

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

INDUSTRIAL EXCESS LANDFILL,  
INC.; B.F. GOODRICH COMPANY;  
BRIDGESTONE/FIRESTONE, INC.;  
HYMAN BUDOFF; GENCORP, INC.;  
GOODYEAR AEROSPACE  
CORPORATION; GOODYEAR TIRE  
AND RUBBER COMPANY; HYBUD  
EQUIPMENT CORPORATION  
CHARLES KITTINGER; MERLE  
KITTINGER; KITTINGER TRUCKING  
COMPANY; MORGAN ADHESIVES  
COMPANY; PPG INDUSTRIES, INC.

Defendants.

STATE OF OHIO, ex rel.. MARC DANN,  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

INDUSTRIAL EXCESS LANDFILL,  
INC., et al.,

Defendants.

CASE NOS.  
5:89 CV 1988  
5:91 CV 2559

JUDGE PETER C. ECONOMUS

**PARTIAL CONSENT DECREE**

**Ability-to-pay Consent Decree Between Plaintiffs,  
United States of America and State of Ohio, and Defendants,  
Hyman Budoff, Hybud Equipment Corporation, and Industrial Excess Landfill, Inc.**

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, and an amended complaint pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, seeking recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Industrial Excess Landfill Superfund Site in Uniontown, Stark County, Ohio ("Site"), and penalties and punitive damages against those defendants that failed to comply with an order issued by EPA under Section 106 of CERCLA.

B. The State of Ohio ("State"), on behalf of the Director of the Ohio Environmental Protection Agency, has also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and Ohio Revised Code ("R.C.") 3745.12, R.C. Chapter 3734, R.C. Chapter 6111, R.C. Chapter 3767, and common law nuisance and common law ultrahazardous activity, for, *inter alia*, reimbursement of costs incurred by Ohio in responding to contamination at the Site, injunctive relief, and civil penalties.

C. As a result of the release or threatened release of hazardous substances, EPA and the State have undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604. Response actions undertaken at the Site to date by EPA, the State, and other persons include: a remedial investigation and feasibility study; installation and operation of a gas venting system; extension of a municipal water supply to nearby residents; installation of groundwater monitoring wells; periodic groundwater sampling and analysis; a

focused feasibility study; and enhancement of vegetative cover over the landfill. Plaintiffs will undertake additional response actions in the future. In performing response actions at or in connection with the Site, the United States and the State have incurred response costs and will incur response costs in the future.

D. On April 7, 2005, a consent decree was entered under which five defendants agreed to implement the final remedy for the Site and to pay \$17,925,000 of EPA's past response costs, \$875,000 of the State's past response costs, and certain defined interim and future costs incurred or to be incurred by the United States or the State. On October 2, 2007, two partial *de minimis* consent decrees were entered under which two other defendants agreed to pay a combined total of \$1,102,500 to the Plaintiffs in partial reimbursement of Plaintiffs' unrecovered response costs.

E. The Defendants that have entered into this Consent Decree ("Settling Defendants") are Hyman Budoff; Hybud Equipment Corporation; and Industrial Excess Landfill, Inc. The Plaintiffs allege, *inter alia*, that Settling Defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for all response costs incurred and to be incurred at the Site not inconsistent with the National Contingency Plan ("NCP"). Settling Defendants deny any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

F. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendants to determine to what extent Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States and the State have determined that

Settling Defendants have limited financial ability to pay for response costs incurred and to be incurred at the Site.

G. EPA anticipates arranging and paying for real estate appraisals of both the Hybud Parcel and IEL Parcel.

H. The United States, the State, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid continuing prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendants and their estate and heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or

personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

3. The obligations of Settling Defendants under this Consent Decree are joint and several, except where this Consent Decree expressly assigns an obligation relating to real property to a specified Settling Defendant that is the owner of such property. In the event of the failure of any one or more Settling Defendants to implement the requirements of this Consent Decree for any reason including death or insolvency, the remaining Settling Defendants shall complete all such requirements, except where Section VI (Disposition of Real Property) or Section XIII (Notice to Successors-in-Title) expressly assigns an obligation relating to real property to a specified Settling Defendant that is the owner of such property.

#### **IV. DEFINITIONS**

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Escrow Account" shall mean the account established by Settling Defendants in the Registry of the United States District Court for the Northern District of Ohio pursuant to Paragraph 14 of this Consent Decree.

h. "Fair Market Value" shall mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy, or to sell and both having reasonable knowledge of relevant facts.

i. "Financial Information" shall mean those financial documents identified in Appendix B.

j. "Hybud" shall mean Hybud Equipment Corporation.

k. "Hybud Parcel" shall mean that real property identified as Parcel No. 022-04130, Lake Township, Stark County, Ohio, the legal description of which is contained in Appendix C.

l. "IEL" shall mean Industrial Excess Landfill, Inc.

m. "IEL Parcel" shall mean that real property identified as Parcel No. 022-00248, Lake Township, Stark County, Ohio, which is generally the premises known as 12646 Cleveland Avenue, the legal description of which is contained in Appendix D.

n. "Insurance Information" shall mean those documents, relating to insurance, identified in Appendix B.

o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

p. "Net Sales Proceeds" shall mean the total value of all consideration received by a Settling Defendant for each Transfer less i) closing costs limited to those reasonably incurred and actually paid by such Settling Defendant associated with the Transfer, ii) real estate taxes and assessments deducted at closing, and iii) federal and state taxes owed on the proceeds. The relevant Settling Defendant shall provide EPA and the State with documentation sufficient to show the total value of all consideration received by such Settling Defendant for each Transfer, the amounts corresponding to items i), ii), and iii) above, and the amount of the Net Sales Proceeds. The documentation shall also include, either as part of the report or separately, a tax statement showing the assessed valuation of the Hybud Parcel or the IEL Parcel (as pertinent) for each of the three years immediately preceding the Transfer.

q. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.

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

s. "Parties" shall mean the United States, the State of Ohio, and the Settling Defendants.

t. "Plaintiffs" shall mean the United States and the State.

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

v. "RD/RA Consent Decree" shall mean the Partial Consent Decree entered in this action on April 7, 2005, between the Plaintiffs and Defendants Bridgestone/Firestone North American Tire, LLC; B.F. Goodrich Company; Gencorp, Inc.; The Goodyear Tire & Rubber Company; and Goodyear Aerospace Corp.

w. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

x. "Settling Defendants" shall mean Hyman Budoff; Hybud Equipment Corporation; and Industrial Excess Landfill, Inc.

y. "Site" shall mean the Industrial Excess Landfill ("IEL") Superfund site, encompassing approximately 30 acres, located at 12646 Cleveland Avenue in Uniontown, Stark County, Ohio, and depicted generally on the map attached as Appendix A, including all areas where hazardous substances deposited at the Industrial Excess Landfill have come to be located.

z. "State" shall mean the State of Ohio, including all of its departments, agencies, and instrumentalities, which includes without limitation Ohio EPA, the Ohio Army National Guard, the Ohio Department of Natural Resources, Ohio State Parks and Recreation, and any state natural resources trustee.

aa. "Transfer" shall mean a sale, assignment, transfer or exchange by any Settling Defendant (or its successors or heirs) of the Hybud Parcel or the IEL Parcel, or any portion thereof or interest therein, where title to such parcel (or any portion thereof or interest therein) i) is transferred pursuant to Paragraph 8 and at least Fair Market Value (in cash and/or property) is received in consideration, or ii) is transferred involuntarily by operation of law. For purposes of this Consent Decree, "transferred involuntarily by operation of law" shall include foreclosure and its equivalents (including, but not limited to, a deed or other assignment in lieu of foreclosure) following default on the indebtedness secured in whole or in part by the Hybud Parcel or the IEL Parcel, but shall not include any transfer of title (whether by foreclosure or its equivalent or otherwise) from one Settling Defendant to another Settling Defendant.

