Site. In the event that any conflict develops in the performance of such common counsel's legal services for the VLSG and the legal services for which an individual VLSG Member has retained the same counsel, such VLSG Member consents to common counsel's continued performance of the work authorized by the VLSG.

7. CONFIDENTIALITY

7.1 Preservation of Privilege. The VLSG Members may jointly coordinate activities that are necessary and proper to carry out the purposes of this Agreement, including without limitation prosecution or defense of claims related to the Site (herein "Joint Efforts"). In connection with the Joint Efforts, the VLSG Members may conduct a mutual exchange of certain information, pool certain individual attorney work product as each VLSG Member may elect, and coordinate research, investigation and discovery. Each VLSG Member affirms that conversations, documents, interview memoranda, results of research or investigations, and compilations of data or documents, created or undertaken by the VLSG Members or their respective counsel in connection with the Joint Efforts are subject to the attorney/client, work product, joint defense, and other privileges. Each VLSG Member agrees that it will assert all such privileges in opposition to any discovery request propounded by any person or entity not a party to this Agreement, who seeks information that such VLSG Member has received or developed in the Joint Efforts.

7.2 Confidentiality of Shared Information. The following provisions apply to all shared information regardless of whether particular shared information is privileged from disclosure by the attorney/client, work product, joint defense or other privileges:

(a) Each VLSG Member agrees that all shared information received from any other VLSG Member or its counsel or technical consultant pursuant to any of the Three Agreements shall be held in strict confidence by the receiving VLSG Member and all persons to whom the receiving VLSG Member

reveals such confidential information, and that such information shall be used only in connection with activities necessary and proper to carry out the purposes of this Agreement. In addition, VLSG Members may disclose shared information to insurers to the extent requested by insurers and required under the terms of the applicable insurance contracts, provided that such insurers agree to maintain the confidentiality of the information in conformance with the provisions of this Agreement. In addition, VLSG Members may also disclose shared information to auditors or other accounting personnel as necessary to satisfy obligations arising under federal, state or local law.

(b) Shared information that is exchanged in written or document form and intended to be kept confidential may but need not be marked "Confidential" or with a similar legend. If such information becomes the subject of an administrative or judicial order requiring disclosure by a VLSG Member in a manner that will render the confidentiality of the information unprotected, the VLSG Member may satisfy its confidentiality obligations hereunder by providing timely notice of such order to the VLSG Member that generated the information or, if the information was generated by a technical consultant for the VLSG, by providing timely notice of the order to said consultant and the VLSG Members.

(c) Each VLSG Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any shared information, participates in work on common projects or otherwise assists any counsel or technical consultants in connection with matters arising under this Agreement, is familiar with the terms hereof and complies with such terms as they relate to the duties of such person.

(d) The VLSG Members intend by this Section to protect from disclosure all confidential information and documents shared among any VLSG Members, or between any VLSG Member and counsel or technical consultants, to the maximum extent permitted by law regardless of whether particular shared information was marked "Confidential" or was exchanged before execution of this Agreement.

(e) The confidentiality obligations of the VLSG Members under this Section shall remain in full force and effect and survive termination of this Agreement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Agreement, or which is sought and obtained from a VLSG Member pursuant to applicable discovery procedures and not otherwise protected from disclosure.

8. DENIAL OF LIABILITY

Nothing in the Three Agreements or the FFO shall constitute or be interpreted, construed or used by any VLSG Member or by any other person as evidence of an admission of liability, law or fact, waiver of any right or defense, or as an estoppel against any VLSG Member; provided that nothing in this Section is intended or should be construed to limit, bar or otherwise impede enforcement of any term or condition of any of the Three Agreements.

9. INSURANCE

Nothing herein is intended to prejudice any VLSG Member with respect to its insurers and the VLSG Members anticipate that the actions taken pursuant to the Three Agreements will benefit such insurers.

10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the successors and assigns of the VLSG Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning VLSG Member without the prior written consent of the other VLSG Members.

11. ADVICE OF COUNSEL

Each VLSG Member represents that it has sought and obtained the legal advice it deems necessary prior to entering this Agreement.

12. NOTICE

All notices, bills, invoices, reports and other communications with a VLSG Member shall be sent to the representative designated by the VLSG Member on said Member's signatory page. Each VLSG Member shall have the right to change its representative upon submission of written notice to the other VLSG Members.

13. EFFECTIVE DATE

This Agreement shall be effective as of December 21, 1998.

14. TERMINATION

Except as stated otherwise herein, this Agreement shall terminate and have no further effect upon completion of all obligations of the VLSG Members pursuant to the FFO.

15. AMENDMENTS

This Agreement may be amended only by a written instrument approved by an affirmative vote of at least two-thirds of the VLSG Members at a meeting called for the purpose of considering such an amendment; provided that no such amendment approved by less than a unanimous vote of all VLSG Members can result in the imposition of any obligation not otherwise provided for in this Agreement or the elimination of any right arising from or preserved by this Agreement; and further provided that Sections 3, 5, 6, 15 and 22 and Subsections 1.3 and 4.3 of this Agreement may be amended only by a written instrument executed by the authorized representative of each VLSG Member. .

16. ADDITIONAL MEMBERS

The VLSG Members may approve the entry into this Agreement of additional entities as VLSG Members after the effective date hereof. The terms and conditions of participation by such additional entities shall be determined by the VLSG Members.

17. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, the balance hereof shall remain in full force and effect.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the VLSG Members with respect to its subject matter and no modification shall be effective unless made in conformance with Section 15.

19. APPLICABLE LAW

For purposes of enforcement or interpretation of this Agreement, the VLSG Members agree that the laws of the State of Ohio shall be applicable, and further agree not to contest personal jurisdiction in any state or federal court in Ohio with respect to litigation brought to enforce or interpret this Agreement.

20. EXECUTED IN COUNTERPARTS

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

21. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the parties hereto. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give any rights or remedies to any person or entity other than the parties hereto.

22. COVENANT NOT TO SUE

In consideration of the mutual undertakings in this Agreement, and subject to the exceptions set forth below, each VLSG Member covenants not to sue the other VLSG Members or their officers, directors, shareholders, subsidiaries, affiliates, employees or agents with respect to any claims relating to matters covered by this Agreement. The foregoing covenant does not apply to: (a) any claims relating to the enforcement of this Agreement, and the VLSG Members expressly reserve the right, jointly and severally, to take such actions as may be necessary to collect or compel the payment by another VLSG Member of any amounts due and payable pursuant to any of the Three Agreements; (b) any claims among the VLSG Members that are otherwise expressly reserved pursuant to this Agreement; (c) any claims or causes of action among the VLSG Members that are outside the scope of the foregoing covenant; and (d) any company acquired in any fashion by either (i) Danis Industries Corporation ("Danis") or (ii) Waste Management, Inc., Waste Management of Ohio, Inc., or SCA Services of Ohio, Inc. (collectively "Waste Management") after the date of execution of the First Amended Site Agreement. It is specifically understood that Danis and Waste Management are not waiving any claims they now have or may have in the future against Peerless for any matters not covered by the January 12, 1995 Valleycrest Site Participation Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement by executing the "Valleycrest Landfill Site Governmental Entity Participation Agreement Signatory Page", including execution thereof by and through their appointed counsel. Each person executing this Agreement represents and warrants that he or she has been authorized to do so by the company or entity on whose behalf it is indicated that the person is signing. Each VLSG Member shall signify its consent and intent to enter into this Agreement by delivering a completed and signed "Valleycrest Landfill Site Governmental Entity Participation Agreement Signatory Page" to:

Vincent B. Stamp
Dinsmore & Shohl
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202

Exhibit A

MONTGOMERY COUNTY SOLID WASTE MANAGEMENT DISTRICT

The following local government entities comprise the Montgomery County Solid Waste Management District:

Montgomery County, Ohio

City of Centerville
City of Dayton
City of Englewood
City of Huber Heights
City of Kettering
City of Miamisburg
City of Moraine
City of Oakwood
City of Riverside[1/]
City of Trotwood[2/]
City of Union
City of Vandalia
City of West Carrollton
Village of Brookville
Village of Clayton[3/]
Village of Farmersville
Village of Germantown
Village of New Lebanon
Village of Phillipsburg[4/]
Butler Township
Clay Township
German Township
Harrison Township
Jackson Township
Jefferson Township
Miami Township
Perry Township
Washington Township

1/ Effective January 1, 1994, the Village of Riverside and Mad River Township merged and became the City of Riverside.

2/ Effective January 1, 1996, Madison Township merged into the City of Trotwood.

3/ Effective January 1, 1998 Randolph Township merged into the Village of Clayton.

4/ Effective January 1, 1996, the Village of Phillipsburg became a member of the Montgomery County Solid Waste Management District.

Exhibit E

ORIGINAL AND NEW MEMBERS' PERCENTAGE SHARES

The Original and New Members' respective percentage liability shares with respect to the Costs are as follows:

Waste Management Inc., Waste Management of Ohio, Inc., SCA Services of Ohio, Inc., and Danis Industries Corporation	46%
General Motors Corporation	19.70977%
Cargill, Incorporated	6.0645%
Dayton Walther Corp.	6.0645%
NCR Corporation	6.0645%
Standard Register Company	6.0645%
Duriron Company, Inc.	3.03225%

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Danis Industries Corporation hereby enters into and shall participate in the Valleycrest
(Member)

Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: Danis Industries Corporation

Signature: Vincent B. Stamp per authority Greg McCann

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Gregory McCann

Title: Attorney

Address: Danis Environmental Management Co.
2 Riverplace, Suite 411
Dayton, OH 45405

Telephone: (937) 220-4904

Facsimile: (937) 228-1194

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

General Motors Corporation hereby enters into and shall participate in the Valleycrest
(Member)

Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: General Motors Corporation

Signature: Vincent B. Stamp per authority of Don Schiemann

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Don A. Schiemann

Title: Attorney

Address: General Motors Legal Staff
M.C. 482 112 149
3044 West Grand Blvd.
Detroit, Michigan 48202

Telephone: (313) 556-2175

Facsimile: (313) 974-5467

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Cargill Incorporated (Member) hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: Cargill Incorporated

Signature: V. Stamp per authority LaRaye Osborne

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: LaRaye Osborne

Title: Attorney

Address: Cargill, Inc.
15407 McGinity Road, West
Walyzata MN 55391-2399

Telephone: (612) 742-6374

Facsimile: (612) 742-6349

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Dayton Walter Corp. (Member) hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: Dayton Walther Corp.

Signature: V. Stamp per authority Susan Nystrom

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Susan Nystrom

Address: 6339 Cherbourg Drive
Indianapolis, Indiana 46220

Telephone: (317) 254-0297

Facsimile: (317) 254-0298

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

NCR Corporation hereby enters into and shall participate in the Valleycrest
(Member)

Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: NCR Corporation

Signature: Vincent B. Stamp per authority Paul Samson

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Paul Samson

Title: Attorney

Address: NCR Corporation
101 W. Schantz Avenue, ECD-2
Dayton, Ohio 45479

Telephone: (937) 445-2908

Facsimile: (937) 445-1933

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Standard Register Company hereby enters into and shall participate in the Valleycrest
(Member)

Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: Standard Register Company

Signature: Vincent B. Stamp per authority Kathryn Lamme

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Kathryn Lamme

Title: Attorney

Address: The Standard Register Company
600 Albany Street
P.O. Box 1167
Dayton, Ohio 45401-1167

Telephone: (937) 443-1540

Facsimile: (937) 443-3431

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Duriron Company, Inc. hereby enters into and shall participate in the Valleycrest
(Member)

Landfill Site Governmental Entity Participation Agreement:

Dated: January 5, 1999

Member: Duriron Company, Inc.

Signature: [signature] per authority Bob Roberts

Name: Vincent B. Stamp

Title: Attorney

Said Member hereby designates the following Representative for receipt of notice and invoices:

Name: Robert L. Roberts

Title: Attorney

Address: Flowserve Corporation
222 Las Colinas Boulevard Suite 1500
Irving, Texas 75039-5421

Telephone: (972) 443-6537

Facsimile: (972) 443-6837

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The Montgomery County Solid Waste Management District and the Board of County Commissioners of Montgomery County, Ohio hereby enter into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22nd, 1998

Members: The Montgomery County Solid Waste Management District and the Board of County Commissioners of Montgomery County, Ohio

Signatures:	[signature]	[signature]	[signature]
Name:	Charles J. Curran	Don Lucas	Vicki D. Pegg
Title:	County Commissioner and District Trustee	County Commissioner and District Trustee	County Commissioner and District Trustee

Said Members hereby designate the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Centerville, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Centerville, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Dayton, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Dayton, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Englewood, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Englewood, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Huber Heights, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Huber Heights, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Kettering, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Kettering, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Miamisburg, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Miamisburg, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Moraine, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Moraine, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Oakwood, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Oakwood, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

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VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Riverside, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Riverside, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Trotwood, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Trotwood, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Union, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Union, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of Vandalia, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of Vandalia, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

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VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The City of West Carrollton, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: City of West Carrollton, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of Brookville, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Village of Brookville, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of Clayton, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Village of Clayton, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of Farmersville, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Village of Farmersville, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of Germantown, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member:	Village of Germantown, Ohio	
Signatures:		
Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of New Lebanon, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member:	Village of New Lebanon, Ohio	
Signatures:		
Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

The Village of Phillipsburg, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Village of Phillipsburg, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Butler Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Butler Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Clay Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Clay Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

German Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: German Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Harrison Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Harrison Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Jackson Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Jackson Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Jefferson Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Jefferson Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Miami Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Miami Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
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Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Perry Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Perry Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT SIGNATORY PAGE

Washington Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Washington Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Perry Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Perry Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY
PARTICIPATION AGREEMENT SIGNATORY PAGE

Washington Township, Ohio hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement:

Dated: December 22, 1998

Member: Washington Township, Ohio

Signatures: _____ _____

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney

Said Member hereby designates the following Representatives for receipt of notice and invoices:

Name:	Victor T. Whisman	Scott M. DuBoff
Title:	Assistant Prosecuting Attorney, Montgomery County, Ohio	Special Legal Counsel, Office of the Montgomery County Prosecuting Attorney
Address:	Dayton-Montgomery County Courts Bldg. 301 West Third Street Dayton, Ohio 45402	Wright & Talisman, P.C. 1200 G St., NW Suite 600 Washington, D.C. 20005
Telephone:	(937) 225-5760	(202) 393-1200
Facsimile:	(937) 225-3470	(202) 393-1240

AMENDMENT TO VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE PARTICIPATION AGREEMENT

This Amendment (hereinafter the "TRW/Valleycrest Amendment") to the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement is entered into between and among: (1) the entities who are parties to either or both the Valleycrest Landfill Site Governmental Entity Participation Agreement, attached hereto and made a part hereof as Exhibit A (hereinafter the "Governmental Entity Agreement"), and to the First Amended Valleycrest Landfill Site Participation Agreement, attached hereto and made a part hereof as Exhibit B (hereinafter the "First Amended Valleycrest Agreement"); and (2) TRW Inc./Globe Motors Division (hereinafter "TRW").

WHEREAS,on or about January 12, 1995 the Original Members jointly entered into the Valleycrest Landfill Site Participation Agreement to establish a framework for complying with the terms of the Final Findings and Orders (hereinafter "FFO"), and to cooperate among themselves in that effort;

WHEREAS, on or about May 22, 1998 the First Amended Valleycrest Agreement was executed by the signatories thereto and on or about December 21, 1998, the Governmental Entity Agreement was executed by the signatories thereto;

WHEREAS, TRW and the signatories to the Governmental Entity Agreement and/or the First Amended Valleycrest Agreement, without admitting any fact, responsibility, fault or liability in connection with the Valleycrest Landfill Site (hereinafter the "Site"), in Dayton, Ohio, desire that TRW, pursuant to the terms of this TRW/Valleycrest Amendment, become a member of the Valleycrest Landfill Site Group (hereinafter "VLSG") and agree to fund the performance of certain necessary work at the Site in order to avoid litigation with the United States, the State of Ohio, and among the members of the VLSG themselves;

WHEREAS,Dayton Walther Corporation (hereinafter "Dayton Walther") was one of the signatories to the Governmental Entity Agreement and the First Amended Valleycrest Agreement and an Original Member of the VLSG. Dayton Walther was subsequently merged into Kelsey-Hayes Company (hereinafter "Kelsey-Hayes"). TRW recently acquired Lucas Varity plc (hereinafter "Lucas Varity") of which Kelsey-Hayes was a wholly owned, indirect subsidiary. Pursuant to the terms of this TRW/Valleycrest Amendment, TRW wishes to assume the obligations and rights of Kelsey-Hayes and Dayton Walther under the Governmental Entity Agreement and the First Amended Valleycrest Agreement;

WHEREAS, TRW, through its Globe Motors Division, independent of its acquisition of Lucas Varity, is alleged to have disposed of hazardous substances at the Site;

NOW THEREFORE, the signatories to the Governmental Entity Agreement, the First Amended Valleycrest Agreement, and TRW, in consideration of the foregoing and the promises and covenants contained herein, mutually agree as follows (unless otherwise indicated, terms used herein have the same meaning as in the Governmental Entity Agreement and the First Amended Valleycrest Agreement):

1. TRW hereby agrees to be responsible for all of the obligations and obtain all of the rights of Kelsey-Hayes and Dayton Walther under the Governmental Entity Agreement and the First Amended Valleycrest Agreement. Nothing contained herein is intended to extinguish the obligations of Kelsey-Hayes or Dayton Walther under the Governmental Entity Agreement and the First Amended Valleycrest Agreement if TRW for any reason defaults on any obligations of Kelsey-Hayes or Dayton Walther under the Governmental Entity Agreement or the First Amended Valleycrest Agreement.

2. In regard to the allegation, which is totally independent of TRW's assumption of the liability of Kelsey-Hayes and Dayton Walther pursuant to this TRW/Valleycrest Amendment, that TRW's Globe Motors Division disposed of hazardous substances at the Valleycrest Site, TRW agrees to pay the percentage set forth in Exhibit C of future assessments issued after January 7, 2000 for the Costs incurred pursuant to the FFO, the First Amended Valleycrest Agreement and the Governmental Entity Agreement.

3. Within thirty days of the execution of this TRW/Valleycrest Amendment, TRW agrees to pay Ninety-Four Thousand, Four Hundred Eight-Nine Dollars ($94,489.00) which represents TRW's share of past member assessments for the Costs from January 12, 1995 to January 7, 2000.

4. Upon the execution of this TRW/Valleycrest Amendment, TRW shall be deemed an Original Member and a VLSG Member under the Governmental Entity Agreement and the First Amended Valleycrest Agreement, as long as it is in compliance therewith, with all rights and obligations of such including the responsibility for the total percentage share of the Costs (as shown in Exhibit D) which combines the percentage shares of TRW and Kelsey-Hayes/Dayton Walther. Except for proportionately adjusting the Original Members' allocated percentage shares of the Costs, nothing herein is intended to affect the rights and obligations of the Original Members relative to each other under the First Amended Valleycrest Agreement.

5. TRW agrees that it shall be bound by all of the terms and conditions of the Governmental Entity Agreement, attached hereto as Exhibit A, and the First Amended

Valleycrest Agreement, attached hereto as Exhibit B, except to the extent that such terms have been modified pursuant to this TRW/Valleycrest Amendment.

6. The VLSG members who are parties in *Cargill, Inc., et al. v. ABCO Construction, et al.*, United States District Court, Southern District of Ohio, Western Division, Case No. C-3-98-36 agree to, as soon as practicable under the Federal Rules of Civil Procedure, (a) voluntarily dismiss TRW without prejudice as a defendant in such action and (b) use their best efforts to add TRW as a party plaintiff in such action.

7. This TRW/Valleycrest Amendment may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

EXHIBIT A
Governmental Entity Agreement

EXHIBIT B
First Amended VLSG Participation Agreement

EXHIBIT C

Participant	Generator Unit Share	New Share Percentage Before Munic. Cap	After Cap
Danis/WMX		46.00	46%
Municipalities		7.00*	0%
Inland (GM)	8	11.75	13.50%
Delco (GM)	4	5.875	6.75%
Frigedaire (GM)	1	1.46875	1.6875%
Cargill	4	5.875	6.75%
Kelsey Hayes/ Dayton Walther (TRW)	4	5.875	6.75%
NCR	4	5.875	6.75%
Standard Register	4	5.875	6.75%
Duriron	2	2.9375	3.375%
Globe/TRW	1	1.46875	1.6875%
Total:	**32**	**100.00**	

* Subject to the cap set forth in Section 5.1 of the Agreement

EXHIBIT D
VLSG MEMBER PERCENTAGE SHARES

The VLSG Members' respective percentage liability shares with respect to the costs are as follows:

	Before Muni Cap	After Muni Cap
Waste Management, Inc., Waste Management of Ohio, Inc., SCA Services of Ohio, Inc., and Danis Industries Corporation	46%	46%
Municipalities	7%*	0%
General Motors Corporation	19.09375%	21.9375%
TRW Inc.	7.34375%	8.4375%
Cargill, Inc.	5.875%	6.75%
NCR Corporation	5.875%	6.75%
Standard Register Company	5.875%	6.75%
Duriron Company, Inc.	2.9375%	3.375%

* Subject to the cap set forth in Section 5.1 of the Agreement

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

Diversified Environmental Management Co., formerly known as Danis Industries Corporation hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: May 18, 2000

Member: Diversified Environmental Management Co., formerly known as Danis Industries Corporation

Signature: Gregory L. McCann

Name: Gregory L. McCann

Title: President

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: _____

Title: _____

Address: _____

_____

_____

Telephone: _____

FAX: _____

AMENDMENT TO VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE PARTICIPATION AGREEMENT

SIGNATURE PAGE

NCR Corporation hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: May 23, 2000
Member: NCR Corporation
Signature: Paul M Samson
Name: Paul M. Samson
Title: Senior Attorney

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: Paul M. Samson
Title: Senior Attorney
Address: 101 W. Schantz Avenue, ECD2
Dayton, OH 45479

Telephone: 937.445.2908
FAX: 937.445.1933

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

THE STANDARD REGISTER COMPANY hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: May 12, 2000
Member: The Standard Register Company
Signature: [signature]
Name: Kathryn A. Lamme
Title: Corporate Vice President, Secretary & Deputy General Counsel

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: Kathryn A. Lamme
Title: Corporate Vice President, Secretary & Deputy General Counsel
Address: 600 Albany Street, Dayton, Ohio 45408

Telephone: 937.221.1540
FAX: 937.221.3431

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

General Motors Corporation hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: March 22, 2000
Member: General Motors Corporation
Signature: Don A. Schiemann
Name: Don A. Schiemann
Title: Attorney

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: Don A. Schiemann
Title: Attorney
Address: MC 482-C24-D24, 300 Renaissance Center
P.O. Box 300
Detroit, MI 48265-3000
Telephone: (313) 665-4885
FAX: (313) 665-4896

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

_____ hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: _____
Member: _____
Signature: Oliver K. Stanley
Name: OLIVER K. STANLEY
Title: ENVIRONMENTAL MANAGER

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: _____
Title: _____
Address: _____
_____
_____
Telephone: _____
FAX: _____

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

FLOWSERVE CORP. hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: MAY 8, 2000
Member: FLOWSERVE CORPORATION (F/K/A DURIRON)
Signature: [signature]
Name: ROBERT L. ROBERTS, JR.
Title: ASSOCIATE GENERAL COUNSEL

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: ROBERT L. ROBERTS, JR.
Title: ASSOCIATE GENERAL COUNSEL
Address: FLOWSERVE CORPORATION
222 W. LAS COLINAS BLVD., SUITE 1500
IRVING, TX 75039
Telephone: (972) 443-6537
FAX: (972) 443-6837

AMENDMENT TO
VALLEYCREST LANDFILL SITE
GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT
AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE
PARTICIPATION AGREEMENT

SIGNATURE PAGE

TRW Inc. hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: 3/10/00
Member: TRW Inc
Signature: David B. Goldston
Name: David B.CGoldston
Title: Assistant Secretary

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: Valerie M. Hanna
Title: Counsel - Environment
Address: TRW Inc., 1
1900 Richmond Road
Cleveland, OH 44124
Telephone: (216) 291-7512
FAX: (216) 291-7874

AMENDMENT TO VALLEYCREST LANDFILL SITE GOVERNMENTAL ENTITY PARTICIPATION AGREEMENT AND THE FIRST AMENDED VALLEYCREST LANDFILL SITE PARTICIPATION AGREEMENT

SIGNATURE PAGE

TRW Inc. hereby enters into and shall participate in the Valleycrest Landfill Site Governmental Entity Participation Agreement and the First Amended Valleycrest Landfill Site Participation Agreement as amended by this TRW/VLSG Amendment.

Dated: 3/10/00
Member: TRW Inc
Signature: David B Goldston
Name: David B. Goldston
Title: Assistant Secretary

Said Member hereby designates the following Representative for the receipt of notice and invoices:

Name: Valerie M. Hanna
Title: Counsel - Environment
Address: TRW Inc., J.
1900 Richmond Road
Cleveland, OH 44124
Telephone: (216) 291-7512
FAX: (216) 291-7874

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

May 8, 2009

Jim Walle
General Motors Corporation
Mail Code 482-C24-D24
P.O. Box 300
Detroit, Michigan 48265-3000

Reference: **Invoice for Funds**
Cash Call, 2nd Quarter 2009
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Walle:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the May 8, 2009 Final Total Project Forecast Update and Assessment Funding Projection . The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 2nd quarter 2009.

GM Share associated with VLSG:

associated with (GM)	=	61,106.00
associated with (Durion)	=	9,401.00
associated with (TRW)	=	4,700.00
associated with (K-H)	=	18,802.00
associated with (Cargill)	=	18,802.00
associated with (SR)	=	18,802.00
GM Share associated with VRAC	=	0.00
PLEASE PAY THIS AMOUNT	=	**$131,613.00**

EXHIBIT
A-3

PAPER

Invoice for Funds-GM
Cash Call, 2nd Quarter 2009
North Sanitary Landfill (a.k.a. Valleycrest) Site
May 8, 2009

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than June 8, 2009.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-5052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Jerome Maynard
William Schikora
Jim Campbell
Vince Stamp
Mike Percival

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

RECEIVED
JUL 24 2009
Flowserve Corporation
Legal Department

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

July 22, 2009

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Cash Call, 3rd Quarter 2009
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the July 21, 2009 Final Total Project Forecast Summary and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 3rd quarter 2009.

VLSG Member Share	=	$ 10,588.00
PLEASE PAY THIS AMOUNT	=	**$ 10,588.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

dlt
Pay
Q1
08/14/09

(CHECK TO VALLEYCREST RESIDUE)

F:\PROJECTS\3098\2009 Correspondence\3Qtr 2009 CashCall July 21 2009.doc

PAPER

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than August 21, 2009.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/dlb

Enclosure

cc: Vince Stamp
Mike Percival

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

October 28, 2009

RECEIVED
OCT 29 2009
Flowserve Corporation
Legal Department

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Cash Call, 4th Quarter 2009
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the October 28, 2009 Final Total Project Forecast Summary and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 4th quarter 2009.

VLSG Member Share	=	10,085.00
PLEASE PAY THIS AMOUNT	=	**$10,085.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

PAPER

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than November 28, 2009.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/dlb

Enclosure

cc: Vince Stamp
Mike Percival

PAPER

B 10 (Official Form 10) (12/08)

COPY

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor:
MOTORS LIQUIDATION COMPANY F/K/A GENERAL MOTORS CORPORATION

Case Number:
09-50026 (REG)

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Flowserve Corporation f/k/a The Duriron Company

Name and address where notices should be sent:
Jeffrey G. Hamilton, Jackson Walker L.L.P.
901 Main Street, Suite 6000, Dallas, TX 75202

Telephone number:
(214) 953-6000

THE GARDEN CITY GROUP, INC. NOV 25 2009

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(*If known*)

Filed on: _____

Name and address where payment should be sent (if different from above):
Robert L. Roberts, Jr., Vice President, Global Litigation Counsel
Flowserve Corporation, 5215 N. O'Connor Blvd., Suite 2300, Irving, Texas 75039

Telephone number:
(972) 443-6537

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 33,178.84

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☑ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Breach of Contract *
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$_____ **Annual Interest Rate**___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date: 11/20/09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

ROBERT L. ROBERTS
Vice President
Global Litigation Counsel
Flowserve Corporation

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

* See attached Exhibit A

Exhibit A

Flowserve Corporation f/k/a The Duriron Company ("Flowserve") entered into a certain Settlement Agreement ("Settlement Agreement") with General Motors Corporation ("Debtor") dated March 2, 2001. A copy of the Settlement Agreement is attached hereto as Exhibit A-1.