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

cc. "Work Defendants" shall mean the Defendants performing the Work pursuant to the RD/RA Consent Decree, as that term is defined in the RD/RA Consent Decree.

**V. STATEMENT OF PURPOSE**

5. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment and to dispose of certain real property as directed, in order to resolve their alleged civil liability for the Site as provided in the Covenant Not to Sue by Plaintiffs in Section IX, subject to the Reservation of Rights by Plaintiffs in Section X.

**VI. DISPOSITION OF REAL PROPERTY**

6. Each Settling Defendant, beginning on the date this Consent Decree is executed on its behalf, shall not sell, assign, transfer or exchange the Hybud Parcel or the IEL Parcel, or cause such sale, assignment, transfer, or exchange, except by means of a Transfer.

7. Mortgages.

a. No later than 30 days after entry of this Consent Decree by the Court, Hybud shall retire any mortgage then existing on the Hybud Parcel by repaying the debt secured by the mortgage or by obtaining voluntary release of the mortgage lien by the mortgagee.

b. No later than 30 days after entry of this Consent Decree by the Court, IEL shall retire any mortgage then existing on the IEL Parcel by repaying the debt secured by the mortgage or by obtaining voluntary release of the mortgage lien by the mortgagee.

c. Settling Defendants shall not mortgage either the Hybud Parcel or the IEL Parcel, shall not cause either the Hybud Parcel or the IEL Parcel to be used as collateral to secure any form of loan or financing, and shall not enter into any transaction that would encumber the title to either the Hybud Parcel or the IEL Parcel.

8. After entry of this Consent Decree, Hybud shall cause a Transfer of the Hybud Parcel

and IEL shall cause a Transfer of the IEL Parcel as further described in this Paragraph. The Covenant Not to Sue by Plaintiffs set forth in Section IX shall be deemed to be Plaintiffs' consideration for each such Transfer.

a. No later than 60 days after entry of this Consent Decree by the Court, Hybud or IEL, as the case may be, shall offer for sale the Hybud Parcel or the IEL Parcel, and shall take reasonable steps to market the Hybud Parcel or the IEL Parcel in view of the expected market value of those properties. Hybud and IEL, as appropriate, shall use best efforts to complete each required Transfer no later than 120 days after offering the Hybud Parcel or the IEL Parcel for sale, or as soon as practicable if the required Transfer cannot be completed within 120 days despite use of best efforts.

9. In addition to any other payments required by this Consent Decree, the appropriate Settling Defendant shall pay to EPA 95.43% of the Net Sales Proceeds of each Transfer completed pursuant to Paragraph 8 and shall pay to the State 4.57% of the Net Sales Proceeds of each Transfer completed pursuant to Paragraph 8. Payment shall be made within 15 days of the actual closing date of the Transfer.

a. Payment to EPA shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of Settling Defendants, the Site name, the EPA Region and Site/Spill ID Number 05W2, DOJ Case Number 90-11-3-247/2, and the Civil Action Numbers 89-cv-1988 and 91-cv-2559. The check (and any accompanying letter) shall be sent to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. Hybud or IEL as the case may

be shall send notice that payment has been made in accordance with Paragraph 15.

b. Payment to the State shall be made in the manner set forth in Paragraph 16.

Hybud or IEL as the case may be shall send notice that payment has been made in accordance with Paragraph 16.

c. At least 30 days prior to any such Transfer, Hybud or IEL as the case may be shall in writing notify Plaintiffs of the proposed Transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the property to be sold. Hybud or IEL as the case may be shall notify Plaintiffs of the completion of the Transfer within 10 days after the actual date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amounts payable to EPA and the State.

10. If, despite compliance with the requirements of Paragraphs 8 and 9, Hybud or IEL, as the case may be, has received no offer of at least Fair Market Value for the Hybud Parcel or the IEL Parcel six months after the date of entry of this Consent Decree by the Court, then Plaintiffs shall meet with the appropriate Settling Defendant and attempt to reach agreement on a disposition of the Hybud Parcel or IEL Parcel, as appropriate. Such agreement may require a written modification to this Consent Decree and Court approval. If the Parties are unable to reach agreement, they shall request the assistance of a Magistrate Judge as a mediator.

11. In the event that, prior to the Transfers required by Paragraph 8, the Hybud Parcel or the IEL Parcel or both is involuntarily transferred, as described in Paragraph 4.aa.ii), Hybud or IEL as the case may be shall pay to Plaintiffs, in the manner and proportions specified in Paragraph 9, any Net Sales Proceeds that Settling Defendants obtain as a result of such Transfer.

12. Notwithstanding a Transfer of the Hybud Parcel or the IEL Parcel or both or any portion thereof, Settling Defendants shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if the Plaintiffs and Settling Defendants modify this Consent Decree in writing.

13. No later than fifteen (15) days after entry of this Consent Decree by the Court, Settling Defendants shall submit to EPA for review and approval, with a copy to the State, notices with respect to the Hybud Parcel and the IEL Parcel, which shall provide notice to all successors-in-title of the existence of this Consent Decree and of the terms of this Consent Decree affecting the conveyance of title or other interests in the Hybud Parcel or the IEL Parcel (as appropriate). Hybud or IEL as the case may be shall file each such notice in the Register of Deeds, Stark County, Ohio, within 10 days of EPA's approval of the notice. If practicable within the time required, such notice may be combined with other notices that said Settling Defendants are required by Section XIII or XIV of this Consent Decree to file in the Register of Deeds, Stark County, Ohio. Hybud or IEL as the case may be shall provide EPA and the State with a certified copy of each recorded notice within 10 days of recording such notice.

**VII. PAYMENT OF RESPONSE COSTS**

14. Within 10 working days of lodging of this Consent Decree, Settling Defendants shall pay the sum of \$210,000 into an interest-bearing escrow account in the Registry of the United States District Court for the Northern District of Ohio (“Escrow Account”), as payment of response costs to the United States and the State, as provided in this Section. Pursuant to this Consent Decree, and in accordance with 28 U.S.C. § 2041, the Clerk of the Court for the United States District Court for the Northern District of Ohio will accept payment from Settling Defendants and shall place said payment in the Registry of the Court in an interest-bearing account.

a. If, after public comment, the United States and/or the State informs Settling Defendants and the Clerk of the Court that it no longer consents to this Consent Decree, the Clerk of the Court shall disburse the amount (including principal deposited and accrued interest, less 10% of interest earned, which is the Registry fee) in the Escrow Account to the Settling Defendants.

b. If the Court denies a motion to enter the Consent Decree, the Clerk of the Court shall disburse the amount (including principal deposited and accrued interest less 10% of interest earned, which is the Registry fee) in the Escrow Account to the Settling Defendants.

15. If the Court enters this Consent Decree, the Clerk of the Court shall disburse to the United States, no later than 30 days after entry of this Consent Decree by this Court, 95.43% of the amount (including principal deposited and accrued interest) in the Escrow Account. The United States may request a waiver of the Registry fee from the Director of the Administrative Office of the United States Courts pursuant to Section 2.7.2 of the Guide to the Judiciary Policies and Procedures.

a. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT procedures provided by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following lodging of the Consent Decree.

b. At the time of making the payment into the Escrow Account pursuant to Paragraph 14, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions), by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the EPA Region and Site/Spill ID Number 05W2, DOJ Case Number 90-11-3-247/2, and the Civil Action Numbers 89-cv-1988 and 91-cv-2559.

c. The total amount to be paid pursuant to this Paragraph 15 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

16. If the Court enters this Consent Decree, the Clerk of the Court shall disburse to the State, no later than 30 days after entry of this Consent Decree by this Court, 4.57% of the amount (including principal deposited and accrued interest) in the Escrow Account. The State may request a waiver of the Registry fee from the Director of the Administrative Office of the United States Courts pursuant to Section 2.7.2 of the Guide to the Judiciary Policies and Procedures. Payment shall be in the form of certified or cashier's checks made payable to "Treasurer, State of Ohio" and shall be sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: IEL Site, with a copy of the transmittal letter and a copy of the checks sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Steven Snyder or his successor, to the Ohio EPA Project Coordinator, and the Assistant Attorney General representing the State in this case.

#### **VIII. FAILURE TO COMPLY WITH CONSENT DECREE**

17. Interest on Late Payments. If Settling Defendants fail to make any payment required by Paragraph 9, 11, or 14 by the required due date, Interest shall accrue on the unpaid balance beginning with the day after the required due date and continuing to accrue through the date of payment.

18. Stipulated Penalty.

a. If any amounts due under Paragraphs 9, 11, or 14 are not paid by the required date, the Settling Defendant(s) that owe(s) the amount due shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 17, \$100 per violation per day that such payment is late. Each stipulated penalty under this sub-

Paragraph shall be paid to the Plaintiff to whom the late payment is due.

b. If Hybud or IEL as the case may be fails to make any Transfer or (subject to Paragraph 37) to file any easement, notice, or other document within the time required by this Consent Decree, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, \$100 per violation per day that such Transfer or filing is late. Each stipulated penalty under this sub-Paragraph shall be paid 50% to EPA and 50% to the State.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the State. All payments to EPA under this Paragraph shall be identified as "stipulated penalties," shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund," and shall be sent to EPA Superfund, P.O. Box 70753, Chicago, Illinois 60673." The check, or a letter accompanying the check, shall reference the name and address of the paying Settling Defendant(s), the Site name, the EPA Region and Site/Spill ID Number 05W2, DOJ Case Number 90-11-3-247/2, and the Civil Action Numbers 89-cv-1988 and 91-cv-2559, and shall indicate that the payment is for stipulated penalties. All payments to the State under this Paragraph shall be paid by certified or cashier's check(s) made payable to "Treasurer, State of Ohio", shall be mailed to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: IEL Site, and shall reference the Party making payment.

d. At the time of each payment, the paying Settling Defendant(s) shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 15, and to the State in accordance with Paragraph 16.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, and shall continue to accrue through the date of payment or the day when performance is completed. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

19. If the United States or the State brings an action to enforce this Consent Decree, the Settling Defendant(s) involved shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

20. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

21. Notwithstanding any other provision of this Section, the United States or the State may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties payable to it that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or Section VII or from performance of any other requirements of this Consent Decree.

#### **IX. COVENANT NOT TO SUE BY PLAINTIFFS**

22. Except as specifically provided in Section X (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendants, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to

the Site. With respect to present and future liability, this covenant shall take effect upon receipt by the United States of all amounts required by Section VII (Payment of Response Costs) and any accompanying amount due under Section VIII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Disposition of Real Property) and Section VII (Payment of Response Costs), payment of any amount due under Section VIII (Failure to Comply with Consent Decree), and performance of any obligation to make a Transfer or file a notice with the Register of Deeds. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to the United States by Settling Defendants and the financial, insurance, and indemnity certification made by Settling Defendants in Paragraph 44. If the Financial Information or the Insurance Information provided by Settling Defendants, or the financial, insurance, or indemnity certification made by Settling Defendants in Paragraph 44, is subsequently determined by EPA, and such determination is upheld by the Court pursuant to Paragraph 26, to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 31 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

23. Except as specifically provided in Section X (Reservation of Rights by Plaintiffs), the State covenants not to sue or to take administrative action against Settling Defendants, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Ohio Revised Code Chapters 3734, 3745, 3767, and 6111, and the common law, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by the State of all amounts required by Section VII (Payment of Response Costs) and any accompanying amount due under Section VIII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Disposition of Real Property) and Section VII (Payment of Response Costs), payment of any amount due under Section VIII (Failure to Comply with Consent Decree), and performance of any obligation to make a Transfer or file a notice with the Register of Deeds. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to the United States by Settling Defendants and the financial, insurance, and indemnity certification made by Settling Defendants in Paragraph 44. If the Financial Information or the Insurance Information provided by Settling Defendants, or the financial, insurance, or indemnity certification made by Settling Defendants in Paragraph 44, is subsequently determined by EPA to be false or, in any material respect, inaccurate, and such determination is upheld by the Court pursuant to Paragraph 26, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 31 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any

way foreclose the State's right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

**X. RESERVATION OF RIGHTS BY PLAINTIFFS**

24. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs set forth in Section IX. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree for which Settling Defendants are jointly and severally responsible pursuant to Paragraph 3;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by a Settling Defendant, provided that this reservation does not apply to any hazardous substance or solid waste (1) that was present at the Site before signature of this Consent Decree by a Settling Defendant and (2) with respect to which, after signature of the Consent Decree by a Settling

Defendant, that Settling Defendant has not exacerbated the release or threat of release, or interfered with or adversely affected the remedial action; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

25. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Hybud and IEL with respect to liability for Hybud's or IEL's failure to meet a requirement of Section VI (Disposition of Real Property) or Section XIII (Notice to Successors-in-Title) that is specifically assigned to Hybud or IEL.

26. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by any Settling Defendant, or the financial, insurance, or indemnity certification made by any Settling Defendant in Paragraph 44, is false or, in any material respect, inaccurate. If there is a dispute as to whether any of the Financial Information or Insurance Information provided by or any certification made by any Settling Defendant was false or, in any material respect, inaccurate, the dispute shall be referred to the Court, which shall rule on any such dispute under applicable principles of law.

**XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

27. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site; or

d. any claim against the State pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or Ohio Revised Code Chapters 3734, 3745, 3767, or 6111, or the common law, relating to the Site.

Except as provided in Paragraph 29 (Waiver of Claims) and Paragraph 32 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 24.c, 24.d, 24.e, but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

28. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

29. Except as provided in this Paragraph 29, Settling Defendants agree not to assert any CERCLA claims or CERCLA causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants. This waiver shall not apply with respect to any claim or cause of action by any Settling Defendant, against any person other than the United States or the State, that is based upon a contract between such other person and such Settling Defendant and/or based upon fraud or misrepresentation by such other person. This Consent Decree does not and shall not be construed to impair or to enhance, in any way, whatever contractual and/or other common law rights that Settling Defendants may have (if any), on the date this Consent Decree is lodged with the Court, against any person not a signatory to this Consent Decree as of the date this Consent Decree is lodged with the Court.

**XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

30. Except as provided in Paragraph 29, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 29, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

31. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person, as well as all claims under State law for damages, civil penalties, punitive damages, and injunctive relief sought in the State's Complaint filed in this action. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

32. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section IX.

**XIII. NOTICE TO SUCCESSORS-IN-TITLE**

33. With respect to any property owned or controlled by one or more of the Settling Defendants that is located within the Site, including without limitation the Hybud Parcel and the IEL Parcel, within 15 days after the entry of this Consent Decree by this Court, Settling Defendants shall submit to EPA for review and approval, with a copy to the State, a notice to be filed with the Register of Deeds, Stark County, Ohio, in order to provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 27, 2002, and that the Work Defendants have entered into a Consent Decree requiring implementation of the remedy. Each such notice shall identify the United States District Court in which this Consent Decree was filed, the name of this case, the Civil Action Numbers 89-cv-1988 and 91-cv-2559, and the date this Consent Decree was entered by the Court, as well as the date of entry of the RD/RA Consent Decree. Settling Defendants shall record each such notice within 10 days of EPA's approval of the notice. Settling Defendants shall provide EPA with a certified copy of each recorded notice within 10 days of recording such notice.

34. At least 30 days prior to the conveyance of any interest in the Hybud Parcel, the IEL Parcel, or any other property located within the Site, including but not limited to fee interests, leasehold interests, and liens or other financial encumbrances including mortgage liens, Hybud or IEL as the case may be shall give the grantee written notice of (i) this Consent Decree, (ii) the RD/RA Consent Decree, and (iii) any instrument by which an interest in real property or servitude has been conveyed that confers a right of access to the Site, or any instrument by which an interest in real property or servitude has been conveyed that confers a right to enforce restrictions on the

use of such property pursuant to Section XIV (Access and Institutional Controls) of this Consent Decree or to Section IX of the RD/RA Consent Decree (hereinafter referred to as "environmental covenants"). At least 30 days prior to such conveyance, Settling Defendants shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of this Consent Decree, the RD/RA Consent Decree, and/or environmental covenants was given to the grantee.

35. In the event of any such conveyance, Settling Defendants shall continue to meet their obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, as required by Section XIV (Access and Institutional Controls) of this Consent Decree. In no event shall the conveyance release or otherwise affect any obligation of Settling Defendants to pay money to the United States or the State under this Consent Decree. In no event shall the conveyance release or otherwise affect the liability of Settling Defendants to comply with all other provisions of this Consent Decree, absent the prior written consent of EPA, provided that a violation of any access easement or restrictive easement by a subsequent landowner, lessee, occupier, user, or trespasser shall not be deemed a violation by Settling Defendants of this Consent Decree.

36. Notwithstanding the provisions of Paragraphs 33 and 34, Settling Defendants shall not be required to perform any obligation required by Paragraph 38 that has previously been satisfied by the Work Defendants pursuant to the RD/RA Consent Decree.

37. With respect to Settling Defendants' obligations to record certain documents in the Register of Deeds as set forth in Paragraphs 13, 33, and 38, Settling Defendants have represented to Plaintiffs that the County Recorder may not agree to record such documents. Settling Defendants shall be deemed to have satisfied these obligations provided that: (1) the appropriate Settling Defendant(s) have presented the required document(s) to the County Recorder for recording within the time specified by the Paragraph in question; (2) no later than ten days after the County Recorder rejects one or more required document(s), the appropriate Settling Defendant(s) have notified EPA in writing, with a copy to the State, of the County Recorder's rejection and of any changes the County Recorder has demanded as conditions for accepting the required document(s) for recording; and (3) the appropriate Settling Defendant(s) have recorded the required document(s) with the changes required by the County Recorder no later than ten days after receiving EPA's authorization to do so. If EPA does not agree to the changes required by the County Recorder, or if the County Recorder informs the appropriate Settling Defendant(s) that it will not accept the required document(s) for recording in any form, EPA and/or the State may endeavor to assist the appropriate Settling Defendant(s) in obtaining recordation of the document(s), and Settling Defendants may fulfill their obligations with respect to such document(s) by cooperating and assisting with such efforts as requested by EPA and/or the State.

#### **XIV. ACCESS AND INSTITUTIONAL CONTROLS**

38. Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree and continuing for as long as Hybud and IEL own the Hybud Parcel and the IEL Parcel, respectively, provide (i) the

United States, the State, and their representatives, including EPA and its contractors, and (ii) the Work Defendants, with access at all reasonable times to the Site, and to the Hybud Parcel, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
  2. Verifying any data or information submitted to the United States or the State;
  3. Conducting investigations relating to contamination at or near the Site;
  4. Obtaining samples;
  5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
  6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents;
  7. Assessing Settling Defendants' compliance with this Consent Decree and the Work Defendants' compliance with the RD/RA Consent Decree; and
  8. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree or the RD/RA Consent Decree;
- b. commencing on the date of lodging of this Consent Decree, refrain from using the Site or the Hybud Parcel in any manner that would interfere with or adversely affect the

implementation, integrity or protectiveness of the remedial measures to be performed at the Site; such restrictions include, but are not limited to (i) extracting, consuming, exposing, or using in any way the ground water underlying the Site without the prior written approval of EPA; (ii) undertaking any type of excavation on the Site without the prior written approval of EPA; and (iii) allowing or conducting any residential use of the Site; and

c. execute and record in the Register of Deeds, Stark County, Ohio, an environmental covenant pursuant to the Ohio Uniform Environmental Covenant Act (ORC 5301.80 to 5301.92), running with the land, that (i) grants a right of access for the purpose of conducting response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 38.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Site. Settling Defendants shall be the holder of the access rights granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) the Work Defendants. Settling Defendants shall grant the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, and (ii) the State and its representatives, and (iii) the Work Defendants. Settling Defendants shall, within 45 days of entry of this Consent Decree by this Court, submit to EPA for review and approval, with a copy to the State, with respect to such property:

1. a draft environmental covenant in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Ohio, including but not limited to the Ohio Uniform Environmental Covenants Act (ORC 5301.80 to 5301.92); and

2. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the environmental covenant to be free and clear of all prior liens and encumbrances other than for real estate taxes and assessments (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants is unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the environmental covenant, IEL or Hybud, as the case may be, shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the environmental covenant with the Register of Deeds of Stark County, Ohio. Within 30 days of recording the environmental covenant, Settling Defendants shall provide EPA with the final title policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded environmental covenant showing the clerk's recording stamps.

39. Notwithstanding the provisions of Paragraph 38, Settling Defendants shall not be required to perform any obligation required by Paragraph 38 that has previously been satisfied by the Work Defendants pursuant to the RD/RA Consent Decree.

40. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

41. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

**XV. RETENTION OF RECORDS AND CERTIFICATION**

42. Until two (2) years after all appellate rights with respect to the entry of this Consent Decree are exhausted, Settling Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

43. For a period of three years after the conclusion of the document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ and the State at least 90 days prior to the destruction of any such records. At any time prior to the destruction of such records, whether or not Settling Defendants have given notice pursuant to the preceding sentence, EPA or DOJ or the State may request such records. Upon a request by EPA or DOJ or the State, Settling Defendants shall deliver or make available for copying or pickup of any such records to EPA or the State. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject

of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all records that they claim to be privileged until the United States or the State or both, as applicable, has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this Consent Decree or of any other settlement with the United States, EPA or the State pertaining to the Site shall be withheld on the grounds that they are privileged.

44. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that they have fully complied with any and all requests by the United States, EPA or the State for information regarding the Site and Settling Defendants' financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to the United States financial information that fairly, accurately, and materially sets forth their financial circumstances at the time of submission, and that those circumstances have not materially changed between the time the financial information was submitted to the United States and the time Settling Defendants execute this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the United States or EPA upon request such insurance policies, indemnity agreements, and information, or provided court decisions related to such insurance policies indicating the policies provided no coverage.

Settling Defendants assert that during the pendency of this litigation there was a burglary and vandalism at Hybud's business premises that resulted in the possible theft, loss, or destruction of records.

#### **XVI. NOTICES AND SUBMISSIONS**

45. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ #90-11-3-247/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Director, Superfund Division  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

Timothy J. Fischer  
EPA Remedial Project Manager  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

Timothy J. Thurlow  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

As to the State:

Senior Deputy, Environmental Enforcement Section  
Ohio Attorney General's Office  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400

Larry Antonelli  
Ohio EPA Project Coordinator  
DERR/OEPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

As to Settling Defendants:

Matthew Yackshaw  
Counsel for Settling Defendants  
Day Ketterer Ltd.

Millennium Center - Suite 300  
200 Market Ave. N.  
P.O. Box 24213  
Canton, OH 44701

**XVII. RETENTION OF JURISDICTION**

46. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVIII. INTEGRATION/APPENDICES**

47. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; "Appendix B" is the list of the financial, insurance, and indemnity documents pertaining to Settling Defendants that were submitted to the United States by Settling Defendants or were generated at or marked during Mr. Hyman Budoff's deposition testimony; "Appendix C" is the legal description of the Hybud Parcel; "Appendix D" is the legal description of the IEL Parcel; "Appendix E" is the draft environmental covenant referred to in Paragraph 38.c.1.

**XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

48. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the State each reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

49. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

**XX. SIGNATORIES/SERVICE**

50. Each undersigned representative of a Settling Defendant, the undersigned Chief or Deputy Chief of the Environmental Enforcement Section or Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice, and the undersigned Assistant Attorney General for the Environmental Enforcement Section of the Ohio Attorney General's Office, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

51. Settling Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the State has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

52. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on their behalf with respect to all

matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XXI. FINAL JUDGMENT**

53. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 4<sup>th</sup> DAY OF November, 2008.

s/Peter C. Economus  
\_\_\_\_\_  
Peter C. Economus  
United States District Judge

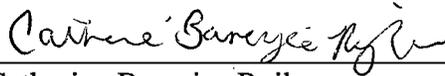
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Industrial Excess Landfill, Inc., Civil Action No. 89-cv-1988, and State of Ohio v. Industrial Excess Landfill, Inc., Civil Action No. 91-cv-2559, relating to the Industrial Excess Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 3/20/08



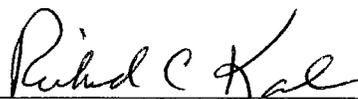
RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611



Catherine Banerjee Rojko  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Tel. 202 514-5315  
Fax 202 616-6584  
cathy.rojko@usdoj.gov

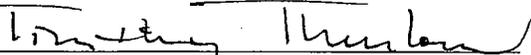
WILLIAM J. EDWARDS  
Acting United States Attorney  
Northern District of Ohio

Steven J. Paffilas  
Assistant United States Attorney  
Northern District of Ohio  
U.S. Department of Justice  
United States Courthouse  
801 W. Superior Ave.  
Suite 400  
Cleveland, Ohio 44113  
Ph. 216-622-3698  
Fax 216-522-2404  
[steven.paffilas@usdoj.gov](mailto:steven.paffilas@usdoj.gov)



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Richard C. Karl  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604



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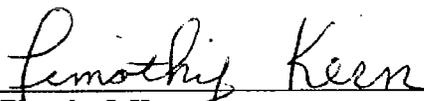
Timothy J. Thurlow  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Industrial Excess Landfill, Inc., Civil Action No. 89-cv-1988, and State of Ohio v. Industrial Excess Landfill, Inc., Civil Action No. 91-cv-2559, relating to the Industrial Excess Landfill Superfund Site.

FOR THE STATE OF OHIO

MARC DANN  
ATTORNEY GENERAL OF OHIO

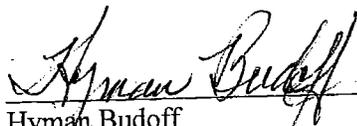
4/4/08  
Date

  
\_\_\_\_\_  
Timothy J. Kern  
Principal Assistant Attorney General  
Public Protection Division  
Environmental Enforcement Section  
State of Ohio  
Office of the Attorney General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Industrial Excess Landfill, Inc., Civil Action No. 89-cv-1988, and State of Ohio v. Industrial Excess Landfill, Inc., Civil Action No. 91-cv-2559, relating to the Industrial Excess Landfill Superfund Site.

FOR DEFENDANTS HYMAN BUDOFF,  
INDUSTRIAL EXCESS LANDFILL, INC., AND  
HYBUD EQUIPMENT CORPORATION

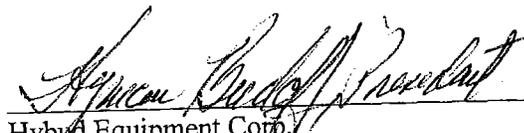
Date: 12/7/07

  
\_\_\_\_\_  
Hyman Budoff  
374 North Pershing Ave.  
Akron, Ohio 44313

Date: 12/7/07

  
\_\_\_\_\_  
Industrial Excess Landfill, Inc.  
By: Hyman Budoff, President  
374 North Pershing Ave.  
Akron, Ohio 44313