Pursuant to the terms of the Settlement Agreement, Debtor was to assume all liabilities of Flowserve related to the Cardington Road Landfill. Pursuant to the Site Participation Agreement ("Site Participation Agreement") dated March 15, 1996, Flowserve's percentage of costs for the Cardington Road Landfill Site remediation is 0.6451%. A copy of the Site Participation Agreement is attached hereto as Exhibit A-2.

Debtor has breached the terms of the Settlement Agreement by failing to pay amounts due under the terms of the Settlement Agreement. Debtor's breach of the Settlement Agreement has caused and will cause damages to Flowserve. The estimated cost for the completion of the Cardington Road Landfill Site remediation from 2009 going forward is $5,143,209.00. See spreadsheet entitled Cardington Road Post Closure Operations and Maintenance Estimated Cost Schedule attached hereto as Exhibit A-3. Applying Flowserve's percentage of costs as set out in the Site Participation Agreement to the future costs of remediation for the Cardington Road Landfill, results in a damage valuation of $33,178.84.

Accordingly, Flowserve's damages for Debtor's breach of contract are $33,178.84 plus interest, costs, and attorneys' fees.

Flowserve reserves the right to amend this Proof of Claim if additional information becomes available.

SETTLEMENT AGREEMENT

This Agreement is made and entered into on this ____day of March 2001, by and among General Motors Corporation ("GM") and Flowserve Corporation (f/k/a The Duriron Company, Inc.) ("FLOWSERVE - DURIRON").

RECITALS

WHEREAS, GM and FLOWSERVE - DURIRON (as alleged successor in interest to the The Duriron Company, Inc. have been identified as parties that may have liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), the Ohio Hazardous Waste Management Act, as amended, ORC §§ 3734 et seq. ("Ohio Superfund"), and other legal authorities in connection with the alleged arrangement for disposal of substances that are or may be regulated by any federal, state or local statute, rule, regulation, or decision of any administrative agency or court, including, without limitation, CERCLA and Ohio Superfund ("Hazardous Substances"), at and from the Cardington Road/Sanitary Landfill Company Superfund Site in Moraine, Ohio (the "Cardington Road Site") including any contiguous off-site areas impacted by the Cardington Road Site; and

WHEREAS, GM and FLOWSERVE - DURIRON and other parties have previously funded certain environmental response activities required at the Cardington Road Site, where remedial construction has been completed and long-term operation and maintenance have begun; and

WHEREAS, GM and FLOWSERVE - DURIRON believe that, to the extent provided by this Agreement, it is in their mutual best interests to resolve current and potential litigation and to reach agreement between themselves with regard to certain responsibilities and potential liabilities relating to the Cardington Road Site, as more specifically defined below; and

EXHIBIT
A-1

WHEREAS, GM and FLOWSERVE - DURIRON acknowledge and agree that the terms of this Agreement represent a good-faith settlement and compromise of disputed claims with respect to the matters addressed herein, negotiated at arms-length, and that this settlement represents a fair, reasonable, and equitable resolution of the matters among the parties hereto.

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings set forth in this Agreement, and other good and valuable consideration contained herein, the parties hereto represent, warrant, and agree as follows:

OBLIGATIONS

1. Covered Matters. This Agreement addresses and settles those liabilities and potential liabilities collectively referred to hereinafter as "Covered Matters" and defined as follows:

   a. All liabilities, remedies, claims, duties, obligations, costs (including any claim for past or future costs), or penalties that FLOWSERVE - DURIRON and/or GM may or could have with respect to environmental conditions at, emanating from, or related to the Cardington Road Site, as defined herein, and which liabilities, remedies, claims, duties, obligations, costs (including any claim for past or future costs), or penalties are created under or by CERCLA, Ohio Superfund, the Resource Conservation and Recovery Act; 42 U.S.C. §§ 6901, et seq. ("RCRA"), or any other similar or remedial federal, state, or local statute, rule, or common law.

   b. Notwithstanding the above, this definition of "Covered Matters" does not include any claims for natural resource damages that may be brought pursuant to statute by a federal natural resources trustee or designee, or their assignees, or any toxic tort claims relating to the Cardington Road Site.

2. Site Definition. The Cardington Road Site means the former landfill located at 1855 Cardington road in Moraine, Ohio (also known as the Sanitary Landfill Company site), being approximately 50 acres in size, but also including any and all contiguous off-site areas impacted by the landfill, as placed on the CERCLA National Priorities List ("NPL) by the United States Environmental Protection Agency ("EPA).

3. Release of FLOWSERVE - DURIRON. GM and its successors and assigns hereby release and forever discharge FLOWSERVE - DURIRON and its shareholders, officers, directors, employees, agents, successors and assigns, of and from any and all actions, courses of action, suits, sums of money, accounts, reckonings, bills, covenants, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands which GM ever had, now has, or hereafter can, shall, or may have against FLOWSERVE - DURIRON with respect to Covered Matters, except for rights granted by this Agreement.

4. Indemnification of FLOWSERVE - DURIRON. GM hereby agrees to protect, defend, indemnify, and save harmless FLOWSERVE - DURIRON from and against all Covered Matters and all claims, demands, and actions relating to Covered Matters. GM shall have the right and duty to defend any order, claim, or suit brought against FLOWSERVE - DURIRON for Covered Matters, even if one or more of the allegations of the order, claim, or suit are groundless, false or fraudulent, and GM may make such investigation and settlement of any order, claim, or suit as GM deems expedient. Other than those previously disclosed to GM, FLOWSERVE - DURIRON hereby acknowledges and certifies that it knows of no currently pending actions, causes of action, suits, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands against FLOWSERVE - DURIRON and relating to Covered Matters.

5. Payment by FLOWSERVE - DURIRON. In consideration for the obligations undertaken by GM pursuant to the terms of this Agreement, FLOWSERVE - DURIRON hereby agrees to pay to GM a cash amount of Twenty-Four Thousand Five Hundred Seventy Eight

Dollars ($24,578.00) (the "Cash Amount"). It is the intent of GM and FLOWSERVE - DURIRON that in return for the total of the Cash Amount being paid by or on behalf of FLOWSERVE - DURIRON to GM, then GM forever releases, indemnifies, defends, protects, and replaces FLOWSERVE - DURIRON with respect to all Covered Matters for the Cardington road site as provided by the terms of this Agreement.

6. GM's Activities. GM will continue, individually or together with other parties, to carry out operation and maintenance activities at the Cardington Road Site. If it chooses to do so, GM may notify EPA and the Ohio Environmental Protection Agency ("OEPA") of the existence and effect of this Agreement, and that FLOWSERVE - DURIRON has paid for and extinguished its potential liabilities associated with the Cardington Road Site.

7. Assignment by FLOWSERVE - DURIRON. FLOWSERVE - DURIRON hereby assigns to GM all claims and demands of every kind and nature that FLOWSERVE - DURIRON may possess with respect to Covered Matters against each and every other person, entity, and potentially liable party at and for the Cardington Road Site. However, this reference to potentially liable parties is not intended to include any insurance carrier of FLOWSERVE - DURIRON, pursuant to Paragraph 17 below. FLOWSERVE - DURIRON agrees to execute any additional documents that GM may reasonably request to give full force and effect to these assignments.

8. Release of GM. FLOWSERVE - DURIRON and its successors and assigns hereby release and forever discharge GM and its shareholders, officers, directors, employees, agents, successors and assigns, of and from any and all actions, causes of action, suits, sums of money, accounts, reckonings, bills, covenants, controversies, agreements, obligations, liabilities, damages, claims, debts, losses, expenses, or demands which FLOWSERVE - DURIRON ever had, now has, or hereafter can, shall, or may have against GM with respect to Covered Matters, except for rights granted by this Agreement.

9. Transmittal of Claims. FLOWSERVE - DURIRON will notify GM by fax and/or express delivery of the existence of any claim, demand, order, notice, summons, or other process received hereafter by FLOWSERVE - DURIRON regarding any Covered Matters, as follows:

a. If a response is required within thirty (30) days of receipt, FLOWSERVE - DURIRON shall provide GM with written notice not later than ten (10) calendar days prior to any such response deadline for the claim, demand, order, notice, summons, or other process received by FLOWSERVE - DURIRON, provided, however, that FLOWSERVE - DURIRON itself received such claim, demand, order, notice, summons, or other process more than ten (10) days prior to such response deadline to allow for timely compliance with this Paragraph 9.a.

b. If FLOWSERVE - DURIRON's receipt thereof is less than ten (10) days prior to the deadline for response, then FLOWSERVE - DURIRON shall seek a thirty (30)-day extension for response and shall provide a copy of the claim, demand, order, notice, summons, or other process and an acknowledgment of the thirty (30)-day extension to GM not later than ten (10) days prior to the extended deadline for response.

c. Such notice and copies of whatever was received by FLOWSERVE - DURIRON shall be sent to GM in conformance with the notice provision set forth at paragraph 21 below.

d. GM shall promptly notify FLOWSERVE - DURIRON that it has assumed the defense of any matter so forwarded to it by FLOWSERVE - DURIRON and covered by this Agreement. GM will then proceed to defend said claim, demand, order, notice, summons, or other process pursuant to this Agreement.

e. If necessary and if reasonably requested by GM, FLOWSERVE - DURIRON shall reasonably cooperate in responding to discovery, allocation and information requests arising for many claim, demand, order, notice, summons, or other process sent to FLOWSERVE - DURIRON and for which GM has assumed the defense pursuant to this Agreement.

f. The failure to FLOWSERVE - DURIRON to abide strictly by the notice provisions contained herein does not excuse GM's obligations of indemnity or defense, except to the extent that actual and substantial prejudice to GM is documented.

MISCELLANEOUS

10. No Third-Party Beneficiaries. The rights and obligations created under this Agreement shall inure solely to the benefit of the persons and entities specifically referred to as the parties to this Agreement. Nothing herein shall create, extinguish, or in any manner alter or affect the rights or duties of any third parties not parties to, or not in privity with the parties to, this Agreement.

11. Bankruptcy. Upon any future bankruptcy filing by GM, or by FLOWSERVE - DURIRON, respectively, performance of the defense, indemnity, payment, and any and all other obligations, duties and actions of the bankrupt party pursuant to this Agreement shall to the extent possible be deemed to have the priority status of administrative expenses pursuant to 11 U.S.C. Sections 503(b) and 507(a)(1). Upon the confirmation of a plan of bankruptcy reorganization for the bankrupt party, the reorganized party or any post-confirmation successor entity shall be bound by all duties created for said bankrupt party by this Agreement. The terms, benefits, and obligations of this Agreement for GM or for FLOWSERVE - DURIRON, respectively, shall not be terminated, modified, or discharged by any Chapter 11 bankruptcy

resolution, and any plan of reorganization that may ever be proposed by GM or by FLOWSERVE - DURIRON respectively, in the future shall so provide.

12. Applicable Law. This agreement shall be interpreted and enforced according to the laws of the State of Ohio.

13. Execution of Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. No Admission of Liability. The execution of this Agreement shall not, under any circumstances, be construed as an admission by FLOWSERVE - DURIRON or GM of any fact or liability with respect to the Cardington Road Site, or with respect to any waste containing or constituting Hazardous Substances allegedly contributed to the site. This Agreement shall not constitute or be used as evidence, as an admission of any liability or fact, or as a concession of any question of law by the parties hereto, nor shall it be admissible in any proceeding except in an action to seek the enforcement of any terms of this Agreement.

15. Successors and Assigns Included as Parties. Wherever in this Agreement either GM or FLOWSERVE - DURIRON is named or referred to, the legal representatives, successors, and permitted assigns of such party shall bind and inure to the benefit of the respective successors and permitted assigns, whether so express or not.

16. Assignment. GM may not assign its rights, duties, or obligations under this Agreement to any other person or entity without the express, written, and advance permission of FLOWSERVE - DURIRON, which permission may be withheld by FLOWSERVE - DURIRON in its sole an exclusive discretion.

17. Insurance. GM and FLOWSERVE - DURIRON do not hereby make any agreement or take any action that will prejudice them with regard to, nor transfer their respective rights conceming, their respective third-party insurance claims, coverages or recoveries.

18. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part hereof, and hall not limit or otherwise affect any of the terms hereof.

19. Modification. Neither this Agreement, nor any provisions hereof, may be changed, waived, discharged, or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto among themselves as to the Covered Matters. As between FLOWSERVE - DURIRON and GM, any prior agreements as to Covered Matters are hereby canceled or superceded by this Agreement to the extent that they may be inconsistent herewith, including without limitation any Consent Decree duties entered into by FLOWSERVE - DURIRON for the Cardington Road Site, and that certain Site Participation Agreement for the Cardington Road Site entered into by and among GM, FLOWSERVE - DURIRON, and certain other parties, dated March 15, 1996.

21. Notice Procedure. Notices required or otherwise given under this Agreement shall be directed as follows:

To GM:

Don A. Schiemann, Esq.
General Motors Corporation - Legal Staff
MC 482-C24-D24
300 Renaissance Center
P.O. Box 300
Detroit, MI 48265-3000
Tel: (313) 665-4885
Fax: (313) 665-4896

To FLOWSERVE - DURIRON:

Robert L. Roberts, Jr.
Flowserve Corporation
222 West Las Colinas Blvd.
Suite 1500
Irving, TX 75039
Tel: (972) 443-6537
Fax: (972) 443-6837
e-mail: rroberts@flowserve.com

All notices or demands required or permitted under this Agreement shall be in writing and shall be effective if sent by express delivery or by registered or certified mail, postage prepaid and return receipt requested. Notices shall be deemed received at the time delivered. Any party may also give notice by facsimile transmission, which shall be effective upon confirmation by the party sending the notice that such facsimile transmission has been received by the party to whom the notice has been addressed. Nothing in this Paragraph 21 shall prevent the giving of notice in such manner as prescribed by the Federal Rules of Civil Procedure for the service of legal process. Either party may change its address by giving written notice thereof to the other party to this Agreement.

24. Remedies and Attorneys' Fees. In any action brought by a party hereto for breach of this Agreement or to enforce the rights and obligations of this Agreement, the prevailing party shall be entitled also to recover its reasonable attorney's fees. Equitable and injunctive relief shall also be available to either party hereto upon breach of this Agreement by the other party.

25. Authorization. Each of the signatories signing below on behalf of his or her respective party to this Agreement represents that he or she is fully authorized to sign on behalf of that party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date appearing above and last written below.

GENERAL MOTORS CORPORATION

By: _____
Name:

Title: _____

Date: _____

FLOWSERVE CORPORATION

By: Robt L. Roberts

Name: ROBERT L. ROBERTS JR.

Title: Associate General Counsel
Flowserve Corporation

Date: MARCH 2, 2001

R020701F2

SITE PARTICIPATION AGREEMENT

This Agreement is made and is effective as of this 15th day of March. 1996. between and among the entities listed in Appendix A to this Agreement (hereinafter the "Members") whose authorized representatives have executed this Agreement.

WHEREAS. the Members have entered into a Consent Decree with the United States for performance of Remedial Action and payment of response costs with respect to the Sanitary Landfill Company (IWD) Superfund Site (aka Cardington Road Landfill Site) in Moraine. Ohio (the "Site"). subject to approval by the United States District Court:

WHEREAS. without admitting any fact. responsibility, fault or liability in connection with the Site, the Members wish to perform their obligations under the Consent Decree and share past and future response costs at the Site;

WHEREAS. to perform the Remedial Action. the Members must fund the Cardington Road Custodial Fund ("Custodial Fund"), which Custodial Fund will be established to fund performance of the obligations set forth in the Consent Decree and to organize payments to be made by the Members and others pursuant to the Consent Decree;

WHEREAS. the Members desire to avoid litigation and agree among themselves to pay for past Site-related costs and the funding of the Consent Decree obligations in accordance with this Agreement;

NOW. THEREFORE. in consideration of the foregoing and the mutual covenants hereinafter made by each Member to the others. it is mutually agreed as follows:

EXHIBIT
A-2

1. **Cardington Road Site Group.**

The Members hereby organize and constitute themselves as the Cardington Road Site Group (hereinafter "Group"). Each Member whose authorized representative has executed this Agreement is a member of the Group.

2. **Purpose and Payments.**

2.1 Purpose. It is the purpose of this Agreement that the terms hereof shall control the manner and means by which the Members will undertake to satisfy their obligations pursuant to, and to otherwise comply with, the terms of the Consent Decree, and to share past and future costs at the Site.

2.2 Payments. The Members agree to take all reasonably necessary actions to ensure that they comply with the Consent Decree, and agree to fund all costs arising in connection with their undertakings, duties, and obligations pursuant to the Consent Decree and this Agreement, including without limitation:

(a) funding of the Work in accordance with the Consent Decree;

(b) payment of sums required by the Custodian pursuant to the Cardington Road Custodial Fund Agreement (the "Custodial Fund Agreement") entered into pursuant to the Consent Decree and this Agreement;

(c) payment of project management costs, the Governments' oversight costs in accordance with the Consent Decree, any stipulated penalties imposed pursuant to the Consent Decree, administrative costs of the Group, and any other costs necessary to effectuate the purposes of this Agreement, by making payments in accordance with the provisions of Sections 6 and 7 hereof;

(d) payment of each Member's percentage share, in accordance with Section 6 and Exhibit A, of past costs spent to date for response activities at the Site, with full credit for obligations previously satisfied by such Member under other agreements regarding the Site; and

(e) costs determined by the Group to be necessary and appropriate to take legal action against non-members, subject to and in accordance with Subsection 4.10 herein.

2.3 **Financial Assurances.** Each Member warrants that it presently has or has the ability to obtain in a timely manner sufficient funds to pay its share of all costs and payments required pursuant to the Consent Decree and to make payments as and when required pursuant to the Consent Decree, the Custodial Fund Agreement and this Agreement.

2.4 **Cooperation.** The Members shall cooperate with each other to effectuate the purposes of this Agreement, shall attempt to make decisions by consensus, and shall attempt to resolve any disputes among them through good faith negotiation.

3. Organization and Procedures.

3.1 **Committees.** In order to carry out the purposes of this Agreement, the Members hereby establish two Committees, the Steering Committee and the Technical Committee. Each Member and any individual serving on behalf of any Member, agrees by virtue of such service, to maintain the privileged nature and confidentiality of all communications and proceedings of such committees or subcommittees; such obligation shall continue in the event such individual should leave the employ of or cease to represent such Member.

3.2 **Authority to Decide.** Except as otherwise provided herein, the Members shall act by and through the Steering Committee, provided that the Group reserves to itself the right at any

time directly to authorize action to be undertaken pursuant to this Agreement in accordance with the voting requirements set forth in this Agreement.

3.3 Meetings. The Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose. which meetings shall be called from time to time as determined necessary by the Steering Committee. Meetings of the Group may be called for any purpose at any time. Meetings may be held by telephone conference.

3.4 Notice of Meetings. Reasonable notice of the time, place and purpose of any meeting of the Group shall be timely given to each Member entitled to vote at such meeting.

3.5 Voting. Each Member shall have a vote ("Voting Power") as follows:

(a) Each member shall have a vote weighted in accordance with the percentage share of the Member with respect to the Site as set forth in Appendix A hereto;

(b) No Member may vote unless that Member has paid all financial contributions assessed, due and owing as of the last assessment made pursuant to this Agreement or the Custodial Fund Agreement prior to such meeting. Any member having an assessment due and owing that remains unpaid at the time of the meeting may vote only upon payment of the full assessment and any penalties prior to the voting process; and

(c) Unless otherwise specified herein, all issues shall be decided by a majority of the voting power of the Members as defined in this section.

3.6 Voting by Proxy. A Member eligible to vote at a Group meeting may assign in writing, using the form in Appendix B to this Agreement. its vote (in accordance with Section 3.5 of this Agreement) to another Member eligible to vote at the meeting.

3.7 **Quorum.** Fifty percent (50%) of the eligible voting power (as defined in Section 3.5 of this Agreement) and at least four (4) Members of the Group shall be present in person or represented by proxy at any Group meeting.

4. Steering Committee.

4.1 **Steering Committee Members.** The Steering Committee shall consist of at least three (3) Members. Any Member may join the Steering Committee.

4.2 **Powers of the Steering Committee.** The Steering Committee shall undertake such activities as the Steering Committee deems necessary and proper to carry out the purposes of this Agreement and the obligations of the Members under the Consent Decree.

4.3 **Shared Costs.** Those activities authorized by the Steering Committee or the Group to be undertaken on behalf of the Group shall be funded by the Members as Shared Costs. These costs include, but are not limited to, payments assessed by the Custodian or the Steering Committee pursuant to Section 6 of this Agreement, administrative costs, common counsel fees and costs, technical costs, and other costs necessary to further the purposes of this Agreement, the Custodial Fund Agreement, and the Consent Decree.

4.3.1 **Past Costs.** Past Costs shall be defined as those costs billed through December 31, 1995 for response activities, responsible party investigations, and similar activities relating to the Site, which amount to $5,434,489.

4.4 **Reports to the Group and Call for Group Meetings.** The Steering Committee shall periodically report its actions to the Group as may be necessary to keep the Group fully informed of matters covered by this Agreement, and shall call meetings of the Group as

determined necessary by the Steering Committee and refer to such meetings for a vote any matters which in the judgment of the Steering Committee should be referred.

4.5 Quorum. Three members of the Steering Committee and at least 50% of the Voting Power shall be present in person or represented by proxy at any Steering Committee meeting.

4.6 Voting. All issues shall be decided by a majority of the Voting Power of the Members. A member of the Steering Committee may assign its vote to another member of the Steering Committee to vote at the meeting using the form in Appendix B to this Agreement.

4.7 Compensation of Steering Committee. The members of the Steering Committee shall serve as volunteers without compensation from the Group.

4.8 Call for, and Notice of, Meetings. The Steering Committee may authorize and direct actions only at meetings duly held and called for such purpose. which meetings shall be regularly called with reasonable notice given. Meetings may be held by telephone conference. The meetings of the Steering Committee shall be open to any Member.

4.9 Providing Members with Information. Upon request from any Member. the Steering Committee shall make available to that Member at that Member's expense copies of any reports submitted to or by the Steering Committee in connection with the Work or pursuant to the Custodial Fund Agreement or the Consent Decree.

4.10 Litigation Against Other Persons. The Members of the Group other than Tremont Landfill Company and Waste Management of Ohio ("Generator Members") who are on the Steering Committee may recommend to the Group that a claim be asserted on behalf of the Members against other persons who arranged for the disposal of waste at the Site. No such claim

may be asserted by Common Counsel under this Agreement without the consent of a majority of the Voting Power of the Group, excluding the voting power of Tremont Landfill Company, Waste Management of Ohio, Inc., and their successors and assigns who shall not participate in such litigation. Any Member may elect to decline participation in any such suit and may, but need not, in lieu of such participation assign its claims to the other Generator Members. Any Member that does not participate in such litigation shall not fund the costs of or share in any proceeds from such litigation. Tremont Landfill Company, and no other Member, may elect to pursue a claim on behalf of the Members against the owners/operators of the Site. Tremont Landfill Company shall fund the costs of and retain the proceeds of such litigation. Except as expressly provided in this Agreement, nothing in this paragraph shall affect or impair the right of any Member to assert any claim in its own name and right against any person.

4.10.1 Litigation Recoveries. Any sums recovered through a settlement or judgment, as a result of the litigation discussed in Section 4.10, shall inure to the benefit of only those Members that funded the litigation under Section 4.10, in proportion to each Member's contribution to such funding. Any funding prior to September 1, 1995, shall be disregarded for purposes of this Section 4.10.1.

5. Technical Committee.

5.1 Technical Committee Members. The Technical Committee shall consist of at least two technically qualified representatives of Members who agree to participate actively on the Committee.

5.2 Powers of the Technical Committee. The powers and duties of the Technical Committee shall include:

(a) assisting the Steering Committee in overseeing the activities of any persons retained for the Group in connection with implementation of the Work;

(b) making recommendations to the Steering Committee concerning issues relating to the implementation of the Work at the Site;

(c) recommending to the Steering Committee remedial action contractors and an oversight contractor; and

(d) review of documents and monthly reports prior to submission to EPA.

5.3 Compensation of Technical Committee Members. The members of the Technical Committee shall serve as volunteers without compensation from the Group.

5.4 Call for, and Notice of, Meetings. The Technical Committee may authorize and direct actions only at meetings duly held and called for such purpose, which meetings shall be regularly called with reasonable notice given. Meetings may be held by telephone conference. The meetings of the Technical Committee shall be open to any Member.

6. Allocation of Expenses and Credit for Payment.

6.1 Past Cost Payments. Each Member shall pay its share of Past Costs within 30 days of the Court's entry of the Consent Decree, said payment to be equal to the amount shown in Appendix A under the heading "Past Cost Payment." Unless otherwise agreed by a vote of the Group, and except as provided in the next sentence, all payments of Past Costs, all payments by Premium Settling Defendants under the Consent Decree, and all payments by other Consent Decree signatories who have elected to cash out of further response action and response cost liability at the Site, will be appropriately applied against subsequent assessments of NCR Corporation, Bridgestone/Firestone, Inc., and General Motors Corporation. All payments under

the Consent Decree and a separate settlement agreement relating to the Site by the Montgomery County Solid Waste District and its member entities, totaling $1,000,000.00, shall be credited to each Member of this Agreement in accordance with its percentage share as listed in Appendix A and applied against subsequent assessments of each Member.

6.2 Payments. Shared Costs, as defined in Paragraph 4.3 herein, shall be assessed by the Steering Committee or the Custodian in accordance with the percentage shares as set forth in Appendix A. All assessments shall be due and payable within 45 days after receipt of notice thereof unless said notice provides otherwise.

6.3 Accounting for Funds. The Steering Committee shall provide to the Members from time to time, and at least annually, informal accountings of monies received, spent, and obligated, and a final accounting upon the termination of the Agreement.

6.4 Purpose of Funds. All monies provided by Members pursuant to this Agreement shall be used solely for the purposes of this Agreement and shall not be considered as payment for any fines, penalties, or monetary sanctions. To the extent the Governments assess stipulated penalties, said penalties shall be a Shared Cost and allocated in accordance with Section 6 of this Agreement. Any such penalties shall be paid separately by the Members and shall not be placed in the Custodial Fund.

7. The Cardington Road Site Custodial Fund.

7.1 Establishment of the Custodial Fund. Each Member shall act to establish the Cardington Road Custodial Fund ("Custodial Fund") by promptly executing the Custodial Fund Agreement when it is presented in final form.

7.2 **Payments.** Each Member shall periodically fund the Custodial Fund in accordance with Section 6.2.

7.3 **Termination.** The Custodial Fund shall terminate upon termination of the Consent Decree and distribution of the proceeds in the Fund pursuant to the Custodial Fund Agreement, or as agreed by the Members pursuant to this Agreement.

8. **Common Counsel.**

8.1 **Initial Common Counsel.** It is agreed that as of the effective date of this Agreement and until otherwise determined under the provisions of this Agreement, Common Counsel shall be the law firm of Beveridge & Diamond, P.C. Each Member agrees that: (1) it will not claim or assert that, based solely on its past or present representation of a Member, Beveridge & Diamond, P.C. has a conflict of interest in performing legal services authorized by the Steering Committee and relating to the Site; (2) it will not claim or assert that, based solely on Beveridge & Diamond's representation of the Group under the terms of this Agreement, Beveridge & Diamond has a conflict of interest in connection with any representation of any other person or entity in a currently pending matter; and (3) it will not claim or assert that, based solely on Beveridge & Diamond's representation of the Group under the terms of this Agreement, Beveridge & Diamond has a conflict of interest in any future representation of any person or entity unless the subject matter relating to said representation arises out of or its connected to the Cardington Road Site and involves or could involve any facts or information obtained from the Member during the term of this Agreement. Each Member agrees that if this Agreement is terminated, the Member will not raise any objection to or assert any conflict of interest regarding the continued representation by Beveridge & Diamond of any other Members

in connection with any legal services arising out of the Site, including, but not limited to, cost recovery or contribution litigation on behalf of such Members. The terms of this section shall survive the termination of this Agreement.

8.2 Separate Counsel. Notwithstanding that the Steering Committee may request Common Counsel to undertake discrete tasks common to the Group effort, each Member reserves the right to select and retain its own counsel to represent such Member on any matter.

8.3 Waiver of Conflict of Interest. Upon engagement of common counsel by the Steering Committee other than Initial Common Counsel as designated in Section 4.4, each Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Member, said counsel has a conflict of interest in performing legal services authorized by the Steering Committee and arising out of the Site, unless the Member notifies the Steering Committee of the claimed conflict within twenty (20) days of receiving notice of intent to hire said counsel; (2) it will not claim or assert that, based solely on said counsel's representation of the Group under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation of any other person or entity in a matter pending as of the date of receiving notice of intent to hire said counsel, unless the Member notifies the Steering Committee of the claimed conflict within twenty (20) days of receiving said notice; (3) it will not claim or assert that, based solely on said counsel's representation of the Group under the terms of this Agreement, said counsel has a conflict of interest in any future representation of any person or entity unless the subject matter relating to said representation arises out of or is connected to the Cardington Road Site and involves or could involve any facts or information obtained from the Member during the term of this Agreement; (4) in the event that

any conflict develops between the performance of work authorized by the Steering Committee by said counsel and the legal services authorized by any Member that has retained that counsel, the Member consents to that counsel's continued performance of the work authorized by the Steering Committee.

9. **Confidentiality.**

9.1 Shared Information. From time to time, the Members may elect to disclose or transmit to each other, directly or through common counsel, such information as each Member, counsel or technical consultant retained for the Group deems appropriate for the sole and limited purpose of coordinating activities that are necessary and proper to carry out the purposes of this Agreement. Shared information may be disclosed to or transferred among the Members orally or in writing or by any other appropriate means of communication. The Members intend that no claim of work product privilege or other privilege be waived by reason of participation or cooperation pursuant to this Agreement.

9.2 Preservation of Privilege. Information disclosed by the Members to counsel appointed by the Steering Committee to perform specified work may be disclosed to any other Member, and each Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of effectuating the purposes of this Agreement. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege.

9.3 Confidentiality of Shared Information. (a) Each Member agrees that all shared information received from any other Member or its counsel, technical consultant, or common counsel pursuant to this Agreement shall be held in strict confidence by the receiving Member

and by all persons to whom confidential information is revealed by the receiving Member pursuant to this Agreement, and that such information shall be used only in connection with conducting such activities as are necessary and proper to carry out the purposes of this Agreement.

(b) Shared information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential" or with a similar legend. If such information becomes the subject of an administrative or judicial order requiring disclosure of such information by a Member, where the information will be unprotected by confidentiality obligations, the Member may satisfy its confidentiality obligations hereunder by notifying the Member that generated the information or, if the information was generated by counsel appointed by the Steering Committee to perform specified work or by a technical consultant, by giving notice to said counsel or consultant and to the Steering Committee;

(c) Each Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any shared information or who participates in work on common projects or who otherwise assists any counsel or technical consultant in connection with this Agreement, is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person;

(d) The Members intend by this Section to protect from disclosure all confidential information and documents shared among any Members or between any Member and counsel appointed by the Steering Committee or any technical consultant to the greatest extent permitted by law regardless of whether the sharing occurred before execution of this Agreement and regardless of whether the writing or document is marked "Confidential";

(e) The confidentiality obligations of the Members under this Section shall remain in full force and effect, without regard to whether actions arising out of the Site are terminated by final judgment, and shall survive the termination of this Agreement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Agreement, or which is sought and obtained from a Member pursuant to applicable discovery procedures and not otherwise protected from disclosure.

10. **Denial of Liability.** This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any Member, by Members as among themselves or by any other person not a Member. However, nothing in this Section 10 is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against any party to this Agreement.

11. **Insurance.** The Members do not intend hereby to make any agreement that will prejudice any Member with respect to its insurers and, by entering into this Agreement, anticipate that the actions taken pursuant to this Agreement will benefit such insurers.

12. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member without the prior written consent of the Steering Committee.

13. **Allocation in the Event of Default.** The Steering Committee shall have the authority to declare any Member to be in default under this Agreement where said Member has failed to satisfy any financial obligation in a timely manner after written notice has been provided to the

alleged defaulting Member. The unpaid balance of any defaulting Member's share may be assessed by the Steering Committee against the other Members hereto (without waiving any rights such Members may have against the defaulting Member or its successors or assigns) in the same proportion as the other Members would have been obligated to pay if the defaulting Member had not been a signatory to this Agreement.

14. **Advice of Counsel.** No Member, or representative or counsel for any Member, has acted as counsel for any other Member with respect to such Member entering into this Agreement, except as expressly engaged by such Member with respect to this Agreement, and each Member represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement.

No Member or its representative serving on any committee or subcommittee shall act as legal counsel or legal representative of any other Member, unless expressly retained by such Member for such purpose, and except for such express retention, no attorney/client relationship or fiduciary relationship is intended to be created between representatives on the Steering Committee or Technical Committee and the Members.

15. **Waiver and Release of Liability.**

15.1 Waiver and Release. No Member or its representative serving on any committee or subcommittee shall be liable to any Member for any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment incurred or arising as a result of any acts or omissions taken or made pursuant to this Agreement. However, nothing in this Paragraph shall constitute a waiver or release of any contribution or indemnification claim or potential claim by one Member

against any other Member which is reserved within the scope of the Consent Decree or made pursuant to any future contract entered into by any Member outside this Agreement.

15.2 Survival. This Section 15 shall survive the termination of this Agreement.

16. Indemnification.

16.1 Indemnification. Each Member agrees to indemnify, defend and hold harmless any member and its representative(s) from and against any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "liability") which in any way relates to the good-faith performance of any duties under this Agreement by any Member or its representative(s) on behalf of the Steering Committee, Technical Committee, or the Group, including, but not limited to, any liability arising from any contract, agreement or instructions to the Custodian signed by the Member or its representative(s) at the request of the Steering Committee or the Group. This indemnification shall not apply to any liability arising from a criminal proceeding where the Member or its representative(s) had reasonable cause to believe that the conduct in question was unlawful. However, nothing in this Paragraph shall constitute a waiver or release of any contribution or indemnification claim or potential claim by a Member which is reserved within the Consent Decree or made pursuant to any future contract entered into by any Member outside this Agreement.

16.2 Montgomery County Solid Waste District. Each Member agrees to indemnify the Montgomery County Solid Waste District and its member entities (collectively the "MCSWD") for or from any and all claims, demands, causes of action, liabilities, suits, and judgements under Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9607 and 9613, or Sections 7002 or 7003 of the

Resource Conservation and Recovery Act, 42 U.S.C. §§ 6972 and 6973, arising from or relating to the Site. This indemnification is in consideration of a payment by the MCSWD of $1,000,000 to settle its response liability at the Site. In accordance with Section 6.1 hereof, each Member will benefit from the MCSWD payment in proportion to its percentage set forth in Appendix A.

16.3 Shared Cost. Payments under this section shall be a Shared Cost in accordance with Section 4.3 hereof, and shall be allocated among the Members.

16.4 Survival. This Section 16 shall survive the termination of this Agreement.

17. Covenant Not To Sue.

17.1 Covenant. In consideration of the mutual undertakings in this Agreement, each Member covenants not to sue the other Members or their officers, directors, shareholders, subsidiaries, affiliates, employees or agents with respect to any claims or liability under any provision of law or past or present contract (other that this Agreement) concerning "matters addressed" in the Consent Decree, as that term is defined in Paragraph 90 of the Consent Decree, except for any claims relating to the enforcement of this Agreement or any claims among the Members expressly reserved pursuant to the Consent Decree. The Members expressly reserve the right, jointly and severally, to take such actions as may be necessary to collect or compel the payment by any other Member of any amounts due and payable pursuant to this Agreement, the Custodial Fund Agreement, or the Consent Decree. Until this Agreement is amended to provide otherwise, the Members expressly reserve, jointly and severally, all claims or causes of action among the Members that are outside the scope of the covenant not to sue in this Paragraph 17.1, notwithstanding any language in Paragraph 88 of the Consent Decree to the contrary. The Members agree not to raise Paragraph 88 of the Consent Decree as a defense to any claim or

action among any of the Members regarding matters outside the scope of the covenant not to sue set forth in this Paragraph 17.1.

17.2 Survival. This Section 17 shall survive the termination of this Agreement.

18. Notice. All notices, bills, invoices, reports, and other communications with a Member shall be sent to the representative designated by the member of said Member's signature page of this Agreement. Each Member shall have the right to change its representative upon written notice to the Chairperson of the Steering Committee.

19. New Members. A person or entity that becomes a Member by execution of this Agreement subsequent to the effective date of this Agreement shall be deemed a Member ab initio and will make all payments which it would have been required to make had it been a Member ab initio, in proportion to the Members' Percentage as determined by the transactional database developed by the Cardington Road Coalition, except that the Members, through the Steering Committee may, for good cause, impose different terms and conditions upon any person or entity seeking to enter this Agreement after its effective date.

20. Effective Date. The effective date of this Agreement shall be the date first stated above.

21. Termination. This Agreement shall terminate at the time that the United States District Court for the Southern District of Ohio rejects or otherwise declines to enter the Consent Decree or when the Consent Decree terminates.

22. Excess Funds. If, after termination of this Agreement and payment of all administrative costs and consent decree expenses, a positive balance remains in the Custodial Fund, the balance will be distributed to each Member in proportion to the percentages listed in Appendix A. At such time, any Member who has contributed more than its percentage share will receive an

amount equal to this overpayment before a distribution to the Members is calculated. Any Member who is in default under Section 13 shall not receive any distribution under this provision.

23. Amendments. This Agreement may be amended only by a vote of at least two-thirds of the Voting Power of the Members present in person or by proxy at a Group meetings called for the purpose of considering such an amendment. However. Section 3.5. 4.10. 6.2. 9, 13, and 23 of this Agreement may be amended only by a unanimous vote of 100% of the Voting Power of the Members. In any event. the provisions of Sections 15. 16. 17 and 23 cannot be amended to limit the effect of Sections 15. 16 or 17 with respect to acts or omissions taken or made prior to such amendment.

24. Separability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

25. Entire Agreement.

25.1 This Agreement constitutes the entire understanding of the Members with respect to its subject matter and supersedes any previous written or oral agreements entered into with respect to the Cardington Road Site.

25.2 Notwithstanding Paragraph 25.1 above, nothing herein prevents or is intended to prevent some of the Members hereto from agreeing to reallocate between or among themselves. on a basis other than as provided in this Agreement. the costs required to be paid by each of those Members under the terms of this Agreement. Similarly. this Agreement does not supersede and is not intended to supersede any existing agreements allocating among some of the Members to

this Agreement. on a basis other than as provided in this Agreement. the costs required to be paid by each of those Members under the terms of this Agreement.

26. **Applicable Law.** For purposes of enforcement or interpretation of the provisions of the Agreement. the Members agree that the laws of the State of Ohio shall be applicable. and further agree not to contest personal jurisdiction in the State or Federal Court of Ohio with respect to litigation brought for such purposes.

27. **Separate Documents.** This Agreement may be executed in two or more counterparts. each of which shall be deemed an original. but all of which together shall constitute one and the same instrument.

28. **Nature of Agreement.** Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Members.

APPENDIX A

Member	Share of Total Site Costs	Past Cost Payment
Tremont Landfill Co.	40.00000%	$0
Waste Management of Ohio, Inc.	6.00000%	$326,069.34
Duriron	.6451%	$35,059.95
TRW, Inc.	.4925%	$26,766.71
Manchester Tank Equipment	.2229%	$12,117.06
Danis Industries Corp.	.6064%	$32,953.85
Subtotal	**47.9669%**	**$432,966.91**
General Motors, NCR, 37.660 8.531 Bridgestone/Firestone 5.842	52.0331%	$0
Total	**100%**	**$432,966.91**

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APPENDIX B

Cardington Road Site Group Proxy

I, the duly authorized representative of _____, (hereinafter the "Member") do hereby grant the Proxy of the Member to _____ for the _____ meeting to be held on the _____ day of _____; _____ is hereby authorized and empowered to vote for said Member and in said Member's name and stead at such meeting (and at any adjournment thereof) on any issue. except for those issues listed below. put to a vote in accordance with the Cardington Road Site Participation Agreement. For those issues noted below, _____ has no authority on behalf of the Member and must abstain from voting on the Member's behalf.

Signature: _____

Title/Position: _____

On Behalf Of: _____
(Company/Entity Name)

Date Signed: _____

Issues for which this proxy is not granted:

1. _____

2. _____

3. _____

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: Gregory L McC

Name: Gregory L. McCann

Title/Position: Vice President, General Counsel and Secretary

On Behalf Of: DANIS INDUSTRIES CORPORATION
(Company/Entity Name)

Date Signed: March 13, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: Gregory L. McCann

Vice President, General Counsel and Secretary

Address: Danis Industries Corporation
2 Riverplace, Suite 400
Dayton, OH 45405

Telephone No. 513-228-1225

Facsimile No. 513-228-1217

IN WITNESS WHEREOF. the Members hereto, which may be by and through their appointed counsel. enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: 

Name: Steven B. Stanley

Title/Position: Vice President

On Behalf Of: Tremont Landfill Company
(Company/Entity Name)

Date Signed: 3/13/96

Designated Representative for Receipt of Notices and Invoices:

Name: Gregory L. McCann - Secretary

Tremont Landfill Company

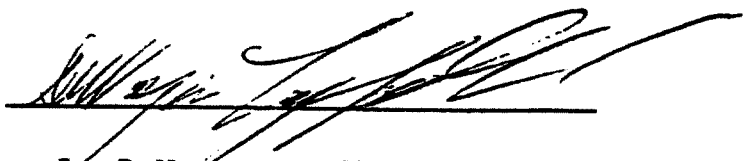
Address: 2 Riverplace, Suite 400

Dayton, OH 45405

Telephone No. 513/228-1225

Facsimile No. 513/228-1217

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: 

Name: L. DeWayne Layfield

Title/Position: Senior Counsel--Litigation

On Behalf Of: Bridgestone/Firestone, Inc.
(Company/Entity Name)

Date Signed: March 13, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: L. DeWayne Layfield

Bridgestone/Firestone, Inc.

Address: 3000 One Shell Plaza - 910 Louisiana Room 2929

Houston, Texas 77002-4995

Telephone No. (713) 222-0382

Facsimile No. (713) 229-1522

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: David B. Goldston

Name: David B. Goldston

Title/Position: Assistant Secretary, TRW Inc.

On Behalf Of: TRW Inc.
(Company/Entity Name)

Date Signed: March 13, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: F. David Trickey
Senior Counsel

Address: TRW Inc.
1900 Richmond Road
Cleveland, OH 44124

Telephone No. 216.291.7359

Facsimile No. 216.291.7874 or 7070

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: Robert E. Leininger

Name: Robert E. Leininger

Title/Position: Senior Environmental Counsel

On Behalf Of: Waste Management of Ohio, Inc.
(Company/Entity Name)

Date Signed: 3/13/96

Designated Representative for Receipt of Notices and Invoices:

Name: Robert E. Leininger

Senior Environmental Counsel

Address: 17250 Newburgh Road, Suite 100

Livonia, MI 48152

Telephone No. (313) 462-6900

Facsimile No. (313) 462-6286

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: Robert L. Roberts

Name: ROBERT L ROBERTS

Title/Position: ASSOCIATE COUNSEL

On Behalf Of: THE DURON COMPANY INC.
(Company/Entity Name)

Date Signed: MARCH 14, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: ROBERT L. ROBERTS, JR
ASSOCIATE COUNSEL

Address: THE DURON CO., INC.
P. O. BOX 8820
DAYTON, OHIO 45401-8820

Telephone No. (513) 476-6139

Facsimile No. (513) 476-6204 OR 6256

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: Don A. Schiemann

Name: Don A. Schiemann

Title/Position: Attorney

On Behalf Of: General Motors Corporation
(Company/Entity Name)

Date Signed: March 15, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: Don A. Schiemann, Esq.
General Motors Corporation

Address: 3044 West Grand Boulevard
MC # 482-112-149
Detroit, MI 48202

Telephone No. (313) 556-2175

Facsimile No. (313) 974-5467

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: David D. Reifschneider

Name: DAVID D. Reifschneider

Title/Position: Environmental Director

On Behalf Of: Manchester Tank & Equipment Co
(Company/Entity Name) For Buckeye Boiler

Date Signed: 3/20/96

Designated Representative for Receipt of Notices and Invoices:

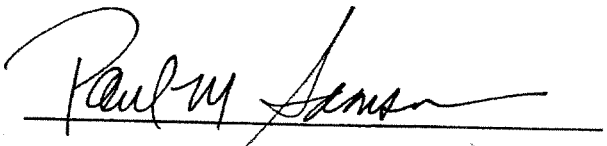
Name: DAVID D. Reifschneider
Environmental Director

Address: Manchester Tank & Equipment Co.
1749 Mallory Ln, Suite 400
Brentwood, TN 37027

Telephone No. 615-370-6124

Facsimile No. 615-370-6285

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Signature: 

Name: Paul M. Samson

Title/Position: Attorney

On Behalf Of: NCR Corporation
(Company/Entity Name)

Date Signed: November 5, 1996

Designated Representative for Receipt of Notices and Invoices:

Name: Paul M. Samson
Attorney, Corporate Section

Address: NCR Corporation
101 W. Schantz Avenue, ECD-2
Dayton, OH 45479-0001

Telephone No. 937/445-2908

Facsimile No. 937/445-1933

Cardington Road Post Closure Operations and Maintenance
Estimated Cost Schedule

PRELIMINARY FOR DISCUSSION PURPOSES ONLY

Line Item	Unit Of Measure	Unit Cost	Quantity	Equivalent Annual Cost	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Line Item	Unit Of Measure	Unit Cost	Quantity	Equivalent Annual Cost	9	10	11	12	13	14	15	16	17	18	19
Pneumatic Pump System															
Air Compressor Bldg. Inspection	hour	$55	13	$715	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Compressor/Lubricate	hour	$55	13	$715	$550	$550	$550	$550	$550	$550	$550	$550	$550	$550	$550
Inspect Moisture Separator/Drain	hour	$55	13	$715	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Dryer	hour	$55	13	$715	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Bldg Heater/On-Off	hour	$55	13	$715	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Compressor Motor	5 years	$1,000	0.2	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200
Desiccant	year	$250	1	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250
Oil Water Separators	year	$50	1	$50	$50	$50	$50	$50	$50	$50	$50	$50	$50	$50	$50
Compressor Valve Replacement	5 years	$800	0.2	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160
Air line Leaks	year	$1,500	1	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Pump Replacement	5 years	$1,250	0.2	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250
Compressor Maintenance	year	$500	1	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500
Groundwater Monitoring System															
Inspect Well Casing	hour	$55	1	$55	$110	$110	$110	$110	$110	$110	$110	$55	$55	$55	$55
Record CH4 Concentration	hour	$55	1	$55	$110	$110	$110	$110	$110	$110	$110	$55	$55	$55	$55
Record Water Level	hour	$55	1	$55	$110	$110	$110	$110	$110	$110	$110	$55	$55	$55	$55
pH/Conductivity Measurement	hour	$55	1.5	$83	$165	$165	$165	$165	$165	$165	$165	$83	$83	$83	$83
Purge Well	hour	$55	7.5	$413	$825	$825	$825	$825	$825	$825	$825	$413	$413	$413	$413
Collect Samples	hour	$110	20	$2,200	$4,400	$4,400	$4,400	$4,400	$4,400	$4,400	$4,400	$2,200	$2,200	$2,200	$2,200
Purge Water Disposal-Non-Hazardous	gal	$0.15	1500	$225	$450	$450	$450	$450	$450	$450	$450	$225	$225	$225	$225
Misc. Supplies/Gloves, PVC	ea	$500	1	$500	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$500	$500	$500	$500
Field Filters	ea	$250	1	$250	$500	$500	$500	$500	$500	$500	$500	$250	$250	$250	$250
Laboratory Analysis															
TCL Volatiles	ea	$150	18	$2,700	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$2,700	$2,700	$2,700	$2,700
Semi-Volatiles	ea	$300	18	$5,400	$10,800	$10,800	$10,800	$10,800	$10,800	$10,800	$10,800	$5,400	$5,400	$5,400	$5,400
TAL Metal (dissolved)	ea	$150	16	$2,400	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$2,400	$2,400	$2,400	$2,400
TAL Metals (total)	ea	$150	18	$2,400	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$2,400	$2,400	$2,400	$2,400
Herbicides	ea	$150	16	$2,400	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$2,400	$2,400	$2,400	$2,400
Pesticides	ea	$150	16	$2,400	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$2,400	$2,400	$2,400	$2,400
Container Prep/Custody Forms	hour	$55	4	$220	$440	$440	$440	$440	$440	$440	$440	$220	$220	$220	$220
Shipping & Handling	ea	$500	1	$500	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$500	$500	$500	$500
			Total	$22,255			8	0	0	0	0				
Explosive Gas Sampling (8 wells)															
Probe Inspection	hour	$90	52	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680
CH4 Sampling	hour	$90	156	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040
PID Sampling	hour	$90	0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Condensate Disposal															
Laboratory Analysis	ea	$1,000	1	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$500	$500	$500	$500
Load Charge	gal	$0.16	1,000	$160	$160	$160	$160	$160	$160	$160	$160	$80	$80	$80	$80
Shipping	gal	$0.16	1,000	$160	$160	$160	$160	$160	$160	$160	$160	$80	$80	$80	$80
Recordkeeping	ea	$500	1	$500	$500	$500	$500	$500	$500	$500	$500	$250	$250	$250	$250

EXHIBIT
A-3

Cardington Road Post Closure Operations and Maintenance
Estimated Cost Schedule

PRELIMINARY FOR DISCUSSION PURPOSES ONLY

Line Item	Unit Of Measure	Unit Cost	Quantity	Equivalent Annual Cost	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Cap Repair															
D4 Dozer	year	$2,500	1	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500		$2,500		$2,500
Soil	cy	$20	250	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000		$5,000		$5,000
Seed & Mulch	acre	$2,500	1.5	$3,750	$3,750	$3,750	$3,750	$3,750	$3,750	$3,750	$3,750		$3,750		$3,750
Silt Fence	lf	$10	300	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000		$3,000		$3,000
Photographs	ls	$250	1	$250	$250	$250	$250	$250	$250	$250	$250		$250		$250
Sediment Basin Clearing															
Basin Drawdown	hour	$130	20	$2,600				$1,100				$1,100			
Sediment Removal	hour	$130	40	$5,200				$5,200				$5,200			
Report Preparation															
Facility Inspection w/Photos	ea	$2,500	4	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
Groundwater	ea	$5,000	4	$20,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$5,000	$5,000	$5,000	$5,000
Explosive Gas	ea	$1,750	4	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000
Condensate	ea	$1,500	4	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000
Flare System	ea	$1,500	4	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000
Project Coordinator	hour	$130	100	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000
Misc. Expenses	ls	$2,500	1	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
		Annual Totals			$197,295	$194,795	$197,295	$201,095	$197,295	$194,795	$197,295	$140,580	$151,280	$134,280	$151,280
		Contingency	10.00%		$19,729.50	$19,479.50	$19,729.50	$20,109.50	$19,729.50	$19,479.50	$19,729.50	$14,058.00	$15,128.00	$13,428.00	$15,128.00
		Total		$5,574,509	$217,025	$214,275	$217,025	$221,205	$217,025	$214,275	$217,025	$154,648	$166,419	$147,719	$166,419
		30 Year NP Value (@ 5%)		$2,979,646.01											
		22 Year NP Value (@5%)		$2,422,852											

Cardington Road Post Closure Operations and Maintenance
Estimated Cost Schedule

PRELIMINARY FOR DISCUSSION PURPOSES ONLY

Post Closure Year

Line Item	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Line Item	20	21	22	23	24	25	26	27	28	29	30
Pneumatic Pump System											
Air Compressor Bldg. Inspection	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Compressor/Lubricate	$550	$550	$550	$550	$550	$550	$550	$550	$550	$550	$550
Inspect Moisture Separator/Drain	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Dryer	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Inspect Bldg Heater/On-Off	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Compressor Motor	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200
Dessicant	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250
Oil Water Separators	$50	$50	$50	$50	$50	$50	$50	$50	$50	$50	$50
Compressor Valve Replacement	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160
Air line Leaks	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Pump Replacement	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250
Compressor Maintenance	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500
Groundwater Monitoring System											
Inspect Well Casing	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55
Record CH4 Concentration	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55
Record Water Level	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55	$55
pH/Conductivity Measurement	$83	$83	$83	$83	$83	$83	$83	$83	$83	$83	$83
Purge Well	$413	$413	$413	$413	$413	$413	$413	$413	$413	$413	$413
Collect Samples	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200	$2,200
Purge Water Disposal-Non-Hazardous	$225	$225	$225	$225	$225	$225	$225	$225	$225	$225	$225
Misc. Supplies/Gloves, PVC	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500
Field Filters	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250
Laboratory Analysis											
TCL Volatiles	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700	$2,700
Semi-Volatiles	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400	$5,400
TAL Metal (dissolved)	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400
TAL Metals (total)	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400
Herbicides	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400
Pesticides	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400	$2,400
Container Prep/Custody Forms	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220
Shipping & Handling	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500
Explosive Gas Sampling (8 wells)											
Probe Inspection	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680	$4,680
CH4 Sampling	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040	$14,040
PID Sampling	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Condensate Disposal											
Laboratory Analysis	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500	$500
Load Charge	$80	$80	$80	$80	$80	$80	$80	$80	$80	$80	$80
Shipping	$80	$80	$80	$80	$80	$80	$80	$80	$80	$80	$80
Recordkeeping	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250

Post Closure Year

Line Item	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Cap Repair											
D4 Dozer		$2,500		$2,500		$2,500		$2,500		$2,500	
Soil		$5,000		$5,000		$5,000		$5,000		$5,000	
Seed & Mulch		$3,750		$3,750		$3,750		$3,750		$3,750	
Silt Fence		$3,000		$3,000		$3,000		$3,000		$3,000	
Photographs		$250		$250		$250		$250		$250	
Sediment Basin Clearing											
Basin Drawdown	$1,100				$1,100				$1,100		
Sediment Removal	$5,200				$5,200				$5,200		
Report Preparation											
Facility Inspection w/Photos	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
Groundwater	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000
Explosive Gas	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000	$7,000
Condensate	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000
Flare System	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000	$6,000
Project Coordinator	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000	$13,000
Misc. Expenses	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
	$140,590	$151,290	$134,290	$151,290	$140,590	$151,290	$134,290	$151,290	$140,590	$151,290	$134,290
	$14,059.00	$15,129.00	$13,429.00	$15,129.00	$14,059.00	$15,129.00	$13,429.00	$15,129.00	$14,059.00	$15,129.00	$13,429.00
	$154,649	$166,419	$147,719	$166,419	$154,649	$166,419	$147,719	$166,419	$154,649	$166,419	$147,719

Exhibit B

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

RECEIVED
JAN 18 2010
Flowserve Corporation
Legal Department

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

January 15, 2010

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Cash Call, 1st Quarter 2010
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the January 14, 2010 Final Total Project Forecast Updates and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 1st quarter 2010.

VLSG Member Share	=	$3,219.00
VRAC Member Share	=	$0.00
PLEASE PAY THIS AMOUNT	=	**$3,219.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

dlt
TRM
071
03/22/10

BILL TO RESEAUE.

EXHIBIT
B

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than February 15, 2010.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Vince Stamp
Mike Percival

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

RECEIVED
APR 08 2010
Flowserve Corporation
Legal Department

VIA OVERNIGHT COURIER

April 7, 2010

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

MGL Acct 0100 0001 0000 4150 0000
Name: Ron Shuff
Title: SVP & GC
Signature:

Reference: Invoice for Funds
Cash Call, 2nd Quarter 2010
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the April 7, 2010 Final Total Project Forecast Updates and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 2nd quarter 2010.

VLSG Member Share	=	$8,460.00
VRAC Member Share	=	$0.00
PLEASE PAY THIS AMOUNT	=	**$8,460.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

obt pay RI 05/04/10
A-4/9/2010

de maximis

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than May 7, 2010.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Vince Stamp
Mike Percival

3 PAPER

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

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JUL - 9 2010
Flowserve Corporation
Legal Department

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

July 8, 2010

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Cash Call, 3rd Quarter 2010
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the July 8, 2010 Final Total Project Forecast Updates and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 3rd quarter 2010.

VLSG Member Share	=	$6,023.00
VRAC Member Share	=	$0.00
PLEASE PAY THIS AMOUNT	=	**$6,023.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than August 8, 2010.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Vince Stamp
Mike Percival

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

RECEIVED
SEP 22 2010
Flowserve Corporation
Legal Department

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

September 21, 2010

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Cash Call, 4th Quarter 2010
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the September 21, 2010 Final Total Project Forecast Updates and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 4th quarter 2010.

VLSG Member Share	=	$3,622.00
VRAC Member Share	=	$0.00
PLEASE PAY THIS AMOUNT	=	**$3,622.00**

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

PAPER

Copy

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than October 21, 2010.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Vince Stamp
Mike Percival

de maximis, inc.