Date: 12/7/07

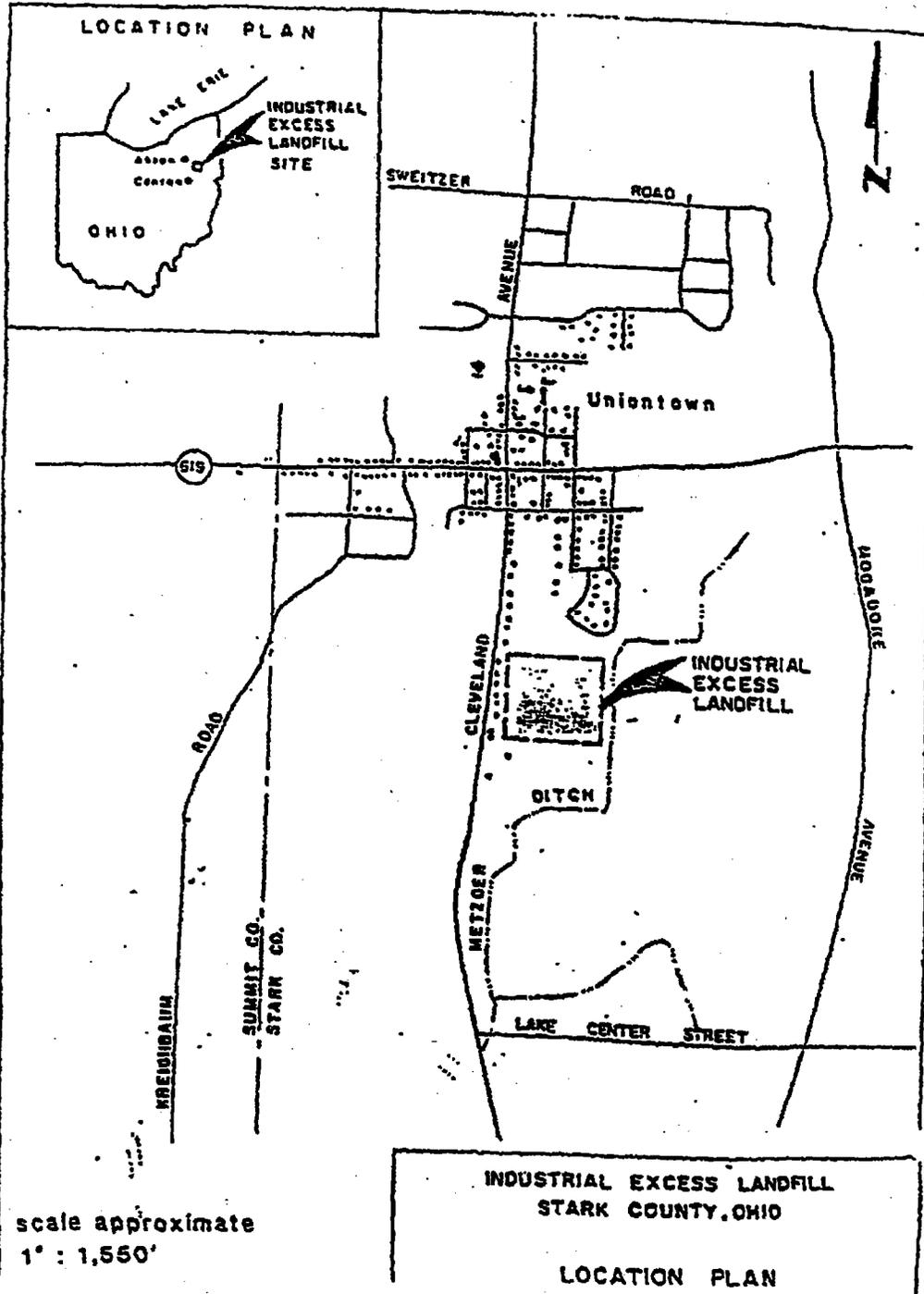
  
\_\_\_\_\_  
Hybud Equipment Corp.  
By: Hyman Budoff, President  
374 North Pershing Ave.  
Akron, Ohio 44313

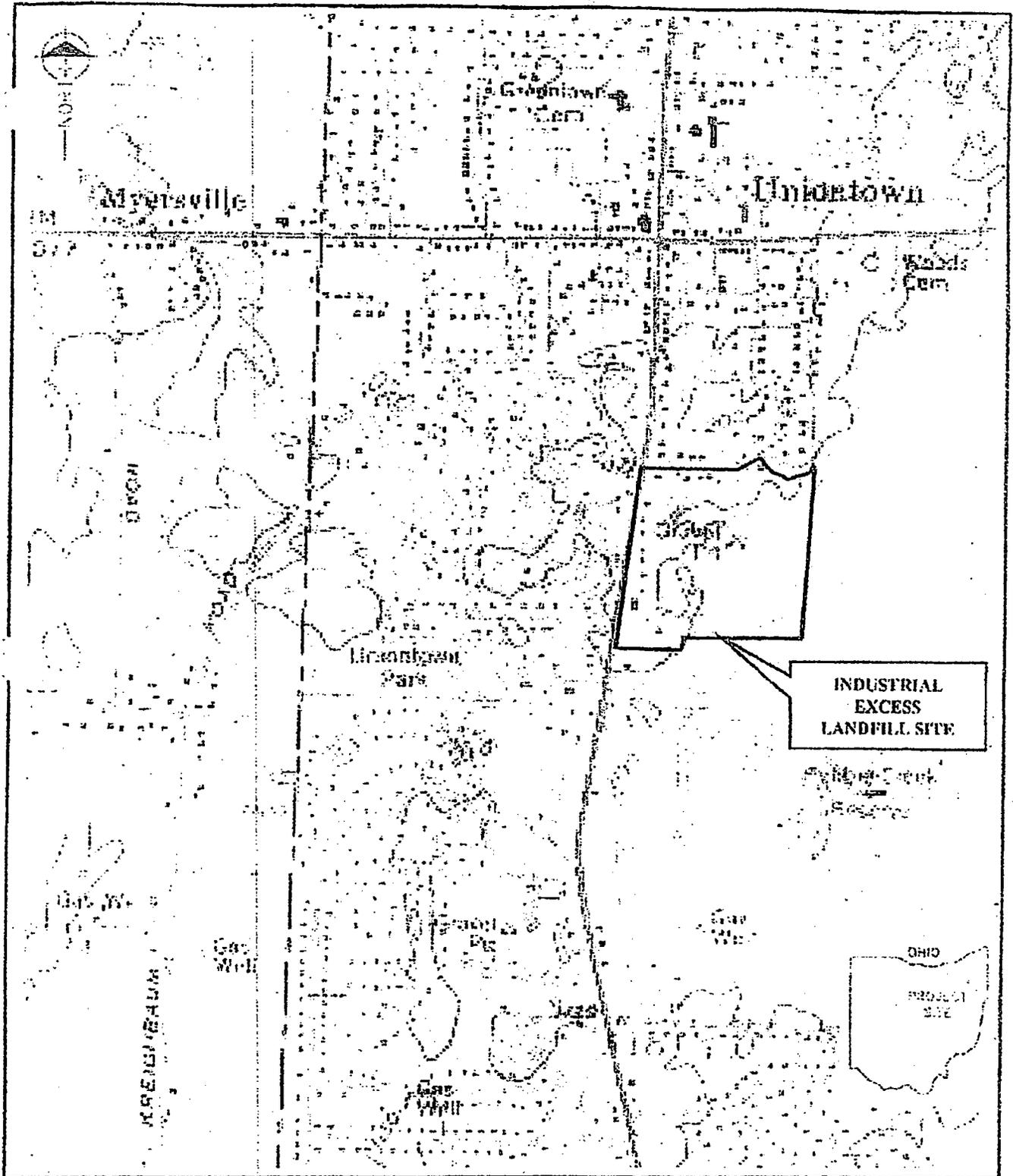
Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: Hyman Budoff  
Title: President

Address: 374 North Pershing Ave.  
Akron, Ohio 44313

Appendix A





 <p>STARD AND ASSOCIATES, INC. 10000 W. 10th Ave. Suite 1000 Denver, CO 80202 Tel: 303.751.1111 Fax: 303.751.1112</p>	<p><b>SITE LOCATION MAP</b> INDUSTRIAL EXCESS LANDFILL UNIONTOWN, OHIO</p>			<p>FIGURE <b>1</b></p>
	<p>PROJECT NUMBER 2101</p>	<p>DATE 08/15/03</p>	<p>FILE NAME 2101/FIG.1</p>	