450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052
(865) 691-6485 FAX
(865) 691-9835 ACCT. FAX

INVOICE

(PAYMENT DUE WITHIN 30 DAYS)

VIA OVERNIGHT COURIER

0100-001-0000-41052
(Accrued Environmental Expense)

January 5, 2011

RECEIVED
JAN 5 2011
Flowserve Corporation
Legal Department

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: **Invoice for Funds**
Cash Call, 1st Quarter 2011
North Sanitary Landfill (a.k.a. Valleycrest) Site

Dear Mr. Roberts:

Pursuant to Paragraph 5 of the Valleycrest Landfill Site Group Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Valleycrest Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. This assessment is consistent with the January 5, 2011 Final Total Project Forecast Updates and Assessment Funding Projection. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through 1st quarter 2011.

VLSG Member Share	=	$13,111.00
VRAC Member Share	=	$0.00
PLEASE PAY THIS AMOUNT	=	**$13,111.00**

Pay

Please send a check in the above amount, made payable to:

Valleycrest Landfill Site Group RI/FS Fund
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

Payable

PAPER

Be advised that this assessment is due and payable upon receipt. **Payment is due no later than February 5, 2011.**

If there are any questions concerning this matter, please do not hesitate to contact me at (865) 691-052 or Mike Percival at (706) 467-3362. Thank you.

Sincerely,
de maximis, inc.

Michael H. Samples
Alternate Project Coordinator

MHS/car

Enclosure

cc: Vince Stamp
Mike Percival

PAPER

de maximis, inc.
1041 Parrott's Cove Road
Greensboro, GA 30642
(706) 467-3362
(706) 467-3378 FAX

INVOICE

(PAYMENT DUE WITHIN 45 DAYS)

RECEIVED
JAN 20 2010
Flowserve Corporation
Legal Department

January 15, 2010

Robert L. Roberts, Jr.
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Reference: Invoice for Funds
Sanitary Landfill (a.k.a. Cardington Road) Site

Dear Mr. Roberts:

Pursuant to Paragraph 6.2 of the Cardington Road Site Participation Agreement ("Agreement") for funding of expenses associated with implementation of work at the Cardington Road Landfill Site ("Site"), this letter serves as an invoice for the amount listed below. The intent of this assessment is to supplement the Group's Fund and cover the expenses associated with activities at the Site through March 2010.

Flowserve/Duriron	=	$1,230.00
PLEASE PAY THIS AMOUNT	=	**$1,230.00**

Please send a check in the above amount, made payable to:

Sanitary Landfill Settling Defendants Operations & Maintenance Account
c/o *de maximis, inc.*
1041 Parrott's Cove Road
Greensboro, GA 30642

obt
Pay
021
03/22/10

[redacted]
BILL TO RESOLVE

PAPER

Be advised that this assessment is due and payable within 45 days of receipt.

If there are any questions concerning this matter, please do not hesitate to contact me at (706) 467-3362.

Sincerely,
de maximis, inc.

Michael J. Percival
Project Coordinator

Enclosures

cc: Steven Jawetz

PAPER

Exhibit C

--- B.R. ----, 2011 WL 11413 (Bkrtcy.S.D.N.Y.)
(Cite as: 2011 WL 11413 (Bkrtcy.S.D.N.Y.))

HOnly the Westlaw citation is currently available.

United States Bankruptcy Court,
S.D. New York.
In re LYONDELL CHEMICAL COMPANY, et al.,
Debtors.

No. 09-10023 (REG).
Jan. 4, 2011.

Background: Chapter 11 debtors in jointly administered cases objected to private party claims for future environmental remediation costs also sought by federal government and state government entities.

Holdings: The Bankruptcy Court, Robert E. Gerber, J., held that:
(1) claims were "contingent" within meaning of bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution;
(2) claim was premised on co-liability under bankruptcy statute;
(3) claims asserted pursuant to cost recovery statute under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) were for "reimbursement"; and
(4) contractually-based claim was claim for "reimbursement."

Objections sustained in part and overruled in part.

West Headnotes

[1] Bankruptcy 51 2828.1

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2828 Contingent or Unliquidated Claims
51k2828.1 k. In General. Most Cited Cases

Three elements must be met for claim for reimbursement or contribution to be disallowed under statute: (1) party asserting the claim must be liable with the debtor on the claim of a third party, (2) claim must be contingent at the time of its allowance or disallowance, and (3) claim must be for reimbursement or contribution. 11 U.S.C.A. § 502(e)(1)(B).

[2] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims asserted by private parties under CERCLA for future environmental remediation costs at sites at which Chapter 11 debtors had operations were "contingent," within meaning of bankruptcy statute generally disallowing claims for reimbursement or contribution by those liable with debtor to the extent that claims were contingent, even if claim by Environmental Protection Agency (EPA) might have accrued against claimants, or claimant's liability for some environmental damage had been established, since amounts for which reimbursement was being sought had not yet been paid. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107, 113(f), 42 U.S.C.A. §§ 9607, 9613(f).

[3] Bankruptcy 51 2828.1

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2828 Contingent or Unliquidated Claims
51k2828.1 k. In General. Most Cited Cases

Establishment of some liability alone is insufficient to render a claim non-contingent under bankruptcy statute generally disallowing claims for reimbursement or contribution by those liable with debtor to the extent that claims are contingent. 11 U.S.C.A. § 502(e)(1)(B).

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--- B.R. ----, 2011 WL 11413 (Bkrtcy.S.D.N.Y.)
(Cite as: 2011 WL 11413 (Bkrtcy.S.D.N.Y.))

[4] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Private claimant's claim against Chapter 11 debtor for future environmental remediation costs was premised on co-liability within meaning of bankruptcy statute generally disallowing claims for reimbursement or contribution by those liable with debtor to the extent that claims were contingent, even though its claim was based on cost recovery under CERCLA, rather than contribution under CERCLA, where both claimant and debtor had been designated as potentially responsible parties (PRPs) by Environmental Protection Agency (EPA) and had shared statutory obligation, under CERCLA, to provide for site's environmental cleanup, and claim relied upon theory that claimant would have to pay more if debtor paid less than its share of cleanup costs. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107, 113(f), 42 U.S.C.A. §§ 9607, 9613(f).

[5] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Private claimants' claims against Chapter 11 debtors for future environmental remediation costs were for "reimbursement" under bankruptcy statute generally disallowing claims for reimbursement or contribution by those liable with debtor to the extent that claims were contingent, even though claims were asserted pursuant to CERCLA's cost recovery statute, rather than CERCLA's contribution statute. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107, 113(f), 42 U.S.C.A. §§ 9607, 9613(f).

[6] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Private claimant's contractually-based claim for future environmental remediation costs against Chapter 11 debtors sought payment from debtors for money that claimant might spend in the future, and thus was claim for "reimbursement" subject to bankruptcy statute generally disallowing claims for reimbursement or contribution by those liable with debtor to the extent that claims were contingent. 11 U.S.C.A. § 502(e)(1)(B).

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Perkins Coie, LLP, by Mark. W. Schneider, Esq. (argued), Seattle, WA, Dorsey & Whitney, LLP, by James V. Parravani, Esq., New York, NY, Attorneys for Weyerhaeuser Company.

Latham & Watkins, LLP, by Mark A. Broude, Esq. (argued), Sara Orr, Esq., New York, NY, Attorneys for Georgia-Pacific, LLC.

Jones Day, by Ross S. Barr, Esq. (argued), New York, NY, Attorneys for Hamilton Beach Brands.

BENCH DECISION [FN1] ON DEBTORS' OBJECTIONS, UNDER BANKRUPTCY CODE SECTION 502(e)(1)(B), TO PRP ENVIRONMENTAL CONTRIBUTION CLAIMS

ROBERT E. GERBER, Bankruptcy Judge.

***1** In this contested matter in the jointly administered chapter 11 cases of Lyondell Chemical Company and its affiliates, the Debtors object to private party claims (the "**Private Party Claims**") for future environmental remediation costs also sought by the federal government and certain state governmental entities, under section 502(e)(1)(B) of the Code,

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which generally disallows claims (1) for reimbursement or contribution (2) by those liable with the debtor (3) to the extent that such claims are contingent.

With one exception, I conclude that these claims are of the type for which disallowance is required under section 502(e)(1)(B) and its associated caselaw, and except insofar as the exception applies, the Debtors' objections are sustained. With respect to the exception (where remediation costs were already paid by the claimant), the Debtors' exceptions are overruled.

Findings of Fact [FN2]

1. Government Environmental Claims

In July and August 2009, the United States, on behalf of the U.S. Environmental Protection Agency, the U.S. Department of the Interior, and the National Oceanic and Atmospheric Administration (collectively, the "**EPA**"), filed proofs of claim (the "**EPA Claims**") against certain of the Debtors asserting claims for, among other things, unreimbursed past and estimated future response costs for environmental cleanup under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**").

Various state governments, or their environmental regulatory agencies, [FN3] did likewise. The governmental claims totaled approximately $5.5 billion in identified amounts, in addition to contingent and unliquidated claims that were asserted in unstated amounts.[FN4] These environmental claims represented one of the largest, if not the largest, groups of unsecured claims asserted in the Lyondell bankruptcy cases.

2. Environmental Settlement Agreement with U.S. and Certain States

In April 2010, I approved a settlement agreement (the "**Settlement Agreement**") among the Debtors, the EPA, and ten state environmental agencies, resolving their environmental claims and providing for funds for future clean-up efforts. The Settlement Agreement, in relevant part, provided for:

> (1) the allowance of over $1 billion in general unsecured claims for the benefit of the U.S. for unreimbursed past and future response costs incurred by the U.S. pursuant to CERCLA section 107(a);
>
> (2) a cash payment to the U.S. to resolve alleged injunctive obligations at a number of environmental sites; and
>
> (3) the formation and funding of an environmental custodial trust to take title to and to remediate certain Debtor-owned properties with known or suspected environmental contamination.

The Agreement also provided allowed claims in fixed amounts to various states' environmental authorities.

The Settlement Agreement granted Millennium Holdings, LLC ("**MHLLC**") contribution protection under CERCLA section 113(f)(2) for environmental liabilities resolved by the Settlement Agreement. The implication of that contribution protection was that other "potentially responsible parties" ("**PRPs**") with respect to those environmental liabilities would not be able to seek payment from MHLLC for cleanup costs, because MHLLC would have satisfied its liability on account of the sites addressed in the Settlement Agreement.

3. The Private Party Environmental Claims

***2** Over 70 Private Party Claims associated with the properties covered by the EPA's and/or the state government entities' proofs of claims-relying either implicitly or explicitly on CERCLA sections 107(a) and 113(f)(1), discussed below-sought an estimated $1.1 billion for both past and future cleanup costs. After having settled the EPA and state governmental claims, the Debtors objected to the Private Party Claims.

The Debtors don't object to the Private Party Claims to the extent they are for money spent by claimants in the past. But the Debtors argue that the Private Party Claims must be disallowed under section 502(e)(1)(B) of the Bankruptcy Code to the extent they seek payment of *future* cleanup costs.

Most of the Private Party claimants did not contest the Objections. But some did. Objections with respect to three Orally Arguing Claimants were orally argued at the hearing on April 16, 2010-those with respect to responders Georgia-Pacific, LLC ("**Geor-**

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gia-Pacific"), Weyerhaeuser Company ("**Weyerhaeuser**"), and Hamilton Beach Brands, Inc. ("**Hamilton Beach,**" and collectively with Georgia-Pacific and Weyerhaeuser, the "**Orally Arguing Claimants**").[FN5]

4. Georgia-Pacific and Weyerhaeuser's Claims

Georgia-Pacific and Weyerhaeuser's claims relate to the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "**Kalamazoo Site**") in Michigan. Paper mill operations once located on the Kalamazoo Site discharged paper residue into the environment, including the Kalamazoo River, and deposited massive amounts of polychlorinated biphenyls into waterways, surface water, soils, and sediments. On August 30, 1990, the EPA placed the Kalamazoo Site on the "National Priorities List"-EPA's list of the most serious hazardous waste sites. MHLLC, Georgia-Pacific, and Weyerhaeuser (or their respective predecessors) were all former mill operators at the Kalamazoo Site. The Site is divided into 5 "operable units" ("**OU**"s), and the EPA has stated that it believes that the cleanup of OU-5, an 80-mile long stretch of the Kalamazoo River and Portage Creek, will be the main source of costs at the Site.

The EPA filed a proof of claim against MHLLC, alleging that MHLLC is liable to the U.S. under CERCLA section 107 for $2.6 billion for response costs at the Kalamazoo Site, including all five OUs, and that other parties along with MHLLC may also be jointly and severally liable. The EPA estimates future response costs for OU-5 to be $2.4 billion-constituting by far the largest portion of the total cost.

The EPA has not issued cleanup orders to MHLLC, Georgia-Pacific, or Weyerhaeuser at this time. The EPA has entered into administrative orders on consent ("**AOCs**") and consent decrees with Georgia-Pacific and Weyerhaeuser with respect to the Kalamazoo Site, and I'll discuss the specific orders and decrees with respect to each Respondent separately below.

A. Georgia-Pacific's Claim

The EPA has identified Georgia-Pacific and MHLLC as PRPs with respect to the Kalamazoo Site. While Georgia-Pacific and the EPA have entered into several AOCs and one Consent Decree, the agreements covering OU-5 did not specify a final remedy for that portion of the Kalamazoo Site.

(1) AOCs for OU-5

***3** In February 2007, Georgia-Pacific, MHLLC, the state of Michigan, and the EPA entered into an AOC to perform a removal action at an area within OU-5 ("**First AOC**"). The same month, Georgia-Pacific, MHLLC, and the EPA entered into another AOC to perform a supplemental remedial investigation and feasibility study for OU-5 and a feasibility study of OU1 (the "**Second AOC**"). In June 2009, Georgia-Pacific and the EPA entered into a third AOC to perform a removal action at an area within OU-5 ("**Third AOC,**" and collectively, with First AOC and the Second AOC, the "**Georgia-Pacific AOCs**").[FN6] Although the U.S. has unreimbursed response costs, investigations at the Kalamazoo Site are still pending, and the final remedy for OU-5 has not yet been selected.

(1) Consent Decree

In May 2009, Georgia-Pacific entered into a proposed consent decree with the EPA (the "**Georgia-Pacific Consent Decree**"), which at the time of Georgia-Pacific's filing of its proof of claim, had not yet been approved by the District Court. In the Consent Decree, Georgia-Pacific agreed to perform and implement the EPA's remedial plan for OU-2, and to pay the related past and future response costs incurred by the EPA. MHLLC is not a party to the Consent Decree.

(3) Allocation Agreement

In August 1991, Georgia-Pacific and MHLLC entered into an agreement with ARCADIS of New York, Inc. ("**ARCADIS**"), under which ARCADIS would perform services including environmental investigation and remediation at the Kalamazoo Site. Under a cost sharing agreement (the **"Allocation Agreement**"), Georgia-Pacific and MHLLC agreed to share costs relating to the Kalamazoo Site-with MHLLC paying 55% and Georgia-Pacific paying 45% of the costs. ARCADIS used the Allocation Agreement when billing Georgia-Pacific and MHLLC for services performed in connection with the Kalamazoo Site. Georgia-Pacific maintains that MHLLC has failed to pay Georgia-Pacific the amounts required under the Allocation Agreement, and has failed to pay ARCADIS for its services.

Much later, in June 2009, Georgia-Pacific and

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ARCADIS entered into an assignment agreement ("**Assignment Agreement**") under which ARCADIS assigned to Georgia-Pacific all of the ARCADIS rights against MHLLC for services ARCADIS performed at the Kalamazoo Site. Georgia-Pacific maintains that MHLLC has not paid Georgia-Pacific the amounts due under the Assignment Agreement.

Georgia-Pacific filed a proof of claim against MHLLC seeking primarily to recover:

> (1) past and future response costs and natural resource damages incurred in connection with the Kalamazoo Site,
>
> (2) amounts paid by Georgia-Pacific to satisfy the obligations of MHLLC to ARCADIS, and
>
> (3) amounts owed by MHLLC to ARCADIS and transferred to Georgia-Pacific pursuant to the Assignment Agreement.[FN7]

Georgia-Pacific asserts its claim under CERCLA section 113, stating that the EPA's commencement of the suit that led to the Consent Decree provides the basis for a section 113(f)(1) contribution claim. Georgia-Pacific doesn't dispute that its claim is for contribution and that it is based on co-liability with MHLLC.[FN8] Georgia-Pacific argues only that its claim is not contingent.

B. Weyerhaeuser's Claim

***4** From 1963 to 1970, Weyerhaeuser operated a mill and landfill next to the Kalamazoo River, about ten miles downstream from MHLLC's facilities. Remediation is still ongoing, and is in its early stages. The EPA has listed MHLLC, Weyerhaeuser, and others as PRPs at the Kalamazoo Site. In November 2004, Weyerhaeuser entered into a consent decree (the "**Weyerhaeuser Consent Decree**") with the EPA with respect to OU-4. Weyerhaeuser filed a proof of claim against MHLLC in the amount of $9 million for past response costs, and also seeks payment on account of MHLLC's liability for future costs and liabilities.

Weyerhaeuser argues that it is not co-liable with MHLLC for the amounts sought in its proof of claim because it is seeking only to recover response costs under CERCLA section 107 that it has already incurred and *will incur itself*. Weyerhaeuser also argues that its claim is not contingent, or for "reimbursement or contribution" under section 502(e)(1)(B).

5. Hamilton Beach's Claims

Debtors MHLLC and Millenium America, Inc. ("**Millenium America**") are also the subjects of claims by the State of North Carolina for environmental cleanup of the Mt. Airy and Southern Pines sites in North Carolina (the "**Mt. Airy Site**" and the "**Southern Pines Site**"). Unlike the Kalamazoo Site, the Mt. Airy and Southern Pines sites are not covered by the Settlement Agreement with EPA.

North Carolina filed a proof of claim against MHLLC and all other Debtors for over $6 million for environmental assessment and cleanup costs of the Mt. Airy Site, asserting its claim on the basis of:

> (1) state environmental law and
>
> (2) an October 2004 administrative agreement (the "**Mt. Airy Administrative Agreement**") among Hamilton Beach, MHLLC, and North Carolina to conduct remediation at the Mr. Airy Site.

North Carolina also filed a proof of claim against Millennium America and all other Debtors for assessment and remedial costs for environmental contaminations at the Southern Pines Site. North Carolina asserts its claim on the basis of:

> (1) a memorandum of understanding between North Carolina and the EPA which provides that the Southern Pines Site is to be remediated pursuant to applicable state law; and
>
> (2) a January 1999 AOC between North Carolina, Hamilton Beach, and Millennium America, Inc. (the "**Southern Pines Order**") to investigate and remediate the Southern Pines Site.

Hamilton Beach filed substantially identical proofs of claim against MHLLC and another Debtor, seeking future costs for environmental cleanup at the Mt. Airy and Southern Pines Sites. Hamilton Beach predicates its claim on:

> (1) the Mt. Airy Administrative Agreement;

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(2) the Southern Pines Order; and

(3) a December 2003 settlement agreement ("**2003 Settlement Agreement**") between Hamilton Beach and MHLLC, under which they agreed to assess and remediate the Mt. Airy and the Southern Pines Sites and allocated the costs between the two parties.

***5** Hamilton Beach adopts the legal arguments of the other Orally Arguing Claimants, and asserts that its claim is not contingent, as the environmental damage has already been done and liability has already been apportioned under the 2003 Settlement Agreement. Hamilton Beach also asserts that its claim is not based on co-liability with the Debtors-although (as the Debtors point out) in its proof of claim Hamilton Beach seemed to claim that it was jointly and severally liable with MHLLC under the 2003 Settlement Agreement and applicable non-bankruptcy law. Finally, by incorporation of the others' arguments, Hamilton Beach argues that its claim is not for reimbursement or contribution.

Discussion

All parties agree that section 502(e)(1)(B) of the Bankruptcy Code determines whether the Private Party Claims should be disallowed. As noted above, the Orally Arguing Claimants argue, for various reasons, that their claims should not be disallowed because they fail to satisfy one or more of the elements of section 502(e)(1)(B), as laid out in the statute or the interpretive caselaw-that the claims be for reimbursement or contribution, that they be contingent, or be based on co-liability with the Debtors.

I.

The Statutory Environment

[1] Though the Code doesn't define all of the terms that ultimately are important here, and many of the gaps have been filled by caselaw, I nevertheless start with textual analysis.[FN9] Section 502(e) provides, in relevant part, that notwithstanding provisions of section 502 under which claims would otherwise be allowable:

(e)(1) ... the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on ... the claim of a creditor, to the extent that-

...

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution....

Thus, by section 502(e)(1)(B)'s terms, three elements must be met for a claim to be disallowed under section 502(e)(1)(B):

(1) the party asserting the claim must be liable with the debtor on the claim of a third party;

(2) the claim must be contingent at the time of its allowance or disallowance; and

(3) the claim must be for reimbursement or contribution.

But textual analysis here is of limited utility. None of the terms or expressions "reimbursement," "contribution," "contingent" or "liable with the debtor" is defined in the Bankruptcy Code, nor does the Code articulate standards for their application.[FN10] Thus a court construes section 502(e)(1)(B)'s requirements based on caselaw. Section 502(e)(1)(B)'s requirements have been interpreted in a fair body of relevant caselaw, most of which has disallowed claims for contribution and indemnification by those who are liable, along with a debtor, to others for amounts to be determined only in the future-including a decision of mine a few months ago, where I sustained objections, on 502(e)(1)(B) grounds, to claims for contribution and/or indemnification for liability in connection with pending or threatened lawsuits by plaintiffs alleging injuries from exposure to the chemical Diacetyl, where the claimants, along with Chemtura, might be liable for the plaintiffs' Diacetyl injury.[FN11] The issue here, whether a different rule should apply to claims by PRPs who, along with a Debtor, are liable for environmental remediation costs, requires consideration of the relevant environmental statutes-most significantly provisions in CERCLA.

***6** Section 106 (captioned "Abatement Actions") provides, its subsection (a):

In addition to any other action taken by a State or local government, when the President determines

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> that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States *to secure such relief as may be necessary to abate such danger or threat*, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.[FN12]

Section 106's subsection (b) then provides for fines for failure to comply with an order issued under subsection (a), and, for those who have received and complied with an order issued under subsection (a), reimbursement from the Hazardous Substance Superfund for the reasonable costs of such action. [FN13]

Then, CERCLA Section 107 (captioned "Liability") provides, in relevant part:

> (a) ... Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-
>
> (1) the owner and operator of a vessel or a facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for-
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
>
> (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
>
> (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
>
> (D) the costs of any health assessment or health effects study carried out under [CERCLA section 104].[FN14]

***7** Thus, CERCLA section 107(a) imposes liability for environmental cleanup costs, natural resource damages, and certain other categories of recovery on PRPs-including, as relevant here, (1) the current "owner or operator" of a site contaminated with hazardous substances, and (2) any person who previously owned or operated a contaminated site at the time of a hazardous waste disposal.

Then, CERCLA Section 113 (captioned "Civil Proceedings") provides in its subsection (f) (captioned "Contribution"), in relevant part:

> (1) Contribution
>
> Any person *may seek contribution from any other person who is liable or potentially liable under [section 107(a)]*, during or following any civil action under [section 106] or under [section 107(a)]. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to

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> bring an action for contribution in the absence of a civil action under [section 106] or [section 107].
>
> (2) Settlement
>
> A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.
>
> (3) Persons not party to settlement
>
> (A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.
>
> (B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).
>
> (C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.[FN15]

Thus 113(f)(1) provides that PRPs who fund response actions can seek contribution from other PRPs "during or following any civil action" instituted under CERCLA section 106 or 107. And CERCLA section 113(f)(3)(B) permits private parties to seek contribution after they settle their liability with the EPA or a state in an administrative or judicially approved settlement. Conversely, section 113(f)(2) protects PRPs who have settled from contribution claims by other PRPs.

II.

Satisfaction of Section 502(e)(1)(B) Elements

***8** While acknowledging that its claim is for contribution and that it is based on co-liability with MHLLC, Georgia-Pacific argues that its claim is not contingent. Weyerhaeuser and Hamilton Beach, like Georgia-Pacific, argue that their claims are not contingent, and further contend that they are not co-liable with MHLLC for the amounts sought in their proofs of claim, and that their claims are not for "reimbursement or contribution."

Because the three Orally Arguing Claimants' positions overlap to such significant degrees, and because they assert, in many respects, similar deficiencies with respect to 502(e)(1)(B)'s three elements, for purposes of analysis I group the objections by the 502(e)(1)(B) elements.

A.

"Contingency" Element

[2] Each of Georgia-Pacific, Weyerhaeuser [FN16] and Hamilton Beach contends that its claim is not contingent. I must disagree.

In my recent decision in *Chemtura*,[FN17] I ruled, among other things, that the claims then before me were contingent. There, as I've noted, five corporate entities had filed claims against Chemtura for contribution and/or indemnification with respect to amounts they might pay in the future in litigation against them. I found that except to the extent they sought contribution for amounts already paid to tort litigants, their claims were contingent.[FN18] While in some instances the potential for payment by any of the Orally Arguing Claimants is more advanced than it was in *Chemtura*, similar principles apply, and key facts remain the same. The most significant of these is that except for remedial action accomplished in the past, for which the right to reimbursement or contribution is unchallenged (or should be), Georgia-Pacific, Weyerhaeuser, and Hamilton Beach are similarly seeking reimbursement for amounts that have not yet been paid.

Though neither is squarely on point, two decisions from the Second Circuit have discussed contingency in deciding whether or not a creditor held a "claim." [FN19] In *Chateaugay*, the EPA argued that "it

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does not have a 'claim' within the meaning of the Bankruptcy Code ... for reimbursement of CERCLA response costs until those costs have been incurred." [FN20] Therefore, the EPA argued, any future response costs that the EPA might incur would pass though the bankruptcy organization as non-discharged liabilities. The Second Circuit rejected this argument, holding that the future costs were pre-petition "claims." The Circuit stated, as part of its rationale, that:

> [T]he location of these sites, the determination of their coverage by CERCLA, and the incurring of response costs by the EPA are all steps that may fairly be viewed, in the regulatory context, as rendering the EPA's claim "contingent," rather than as placing it outside the Code's definition of "claim." [FN21]

Similarly, in *Manville Forest*, the Second Circuit decided that a party's liability constitutes a "claim" against the debtor, albeit contingent. It stated:

> ***9** the fact that [claimant] Olin did not know the specific parameters of its liability does not place that liability outside of the definition of "claim" *but rather is precisely what made the claim contingent.* Under this specific combination of circumstances, we find that future environmental liability was actually or presumedly contemplated by the parties upon their signing of the indemnification agreements and constitutes a valid *contingent claim.* [FN22]

The Debtors cite *Chateauguay* for the proposition that claims are contingent until costs for remediation work are actually expended or paid.[FN23] I don't read *Chateauguay*, which of course is not a 502(e)(1)(B) case, to go that far-to *hold* that a claim for reimbursement or contribution is contingent until an underlying payment (here, costs for remediation) is actually made.[FN24] But I do find it instructive that in both *Chateauguay* and *Manville Forest*, it was undisputed that the debtors faced *some* environmental liability, but the Second Circuit nevertheless described those claims as contingent because the scope, amount, and form of that liability was undetermined.[FN25]

But other authority, including three decisions by other bankruptcy judges in this very district,[FN26] another by a district judge in this district, [FN27] and another a thoughtful decision from Delaware [FN28]-all 502(e)(1)(B) determinations-supports the conclusion that until and unless amounts *are actually paid*, the claims for reimbursement or contribution with respect to those amounts remain contingent for 502(e)(1)(B) purposes.[FN29] For instance, in *Alper Holdings*, in this district, Judge Lifland disallowed claims for indemnification for future liability in environmental contamination litigation, finding that they were

> properly categorized as "contingent as of the time of allowance or disallowance" as the amounts and ultimate liability are presently unknown. [FN30]

Likewise, in *Drexel Burnham*, in this district, it was observed that "[t]he Claimants' claim is contingent until their liability is established *and the co-debtor has paid the creditor*.... One who is secondarily liable may only secure distribution rights by paying the amount owed the creditor." [FN31]

Similarly, in *APCO*, Judge Shannon disallowed a claim for the costs of remedial activities filed by the City of Wichita, which like the debtor there, was a PRP with respect to a site with groundwater contamination. Significantly, the City had agreed not just to perform a remedial investigation and feasibility study of the contaminated site; it had agreed to undertake the remedial activities identified in the study to clean up the site,[FN32] and had prevailed in a trial at which the *APCO* debtors were determined to be responsible for 1.72% of the City's past and future costs for the remediation, and for 100% of the City future source control costs to be incurred at a different site,[FN33] securing a judgment for the future cleanup costs of which a portion was unpaid.[FN34]

***10** Among other things, Judge Shannon ruled that "because the City has not yet incurred any future source control costs" at one of the sites,[FN35] the claim was contingent, even though "the parties' liability has been established." [FN36] Quoting, among other decisions, *Drexel Burnham*, he observed that

> The law is clear that '[t]he contingency contemplated by [section] 502(e)(1)(B) relates to both payment *and* liability." ... Therefore, a claimant's "claim is contingent until their liability is established ... *and* the co-debtor has paid the creditor." [FN37]

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I've stated many times that the interests of predictability in this district are of great importance, and that where there is no controlling Second Circuit authority, I follow the decisions of other bankruptcy judges in this district in the absence of clear error.[FN38] But to say that these decisions, in this district and elsewhere, should be followed under that standard would be faint praise here. In my view, the conclusions in those cases were plainly correct. That is so because even though the need for remediation of the underlying environmental site might be obvious, the EPA or state environmental agency might have a multitude of different ways of getting the remediation done, and any one of those means might or might not call for-or result in-payment by the separate PRP that is asserting the claim against the debtor. And the PRP might or might not wind up actually making the payment for which it then would be seeking reimbursement or contribution.

Thus, in my view, the fact that an EPA claim may have accrued against any of Georgia-Pacific, Weyerhaeuser, or Hamilton Beach does not mean that any of their separate claims against the Debtor are no longer contingent. We don't know whether either of them will lay out the funds necessary to engage in the curative action, and, if so, to what extent.

In arguing that its claim for future response costs is not contingent, Georgia-Pacific contends that a claim is contingent only when it has not yet *accrued* (in contrast to *paid*), and Georgia-Pacific maintains that its claim for contribution under section 113 has accrued. As support, Georgia-Pacific cites the Supreme Court's *Aviall Services* decision,[FN39] a case that did not involve section 502(e)(1)(B), wherein the Supreme Court held that a private party can bring a CERCLA section 113(f)(1) action for contribution only after it has been sued under CERCLA section 106 or 107(a).

However, *Aviall Services* can properly be read as going only to the requirements for bringing a claim under CERCLA section 113(f); it cannot be extended to deciding whether a claim by a PRP is or is not "contingent" within the meaning of section 502(e)(1)(B), which *Aviall Services* quite obviously did not address. Georgia-Pacific incorrectly assumes that the requirements for bringing a section 113(f)(1) contribution claim under CERCLA are the same as the requirements for having *non-contingent* 113(f)(1) claim under section 502(e)(1)(B) of the Code.

***11** Additionally, Georgia-Pacific and Weyerhaeuser argue that the Debtors are conflating contingency and liquidation. While I fully understand that "unliquidated" and "contingent" are not the same thing [FN40] (and suspect that the Debtors do too), here I find that the claims of each of Georgia-Pacific, Weyerhaeuser, and Hamilton Beach are *both.* The claims at issue here are for future cleanup costs that might or might not actually be incurred, and then might or might not actually be paid, by any of them.[FN41]

Though I ultimately decide the issue on the statutory language and the caselaw, I note, to the extent it matters, that this ruling advances not just bankruptcy policy, but environmental policy as well. Disallowance of Georgia-Pacific's claims here advances CERCLA's policy goal of encouraging expeditious cleanup, because claimants are encouraged to remediate promptly by the threat of disallowance of claims that have not been fixed.[FN42] As Judge Shannon observed in *APCO:*

> It may appear that the Court's ruling is a harsh result for the City, and that may be true. Nevertheless, the Court's decision is mandated by the express language of the Code and is entirely consistent with the principles animating CERCLA. At bottom, CERCLA and similar state and federal environmental statutes create a scheme whereby parties are incentivized to promptly clean up contaminated sites. The prospect of the potential disallowance of contingent contribution claims under section 502(e)(1)(B) offers a further incentive to undertake the cleanup: if the work is done (or at least underway), the contribution claim is not contingent as to amounts incurred by the contribution claimant. Thus, if the City had commenced or completed source control remediation at 1001 E. Lincoln in connection with its work on the G & M Site as a whole, the City's claim would be allowed to the extent of the amounts incurred.[FN43]

[3] Similarly, Hamilton Beach relies on the fact that the environmental damage at the Mt. Airy and Southern Pines Sites has already occurred to support its argument that its claim is not contingent. I explained above that the establishment of some liability alone is insufficient to render a claim non-contingent. Similarly, the fact that Hamilton Beach is liable for

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environmental damage is also by itself insufficient to render a claim non-contingent, as *APCO* makes quite clear. Although Hamilton Beach has entered into a settlement agreement in which the parties allocated the liability with respect to the two sites, there is no indication that money has been spent. For the same reasons that I determined that Georgia-Pacific's claim is contingent, I determine that Hamilton Beach's claim is contingent as well.

Finally, Weyerhaeuser argues that it has already incurred over $11 million in response costs, in addition to amounts it may have to pay in the future. I believe that with respect to these *past* response costs, the Debtors have now acknowledged that they are non-contingent. To the extent the Debtors haven't conceded the point, I agree with Weyerhaeuser. But with respect to payments Weyerhaeuser hasn't made yet, I must find that the amounts are contingent, for the reasons stated above.

B.
"Co-Liability" Element

***12** Making three principal arguments, Weyerhaeuser and Hamilton Beach [FN44] also contend that the co-liability element has not been satisfied. Once more I cannot agree.

1. The Atlantic Research Contentions

[4] Weyerhaeuser's first argument is that its claim is not premised on co-liability because its claim is based on cost recovery under CERCLA section 107(a), and not contribution under section 113(f).[FN45] In that connection, Weyerhaeuser notes that in *U.S. v. Atlantic Research Corp.,* [FN46] the Supreme Court held that a private party may recover under CERCLA section 107(a) without any establishment of liability to a third party. Because it is asserting a section 107(a) claim, therefore, Weyerhaeuser argues, the basis for finding co-liability is lacking.

But Weyerhaeuser's reliance on *Atlantic Research* is flawed. The issue in *Atlantic Research*, a non-bankruptcy case, was whether a PRP could sue to recover voluntarily incurred cleanup costs under section 107(a), rather than relying solely on section 113(f).[FN47] Section 107(a)(4)(A) expressly authorizes the federal government, the states, and Indian tribes to sue for cost recovery under section 107(a), and section 107(a)(4)(B) gives the same right to sue to "any other person." Specifically, the Court was asked to determine whether a PRP is included in the phrase "any other person" in 107(a)(4)(B).

The Supreme Court held that the operator's status as a PRP did not preclude the operator from suing under section 107(a), as section 107(a)(4)(B) covers any person not identified in subparagraph (A), and that a PRP was not limited to relief under section 113(f).[FN48] Nevertheless, the Supreme Court highlighted the "complementary yet distinct" nature of the rights established under section 107(a) and 113(f)-specifically, that a private party may sue under section 107(a) without any establishment of liability to a third party, something it could not do under section 113(f).[FN49] The Supreme Court allowed the claimant to recover from other PRPs costs that it had incurred by voluntary cleanup-or in other words, by cleanup or payments not prompted by a government action under sections 106 or 107.

On the issue of co-liability, Weyerhaeuser erroneously assumes that only claims under section 113(f) are premised on co-liability with the defendant (in this case, the Debtor), and that cost recovery claims under section 107(a) are all direct claims, and not claims for either reimbursement or contribution. The *Atlantic Research* court held that a claim under section 107(a) *need not* be based on co-liability to a third-party (e.g. a governmental entity). But it did not hold that a claim under 107(a) *cannot* be based on co-liability. If a PRP undertakes "voluntary" clean up (as opposed to cleanup pursuant to government action under section 106 or 107)-and sues under 107(a) to seek recovery for that cleanup from another PRP-that has no effect on, and certainly does not nullify, the fact that the two may still be co-liable to the Government.

***13** Weyerhaeuser and MHLLC, who have both been designated as PRPs by the EPA, have a shared statutory obligation, under CERCLA, to provide for the cleanup of the Kalamazoo Site, by one means or another. That Weyerhaeuser might satisfy its own obligations by voluntary cleanup, rather than by waiting for a government action, is laudable, but not relevant to the 502(e)(1)(B) determination. Weyerhaeuser's claims rely on the theory that if the Debtors pay less than their share of cleanup costs, Weyerhaeuser will have to pay more. That is the essence of co-liability.

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--- B.R. ----, 2011 WL 11413 (Bkrtcy.S.D.N.Y.)
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2. The Allegheny Contentions

Weyerhaeuser further asserts that co-liability is lacking based on a district court decision in the *Allegheny* bankruptcy case.[FN50] In *Allegheny*, the owner of the site filed a claim for past and future response costs against a debtor that had sold the site to the claimant prior to filing for bankruptcy. Applying the three-part test described on page 10 above, the *Allegheny* court ruled that section 502(e)(1)(B) did not exclude the claimant's direct claims for future response costs under CERCLA section 107(a).[FN51] While the *Allegheny* debtor argued that there was a possibility that the creditor might never be required to expend any funds if the EPA were subsequently to order the debtor to perform the remediation, the *Allegheny* court reasoned that this risk of double liability could be avoided by having the creditor's claim paid into a trust to be expended on remediation of the waste sites.[FN52]

I find the claims at issue in *Allegheny* to be distinguishable from Weyerhaeuser's claims,[FN53] but more fundamentally, I must join the other courts that have disagreed with the *Allegheny* decision.[FN54]

As we all know, section 502(e)(1)(B) serves the important purpose of avoiding redundant recoveries.[FN55] The situation here, where both Weyerhaeuser and MHLLC were named as PRPs, presents precisely the danger of double recovery from the Debtors on account of the same liability, ultimately to the EPA.[FN56] Because the EPA already has an allowed claim against the Debtors for the Kalamazoo site, allowing Weyerhaeuser's claim would be setting up precisely the redundant recoveries section 502(e)(1)(B) was created to prevent.

The *Allegheny* court acknowledged that its decision not to disallow the claimant's claim under section 502(e)(1)(B) left the debtors vulnerable to multiple recoveries. What the *Allegheny* court failed to realized, however, is that this risk of duplicative recoveries arose *because* the debtors and claimant were co-liable. For that reason, several cases have rejected *Allegheny's* logic .[FN57]

In *Cottonwood Canyon*, for instance, the court stated that the fact that the *Allegheny* court found it necessary to establish a trust shows that the debtor and the claimant share a common liability against which the claimant sought to protect itself.[FN58] The *Cottonwood Canyon* court stated:

> ***14** CSI argues that it is asserting a direct claim against Kaiser under Section [107(a)] and not a claim for reimbursement or contribution. It would clearly appear that a claim for reimbursement or contribution under either the California statute, CERCLA or the indemnification provisions of the contract is, by definition, a claim to recover costs incurred by reason of CSI's liability for cleanup as the "owner" of the site, which is the same liability Kaiser has for cleanup as the party which deposited the hazardous substances in the first instance. Such a claim would necessarily be one for liability for which both Kaiser and CSI are responsible and would fall within the ambit of 11 U.S.C. § 502(e).[FN59]

Similarly, in *Eagle-Picher*,[FN60] the court rejected *Allegheny's* logic for similar reasons, and disallowed the creditors' reimbursement claims (which were under section 113(f)) for future response costs under CERCLA. The *Eagle-Picher* court stated that "[d]ouble liability could occur under the circumstances of this case since EPA remains free to pursue [the debtor] for remediation costs should the claimants fail to fulfill their cleanup obligations." [FN61]

Here, we have a situation similar to *Eagle-Picher*. The Debtors here do not dispute Weyerhaeuser's claims for costs it already incurred from voluntary remediation; the claims at issue are for *future* remediation costs. *Both the Debtors and Weyerhaeuser are liable for cleanup at the Kalamazoo Site.* Here, in fact, the EPA has already entered into the Settlement Agreement with the Debtors for remediation of the Kalamazoo Site. Allowing Weyerhaeuser's claim would not only expose the Debtors to-but would actually result in-paying multiple recoveries on account of the same liability.[FN62]

3. The Burlington Northern Contentions

Finally, Weyerhaeuser asserts that even if I should find that there is no difference, for the purpose of co-liability, between recovery under section 107 or 113(f), Weyerhaeuser should still prevail on this element because CERCLA does not always require joint and several liability for superfund sites. Weyerhaeuser cites the Supreme Court's decision in *Burlington Northern and Santa Fe Railway Co. v. U.S.*[FN63] for the point that "in the superfund context,

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liability will not be joint and several if there's a reasonable basis for apportionment." [FN64] In *Burlington Northern*, the Supreme Court decided that joint and several liability would not apply because the defendant in that case owned some, but not all, of the property at issue. Weyerhaeuser then makes an argument by analogy, asserting that apportionment is also appropriate in this case because, based on the laws of gravity, Weyerhaeuser cannot be held liable for any damage upstream of where it owned or used property. Therefore, Weyerhaeuser argues, any cleanup costs that it will incur in the future over and above those for its own liability are costs for which it is not co-liable with MHLLC.

***15** But there is a fundamental flaw in Weyerhaeuser's argument on this point. If the Debtors and Weyerhaeuser are not jointly and severally liable, then Weyerhaeuser would have not a claim against the Debtors in the first place, as Weyerhaeuser would never be required to pay more than its fair share. [FN65] This issue arose at the hearing:

> THE COURT: If there is no joint liability, either joint and several or in some other proportion, then what's the basis for your client filing a claim in the first place? What's the nexus between your guys writing out a check and the debtors reimbursing you?
>
> MR. SCHNEIDER: We've spent money that's attributable to them and not to us. And that happens all the time in superfund cases where you have parties who will undertake environmental investigations or cleanups because the contamination is not attributable to your activities. And that's the situation here.[FN66]

The problem with Weyerhaeuser's response to the Court's question is that it addressed expenses that it had incurred *in the past*, not future expenses. Claims for past expenses, not disputed by the Debtors, are not at issue here. If, by means of technology or techniques described by Weyerhaeuser's counsel during the Hearing [FN67] (or by some other means), Weyerhaeuser can establish that it is liable to the EPA for less than had previously been assumed, that merely underscores why its claim should be limited to amounts it actually pays.

C.

"Reimbursement or Contribution" Element

[5] Weyerhaeuser also relies on its contention that it seeks a claim for cost recovery under section 107(a), rather than a claim for contribution under section 113(f), to argue that its claim is not one for "reimbursement or contribution" under section 502(e)(1)(B). But whether the Weyerhaeuser claim is one for cost recovery under section 107(a), or contribution under 113(f)(1), I must find that it still is covered by section 502(e)(1)(B).

CERCLA section 113(f), by its terms, directly provides for "contribution"; therefore, quite indisputably, any recovery under section 113 must be considered contribution for the purposes of 502(e)(1)(B). [FN68] Section 107(a), under which Weyerhaeuser asserts that its claims are brought, provides for "recoverable costs," but does not contain the words "contribution" or "reimbursement." But I do not find this distinction to be dispositive, and I find that the claims of Weyerhaeuser,[FN69] even if premised on section 107(a), are in substance still claims for "reimbursement" for the purposes of 502(e)(1)(B).

Section 502(e)(1)(B) states that "the court shall disallow *any* claim for reimbursement or contribution ..." [FN70] As I noted above,[FN71] section 502(e)(1)(B) imposes no requirements as to the means or reason by which co-liability exists. Although "reimbursement" is not defined in the Bankruptcy Code, Black's Law Dictionary defines "reimbursement" as "1. Repayment. 2. Indemnification." [FN72] In *Wedtech II*, Chief Judge Brozman, in this district, explained that "[t]he use of the word 'reimbursement' in the statute cannot be viewed as accidental. It is a broad word which encompasses whatever claims a co-debtor has which entitle him to be made whole for monies he has expended on account of a debt for which he and the debtor are both liable." [FN73]

***16** Similarly, in *Chemtura*, wherein I rejected the notion that the "liable with" prong requires that the Debtors establish that "the successful prosecution of a claim of [a Tort Plaintiff] against [a Corporate Claimant] would *automatically* result in the Debtors being liable to such underlying tort plaintiff as well," [FN74] I noted that Congress clearly meant to include all situations wherein indemnitors or contributors could be liable with the debtor within the scope of § 502(e)(1)(B).[FN75]

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Other courts similarly focused on substance over form when addressing this issue, and I find their reasoning and conclusions to be persuasive. In *Cottonwood Canyon*, discussed above, the court disallowed, as "contribution or reimbursement," claims asserted under CERCLA 107(a). The risk, both there and in *Allegheny*, that the Debtors would make duplicative payments for the same liability, revealed that "the clear character of the claim" was that "debtor was not being asked to satisfy a [direct] claim for injury to the claimants property" but rather was being sought for reimbursement.[FN76]

Looking at substance over form here, the claims at issue plainly are for "reimbursement" as that term is used in section 502(e)(1)(B). Weyerhaeuser seeks repayment of money that it alleges it will spend on environmental remediation, and the Debtors and Weyerhaeuser, all PRPs, are co-liable for environmental cleanup. There is a substantial risk that if these private party claims are allowed, the Debtors will pay twice for the same liability. In light of these facts, Weyerhaeuser's claims, even if brought for cost recovery under section 107(a), are claims for reimbursement under 501(e)(1)(B).

Weyerhaeuser's reliance on the distinctions between sections 107(a) and 113(f) noted in *Atlantic Research* and *Aviall Services* is misplaced. As explained above, *Atlantic Research* merely holds that co-liability is not required for cost recovery under 107(a). Weyerhaeuser's claim may not be one for contribution, and may in fact be "cost recovery" under 107(a). But *Atlantic Research* and *Aviall* do not address section 502(e)(1)(B) (or, more specifically "reimbursement") at all, and do not affect earlier decisions, such as *Cottonwood Canyon*, which found that direct claims for cost recovery under CERCLA section 107 are claims for "reimbursement" under 502(e)(1)(B).

Weyerhaeuser also argues that if this Court were to create a trust account for payment of future costs like in *Allegheny*, the payment of funds into the trust account could be considered something other than reimbursement, because the money wouldn't be spent until the future.[FN77] I find this argument unpersuasive. The money would be paid to return money expended by Weyerhaeuser. That is reimbursement.

[6] In its one unique contention, Hamilton Beach also maintains that its claim is a direct contractual claim, and not one for contribution. Contractual claims are similarly disallowed under 502(e)(1)(B) when they are, in substance, claims for reimbursement.[FN78] Like Weyerhaeuser, Hamilton Beach seeks payment from the Debtors for money it might spend in the future. That is a claim for reimbursement.

Conclusion

***17** For the foregoing reasons, I conclude that the Orally Arguing Claimants' claims, to the extent they are on account of future costs, are contingent claims for reimbursement or contribution of an entity that is liable with the debtor to a third party creditor. Except for the amounts that the Orally Arguing Claimants already actually paid, the Objections to the Orally Arguing Claimants' claims are sustained.

FN1. I use bench decisions to lay out in writing decisions that are too long, or too important, to dictate in open court, but where the circumstances do not permit more leisurely drafting or more extensive or polished discussion. Because they often start as scripts for decisions to be dictated in open court, they typically have a more conversational tone.

FN2. Pursuant to the parties' agreement and the provisions of Case Management Order # 1, all of the facts (but not necessarily arguments and conclusions) in the declarations submitted to me have been taken as true. To shorten this Decision, I've limited factual citations and detail to the most significant matters.

FN3. For simplicity, I ignore this distinction going forward, and refer to such claims simply as being asserted by the respective states.

FN4. The proofs of claim filed by the U.S. and state governmental agencies totaled approximately $5.5 billion, with the federal claims totaling approximately $5 billion, and the state claims representing the remainder.

FN5. Other claimants (the "**Other Claimants**") filed timely responses but did not orally argue: Arkema Incorporated, Certain

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Teed Corporation, Marvin Jonas Transfer Station Site Orally Arguing Claimants Group, Ashland, Inc., Givaudan Fragrances Corporation, ISP Environmental Services Inc., LPRSA Site Cooperating Parties, Mallinckrodt, Inc., Teval Corp., The Dial Corporation, The Stanley Works, and Wolff & Sampson Group/Wolff & Sampson PC. Based on the papers and on the oral arguments from those who sought to orally argue, I believe that the analysis that follows requires disallowing the Other Claimants' claims as well, and to avoid lengthening this decision further, I won't discuss their particular facts. But if any of them believes that I overlooked circumstances that might make its situation distinguishable, I will permit any such entity to move for reargument, based on matters not addressed here.

FN6. Under the AOCs, Georgia-Pacific and MHLLC are obligated to pay the costs necessary to perform-as well as the future response costs incurred by EPA in connection with-the First and Second AOCs. Georgia-Pacific alone is also obligated to pay the costs necessary to perform-as well as the future response costs incurred by EPA in connection with-the Third AOC.

FN7. Georgia-Pacific maintains that as of the time of the filing, it had incurred approximately $7 million in response costs at the Kalamazoo Site, and that MHLLC owes Georgia-Pacific approximately $3 .87 million of this amount under the Allocation Agreement. Georgia-Pacific further states that MHLLC owes Georgia-Pacific an additional $3.12 million by reason of MHLLC's obligations to pay for ARCADIS's prior services at the Kalamazoo Site. It is worth noting that these are past costs, or costs that have already been incurred by Georgia-Pacific. As noted above, Georgia-Pacific's claim also seeks future costs.

FN8. *See* 4/16/2010 Hr'g Tr. at 118:7-12 ("Georgia-Pacific is asserting only a 113 claim. So issues of contribution or reimbursement ... we're not arguing that these-that we don't have claims for contribution or reimbursement. We're simply arguing that our claims are not contingent.").

FN9. *See, e.g., Alta Partners Holdings LDC v. Credit Suisse First Boston LLC ("In re Global Crossing Ltd.")*, 385 B.R. 52, 66 (Bankr.S.D.N.Y.2008); *In re General Motors Corp.*, 407 B.R. 463, 486 (Bankr.S.D.N.Y.2009) ("***GM-Sale Decision*** "), *appeal dismissed and aff'd*, 428 B.R. 43 (S.D.N.Y.2010), and 430 B.R. 65 (S.D.N.Y.2010); *In re Motors Liquidation Co.*, No. 09-50026, 2010 WL 3219506, *5 (Bankr.S.D.N.Y. Jul.16, 2010); *In re Adelphia Communications Corp.*, No. 02-41729, ---B.R. ----, 2010 WL 4791795, *3 & n. 17 (Bankr.S.D.N.Y. Nov.18, 2010).

FN10. It should be noted, however, while focusing on textual analysis, that section 502(e)(1)(B) imposes no requirements as to *how* or *why* the party asserting the claim potentially subject to section 502(e)(1)(B) must be liable with the debtor on the claim of the third party. There is no statutory requirement, for example, that the debtor and the party asserting the claim be liable on the claim of the third party in the same action, under a common statute, or on the same legal theory.

FN11. *See In re Chemtura Corp.*, 436 B.R. 286 (Bankr.S.D.N.Y.2010) ("***Chemtura*** ").

FN12. CERCLA § 106(a), 42 U.S.C. § 9606(a) (emphasis added).

FN13. *See* CERCLA § 106(b), 42 U.S.C. § 9606(b).

FN14. CERCLA § 107, 42 U.S.C. § 9607.

FN15. CERCLA § 113(f), 42 U.S.C. § 9613(f).

FN16. Weyerhaeuser addresses contingency with respect to both past costs it incurred, and future costs. I think the Debtors have now acknowledged that past costs incurred by Weyerhaeuser are not contingent, and

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cannot be disallowed for that reason, but to the extent the Debtors continue to argue otherwise, I reject their position in that regard.

FN17. *See* n. 11 above, 436 B.R. at 286.

FN18. *See Chemtura*, 436 B.R. at 297.

FN19. *See In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir.1991) ("***Chateaugay*** "); *Olin Corp. v. Riverwood Int'l Corp. (" In re Manville Forest Products Corp.")*, 209 F.3d 125 (2d Cir.2000) ("***Manville Forest*** ").

FN20. *Chateaugay*.

FN21. *Id.* at 1005.

FN22. *Manville Forest*, 209 F.3d at 129 (emphasis added).

> Other caselaw-again in the context of determining the existence of a claim, rather than in deciding whether or not it was "contingent"-likewise describes a situation where the need for remediation is known, but the amount, if any, to be paid for the remediation is not, as giving rise to a "contingent claim." *See Cal. Dep't of Health Services v. Jensen (" In re Jensen")*, 995 F.2d 925, 930-31 (9th Cir.1993) (*per curiam*) ("We conclude that the state had sufficient knowledge of the Jensens' potential liability to give rise to a contingent claim for cleanup costs before the Jensens filed their personal bankruptcy petition on February 13, 1984"); *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 974 F.2d 775, 786 (7th Cir.1992) (in context of a former Bankruptcy Act § 77 railroad reorganization, to same effect: "when a potential CERCLA claimant can tie the bankruptcy debtor to a known release of a hazardous substance which this potential claimant knows will lead to CERCLA response costs, and when this potential claimant has, in fact, conducted tests with regard to this contamination problem, then this potential claimant has, at least, a contingent CERCLA claim for purposes of Section 77.").

FN23. *See* Debtors Reply Br. at ¶ 8.

FN24. Somewhat earlier in the *Chateaugay* decision, also as part of its analysis as to whether the EPA had a claim at all, the Circuit dealt with the easy case. It stated, with respect to the EPA's incurrence of CERCLA response costs:

> When such costs are incurred, EPA will unquestionably have what can fairly be called a "right to payment." That right is currently unmatured and will not mature until the response costs are incurred.

944 F.2d at 1004.

FN25. *See Chateaugay*, 944 F.2d at 1005.

FN26. *See In re Alper Holdings USA*, No. 07-12148, 2008 WL 4186333,*6-*7 (Bankr.S.D.N.Y. Sept.10, 2008) (Lifland, C.J.) ("***Alper Holdings*** ") (disallowing future environmental indemnification costs "as the amounts and ultimate liability are presently unknown," and finding contingency on the ground that amounts for which indemnification was sought were undetermined and unpaid); *In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. 983, 986-90 (Bankr.S.D.N.Y.1992) (Conrad, J.) ("***Drexel Burnham*** ") (disallowing indemnity claims of co-underwriters for potential liability in pending fraud suits, because claimants had not yet paid judgments or settlements); *In re Wedtech Corp.*, 85 B.R. 285, 290 (Bankr.S.D.N.Y.1998) (Buschman, J.) ("***Wedtech I*** ") (disallowing debtor's officers' contingent indemnification claims).

FN27. *See Aetna Casualty and Surety Company v. Georgia Tubing Corp. ("In re Georgia Tubing Corp.")*, No. 93 Civ. 3659, 1995 WL 429018,*3 -*4 (S.D.N.Y. July 20, 1995) (Preska, C.J.), *aff'd*, 93 F.3d 56 (2d Cir.1996) (disallowing an insurance company's claim regarding hazardous waste bonds where primary creditor was a state

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environmental agency, stating that a surety claim was contingent until the claimant "pays the principal creditor and fixes his own right to payment from the debtor" (quoting 3 Collier on Bankruptcy ¶ 502.05 at 502-88 (15th edition 1995)).

FN28. *See* *In re APCO Liquidating Trust*, 370 B.R. 625 (Bankr.D.Del.2007) (Shannon, J.) ("***APCO***").

FN29. Similarly, *Collier* expressly identifies claims for contribution arising under CERCLA as examples of claims that are contingent. *See* 4 *Collier* ¶ 502.06[2][d] (16th ed.). *Collier* provides:

> In addition to codebtor situations created by contract, section 502(e)(1)(B) applies to disallow contingent reimbursement or contribution claims created by statute. For example, a claim for contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act may be a contingent claim subject to disallowance under section 502(e)(1)(B).... In such a case, the government is the primary obligee that may seek satisfaction of its claim against the debtor from third parties who, under the statute, are obligated with the debtor to the government on the same debt. The statute under which the third-party liability is created, however, must provide for a reimbursement or contribution claim against the debtor.
>
> (footnote omitted).

FN30. 2008 WL 4186333 at *6.

FN31. 148 B.R. at 987 (emphasis added; internal citations omitted).

FN32. *See* 370 B.R. at 629.

FN33. *Id.*

FN34. *Id.* at 630.

FN35. *Id.* at 636.

FN36. *Id.*

FN37. *Id.* (emphasis in original; internal citations omitted).