**Appendix B**

<b><u>Document</u></b>	<b><u>Date</u></b>
Deposition of Hyman Budoff	November 14, 2005
Compilation of income tax basis of Hybud Equipment as June 30, 1994 and 1993 related statement of income and retained earnings prepared by Reaven, Carey, & Associates	August 26, 1994
Integrated Assessment of Parcel 6712381 for the Tax Year 2005	November 3, 2005
Letter from Ronald Bake, President of Waste Management of Ohio, Inc. to Hyman Budoff, Budoff Iron & Metal company, Hybud Equipment Corporation regarding sale to Waste Management of certain assets	May 27, 1993
Integrated Assessment of Parcel 6755912 for Tax Year 2005	November 12, 2005
Settlement Statement of Sale between Waste Management of Ohio and Hyman Budoff et al.	April 21, 1994
Open-End Mortgage between Hybud Equipment Corporation to Budoff Iron & Metal Company, Inc.	January 27, 2000
Satisfaction of Mortgage between Hybud Equipment Corporation and Budoff Iron & Metal Company Inc.	February 27, 2004
Hybud Equipment's financial statement for the year ended in June 30, 1994	November 11, 2005
Deposition of Charles M. Kittinger	December 4, 2000, January 3, 2001, January 4, 2001
Letter to Attorney Steve C. Gold	July 10, 2007
Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Hybud Equipment Corporation	April 15, 1993
Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Industrial Excess Landfill, Inc. (IEL), attaching: <ol style="list-style-type: none"> <li>1. Agreement between IEL and Charles M. Kittinger and Merle Kittinger dated 5-16-68;</li> <li>2. Warranty Deed for real estate owned by IEL dated 5-23-68;</li> <li>3. Agreement between Hyman Budoff and Charles Kittinger, Jr. dated 4-10-68; and</li> <li>4. Agreement between IEL and Gene Laston dated 4-1-72</li> </ol>	June 28, 1994
Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Hyman Budoff	July 5, 1994
Supplemental Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Hybud Equipment Corporation	March 1, 1995
Supplemental Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Hyman Budoff	March 1, 1995

Supplemental Responses to United States' First Set of Interrogatories and First Request for Production of Documents to Industrial Excess Landfill, Inc.	March 1, 1995
Letter to Steve C. Gold, Esq. from Louis E. Tosi, Esq., attaching closing transcript for sale of assets of Hybud Equipment Corp. and Budoff Iron & Metal Co., Inc. to Waste Management of Ohio, Inc. dated April 20, 1994	April 12, 2001
Letter to Steve C. Gold, Esq., attaching: <ol style="list-style-type: none"> <li>1. DOJ Financial Statement of Debtor (Form OBD-500) completed by Hyman Budoff dated 2-20-04;</li> <li>2. DOJ Financial Statement of Debtor (Form OBD-500C) completed by Hybud Equipment Corporation dated 2-20-04;</li> <li>3. DOJ Financial Statement of Debtor (Form OBD-500C) completed by Industrial Excess Landfill, Inc. dated 2-20-04;</li> <li>4. Copy of the Ohio Supreme Court's decision in <i>Hybud Equipment Corporation vs. Sphere Drake Insurance Company, Ltd.</i> (1992), 64 Ohio St. 3d 657, 597 N.E. 2d 1096; and</li> <li>5. Copy of Judge Manos' Memorandum of Opinion and Order dated May 7, 1993, <i>aff'd</i> 47 F. 3d 1168 (6<sup>th</sup> Cir. 1995), <i>cert. denied</i>, 516 U.S. 819, 116 S. Ct. 78, 133 L. Ed. 2d 37 (1995)</li> </ol>	February 23, 2004
Letter to Steve C. Gold, Esq., attaching Comments and Objections of Industrial Excess Landfill, Inc., Hybud Equipment Corporation, and Hyman Budoff	July 22, 2004
Letter to Steve C. Gold, Esq., attaching Purchase Agreement for Parcel No. 22-03796 dated 12-3-03, and Closing Statement dated 3-2-04	August 18, 2004
Letter to Steve C. Gold, Esq., attaching: <ol style="list-style-type: none"> <li>1. Hyman Budoff's U.S. Individual Income Tax Returns (IRS Forms 1040) for years 1993 through 2004;</li> <li>2. Industrial Excess Landfill, Inc.'s U.S. Corporation Income Tax Returns (IRS Forms 1120) for the years 1993, 1994, and 1996;</li> <li>3. U.S. Corporation Income Tax Returns (IRS Form 1120) for Hybud Equipment Corporation for the years ended June 30, 1998, June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, June 30, 2004, and June 30, 2005;</li> <li>4. Hybud Equipment Corporation's financial statement for the year ended June 30, 1994;</li> <li>5. Budoff Iron &amp; Metal Co., Inc. tax returns for the years ended June 30, 1998, June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, June 30, 2004, and June 30, 2005;</li> <li>6. Budoff Iron &amp; Metal Co., Inc. financial statements for the</li> </ol>	November 11, 2005

<p>periods ended June 30, 1993 and June 30, 1994;</p> <ol style="list-style-type: none"> <li>7. Hybud Waste Industries, Inc. tax returns for the years ended June 30, 1998, June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, June 30, 2004, and June 30, 2005;</li> <li>8. Amended and Restated Hyman Budoff Trust and two subsequent Amendments; and</li> <li>9. Deed and Real Estate Tax Valuation for home owned by the Lourice Budoff Trust</li> </ol>	
<p>Letter to Steve C. Gold, Esq., attaching:</p> <ol style="list-style-type: none"> <li>1. Financial Statement of Corporate Debtor (Form OBD-500C) completed by Hybud Waste Industries, Inc. dated 11-16-05;</li> <li>2. Financial Statement of Corporate Debtor (Form OBD-500C) completed by Budoff Iron &amp; Metal Company, Inc. dated 11-16-05;</li> <li>3. Financial Statement of Corporate Debtor (Form OBD-500C) completed by Hybud Equipment Corporation dated 11-16-05;</li> <li>4. Financial Statement of Corporate Debtor (Form OBD-500C) completed by Industrial Excess Landfill, Inc. dated 11-16-05; and</li> <li>5. Financial Statement of Debtor (Form OBD-500) completed by Hyman Budoff dated 11-16-05.</li> </ol>	<p>November 29, 2005</p>
<p>Letter to Steve C. Gold, Esq., responding to letter dated 10-5-05 that was not transmitted until November 30, 2005</p>	<p>December 5, 2005</p>
<p>Letter to Steve C. Gold, Esq., attaching:</p> <ol style="list-style-type: none"> <li>1. Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Hyman Budoff;</li> <li>2. Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Hybud Equipment Corporation; and</li> <li>3. Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Industrial Excess Landfill, Inc.</li> </ol>	<p>December 6, 2005</p>
<p>Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Hybud Equipment Corporation, attaching:</p> <ol style="list-style-type: none"> <li>1. Warranty Deed to Hybud's remaining parcel of real estate;</li> <li>2. Stark County Auditor's Property Record Card for Hybud's real estate;</li> <li>3. Stark County Current Parcel Value Summary for Hybud's real estate;</li> <li>4. Key Bank's McDonald Financial Group Account Statement for the period 10-1-05 to 10-31-05;</li> </ol>	<p>December 6, 2005</p>