FN38. *See, e.g.*, *In re Adelphia Communications Corp.*, 359 B.R. 65, 72 n. 13 (Bankr.S.D.N.Y.2007) ("This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this district in the absence of clear error."); *GM-Sale Decision*, 407 B.R. at 487 & n. 19 (same).

FN39. *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 125 S.Ct. 577, 160 L.Ed.2d 548 (2004) ("***Aviall Services***").

FN40. *See, e.g.*, *Chemtura*, 436 B.R. at 297 ("Thus, while we all understand and agree that there is a distinction between "contingent" and unliquidated, that distinction isn't material here. The unliquidated but non-contingent costs of defense here still result in a potentially allowable claim, but the claims for contribution in the event that a Tort Claimant succeeds against Corporate Claimants are still contingent, and satisfy this prong of the 3-part test for establishing 502(e)(1)(B) disallowance.").

FN41. Weyerhaeuser cites Judge Sontchi's decision in *In re RNI Wind Down Corp.*, 369 B.R. 174 (Bankr.D.Del.2007) ("**RNI**") in support of this contention. But as I noted in *Chemtura*, see 436 B.R. at 296-97, the claimant in *RNI waived* any claims he might have for amounts he might have to pay on the underlying claims (there, by the SEC). The right to payment that Judge Sontchi found to be "unliquidated but not contingent" was the right to the *advancement of those costs of defense*, and not the right to *contribution or indemnity for amounts ultimately paid to a third party*-the circumstance that was relevant there and here.

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Judge Sontchi merely found (understandably, given appropriate analysis) that the right to advancement was a then-existing right (under the certificate of incorporation, by-laws, and Delaware law), subject only to uncertainty at the time as to just how much the defense costs would turn out to be. I observed, in fact, that Judge Sontchi had actually used claims for contribution as an example of what would satisfy the contingency elements. *See* *Chemtura*, 436 B.R. at 297.

FN42. *See* *In re Eagle-Picher Indus. Inc.*, 164 B.R. 265, 272 (S.D.Ohio 1994) ("***Eagle-Picher*** ") ("502(e)(1)(B) fosters the primary objective of CERCLA by requiring those who seek contribution to incur the expenses relating to cleanup before stating an allowable claim."); *APCO*, 370 B.R. at 636 (same, quoting *Eagle-Picher*).

FN43. 370 B.R. at 636-37.

FN44. Having incorporated all of the others' arguments, Hamilton Beach also argues that its claim is not based on co-liability. But with only one exception (discussed at page 33 below), Hamilton Beach doesn't articulate any theories or authority distinct from those asserted by Weyerhaeuser, and its situation is governed by the analysis that follows.

FN45. Weyerhaeuser makes a secondary argument that joint and several liability is not required by CERCLA for all superfund sites. See sub-section 3.

FN46. *U.S. v. Atlantic Research Corp.*, 551 U.S. 128, 127 S.Ct. 2331, 168 L.Ed.2d 28 (2007) ("***Atlantic Research*** "). Contrasting CERCLA section 107(a) with section 113(f), the Supreme Court stated the following: " § 107(a) permits recovery of cleanup costs but does not create a right to contribution. A private party may recover under § 107(a) without any establishment of liability to a third party." *Atlantic Research*, 551 U.S. at 139.

FN47. The PRP was the owner of the facility and filed a suit against the U.S. under CERCLA section 107 to recover cleanup costs.

FN48. *Atlantic Research*, 551 U.S. at 135.

FN49. *Id.* at 139.

FN50. *In re Allegheny Int'l, Inc.*, 126 B.R. 919 (W.D.Pa.1991), *aff'd without opinion*, 950 F.2d 721 (3d Cir.1991) ("***Allegheny*** ").

FN51. *See Allegheny*, 126 B.R. at 923.

FN52. *See id.* at 924.

FN53. In *Allegheny*, the claimant's cleanup was entirely voluntary; no environmental government agency had taken any action with regard to the claimant's property. Here, however, the EPA has listed Weyerhaeuser as a PRP at the Kalamazoo Site and Weyerhaeuser has entered into a Consent Decree with the EPA with regard to a portion of the Site.

FN54. *See* *Eagle-Picher*, 164 B.R. at 271; *Drexel Burnham*, 148 B.R. at 988; *In re Cottonwood Canyon Land Co.*, 146 B.R. 992, 996 (Bankr.D.Colo.1992) ("***Cottonwood Canyon*** ").

FN55. *See* *APCO*, 370 B.R. at 634 ("[T]he sole purpose served by section 502(e)(1)(B) is to preclude redundant recoveries...."); *Wedtech I*, 85 B.R. at 289 & n. 4 (noting that Congress enacted the provision, in part, to prevent competition between primary and secondary creditors for the "limited proceeds of the estate" (quoting H.R.Rep. No. 95 595, 95th Cong., 1st Sess. 354 (1977))).

FN56. It is not possible to maintain that the cost recovery claim does not involve an obligation that both the Debtor and Weyerhaeuser owe to a third party, given that the EPA has specified that both parties are PRPs at the Kalamazoo Site.

FN57. Weyerhaeuser also cites *In re Har-*

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vard Indus., Inc., 138 B.R. 10 (Bankr.D.Del.1992) (Balick, J.) ("***Harvard Industries*** "), which follows *Allegheny's* logic. In *Harvard Industries*, Judge Balick distinguished between claims by a PRP for a cleanup performed by the PRP and claims for where the EPA performed the cleanup, and ruled, *inter alia*, that where the party sought to recover funds it would expend in the future, section 502(e)(1)(B) does not apply. She acknowledged that double liability could occur if the PRP recovered for personal expenditures but then failed to cleanup the site and the EPA brought an action against the debtor, and, as in *Allegheny*, set up a trust to resolve that potential problem. But since, as in *Allegheny*, *Harvard Industries* subjects debtors to the risks of duplicative recoveries, I believe that *Harvard Industries* is subject to the same criticism that has been raised with respect to *Allegheny*.

FN58. *Cottonwood Canyon*, 146 B.R. at 996. *See also Drexel Burnham*, 148 B.R. at 989 ("The *Cottonwood* court insisted that this is demonstrated by the solution devised by the *Allegheny* court in response to the concern that the allowance of the claim might lead to multiple recoveries against the debtor. The debtor would be subject to multiple recovery if the claimant failed to take remedial action to remove the hazard after it had received a distribution from the debtor, leaving the debtor liable to a claim by the Government for remediation of the plants."). The *Allegheny* court even noted that "both debtor and [claimant] are liable for the waste remediation...." *Allegheny*, 126 B.R. at 923.

FN59. *Cottonwood Canyon*, 146 B.R. at 996.

FN60. Weyerhaeuser criticizes the Debtors for relying on *Eagle-Picher* and *Cottonwood Canyon*, which are pre-*Atlantic Research* cases, and argues that they were overruled by *Atlantic Research*. The *Eagle-Picher* court, citing circuit court decisions, had found that the claims asserted there (a PRP against another PRP) could only be brought under CERCLA § 113, and not § 107, and Weyerhaeuser is correct that *Atlantic* overruled *Eagle-Picher* in this respect-since *Atlantic Research* now allows a PRP to seek recovery from another PRP under § 107. But that distinction does not matter here. I rely on *Eagle-Picher* for its narrower (and I believe undisputable) finding that the Debtor and claimant were co-liable. Because the *Atlantic Research* decision did not reach that issue, the portion of *Eagle-Picher* upon which I rely was not overruled. And because *Atlantic Research* did not decide issues under Bankruptcy Code section 502(e)(1)(B), it had no effect on *Cottonwood Canyon*. Thus I find Weyerhaeuser's criticism unpersuasive.

FN61. *Eagle-Picher*, 164 B.R. at 271.

FN62. The fact that Debtors settled their claims with the EPA is not necessary to my decision here, though, it is worth noting that the contribution protection in the Settlement Agreement protects the Debtors from duplicative payments on account of the same liabilities, a risk that exists because the Debtors are co-liable with the Private Party Claimants. As the Debtors correctly explained, that provision "plays into the central purpose of 502(e)(1)(b), which is to avoid double dipping for duplicate claims asserted by more than one creditor." 4/16/2010 Hr'g Tr. at 63.

FN63. --- U.S. ----, 129 S.Ct. 1870, 173 L.Ed.2d 812 (2009) ("***Burlington Northern*** ").

FN64. 4/16/2010 Hr'g Tr. at 92.

FN65. Or if it was required, Weyerhaeuser could make this same argument in the appropriate forum to avoid having to pay a full judgment.

FN66. 4/16/2010 Hr'g Tr. at 92.

FN67. *See* 4/16/2010 Hr'g Tr. at 91-92.

FN68. Georgia-Pacific, who asserts that it

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has an allowable claim under section 113(f), does not dispute that its claim is for "contribution or reimbursement" under 502(e)(1)(B).

FN69. And other similarly situated private party claimants, such as Hamilton Beach

FN70. 11 U.S.C. § 502(e)(1)(B) (emphasis added).

FN71. *See* n. 10 above.

FN72. *Black's Law Dictionary* 1399 (9th ed.2009).

FN73. *In re Wedtech*, 87 B.R. 279, 287 (Bankr.S.D.N.Y.1988) (Brozman, C.J.) ("***Wedtech II***).

FN74. *Chemtura*, 436 B.R. at 293.

FN75. *See id.* at 295-96.

FN76. *Cottonwood Canyon*, 146 B.R. at 996.

FN77. *See* 4/16/2010 Hr'g Tr., at 106:5-10.

FN78. *See Fine Organic Corp. v. Hexcel Corp. ("In re Hexcel Corp".)*, 174 B.R. 807, 810 (Bankr.N.D.Cal.1994) (Tchaikovsky, J.) (disallowing as reimbursement claims arising out of asset purchase agreement between debtors and claimant in which debtor promised to perform remediation, even though claimant was not jointly liable with debtor).

Bkrtcy.S.D.N.Y.,2011.
In re Lyondell Chemical Co.
--- B.R. ----, 2011 WL 11413 (Bkrtcy.S.D.N.Y.)

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HOnly the Westlaw citation is currently available.

United States Bankruptcy Court,
S.D. New York.
In re CHEMTURA CORPORATION, et al., Debtors.

No. 09-11233(REG).
Jan. 13, 2011.

Background: Chapter 11 debtors in jointly administered cases objected to private party claims for future environmental remediation costs also sought by federal government and state governmental entities.

Holdings: The Bankruptcy Court, Robert E. Gerber, J., held that:
(1) private party claims were contingent within meaning of bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution;
(2) claims were premised on co-liability with debtors within meaning of statute generally disallowing co-debtor contingent claims for reimbursement or contribution;
(3) claim of trust that was to receive environmental remediation payments did not satisfy co-obligor requirement under statute generally disallowing co-debtor contingent claims for reimbursement or contribution;
(4) claims asserted pursuant to cost recovery statute under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) were for reimbursement; and
(5) claims under agreements with debtors requiring payments proportional to parties' liability to be paid into trust fund were claims for contribution.

Objections sustained in part and overruled in part.

West Headnotes

[1] Bankruptcy 51 2828.1

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2828 Contingent or Unliquidated Claims
51k2828.1 k. In General. Most Cited Cases

Three elements must be met for claim for reimbursement or contribution to be disallowed under statute: (1) party asserting claim must be liable with debtor on claim of third party, (2) claim must be contingent at time of its allowance or disallowance, and (3) claim must be for reimbursement or contribution. 11 U.S.C.A. § 502(e)(1)(B).

[2] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims asserted against Chapter 11 debtors under CERCLA for environmental remediation costs that had already been paid by claimants were no longer "contingent" within meaning of bankruptcy statute generally providing for disallowance of claims for reimbursement or contribution by those liable with debtor to the extent that claims were contingent. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f)(1), 42 U.S.C.A. §§ 9607(a), 9613(f)(1).

[3] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims for reimbursement or contribution asserted against Chapter 11 debtors by private parties under CERCLA, seeking future environmental remediation costs, were "contingent" within meaning of bankruptcy statute generally providing for disallowance of contingent claims for reimbursement or con-

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tribution by those liable with debtor, even if amount of future costs was known or fixed, since claimants sought reimbursement for amounts that had not yet been paid. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f)(1), 42 U.S.C.A. §§ 9607(a), 9613(f)(1).

[4] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims for reimbursement or contribution asserted against Chapter 11 debtors by private parties under CERCLA, seeking future environmental remediation costs, were both "unliquidated" and "contingent," for claims allowance purposes, where claims were for future cleanup costs that might or might not actually be incurred, and then might or might not actually be paid by claimants. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107, 113(f), 42 U.S.C.A. §§ 9607, 9613(f).

[5] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims asserted by private claimants against Chapter 11 debtors for future environmental remediation costs were premised on co-liability with debtors within meaning of bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution, even though claims were based on cost recovery under CERCLA, rather than contribution under CERCLA, where both claimants and debtors had been designated as potentially responsible parties (PRPs) by Environmental Protection Agency (EPA) and had shared statutory obligation to provide for environmental cleanup of designated sites, and claims rested on theory that claimants would have to pay more than their share of cleanup costs if debtors paid less than their share. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f)(1), 42 U.S.C.A. §§ 9607(a), 9613(f)(1).

[6] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Co-liability requirement of bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution was satisfied where Chapter 11 debtors and claimant both denied liability for cleanup of environmental contamination under CERCLA but any recovery action that would be brought by claimant, after it was found liable and paid remediation costs, would be premised on debtors' co-liability. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f)(1), 42 U.S.C.A. §§ 9607(a), 9613(f)(1).

[7] Bankruptcy 51 2828.1

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2828 Contingent or Unliquidated Claims
51k2828.1 k. In General. Most Cited Cases

Co-liability requirement of bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution does not require that debtor and claimant have already been found liable in underlying lawsuit, and, instead, requires a finding that causes of action in underlying lawsuit assert claims upon which, if proven, debtor could be liable but for automatic stay. 11 U.S.C.A. §§ 362, 502(e)(1)(B).

[8] Bankruptcy 51 2830.5

51 Bankruptcy

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51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Co-liability required under bankruptcy statute generally disallowing co-debtor contingent claims for reimbursement or contribution existed where environmental liability of Chapter 11 debtors and claimant was one and the same, even though debtors were not parties to claimant's consent decree with state agency. 11 U.S.C.A. § 502(e)(1)(B).

[9] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Trust which was to receive payments for environmental remediation, but which faced no environmental liability itself, was not obligor or co-obligor, and therefore trust's CERCLA claim against Chapter 11 debtor for future remediation costs did not satisfy co-liability requirement of bankruptcy statute generally providing for disallowance of contingent claims for reimbursement or contribution by those liable with debtor, regardless of whether trust was regarded as collection agent for Environmental Protection Agency (EPA) or mechanism by which debtor was meeting its obligations to EPA. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f)(1), 42 U.S.C.A. §§ 9607(a), 9613(f)(1).

[10] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims of private claimants against Chapter 11 debtors for future environmental remediation costs were for "reimbursement" under bankruptcy statute generally providing for disallowance of contingent claims for reimbursement or contribution by those liable with debtor, even though claims were asserted pursuant to CERCLA's cost recovery statute, rather than CERCLA's contribution statute. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §§ 107(a), 113(f), 42 U.S.C.A. §§ 9607(a), 9613(f).

[11] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

Claims brought pursuant to CERCLA's contribution provision seek "contribution" within meaning of bankruptcy statute generally providing for disallowance of claims for reimbursement or contribution by those liable with debtor, to the extent that claims were contingent. 11 U.S.C.A. § 502(e)(1)(B); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 113(f), 42 U.S.C.A. § 9613(f).

[12] Bankruptcy 51 2828.1

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2828 Contingent or Unliquidated Claims
51k2828.1 k. In General. Most Cited Cases

Contractual claims are disallowed under bankruptcy statute generally providing for disallowance of contingent claims for reimbursement or contribution by those liable with debtor when they are, in substance, claims for reimbursement or contribution. 11 U.S.C.A. § 502(e)(1)(B).

[13] Bankruptcy 51 2830.5

51 Bankruptcy
51VII Claims
51VII(A) In General
51k2830.5 k. Environmental Claims. Most Cited Cases

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Claims of private claimants against Chapter 11 debtors under agreements which required claimants and debtors to make payments proportional to their liability for environmental remediation costs into trust funds, out of which money would be paid for remediation, were claims for "contribution" within meaning of bankruptcy statute generally providing for disallowance of contingent claims for reimbursement or contribution by those liable with debtor, since claims sought payment for cleanup costs beyond claimants' fair share of such costs that might be incurred in the future, and trust was merely mechanism used for contributions. 11 U.S.C.A. § 502(e)(1)(B).

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BENCH DECISION [FN1] ON THE DEBTORS' OBJECTIONS UNDER BANKRUPTCY CODE SECTION 502(e)(1)(B), TO PRP ENVIRONMENTAL CONTRIBUTION CLAIMS

ROBERT E. GERBER Bankruptcy Judge.

***1** In this contested matter in the jointly administered chapter 11 cases of Chemtura Chemical Company and its affiliates, the Debtors object to private party claims (the "**Private Party Claims**" and "**Claimants**") [FN2] for future environmental remediation costs also sought by the federal government and certain state governmental entities, under section 502(e)(1)(B) of the Code, which generally disallows claims (1) for reimbursement or contribution (2) by those liable with the debtor (3) to the extent that such claims are contingent.

With two exceptions, I conclude that these claims are of the type for which disallowance is required under section 502(e)(1)(B) and its associated caselaw. Except insofar as the exceptions apply, the Debtors' objections are sustained. With respect to the exceptions:

(a) where remediation costs were already paid by the claimant and

(b) the claim by the Delaware Sand & Gravel Trust,

the Debtors' exceptions are overruled.

Findings of Fact [FN3]

1. Government Environmental Claims

In October 2009, the United States, on behalf of the United States Environmental Protection Agency ("**EPA**") and the National Oceanic and Atmospheric Administration (collectively, the "**U.S.**") [FN4] filed proofs of claim against certain of the Debtors asserting, *inter alia*, more than $2 billion in liabilities for response costs pursuant to section 107(a) the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"),[FN5] civil penalties, and natural resource damages and assessment. More specifically, the U.S. claims asserted, in part, that certain Debtors are jointly and severally liable, along with other responsible parties, for approximately $49.6 million in past response costs, an estimated $2 billion in future response costs, and approximately $1.2 million in natural resources damages and assessment costs.

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Though smaller in dollar amount, similar claims were filed by the state environmental agencies [FN6] for the states of California, Connecticut, and Texas, among others.

2. Environmental Settlement Agreement with U.S. and Certain States

Since the briefing and the hearing on these Objections, the status of some of the Debtors' environmental liabilities has changed.

In September 2010, I approved a settlement agreement among the Debtors, the U.S., and Connecticut, resolving the regulators' environmental claims and providing funds for future clean-up efforts. That settlement agreement, among other things, provided for:

(1) the allowance of approximately $16 million in general unsecured claims for the benefit of the U.S. for unreimbursed past and future response costs incurred by the U.S. pursuant to CERCLA section 107(a);

(2) cash payments to the U.S. of approximately $9 million the U.S. to resolve alleged injunctive obligations at a number of environmental sites;

(3) the allowance of environmental claims of approximately $830,000 for the benefit of the U.S. for sites still owned or operated by the Debtors; and

***2** (4) the allowance of environmental claims by Connecticut of about $1.1 million.

In addition, that settlement agreement provided that other, non-debtor, potentially responsible parties ("**PRPs**") would receive a reduction in their liability equal to the amounts paid by the Debtors pursuant to the settlement, as provided for by CERCLA. The settlement agreement also contained broad covenants not to sue, and granted the Debtors contribution protection under CERCLA section 113(f)(2) for environmental liabilities resolved by the Agreement.

The implication of the contribution protection in these settlements was that other PRPs with respect to those environmental liabilities would not be able to come after the Debtors for costs of cleanup, because the Debtors would have satisfied their liability on account of the sites addressed in the Agreement.

In addition, I approved settlement agreements between the Debtors and California and Texas with respect to sites for which Private Party Claims at issue here were also filed. Like the U.S. and Connecticut settlement agreement, these settlements provided the Debtors with both covenants not to sue and contribution protection in exchange for allowed environmental claims of fixed amounts (in the case of Texas), or cash payments of fixed amounts (in the case of California).

3. Private Party Environmental Claims

In May 2010, the Debtors objected to 59 Private Party Claims pursuant to 502(e)(1)(B) of the Code. The Private Party Claims-relying either implicitly or explicitly on CERCLA sections 107(a) and 113(f)(1)-sought hundreds of millions of dollars for both past and future cleanup costs.

The Debtors' objections to the Private Party Claims "do[ ] not relate to any past costs actually spent by these claimants." [FN7] But the Debtors argue that the Private Party Claims must be disallowed under 502(e)(1)(B) of the Bankruptcy Code to the extent they seek payment of *future* cleanup costs, because such claims are: (1) for reimbursement or contribution, (2) based on the claimant's co-liability with the Debtors to a federal or state environmental agency, and (3) contingent.

No responses were submitted by the claimants for 23 of those objections, and those 23 claims were either resolved by stipulation and order [FN8] or disallowed by orders of this Court either (a) in their entirety or (b) to the extent that they sought future costs.[FN9] One claim-that of Agrico Chemical Company-was expunged as late-filed under section 502(b) of the Code. Objections to 32 claims went forward on a contested basis at a hearing on the objections.[FN10] Since the hearing, one claim has been resolved by stipulation and order,[FN11] and the Debtors have reached settlements, in principle but without documentation, with regard to two others.[FN12] This decision applies to the remaining 29 section 502(e)(1)(B) objections to claims of Private Party Claimants.[FN13]

The 29 Private Party Claims at issue here were filed on the basis of the Debtors' alleged liabilities at

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certain environmental sites. With respect to each of these claims, overlapping claims, in terms of the underlying environmental site, were filed by the U.S., Connecticut, California, or Texas. And as mentioned above, all of those governmental claims were since resolved by settlement.

***3** I lay out the facts as to the 29 Claims at issue by Private Party Claimant or group of Claimants, and have organized them based on similar factual positions.

A. Claims for Remediation Pursuant to a Consent Decree or Intent to Comply to which a Debtor Was Not a Party

Some of the Claimants are private entities that agreed to provide and fund remediation at certain environmental sites by either (a) submitting statements of "intent to comply" with "Unilateral Administrative Orders" or "Administrative Orders on Consent" issued by state or federal environmental agencies or (b) entering into consent decrees with state or federal environmental agencies. None of the Debtors was a party to these consent decrees or a signatory to these statements of intent to comply. The Claimants assert that they are entitled to payment from the Debtors for costs they are incurring because, under CERCLA or other environmental law, the Debtors are responsible for remediation at these sites.

(1) BKK Joint Defense Group

The BKK Joint Defense Group filed claims against certain of the Debtors for past and future remediation costs associated with the BKK Class I Landfill in California, which is a waste landfill and associated treatment and control facility currently owned and operated by the BKK Corporation. California's Department of Toxic Substances Control issued an "Imminent and Substantial Endangerment Order" to several entities, excluding the Debtors, which led to consent decrees between members of the BKK Joint Defense Group and California. Members of the BKK Joint Defense Group have performed and will continue to perform operation, maintenance, and monitoring activities at the BKK site, and have paid and will continue to pay for California's costs in overseeing the remediation activities at the facility.

Although none of the Debtors was issued an order by California with respect to the BKK Site (or entered into a consent decree with California with respect to it), the BKK Joint Defense Group contends that certain of the Debtors are potentially responsible parties under CERCLA and/or other state or federal environmental laws because of their status as prior owners or operators of the BKK facility, or because those Debtors arranged for the disposal of materials at the facility. Future costs to remediate the Site are estimated by California to be in excess of $600 million.

(2) BASF Sparks

In 2000, the EPA placed the Landia Site in Florida on the Superfund List, conducted a Remedial Investigation and Feasibility Study ("**RI/FS**"), and later approved RI/FS Reports for the Site.

In 2007, the EPA executed a final Record of Decision, which provided for the plan of remedial action to be implemented at the Landia Site. In 2008, the EPA sent "Special Notice" letters to a Debtor, BASF, and other parties notifying them of their status as PRPs that were responsible for the costs of cleaning up that site.

In response to the Letters, BASF and other private entities-not including any of the Debtors-entered into a consent decree with the EPA pursuant to which they agreed to pay for the cleanup work. Since that consent decree became effective in 2009, BASF and the other parties to the consent decree have paid environmental consultants to perform and oversee the requisite remedial work. BASF filed a claim against the Debtors seeking payment for its share of these past costs, and for costs of cleanup that BASF will incur in the future under the consent decree.

(3) Cooper Drum Cooperating Parties Group

***4** The Cooper Drum Cooperating Parties Group ("**Cooper Drum Group**") filed a claim against the Debtors for costs incurred in the remediation of a former drum recycling facility in California.

In 2008, the EPA issued "Special Notice" letters identifying various entities, including one or more of the Debtors, as PRPs under CERCLA and/or other state and federal environmental laws. In 2009, the EPA issued a Unilateral Administrative Order to 43 potentially responsible parties, including the members of the Cooper Drum Group and Chemtura, requiring the recipients to conduct the remedy identified in an EPA Record of Decision. Later in 2009, the

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Cooper Drum Group submitted a letter to the EPA indicating its intent to comply with that order, and has since been performing its obligations under it.

None of the Debtors identified as PRPs has participated in any of these efforts at the Cooper Drum Site. The Cooper Drum Group asserts that past recoverable costs, including EPA oversight costs, exceed $12 million, and that future recoverable costs will exceed $25 million.

(4) Malone Cooperating Parties Group

In 2003, members of the Malone Cooperating Parties Group ("**Malone Group**") entered into an Administrative Order on Consent with the EPA for, among other things, the performance of a RI/FS at the Malone Service Company Superfund Site in Texas. The Malone Group completed the RI/FS in 2008 and is continuing to take other actions at the site pursuant to the Administrative Order on Consent.

In 2009, the EPA issued a proposed plan for remedial action, which estimates that the total costs of the remedy will be $54.6 million, not including future EPA oversight costs, natural resource damage claims, and past EPA response costs. The Malone Group members plan to enter into a consent decree with the U.S. for the performance of the remedial action at the site, and they assert that they will pay at least a portion of the EPA's past and future response costs.

The Malone Group filed a claim for unpaid response and other costs "in an amount estimated to equal or exceed $109,000." Using the EPA's calculation of the percentage of waste by volume sent to the site by the Debtors, and the EPA's estimated costs of remediation pursuant to the plan, the Malone Group asserts that Debtors are responsible for approximately $109,000 for future response costs. The Malone Group also alleges that the Debtors are liable for a share of additional costs, including future EPA oversight costs and future natural resource damage claims.

B. Claims arising from Debtors' consent decree and allocation agreement with Claimants

Some of the Claimants are private entities (or groups of private entities) that both

(a) entered into a consent decree with a Debtor and state or federal environmental agency to perform or pay for environmental remediation and

(b) subsequently entered into a contract with a Debtor to allocate responsibilities for coordination of work and funding of response costs required by the consent decree.

*(1) Interstate Lead Company **("ILCO")** Site Remediation Group*

***5** Witco Corporation (a predecessor to Chemtura) and members of the ILCO Site Remediation Group (with Witco, the "**ILCO Settling Defendants**") entered into a consent decree with the EPA in 1997, which required each Settling Defendant to finance and perform remediation of the ILCO Superfund Site and related areas in Alabama, with EPA oversight.

To organize the implementation and funding of this remediation, the Settling Defendants, including Witco, entered into a remediation contract. That contract included a formula for determining each party's share of costs for the remediation, and using this formula, periodic assessments were made and allocated to each of the parties.

Consultants hired by the ILCO Remediation Group estimate future response costs to be over $31 million. Pursuant to the contractual formula, the Debtors' share of those future costs would be $732,973.

(2) Beacon Heights Coalition and Goodrich Corp./Coltec Inc.

Members of the Beacon Heights Coalition and the Debtors entered into a consent decree with the EPA in 1987, which provided that the members of that coalition (including the Debtors) would jointly and severally finance and perform remedial action, including operation and maintenance, at the Beacon Heights Landfill in Connecticut-and that in the event of insolvency of one of the members, the remaining members of the coalition would complete the remediation.

To comply with the provisions of that consent decree, and to provide for an equitable apportionment of their obligations, the members of the coalition, including the Debtor, entered into a sharing agreement in 1986. The Debtors' apportioned liability pursuant to that sharing agreement is 42%.

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In addition to filing claims for over $100,000 in *past* costs incurred by the coalition members, the coalition and certain of its members also asserted claims against the Debtors for the Debtors' allocated share of *future* operation, maintenance, cleanup, and other costs. The Coalition estimates that total Site costs are projected to be over $16 million, with the Debtors' share of these future costs at nearly $7 million.

(3) Lower Passaic River Study Area Cooperating Parties Group, and certain of its members (Ashland Inc., Givaudan Fragrances Corp., Mallinckrodt Inc.)

The EPA issued "General Notice" letters to Chemtura and other entities notifying them of their potential liability for environmental study expenses and response actions at the "Lower Passaic River Study Area" portion of the Diamond Alkali Superfund Site in New Jersey. The Lower Passaic River Study Area Cooperating Parties Group ("**LPRSA Group**") was formed to respond to the EPA, and in 2004, certain LPRSA Group members, including Chemtura, entered into a settlement agreement with the EPA through which they contractually agreed to pay a fixed sum to the EPA to fund a RI/FS at the site.

In 2007, the EPA entered into another settlement agreement with certain LPRSA Group members, including Chemtura (the "**RI/FS Settlement Agreement**" and "**RI/FS Agreement Settlers**"), which contractually obligated those parties to, among other things,

***6** (a) implement and perform certain RI/FS tasks,

(b) make a $700,000 initial payment to the EPA,

(c) establish and maintain a trust fund in the initial amount of $37.45 million to ensure funds are available to perform the RI/FS work, and

(d) pay all EPA oversight costs.

The LPRSA Group and certain of its members assert that the Debtors are contractually obligated to pay an allocated share of the expenses pursuant to an agreement among the Debtors and other RI/FS Agreement Settlers. The LPRSA Group has filed claims against the Debtors for Chemtura's allocated share of:

(a) $9.45 million payment to the RI/FS trust fund,

(b) $512,427 in EPA oversight costs,

(c) continuing EPA oversights costs,

(d) any changes in cost related to the RI/FS, and

(e) other administrative project costs.

(4) Laurel Park Coalition and certain of its members (Cadbury Beverages Inc., CR USA Inc., Kerite Company, Unisys Corp.)

In 1992, the Debtors and other PRPs (also members of the Laurel Park Coalition) entered into a consent decree with the EPA which provided that the PRPs would jointly and severally finance and perform remedial action, operations, and maintenance at the Laurel Park Landfill in Connecticut.

Members of the Laurel Park Coalition, including the Debtors, entered into a sharing agreement in 1991 to secure equitable participation and funding for compliance with the consent decree. Under that sharing agreement, the Debtors' apportioned liability for the site is 86.24%.

The Laurel Park Coalition and certain of its members have filed claims against the Debtors seeking payment of the Debtors' allocated share of fixed costs incurred in the *past* by the Laurel Park Coalition's members since the Debtors filed for chapter 11 and then ceased contributing funds for ongoing cleanup operations. They also assert claims for the Debtors' share of *future* operations and maintenance costs, and any other liabilities at the Laurel Park Site, pursuant to the sharing agreement.

The Coalition estimates that the total future costs at the Laurel Park Site will be over $7.7 million, and asserts that the Debtors are therefore liable for $6.6 million of those costs.

(5) Delaware Sand and Gravel Remedial Trust

In 1981, the EPA designated the Delaware Sand

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& Gravel Landfill as a Superfund site, and in 1984, the EPA incurred removal costs at the Site. In 1990, Debtor Witco and other PRPs entered into a consent decree with the U.S., under which the defendants agreed to reimburse an aggregate $600,000 of the EPA's 1984 removal costs.

One year later, in 1991, Witco and other PRPs entered into an agreement to allocate responsibility among the PRPs for the cost of remediating the site, which was later incorporated into a settlement agreement. That settlement agreement created a mechanism for reimbursing the EPA's response costs, and provided for the funding of the Delaware Sand & Gravel Remedial Trust (the "**DS & G Trust**") to pay for remedial work at the Site. Under that settlement agreement, Witco is responsible for 7.76% of the costs associated with remediating the Delaware Sand & Gravel Landfill site.

***7** Witco and other PRPs also entered into another consent decree with the U.S., pursuant to which they agreed to reimburse the EPA for a portion of its response costs and to implement the remedial measures specified in an EPA "Record of Decision."

The DS & G Trust filed a proof of claim seeking over $100,000 in past-due amounts, and for about $470,000 of additional amounts that the Debtors had committed to pay for the future. Significantly (for reasons discussed below), these sums are said to be due to the DS & G Trust, and not to other PRPs who are likewise obligated to make payments into the DS & G Trust.

(6) Givaudan Flavors Corporation

One of the Debtors and other PRPs entered into a consent decree with the EPA in 2007 regarding the cleanup of the LWD Facility Site in Kentucky.

A group of these PRPs (the "**LWD PRP Group**") filed claims against the Debtors. The Debtors objected to the LWD PRP Group's claims on 502(e)(1)(B) grounds. After no responses to those objections were filed by the LWD PRP Group, I disallowed its claims.

But Givaudan filed a separate proof of claim against the Debtors for "the amount, as it ultimately may be determined, to which Givaudan is entitled from the Debtor based upon the Debtor's liability as set forth in the proof of claim ... filed in this case by the [LWD] PRP Group."

C. Other claims

(1) Passaic Valley Sewerage Commission

The Passaic Valley Sewerage Commission filed a claim against Chemtura alleging that Chemtura is liable for unliquidated contribution claims related to the Diamond Alkali Site (discussed above) [FN14] (and other environmental sites) for cleanup, investigation, and natural resource damage costs related to the environmental contamination. Its claim also asserted unliquidated contribution claims based on various agreements and orders.[FN15]

In December 2005, New Jersey brought an action against various parties for cleanup costs and damages relating to the environmental contamination of the Passaic River and surrounding areas at the Diamond Alkali Site. Some of the defendants in that action filed complaints against third-party defendants, including one of the Debtors and the Passaic Valley Sewerage Commission. The Passaic Valley Sewerage Commission's claim seeks an indeterminate amount to the extent a Debtor [FN16] or the Passaic Valley Sewerage Commission is or may be liable for contamination alleged in the third-party complaint.

(2) Dow Chemical Company

In 1998, California initiated litigation against six defendants, including Debtor Witco and Dow Chemical, for environmental damage at San Joaquin Drum Company Site in Bakersfield, California.

Witco and Dow Chemical agreed to work cooperatively with California to address the release of hazardous substances at the San Joaquin Drum Company Site, and entered into separate tolling agreements with California. As a result, in 2006, California dismissed the litigation against those two defendants without prejudice.

***8** In 2008, the Debtors executed an agreement with California pursuant to which the Debtors agreed to remit certain costs and complete certain tasks with respect to the San Joaquin Drum Company Site. And in 2009, California approved a "Remedial Investigation Work Plan" proposed by the Debtors in accor-

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dance with that agreement. After the Debtors' chapter 11 filing (and after California filed a claim for the San Joaquin Site in this case), Dow Chemical and California entered into an agreement pursuant to which Dow Chemical agreed to finalize and implement that work plan and pay California oversight costs, since the Debtors were no longer doing so.

Dow Chemical estimates that future costs in connection with that work plan will be approximately $188,500; future costs necessary for complete remediation will be approximately $268,000; and the cost of operating and maintain such measures over the next 20 years will total $460,000. Dow Chemical filed a claim against the Debtors for these costs.

Discussion

All parties agree that section 502(e)(1)(B) of the Bankruptcy Code determines whether the Private Party Claims should be disallowed. As noted above, the Claimants argue, for various reasons, that their claims should not be disallowed because they fail to satisfy one or more of the elements of section 502(e)(1)(B), as laid out in the statute or the interpretive caselaw-that the claims be for reimbursement or contribution, that they be contingent, or be based on co-liability with the Debtors.

I.
The Statutory Environment

Though the Code doesn't define all of the terms that ultimately are important here, and many of the gaps have been filled by caselaw, I nevertheless start with textual analysis.[FN17] Section 502(e) provides, in relevant part, that notwithstanding provisions of section 502 under which claims would otherwise be allowable:

> (e)(1) ... the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on ... the claim of a creditor, to the extent that-
>
> ...
>
> (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution....

[1] Thus, by section 502(e)(1)(B)'s terms, three elements must be met for a claim to be disallowed under section 502(e)(1)(B):

> (1) the party asserting the claim must be liable with the debtor on the claim of a third party;
>
> (2) the claim must be contingent at the time of its allowance or disallowance; and
>
> (3) the claim must be for reimbursement or contribution.[FN18]

But textual analysis here is of limited utility. None of the terms or expressions “reimbursement,” “contribution,” “contingent” or “liable with the debtor” is defined in the Bankruptcy Code, nor does the Code articulate standards for their application.[FN19] Thus a court construes section 502(e)(1)(B)'s requirements based on caselaw.

***9** Section 502(e)(1)(B)'s requirements have been interpreted in a fair body of relevant caselaw, most of which has disallowed claims for contribution and indemnification by those who are liable, along with a debtor, to others for amounts to be determined only in the future-including a decision of mine a few months ago, where I sustained objections, on 502(e)(1)(B) grounds, to claims for contribution and/or indemnification for liability in connection with pending or threatened lawsuits by plaintiffs alleging injuries from exposure to the chemical Diacetyl, where the claimants, along with Chemtura, might be liable for the plaintiffs' Diacetyl injury.[FN20] The issue here-whether a different rule should apply to claims by PRPs who, along with a Debtor, are liable for environmental remediation costs-requires consideration of the relevant environmental statutes, most significantly provisions in CERCLA.

Section 106 (captioned “Abatement Actions”) provides, its subsection (a):

> In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United

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> States *to secure such relief as may be necessary to abate such danger or threat,* and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.[FN21]

Section 106's subsection (b) then provides for fines for failure to comply with an order issued under subsection (a), and, for those who have received and complied with an order issued under subsection (a), reimbursement from the Hazardous Substance Superfund for the reasonable costs of such action. [FN22]

Then, CERCLA Section 107 (captioned "Liability") provides, in relevant part:

> (a) ... Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-
>
> (1) the owner and operator of a vessel or a facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> ***10** (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for-
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
>
> (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
>
> (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
>
> (D) the costs of any health assessment or health effects study carried out under [CERCLA section 104].[FN23]

Thus, CERCLA section 107(a) imposes liability for environmental cleanup costs, natural resource damages, and certain other categories of recovery on PRPs-including, as relevant here, (1) the current "owner or operator" of a site contaminated with hazardous substances, and (2) any person who previously owned or operated a contaminated site at the time of a hazardous waste disposal.

Then, CERCLA Section 113 (captioned "Civil Proceedings") provides in its subsection (f) (captioned "Contribution"), in relevant part:

> (1) Contribution
>
> Any person *may seek contribution from any other person who is liable or potentially liable under [section 107(a)],* during or following any civil action under[section 106] or under [section 107(a)]. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under [section 106] or [section 107].
>
> (2) Settlement

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> A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.
>
> (3) Persons not party to settlement
>
> (A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.
>
> (B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).
>
> ***11** (C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.[FN24]

Thus 113(f)(1) provides that PRPs who fund response actions can seek contribution from other PRPs "during or following any civil action" instituted under CERCLA section 106 or 107. And CERCLA section 113(f)(3)(B) permits private parties to seek contribution after they settle their liability with the EPA or a state in an administrative or judicially approved settlement. Conversely, section 113(f)(2) protects PRPs who have settled from contribution claims by other PRPs.

II.

Satisfaction of Section 502(e)(1)(B) Elements

In *Lyondell*,[FN25] the debtors similarly objected to private party claims for future environmental remediation costs under section 502(e)(1)(B) of the Code, and in response, the claimants there made arguments nearly identical to those made by the Claimants here. This Decision relies heavily on reasoning set forth in my recent decision on these same issues in *Lyondell*, but of course I also address unique facts and arguments in this case.

As in *Lyondell*, because the various Claimants' positions overlap to such significant degrees, and because they assert, in many respects, similar deficiencies with respect to 502(e)(1)(B)'s three elements, for purposes of analysis I group the objections by the 502(e)(1)(B) elements.

A.

"Contingency" Element

[2][3] Several of the Claimants assert that their claims are not contingent because (a) they have been fixed by contracts, settlements, consent decrees, or administrative orders; or (b) the right to payment has accrued and is not dependent on a future event. As in *Lyondell*, I agree that claims for remediation costs already paid by the Claimants are no longer contingent. But I find that claims for *future* remediation costs, not already paid for, are contingent, and satisfy the "Contingency" Element of section 502(e)(1)(B) doctrine.

In another recent decision, the *Chemtura-Diacetyl* decision in these chapter 11 cases,[FN26] I ruled, among other things, that the claims then before me were contingent. There, as I've noted, five corporate entities had filed claims against the Debtors for contribution and/or indemnification with respect to amounts they might pay in the future in litigation against them. I found that except to the extent they sought contribution for amounts already paid to tort litigants, their claims were contingent.[FN27] While in some instances the potential for payment by some of the Claimants here is more advanced than it was in the Diacetyl situation, similar principles apply, and key facts remain the same. The most significant of these is that except for remedial action accomplished in the past, for which the right to reimbursement or contribution is unchallenged (more clearly than it was in *Lyondell*),[FN28] claimants here are similarly seeking reimbursement for amounts that have not yet been paid.

***12** As discussed in *Lyondell*,[FN29] though neither is squarely on point, two decisions from the Second

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Circuit have discussed contingency in deciding whether or not a creditor held a "claim." [FN30] In *Chateaugay*, the EPA argued that "it does not have a 'claim' within the meaning of the Bankruptcy Code ... for reimbursement of CERCLA response costs until those costs have been incurred." [FN31] Therefore, the EPA argued, any future response costs that the EPA might incur would pass though the bankruptcy organization as non-discharged liabilities. The Second Circuit rejected this argument, holding that the future costs were pre-petition "claims." The Circuit stated, as part of its rationale, that:

> [T]he location of these sites, the determination of their coverage by CERCLA, and the incurring of response costs by the EPA are all steps that may fairly be viewed, in the regulatory context, as rendering the EPA's claim "contingent," rather than as placing it outside the Code's definition of "claim." [FN32]

Similarly, in *Manville Forest*, the Second Circuit decided that a party's liability constitutes a "claim" against the debtor, albeit contingent. It stated:

> the fact that [claimant] Olin did not know the specific parameters of its liability does not place that liability outside of the definition of "claim" *but rather is precisely what made the claim contingent.* Under this specific combination of circumstances, we find that future environmental liability was actually or presumedly contemplated by the parties upon their signing of the indemnification agreements and constitutes a valid *contingent claim.*[FN33]

As noted in *Lyondell,*[FN34] I don't read *Chateaugay* and *Manville Forest Products*, neither of which is a 502(e)(1)(B) case, to go so far as to *hold* that a claim for reimbursement or contribution is contingent until an underlying payment (here, costs for remediation) is actually made.[FN35] But I do find it instructive that in both *Chateaugay* and *Manville Forest Products*, it was undisputed that the debtors faced *some* environmental liability, but the Second Circuit nevertheless described those claims as contingent because the scope, amount, and form of the environmental liability was undetermined.[FN36]

But other authority, including my decision in *Lyondell*[FN37] and the authority upon which I there relied, including three decisions by other bankruptcy judges in this very district,[FN38] another by a district judge in this district,[FN39] and another a thoughtful decision from Delaware [FN40]-all 502(e)(1)(B) determinations-supports the conclusion that until and unless amounts *are actually paid*, the claims for reimbursement or contribution with respect to those amounts remain contingent for 502(e)(1)(B) purposes.[FN41] For instance, in *Alper Holdings*, in this district, Judge Lifland disallowed claims for indemnification for future liability in environmental contamination litigation, finding that they were

> ***13** properly categorized as "contingent as of the time of allowance or disallowance" as the amounts and ultimate liability are presently unknown. [FN42]

Likewise, in *Drexel Burnham*, in this district, it was observed that "[t]he Claimants' claim is contingent until their liability is established *and the co-debtor has paid the creditor* .... One who is secondarily liable may only secure distribution rights by paying the amount owed the creditor." [FN43]

Similarly, in *APCO*, Judge Shannon disallowed a claim for the costs of remedial activities filed by the City of Wichita, which like the debtor there, was a PRP with respect to a site with groundwater contamination. Significantly, the City had agreed not just to perform a remedial investigation and feasibility study of the contaminated site; it had agreed to undertake the remedial activities identified in the study to clean up the site,[FN44] and had prevailed in a trial at which the *APCO* debtors were determined to be responsible for 1.72% of the City's past and future costs for the remediation, and for 100% of the City future source control costs to be incurred at a different site,[FN45] securing a judgment for the future cleanup costs of which a portion was unpaid.[FN46]

Among other things, Judge Shannon ruled that "because the City has not yet incurred any future source control costs" at one of the sites,[FN47] the claim was contingent, even though "the parties' liability has been established." [FN48] Quoting, among other decisions, *Drexel Burnham*, he observed that

> The law is clear that '[t]he contingency contemplated by [section] 502(e)(1)(B) relates to both payment *and* liability." ... Therefore, a claimant's "claim is contingent until their liability is established ... *and* the co-debtor has paid the creditor."

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FN49

I stated in *Lyondell*[FN50] and many times before it [FN51] that that the interests of predictability in this district are of great importance, and that where there is no controlling Second Circuit authority, I follow the decisions of other bankruptcy judges in this district in the absence of clear error. But as I also stated in *Lyondell*,[FN52] I believe that the conclusions in those cases were plainly correct. That is so because even though the need for remediation of the underlying environmental site might be obvious, the EPA or state environmental agency might have a multitude of different ways of getting the remediation done, and any one of those means might or might not call for-or result in-payment by the separate PRP that is asserting the claim against the debtor. And the PRP might or might not wind up actually making the payment for which it then would be seeking reimbursement or contribution.

Thus, as I held in *Lyondell*,[FN53] the fact that an EPA claim may have accrued against any of the Claimants does not mean that any of their separate claims against the Debtors are no longer contingent. We don't know whether any of the Claimants will lay out the funds necessary to engage in the curative action, and, if so, to what extent.

[4] Here, as in *Lyondell*, some of the Claimants argue that the Debtors are conflating contingency and liquidation. While I fully understand that "unliquidated" and "contingent" are not the same thing [FN54] (and suspect that the Debtors do too), here I find that the claims at issue are *both.* The claims at issue here are for future cleanup costs that might or might not actually be incurred, and then might or might not actually be paid, by any of them.[FN55]

***14** Though I ultimately decide the issue on the statutory language and the caselaw, I note, as I did in *Lyondell*,[FN56] that this ruling advances not just bankruptcy policy, but environmental policy as well. Disallowance of reimbursement claims for amounts not yet paid by the claimant advances CERCLA's policy goal of encouraging expeditious cleanup, because claimants are encouraged to remediate promptly by the threat of disallowance of claims that have not been fixed.[FN57] As Judge Shannon observed in *APCO:*

> It may appear that the Court's ruling is a harsh result for the City, and that may be true. Nevertheless, the Court's decision is mandated by the express language of the Code and is entirely consistent with the principles animating CERCLA. At bottom, CERCLA and similar state and federal environmental statutes create a scheme whereby parties are incentivized to promptly clean up contaminated sites. The prospect of the potential disallowance of contingent contribution claims under section 502(e)(1)(B) offers a further incentive to undertake the cleanup: if the work is done (or at least underway), the contribution claim is not contingent as to amounts incurred by the contribution claimant. Thus, if the City had commenced or completed source control remediation at 1001 E. Lincoln in connection with its work on the G & M Site as a whole, the City's claim would be allowed to the extent of the amounts incurred.[FN58]

Very few of the contentions made here raise issues not addressed in *Lyondell.* In one slight variant here, the Malone Cooperating Parties assert that their claim is non-contingent because the EPA has approved a remediation plan, with costs, and has apportioned liability. But the fact that the amount of future costs is known or fixed does not render the claim non-contingent where the costs have not yet been incurred and paid by the claimant.

As previously noted,[FN59] the Debtors here acknowledge, as they must, that *past* response costs previously paid are non-contingent. When they acknowledged that, the Debtors did not flesh out what they meant by that, or what kinds of past payments they would agree then qualify. Subject to rights to be heard, I would think that it's at least arguable that qualifying payments could be of many different types-including, by way of example, not just payments to the EPA, a state, or to a company hired to perform the cleanup, but also those made into a trust or a fund previously established for environmental remediation.[FN60] But if the Debtors contend otherwise, I'll hear more as to the facts concerning the trust and the payments that were made to it-such as the circumstances under which the trust or fund was established, its purpose, the use of any funds paid to it, and the extent, if any, to which any PRP could get money back from the trust. Plainly, however, I will not find on motion (and in the absence of an evidentiary hearing) that sums already paid by claimants in

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this case to such trusts or funds fail to qualify as sums paid in the past.

***15** But with respect to payments the Claimants have not made yet, and that are only to be made in the future (if at all), I must and do find that the amounts are contingent, for the reasons stated above.

B.
"Co-Liability" Element

The Claimants also contend that the co-liability element has not been satisfied. For the most part, I must disagree. But with respect to the claim of the DS & G Trust, the co-liability element hasn't been met, and I therefore rule that the DS & G Trust's claim isn't disallowable under section 502(e)(1)(B) grounds.[FN61]

1. The Atlantic Research Contentions

[5] Some of the Claimants' also argue that their claims aren't premised on co-liability, because their claims are based on cost recovery under CERCLA section 107(a), and not contribution under section 113(f). In that connection, they note that in *U.S. v. Atlantic Research Corp.*,[FN62] the Supreme Court held that a private party may recover under CERCLA section 107(a) without any establishment of liability to a third party. Because they are asserting section 107(a) claims, therefore, those claimants argue, the basis for finding co-liability is lacking.

But this reliance on *Atlantic Research* is flawed. The issue in *Atlantic Research*, a non-bankruptcy case, was whether a PRP could sue to recover voluntarily incurred cleanup costs under section 107(a), rather than relying solely on section 113(f).[FN63] Section 107(a)(4)(A) expressly authorizes the federal government, the states, and Indian tribes to sue for cost recovery under section 107(a), and section 107(a)(4)(B) gives the same right to sue to "any other person." Specifically, the Court was asked to determine whether a PRP is included in the phrase "any other person" in 107(a)(4)(B).

The Supreme Court held that the operator's status as a PRP did not preclude the operator from suing under section 107(a), as section 107(a)(4)(B) covers any person not identified in subparagraph (A), and that a PRP was not limited to relief under section 113(f).[FN64] Nevertheless, the Supreme Court highlighted the "complementary yet distinct" nature of the rights established under section 107(a) and 113(f)-specifically, that a private party may sue under section 107(a) without any establishment of liability to a third party, something it could not do under section 113(f).[FN65] The Supreme Court allowed the claimant to recover from other PRPs costs that it had incurred by voluntary cleanup-or in other words, by cleanup or payments not prompted by a government action under sections 106 or 107.

On the issue of co-liability, the Claimants relying on *Atlantic Research* erroneously assume that only claims under section 113(f) are premised on co-liability with the defendant (in this case, a Debtor), and that cost recovery claims under section 107(a) are all direct claims, and not claims for either reimbursement or contribution. The *Atlantic Research* court held that a claim under section 107(a) *need not* be based on co-liability to a third-party (e.g. a governmental entity). But it did not hold that a claim under 107(a) *cannot* be based on co-liability. If a PRP undertakes "voluntary" clean up (as opposed to cleanup pursuant to government action under section 106 or 107)-and sues under 107(a) to seek recovery for that cleanup from another PRP-that has no effect on, and certainly does not nullify, the fact that the two may still be co-liable to the Government.

***16** Where a Debtor and a claimant have both been designated as PRPs by the EPA, they have a shared statutory obligation, under CERCLA, to provide for the cleanup of the environmental site, by one means or another. That a claimant might satisfy its own obligations by voluntary cleanup, rather than by waiting for a government action, is laudable, but not relevant to the 502(e)(1)(B) determination. The claims here are still expressly or impliedly premised on the theory that if any of the Debtors pay less than its share of cleanup costs, the claimant will have to pay more. That is the essence of co-liability.

2. The Allegheny Contentions

Some of the Claimants also assert that co-liability is lacking based on a district court decision in the *Allegheny* bankruptcy case.[FN66] In *Allegheny*, the owner of the site filed a claim for past and future response costs against a debtor that had sold the site to the claimant prior to filing for bankruptcy. Applying the three-part test described on page 16 above, the *Allegheny* court ruled that section 502(e)(1)(B) did not exclude the claimant's direct claims for future

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response costs under CERCLA section 107(a).[FN67] While the *Allegheny* debtor argued that there was a possibility that the creditor might never be required to expend any funds if the EPA were subsequently to order the debtor to perform the remediation, the *Allegheny* court reasoned that this risk of double liability could be avoided by having the creditor's claim paid into a trust to be expended on remediation of the waste sites.[FN68]

As in *Lyondell,*[FN69] I join the other courts that have disagreed with the *Allegheny* decision.[FN70]

As noted in *Lyondell,*[FN71] section 502(e)(1)(B) serves the important purpose of avoiding redundant recoveries.[FN72] The situation here, where both Debtors and claimants are PRPs under CERLCA, state law, or both, presents precisely the danger of double recovery from the Debtors on account of the same liability, ultimately to the EPA and state authorities. Because the EPA and state environmental authorities already have allowed claims against Debtors for the all of the sites covered by the claims at issue here, allowing these Private Party Claims would be setting up precisely the redundant recoveries section 502(e)(1)(B) was created to prevent.

Indeed, the *Allegheny* court acknowledged that its decision not to disallow the claimant's claim under section 502(e)(1)(B) left the debtors vulnerable to multiple recoveries. What the *Allegheny* court failed to realized, however, is that this risk of duplicative recoveries arose *because* the debtors and claimant were co-liable.

For that reason, several cases have rejected *Allegheny's* logic.[FN73] In *Cottonwood Canyon,* for instance, the court stated that the fact that the *Allegheny* court found it necessary to establish a trust shows that the debtor and the claimant share a common liability against which the claimant sought to protect itself .[FN74] The *Cottonwood Canyon* court stated:

> ***17** CSI argues that it is asserting a direct claim against Kaiser under Section [107(a)] and not a claim for reimbursement or contribution. It would clearly appear that a claim for reimbursement or contribution under either the California statute, CERCLA or the indemnification provisions of the contract is, by definition, a claim to recover costs incurred by reason of CSI's liability for cleanup as the "owner" of the site, which is the same liability Kaiser has for cleanup as the party which deposited the hazardous substances in the first instance. Such a claim would necessarily be one for liability for which both Kaiser and CSI are responsible and would fall within the ambit of 11 U.S.C. § 502(e).[FN75]

Similarly, in *Eagle-Picher,*[FN76] the court rejected *Allegheny's* logic for similar reasons, and disallowed the creditors' reimbursement claims (which were under section 113(f)) for future response costs under CERCLA. The *Eagle-Picher* court stated that "[d]ouble liability could occur under the circumstances of this case since EPA remains free to pursue [the debtor] for remediation costs should the claimants fail to fulfill their cleanup obligations." [FN77]

Here, we have a situation similar to *Eagle-Picher.* The Debtors here do not dispute claims for costs the Claimants have already incurred from voluntary remediation; the claims at issue are for *future* remediation costs. The Private Party Claimants and the Debtors are both liable for cleanup at the same sites. And the EPA and state authorities have already entered into settlement agreements with the Debtors for remediation of every site for which a Private Party Claim was filed. Allowing the Private Party Claims would not only expose the Debtors to-but would actually result in-paying multiple recoveries on account of the same liability.[FN78]

3. Other Contentions

A. Passaic Valley Sewerage Commission

[6] The Passaic Valley Sewerage Commission argues that because the Debtors and the Passaic Valley Sewerage Commission both deny liability for contamination of the Newark Bay Complex, the Passaic Valley Sewerage Commission claim cannot be disallowed. But this argument-premised on a state of affairs that exists in many, if not most, instances in which multiple defendants are named in actions where one or more may turn out to be liable, on the one hand, or exonerated, on the other-is overly simplistic, and contrary to existing authority.

First, if the Passaic Valley Sewerage Commission turns out not to be liable, then the Passaic Valley Sewerage Commission would have nothing to claim

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against any of the Debtors in the first place, as the Passaic Valley Sewerage Commission wouldn't be required to pay any money for remediation of the Newark Bay Complex.[FN79]

[7] Second, as explained in *Wedtech I*, the co-liability requirement doesn't require that the debtor and claimant have already been found liable in the underlying suit. Rather, "the co-liability requirement is to be interpreted to require a finding that the causes of action in the underlying lawsuit assert claims upon which, *if proven*, the debtor could be liable but for the automatic stay." [FN80] If the Passaic Valley Sewerage Commission were found to be liable, then paid remediation costs, and then sought to recover costs from the Debtors, that recovery action would be premised on the co-liability of the Debtors and the Passaic Valley Sewerage Commission. That is all that section 502(e)(1)(B) requires.

B. BKK

***18** [8] BKK similarly argues that because none of the Debtors is a party to BKK's consent decree with California, there is no co-liability to a primary creditor. Of course, the fact that none of the Debtors entered into the consent decree doesn't mean that none is liable to California; both Debtor entities and the BKK are PRPs under CERCLA.

More to the point, the environmental liability for which one or more of the Debtors and BKK are liable is one and the same, regardless of whether it is enforced by California (under California law) or the EPA (under CERCLA).

C. Dow Chemical

Dow Chemical argues that it is not co-liable with the Debtors because it is not liable for the San Joaquin Site at all, and is "voluntarily" undertaking and paying for an investigation of the Site.[FN81]

While it might ultimately turn out that Dow Chemical has no liability for the San Joaquin Site, there is now insufficient evidence in the record for me to issue rulings premised on the assumption that Dow Chemical is undertaking this investigation merely as a Good Samaritan-and I don't need to rule on how I'd deal with a situation if a claimant ever turned out to be such. As Dow Chemical acknowledges in its papers, California initiated litigation against Dow Chemical in 1998, and California dismissed that litigation, without prejudice, only after Dow Chemical entered into tolling and other agreements with California. Even now, Dow Chemical is conducting an investigation of the Site pursuant to an agreement with California.

In addition, while Dow Chemical states that it is conducting only an investigation, Dow Chemical's claim also seeks payment for future remediation costs. As I've repeatedly stated, the claims of Dow Chemical (and of all of the other Claimants) for past costs will not be disallowed under section 502(e)(1)(B). With respect to future costs, if it true that Dow Chemical has no liability for the site and any future acts would be undertaken solely as a Good Samaritan, then Dow Chemical can stop paying for the investigation at any time, and will thereby stop incurring costs for which it will be ineligible to receive reimbursement from the Debtors.[FN82]

D. DS & G Trust

[9] The claim filed by the DS & G Trust was filed by an entity that was supposed to *receive* payments for remediation, and not (as in the case of the Lower Passaic River Study Area Cooperating Parties), by others who might have to make contributions to a trust or fund. The DS & G Trust argues that because the trust itself faces no environmental liability, its claims cannot be disallowed as premised on "co-liability" with the Debtors. I agree.

Whether the DS & G Trust is regarded as a *collection agent* for the EPA, or the *mechanism* by which Chemtura itself was meeting its obligations to the EPA, its role is still as a recipient of payments for remediation-rather than as an obligor, much less a co-obligor. With respect to the DS & G Trust, the Co-liability Element is not satisfied.[FN83] I therefore decline to disallow its claim on section 502(e)(1)(B) grounds.[FN84]

C.
"Reimbursement or Contribution" Element

***19** [10] Some of the Claimants also contend that because their claims are for cost recovery under section 107(a), rather than for contribution under section 113(f), their claims are not for "reimbursement or contribution" under section 502(e)(1)(B). But whether the claims are for cost recovery under section 107(a), or contribution under 113(f)(1), I must find that they still are covered by section

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502(e)(1)(B).

[11] CERCLA section 113(f), by its terms, directly provides for "contribution"; therefore, quite indisputably, any recovery under section 113 must be considered contribution for the purposes of 502(e)(1)(B). Section 107(a), under which many of the Claimants assert that their claims are brought, provides for "recoverable costs," but does not contain the words "contribution" or "reimbursement." But as in *Lyondell,*[FN85] I don't find this distinction to be dispositive, and I find that the claims at issue here, even if premised on section 107(a), are in substance still claims for "reimbursement" for the purposes of 502(e)(1)(B).

Section 502(e)(1)(B) states that "the court shall disallow *any* claim for reimbursement or contribution ..." [FN86] As I noted above,[FN87] section 502(e)(1)(B) imposes no requirements as to the means or reason by which co-liability exists. Although "reimbursement" is not defined in the Bankruptcy Code, Black's Law Dictionary defines "reimbursement" as "1. Repayment. 2. Indemnification." [FN88] In *Wedtech II,* Chief Judge Brozman, in this district, explained that "[t]he use of the word 'reimbursement' in the statute cannot be viewed as accidental. It is a broad word which encompasses whatever claims a co-debtor has which entitle him to be made whole for monies he has expended on account of a debt for which he and the debtor are both liable." [FN89]

Similarly, in the *Chemtura-Diacetyl* decision, wherein I rejected the notion that the "liable with" prong requires that the Debtors establish that "the successful prosecution of a claim of [a Tort Plaintiff] against [a Corporate Claimant] would *automatically* result in the Debtors being liable to such underlying tort plaintiff as well," [FN90] I noted that Congress clearly meant to include all situations wherein indemnitors or contributors could be liable with the debtor within the scope of § 502(e)(1)(B).[FN91]

Other courts similarly focused on substance over form when addressing this issue, and I find their reasoning and conclusions to be persuasive. In *Cottonwood Canyon,* discussed above, the court disallowed, as "contribution or reimbursement," claims asserted under CERCLA 107(a). The risk, both there and in *Allegheny,* that the Debtors would make duplicative payments for the same liability, revealed that "the clear character of the claim" was that "debtor was not being asked to satisfy a [direct] claim for injury to the claimants property" but rather was being sought for reimbursement.[FN92]

Looking at substance over form here, the claims at issue plainly are for "reimbursement" as that term is used in section 502(e)(1)(B). The Claimants seek repayment of money that they allege that they will spend on environmental remediation, and the Debtors and the Claimants, all PRPs, are co-liable for environmental cleanup. There is a substantial risk that if these private party claims are allowed, the Debtors will pay twice for the same liability. In light of these facts, these claims, even if brought for cost recovery under section 107(a), are claims for reimbursement under 501(e)(1)(B).

***20** Some Claimants argue that if this Court were to create a trust account for payment of future costs like in *Allegheny,* the payment of funds into the trust account could be considered something other than reimbursement, because the money wouldn't be spent until the future.[FN93] I find this argument unpersuasive. The money would be paid to return money expended by the Claimants. That is reimbursement.

[12][13] Certain Claimants, such as the LPRSA Group members, entered into agreements with the Debtors to make payments proportional to their liability into a trust fund, out of which the money would then be used to pay for remediation. These Claimants maintain that their claims are direct contractual claims, and not for contribution. But contractual claims are similarly disallowed under 502(e)(1)(B) when they are, in substance, claims for reimbursement or contribution.[FN94] The Claimants assert that they will be forced to pay more than their fair share of the cleanup costs (or more than their fair share of money into the trust), and therefore, seek payment for cleanup costs that might be incurred in the future. But these are in substance claims for contribution. The trust into which the contributions will be made is merely the mechanism for their contributions.

Conclusion

For the foregoing reasons, I conclude that claims before me here (other than that of the DS & G Trust), to the extent they are on account of future costs, are contingent claims for reimbursement or contribution

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of an entity that is liable with the debtor to a third party creditor. Except for the amounts that the Claimants already actually paid, and the claim of the DS & G Trust, the Debtors' objections to the claims listed on Appendix B are sustained.

FN1. I use bench decisions to lay out in writing decisions that are too long, or too important, to dictate in open court, but where the circumstances do not permit more leisurely drafting or more extensive or polished discussion. Because they often start as scripts for decisions to be dictated in open court, they typically have a more conversational tone.

FN2. Although the Debtors originally objected to more claims on the same grounds, some have since been resolved, disallowed, or expunged. *See* Findings of Fact, Section 3. At this point, 29 proofs of claim remain subject to this objection. *See* n. 13 and Appendix B.

FN3. Pursuant to the parties' agreement and the provisions of Case Management Order # 1, all of the facts (but not necessarily arguments and conclusions) in the declarations submitted to me have been taken as true. To shorten this Decision, I've limited factual citations and detail to the most significant matters.

FN4. For the sake of simplicity, I refer to the claims filed by the Federal Agencies as "U.S. claims" or "EPA claims," and I use the terms "U.S." and "EPA" interchangeably.

FN5. *See* 42 U.S.C. §§ 9601 *et seq.*

FN6. For simplicity, going forward, I refer to such claims as simply being asserted by the respective states.

FN7. *See* 8/4/2010 Hr'g Tr. at 119.

FN8. Claims filed by Sensient were resolved by stipulation and order on the date of the hearing. *See* ECF # 3486.

FN9. *See* Appendix A.

FN10. Three contested claims (those of Maxus Energy Corp., Tierra Solutions Inc., and Stony Creek Technologies LLC) weren't addressed at the argument on these issues by reason of pending settlement negotiations: Accordingly, this decision doesn't apply to those claims for the purpose of disallowance, *res judicata* or collateral estoppel. Of course, it does have *stare decisis*, or precedential, significance if settlements are not finalized.

FN11. The claim of Akzo Nobel Chemicals, Inc. was resolved by stipulation and order disallowing the claim to the extent the claim sought future environmental costs, and establishing an allowed claim for costs already incurred. *See* ECF # 4269.

FN12. The Debtors reached a settlement in principle, but without documentation, with respect to the claims of Flabeg Technical Glass U.S. Corp. Accordingly, this decision doesn't apply to those claims for the purpose of disallowance, *res judicata* or collateral estoppel. Of course, it does have *stare decisis*, or precedential, significance if either side justifiably fails to proceed with the settlement.

FN13. *See* Appendix B. The Debtors are in settlement negotiations with some of these claimants, but only in connection with the non-502(e) portions of their claims. Therefore, those settlements, even if ultimately approved by the Court, are irrelevant to this decision.

FN14. *See* page 10 above.

FN15. It isn't clear from the proof of claim and response filed by Passaic Valley Sewerage Commission whether the Passaic Valley Sewerage Commission is a party to any of those agreements or orders.

FN16. The Court has some difficulty seeing

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how a *Debtor's* liability would be relevant (as contrasted to the claimant's), but this is what the proof of claim says.

FN17. *See, e.g., Alta Partners Holdings LDC v. Credit Suisse First Boston LLC ("In re Global Crossing Ltd."),* 385 B.R. 52, 66 (Bankr.S.D.N.Y.2008); *In re General Motors Corp.*, 407 B.R. 463, 486 (Bankr.S.D.N.Y.2009) ("*GM-Sale Decision* "), *appeal dismissed and aff'd,* 428 B.R. 43 (S.D.N.Y.2010), and 430 B.R. 65 (S.D.N.Y.2010); *In re Motors Liquidation Co.*, 438 B.R. 365, 372 (Bankr.S.D.N.Y.2010); *In re Adelphia Communications Corp.*, --- B.R. ----, 2010 Bankr.LEXIS 3915, *12 & n. 17, 2010 WL 4791795, *3 & n. 17 (Bankr.S.D.N.Y. Nov.18, 2010).

FN18. *See In re Lyondell Chemical Co.*, --- B.R. ----, 2011 Bankr.LEXIS 10, 2011 WL 18975 (Bankr.S.D.N.Y. Jan.4, 2011) ("***Lyondell*** "). *Lyondell* dealt with claims that, with few exceptions, were identical to those here, and *Lyondell* (along with the earlier caselaw upon which it relied, much of which is controlling in its own right) is on point and controlling in most respects here. To balance needs to provide necessary context in this decision and to make it free-standing, to issue this decision as promptly as practicable, and to avoid making this decision unduly repetitive, this decision repeats more than a little, but less than all, of the analysis in *Lyondell.* Many elements of the discussion that follows will have obvious similarities to *Lyondell*, and the conclusions with respect to similar types of claims are of course identical.

FN19. It should be noted, however, while focusing on textual analysis, that section 502(e)(1)(B) imposes no requirements as to *how* or *why* the party asserting the claim potentially subject to section 502(e)(1)(B) must be liable with the debtor on the claim of the third party. There is no statutory requirement, for example, that the debtor and the party asserting the claim be liable on the claim of the third party in the same action, under a common statute, or on the same legal theory.

FN20. *See In re Chemtura Corp.*, 436 B.R. 286 (Bankr.S.D.N.Y.2010) ("***Chemtura-Diacetyl*** ").

FN21. CERCLA § 106(a), 42 U.S.C. § 9606(a) (emphasis added).

FN22. *See* CERCLA § 106(b), 42 U.S.C. § 9606(b).

FN23. CERCLA § 107, 42 U.S.C. § 9607.

FN24. CERCLA § 113(f), 42 U.S.C. § 9613(f).

FN25. *See* n. 18 above.

FN26. *See* n. 20 above, 436 B.R. at 286.

FN27. *See Chemtura-Diacetyl*, 436 B.R. at 297.

FN28. *See* n. 7 above ("The Debtors' objections to the Private Party Claims "do[ ] not relate to any past costs actually spent by these claimants.").

FN29. *See* --- B.R. at ----, 2011 Bankr.LEXIS at *25-*28, 2011 WL 18975 at *8-*9.

FN30. *See In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir.1991) ("***Chateaugay*** "); *Olin Corp. v. Riverwood Int'l Corp. (" In re Manville Forest Products Corp."),* 209 F.3d 125 (2d Cir.2000) ("***Manville Forest Products*** ").

FN31. *Chateaugay*, 944 F.2d at 1000.

FN32. *Id.* at 1005.

FN33. *Manville Forest Products*, 209 F.3d at 129 (emphasis added).

Other caselaw-again in the context of de-

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> termining the existence of a claim, rather than in deciding whether or not it was "contingent"-likewise describes a situation where the need for remediation is known, but the amount, if any, to be paid for the remediation is not, as giving rise to a "contingent claim." *See Cal. Dep't of Health Services v. Jensen (" In re Jensen"),* 995 F.2d 925, 931 (9th Cir.1993) (*per curiam*) ("We conclude that the state had sufficient knowledge of the Jensens' potential liability to give rise to a contingent claim for cleanup costs before the Jensens filed their personal bankruptcy petition on February 13, 1984"); *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 974 F.2d 775, 786 (7th Cir.1992) (in context of a former Bankruptcy Act § 77 railroad reorganization, to same effect: "when a potential CERCLA claimant can tie the bankruptcy debtor to a known release of a hazardous substance which this potential claimant knows will lead to CERCLA response costs, and when this potential claimant has, in fact, conducted tests with regard to this contamination problem, then this potential claimant has, at least, a contingent CERCLA claim for purposes of Section 77.").

FN34. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *28, 2011 WL 18975 at *9.

FN35. Somewhat earlier in the *Chateaugay* decision, also as part of its analysis as to whether the EPA had a claim at all, the Circuit dealt with the easy case. It stated, with respect to the EPA's incurrence of CERCLA response costs:

> When such costs are incurred, EPA will unquestionably have what can fairly be called a "right to payment." That right is currently unmatured and will not mature until the response costs are incurred.

944 F.2d at 1004.

FN36. *See Chateaugay*, 944 F.2d at 1005.

FN37. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *29, *33-*34, 2011 WL 18975 at *9, *10,

FN38. *See In re Alper Holdings* USA, No. 07-12148, 2008 WL 4186333,*6-*7 (Bankr.S.D.N.Y. Sept.10, 2008) (Lifland, C.J.) ("***Alper Holdings*** ") (disallowing future environmental indemnification costs "as the amounts and ultimate liability are presently unknown," and finding contingency on the ground that amounts for which indemnification was sought were undetermined and unpaid); *In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. 983, 986-90 (Bankr.S.D.N.Y.1992) (Conrad, J.) ("***Drexel Burnham*** ") (disallowing indemnity claims of co-underwriters for potential liability in pending fraud suits, because claimants had not yet paid judgments or settlements); *In re Wedtech Corp.*, 85 B.R. 285, 290 (Bankr.S.D.N.Y.1998) (Buschman, J.) ("*Wedtech I* ") (disallowing debtor's officers' contingent indemnification claims).

FN39. *See Aetna Casualty and Surety Company v. Georgia Tubing Corp. ("In re Georgia Tubing Corp."),* No. 93 Civ. 3659, 1995 WL 429018,*3-*4 (S.D.N.Y. July 20, 1995) (Preska, C.J.), *aff'd*, 93 F.3d 56 (2d Cir.1996) (disallowing an insurance company's claim regarding hazardous waste bonds where primary creditor was a state environmental agency, stating that a surety claim was contingent until the claimant "pays the principal creditor and fixes his own right to payment from the debtor" (quoting 3 *Collier on Bankruptcy* ¶ 502.05 at 502-88 (15th ed.1995)).

FN40. *See In re APCO Liquidating Trust*, 370 B.R. 625 (Bankr.D.Del.2007) (Shannon, J.) ("***APCO*** ").

FN41. Similarly, *Collier* expressly identifies claims for contribution arising under CERCLA as examples of claims that are contingent. *See* 4 *Collier on Bankruptcy* ¶ 502.06[2][d] (16th ed.2010). *Collier* provides:

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> In addition to codebtor situations created by contract, section 502(e)(1)(B) applies to disallow contingent reimbursement or contribution claims created by statute. For example, a claim for contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act may be a contingent claim subject to disallowance under section 502(e)(1)(B).... In such a case, the government is the primary obligee that may seek satisfaction of its claim against the debtor from third parties who, under the statute, are obligated with the debtor to the government on the same debt. The statute under which the third-party liability is created, however, must provide for a reimbursement or contribution claim against the debtor.
>
> (footnote omitted).

FN42. 2008 WL 4186333 at *6.

FN43. 148 B.R. at 987 (emphasis added; internal citations omitted).

FN44. *See* 370 B.R. at 629.

FN45. *Id.*

FN46. *Id.* at 630.

FN47. *Id.* at 636.

FN48. *Id.*

FN49. *Id.* (emphasis in original; internal citations omitted).

FN50. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *33, 2011 WL 18975 at *10.

FN51. *See, e.g., In re Adelphia Communications Corp.*, 359 B.R. 65, 72 n. 13 (Bankr.S.D.N.Y.2007) ("This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this district in the absence of clear error."); *GM-Sale Decision*, 407 B.R. at 487 & n. 19 (same).

FN52. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *33, 2011 WL 18975 at *10.

FN53. *See id.* at ----, 2011 Bankr.LEXIS 10 at *34, 2011 WL 18975 at *10.

FN54. *See, e.g., Chemtura-Diacetyl*, 436 B.R. at 297 ("Thus, while we all understand and agree that there is a distinction between "contingent" and unliquidated, that distinction isn't material here. The unliquidated but non-contingent costs of defense here still result in a potentially allowable claim, but the claims for contribution in the event that a Tort Claimant succeeds against Corporate Claimants are still contingent, and satisfy this prong of the 3-part test for establishing 502(e)(1)(B) disallowance.").

FN55. Some of the claimants cite Judge Sontchi's decision in *In re RNI Wind Down Corp.*, 369 B.R. 174 (Bankr.D.Del.2007) ("***RNI*** ") in support of this contention. But as I noted in my *Chemtura-Diacetyl* decision, see 436 B.R. at 296-97, the claimant in *RNI waived* any claims he might have for amounts he might have to pay on the underlying claims (there, by the SEC). The right to payment that Judge Sontchi found to be "unliquidated but not contingent" was the right to the *advancement of those costs of defense*, and not the right to *contribution or indemnity for amounts ultimately paid to a third party*-the circumstance that was relevant there and here. Judge Sontchi merely found (understandably, given appropriate analysis) that the right to advancement was a then-existing right (under the certificate of incorporation, bylaws, and Delaware law), subject only to uncertainty at the time as to just how much the defense costs would turn out to be. I observed, in fact, that Judge Sontchi had actually used claims for contribution as an example of what would satisfy

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the contingency elements. *See* *Chemtura - Diacetyl*, 436 B.R. at 297.

FN56. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *37-*38, 2011 WL 18975 at * 11.

FN57. *See* *In re Eagle-Picher Indus. Inc.*, 164 B.R. 265, 272 (S.D.Ohio 1994) ("***Eagle-Picher*** ") ("502(e)(1)(B) fosters the primary objective of CERCLA by requiring those who seek contribution to incur the expenses relating to cleanup before stating an allowable claim."); *APCO*, 370 B.R. at 637 (same, quoting *Eagle-Picher*).

FN58. 370 B.R. at 636-37.

FN59. *See* n. 28 above.

FN60. Allowing reimbursement for money paid into a trust or fund in accordance with a contractually established payment schedule, even though the money may not have actually been spent on cleanup yet, furthers environmental policy, as I discussed earlier, by incentivizing parties to make their payments as soon as possible.

FN61. I don't decide any other issues as to the DS & G Trust claim, as to which both sides' rights will be reserved.

FN62. *U.S. v. Atlantic Research Corp.*, 551 U.S. 128, 127 S.Ct. 2331, 168 L.Ed.2d 28 (2007) ("***Atlantic Research*** "). Contrasting CERCLA section 107(a) with section 113(f), the Supreme Court stated the following: " § 107(a) permits recovery of cleanup costs but does not create a right to contribution. A private party may recover under § 107(a) without any establishment of liability to a third party." *Atlantic Research*, 551 U.S. at 139.

FN63. The PRP was the owner of the facility and filed a suit against the U.S. under CERCLA section 107 to recover cleanup costs.

FN64. *Atlantic Research*, 551 U.S. at 135.

FN65. *Id.* at 139.

FN66. *In re Allegheny Int'l, Inc.*, 126 B.R. 919 (W.D.Pa.1991), *aff'd without opinion*, 950 F.2d 721 (3d Cir.1991) ("***Allegheny*** ").

FN67. *See Allegheny*, 126 B.R. at 923.

FN68. *See id.* at 924.

FN69. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *44, 2011 WL 18975 at * 13.

FN70. *See* *Eagle-Picher*, 164 B.R. at 271; *Drexel Burnham*, 148 B.R. at 988; *In re Cottonwood Canyon Land Co.*, 146 B.R. 992, 996 (Bankr.D.Colo.1992) ("***Cottonwood Canyon*** ").

FN71. *See* --- B.R. at ----, 2011 Bankr.LEXIS 10 at *45, 2011 WL 18975 at * 13.

FN72. *See* *APCO*, 370 B.R. at 634 ("[T]he sole purpose served by section 502(e)(1)(B) is to preclude redundant recoveries...."); *Wedtech I*, 85 B.R. at 289 & n. 4 (noting that Congress enacted the provision, in part, to prevent competition between primary and secondary creditors for the "limited proceeds of the estate" (quoting H.R.Rep. No. 95, 595, 95th Cong., 1st Sess. 354 (1977))).

FN73. Some of the claimants also cite *In re Harvard Indus., Inc.*, 138 B.R. 10 (Bankr.D.Del.1992) (Balick, J.) ("***Harvard Industries*** "), which follows *Allegheny's* logic. In *Harvard Industries*, Judge Balick distinguished between claims by a PRP for a cleanup performed by the PRP and claims for where the EPA performed the cleanup, and ruled, *inter alia*, that where the party sought to recover funds it would expend in the future, section 502(e)(1)(B) does not apply. She acknowledged that double liability could occur if the PRP recovered for personal expenditures but then failed to clean

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up the site and the EPA brought an action against the debtor, and, as in *Allegheny*, set up a trust to resolve that potential problem. But since, as in *Allegheny*, *Harvard Industries* subjects debtors to the risks of duplicative recoveries, I believe that *Harvard Industries* is subject to the same criticism that has been raised with respect to *Allegheny*.

FN74. *Cottonwood Canyon*, 146 B.R. at 996. *See also Drexel Burnham*, 148 B.R. at 989 ("The *Cottonwood* court insisted that this is demonstrated by the solution devised by the *Allegheny* court in response to the concern that the allowance of the claim might lead to multiple recoveries against the debtor. The debtor would be subject to multiple recovery if the claimant failed to take remedial action to remove the hazard after it had received a distribution from the debtor, leaving the debtor liable to a claim by the Government for remediation of the plants."). The *Allegheny* court even noted that "both debtor and [claimant] are liable for the waste remediation...." *Allegheny*, 126 B.R. at 923.

FN75. *Cottonwood Canyon*, 146 B.R. at 996.

FN76. *Eagle-Picher* and *Cottonwood Canyon* are both pre-*Atlantic Research* cases. The *Eagle-Picher* court, citing circuit court decisions, found that the claims asserted there (a PRP against another PRP) could only be brought under CERCLA § 113, and not § 107. *Atlantic Research* did overrule *Eagle-Picher* in this respect-since *Atlantic Research* now allows a PRP to seek recovery from another PRP under § 107. But that distinction does not matter here. I rely on *Eagle-Picher* for its narrower (and I believe undisputable) finding that the debtor and claimant were co-liable. Because the *Atlantic Research* decision did not reach that issue, the portion of *Eagle-Picher* upon which I rely was not overruled. And because *Atlantic Research* did not decide issues under Bankruptcy Code section 502(e)(1)(B), it had no effect on *Cottonwood Canyon*.

FN77. *Eagle-Picher*, 164 B.R. at 271.

FN78. The fact that Debtors settled their claims with the EPA is not necessary to my decision here, though, it is worth noting that the contribution protection in the Settlement Agreement protects the Debtors from duplicative payments on account of the same liabilities, a risk that exists because the Debtors are co-liable with the Private Party Claimants.

FN79. This underscores, of course, the significance of the Contingency Element, discussed above.

FN80. *Wedtech I*, 85 B.R. at 290 (emphasis added).

FN81. *See* 8/4/10 Hr'g Tr. at 156 ("We voluntarily undertook investigation with respect to our location, which is in Bakersfield, California, it's the San Joaquin Dum Site. I mean, we claim and assert we have absolutely no liability.... We are voluntarily conducting an investigation only, and have agreed to do so because Chemtura did not fulfill their obligation by virtue of the bankruptcy to complete the investigation.").

FN82. Dow Chemical also argues that California's claim did not include the costs of operating and managing the remedial measures and therefore, part of Dow Chemical's claim is not duplicative of the California claim. The content of the California claim or settlement agreement is irrelevant, because Dow Chemical's claims, to the extent they seek repayment for future costs, fall squarely within 502(e)(1)(B). *See APCO*, 370 B.R. at 625 ("[T]he failure of KDHE to file a claim does not alter the co-liability of the Debtors and the City to KDHE. As other courts have observed, "section 502(e) does not require that a proof of claim be filed in the proceeding to be liable with the debtor. Application of [section 502(e)(1)(B)] 'is not premised on the actual filing of multiple claims but, rather, on the existence of such claims.' " (quoting *In re Lull Corp.*, 162 B.R. 234, 238 (Bankr.D.Minn.1993); *Cottonwood Canyon*, 146 B.R. at 997)).

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FN83. The Debtors argue that "the Trust cannot assert a claim on behalf of its members while simultaneously using its institutional identity to short-circuit consideration of whether this claim is actually allowable under section 502(e)(1)(b)." This argument confuses the beneficiaries of the trust. No evidence was submitted that the DS & G Trust is for the benefit of its "members." To the extent there was any evidence, it suggested that the DS & G Trust was created for the benefit of the EPA, and/or the necessary remediation effort.

FN84. I once more do not now decide whether this claim is disallowable for other reasons.

FN85. --- B.R. at ----, 2011 Bankr.LEXIS 10 at *54, 2011 WL 18975 at *15.

FN86. 11 U.S.C. § 502(e)(1)(B) (emphasis added).

FN87. *See* n. 19 above.

FN88. *Black's Law Dictionary* 1399 (9th ed.2009).

FN89. *In re Wedtech*, 87 B.R. 279, 287 (Bankr.S.D.N.Y.1988) (Brozman, C.J.) (***"Wedtech II***).

FN90. *Chemtura-Diacetyl*, 436 B.R. at 293.

FN91. *See id.* at 295-96.

FN92. *Cottonwood Canyon*, 146 B.R. at 996.

FN93. *See* 8/4/2010 Hr'g Tr. at 149:10-12.

FN94. *See Wedtech II*, 87 B.R. at 287 (finding accounting firm's alleged breach of contract claims to be claims for reimbursement because claims sought repayment for monies to be expended in satisfying liability to third parties); *Fine Organic Corp. v. Hexcel Corp. ("In re Hexcel Corp".)*, 174 B.R. 807, 810 (Bankr.N.D.Cal.1994) (Tchaikovsky, J.) (disallowing as reimbursement claims arising out of asset purchase agreement between debtors and claimant in which debtor contractually agreed in purchase agreement to perform remediation even where but for purchase of assets, claimant would not be liable for the site).

Bkrtcy.S.D.N.Y.,2011.
In re Chemtura Corp.
--- B.R. ----, 2011 WL 109081 (Bkrtcy.S.D.N.Y.)

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