<ol style="list-style-type: none"> <li>5. Articles of Incorporation of L.A.D.E. Corp.;</li> <li>6. L.A.D.E. Inc. Special Joint Meeting as of June 3, 1994;</li> <li>7. HUD Settlement Statement dated March 2, 2004;</li> <li>8. Hybud Equipment Corporation Share Certificate issued to Hybud Waste Industries, Inc. for 50 shares dated 1-2-88; and</li> <li>9. Hybud Equipment Corporation Share Certificate issued to Hybud Waste Industries, Inc. for 100 shares dated 1-2-88</li> </ol>	
<p>Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Hyman Budoff, attaching:</p> <ol style="list-style-type: none"> <li>1. National City Bank Money Market Savings account statement for period 10-4-05 to 11-1-05 issued to Hyman Budoff Trustee;</li> <li>2. McDonald Financial Group Account Statement dated 10-31-05 issued to Hyman Budoff Trust;</li> <li>3. Hybud Equipment Corporation Share Certificate issued to Hyman Budoff for 100 shares dated 7-10-56, and marked cancelled 1-2-88;</li> <li>4. Hybud Equipment Corporation Share Certificate issued to Hyman Budoff for 50 shares dated 7-1-71, and cancelled 1-2-88;</li> <li>5. Affidavit of Loss of Stock Certificate dated 1-2-88;</li> <li>6. Received Certificate No. 1 transferring 90 shares of Budoff Iron &amp; Metal Co. Inc. from Hyman Budoff to Hybud Waste Industries, Inc. dated 1-2-88;</li> <li>7. Hybud Waste Industries Inc. Share Certificate issued to Hyman Budoff for 471 shares of preferred stock dated 1-22-88, and cancelled 9-16-94;</li> <li>8. Hybud Waste Industries Inc. Share Certificate issued to Hyman Budoff, Trustee, Amended and Restated Hyman Budoff Trust for 471 shares of preferred stock dated 9-16-94;</li> <li>9. Amendment to Articles of Incorporation of Hybud Waste Industries, Inc. dated 1-19-88;</li> <li>10. Hybud Waste Industries, Inc. Ten-Year 10% Debenture Due January 2, 1998, issued to Hyman Budoff dated 1-2-88; and</li> <li>11. Extension of Debenture Agreement dated 1-2-98</li> </ol>	<p>December 6, 2005</p>
<p>Responses to Plaintiffs' First Coordinated Supplemental Interrogatories and Requests for Production of Documents to Defendant Industrial Excess Landfill, Inc., and documents attached thereto:</p> <ol style="list-style-type: none"> <li>1. U.S. Corporation Income Tax Return for 1992;</li> <li>2. Stark County Auditor's Property Record Card for IEL's real estate;</li> </ol>	<p>December 6, 2005</p>

3. Stark County Auditor's Current Parcel Value Summary for IEL's real estate; and 4. Stark County Treasurer's Tax Lien document for IEL's real estate	
Letter to Steve C. Gold, Esq.	December 8, 2005
Letter to Steve C. Gold, Esq.	December 27, 2005
Letter to Assistant Attorney General attaching Comments of Industrial Excess Landfill, Inc., Hybud Equipment Corporation, and Hyman Budoff.	July 28, 2006
Letter to Steve C. Gold, Esq.	January 3, 2007
Letter to Ms. Marcy A. Toney, attaching: 1. Affidavit of Hyman Budoff; and 2. Collector's Indemnification Agreements	February 22, 2007
Letter to Ms. Marcy A. Toney	March 27, 2007
Account statements and holding sheets presented in person to Steve Gold attaching: 1. CIS Certificate/Deposit Detail dated 5-21-07 for Hyman Budoff Trust; 2. National City Bank account Statement for period April 11, 2007 – May 11, 2007 for Hyman Budoff; 3. National City Bank Maturity Notice for your Certificate of Deposit for Hyman Budoff, Trustee Under Budoff Trust dated 4-2-07; 4. National City Bank Certificate of Deposit Receipt for Hyman Budoff, Trustee dated 3-16-07; 5. UBS Financial Services, Inc. Resource Management Account Statement for Hyman Budoff Trustee, Hyman Budoff Trust, for April 2007; 6. UBS Financial Services, Inc. UBS Strategic Advisor Statement for Budoff Iron & Metal Co., Inc. for April 2007; 7. UBS Financial Services, Inc. Business Services Account BSA Statement for Budoff Iron & Metal Co., Inc. for April 2007; 8. UBS Financial Services, Inc. Business Services Account BSA Statement for Hybud Equipment Corporation for April 2007; 9. Current Parcel Value Summary for Parcel No. 22-04130 owned by Hybud Equipment Corporation; 10. Tax bill from Stark County Treasurer dated 5-11-2007 for Parcel No. 22-04130 owned by Hybud Equipment Corporation; 11. Parcel and Tax Information Document from Stark County Treasurer for Parcel No. 22-04130 owned by Hybud Equipment Corporation; 12. UBS Financial Services, Inc. Business Services Account BSA Statement for Hybud Waste Industries for April 2007;	May 22, 2007

<p>13. Current Parcel Value Summary for Industrial Excess Landfill, Inc.'s real estate;                  14. Tax bill from Stark County Treasurer dated 5-11-2007 for Industrial Excess Landfill, Inc.'s real estate; and                  15. Parcel and Tax Information Document from Stark County Treasurer for Industrial Excess Landfill, Inc.'s real estate</p>	
<p>Deposition of Hyman Budoff</p>	<p>December 12, 2000,                  December 13, 2000,                  January 4, 2001 &amp;                  January 5, 2001</p>
<p>Cross-claims filed by Budoff defendants in U.S. v. IEL and State of Ohio v. IEL, Case Nos. 5:89-CV-1988 and 5:91-CV-2559 (USDC ND Ohio)</p>	<p>December 6, 1989</p>

Appendix C

110 GUARANTY DEED, FROM A CORP. TO A CORP.

836

STARK COUNTY, OHIO  
CITY OF AKRON, OHIO

# Know all Men by these Presents

1991 JAN 10 1990

INDUSTRIAL WASTE LANDFILL, INC., a Corporation, the Grantor,

for the consideration of Ten 10.00 Dollars (\$ 10.00)

received in full satisfaction of RENO SPURGEON CORPORATION  
556 Beacon Street, Akron, Ohio

a Corporation, the Grantee, does give, grant, bargain, sell and convey unto the said Grantor, its successors and assigns, the following described premises, situated in the Township of

Lake County of Stark and State of Ohio:

And known as and being a part of the southeast and southwest quarter of Section 17, Township 12, (Lake) Range 11, Stark County, Ohio, beginning at the northwest corner of the southeast quarter Section 17, thence south along the west line of the southeast quarter 865.15 feet to a point; thence north 86 degrees 10 minutes west 65.8 feet to the center of the Canton-Akron road; thence south 10 degrees 00 minutes west along the center of said road 379.02 feet to a point and the place of beginning for the tract herein described; thence south 85 degrees 44 minutes east 435.00 feet to a stake; thence south 10 degrees 00 minutes west 150.00 feet to a stake; thence north 85 degrees 44 minutes west 435.00 feet to a point in the center of the Canton-Akron road; thence north 10 degrees 00 minutes east along the center of said road 150.00 feet to a point and the place of beginning, containing 1.471 acres more or less, but subject to all legal highways.

\*\*\*

**TRANSFERRED**  
350  
JAN 10 1990  
WILLIAM D. BOYMAN  
STARK COUNTY AUDITOR  
CERTIFIED

IN COMPLIANCE  
WITH ORC 319.202  
JAN 10 1990  
WILLIAM D. BOYMAN  
STARK COUNTY AUDITOR  
52.00 FEE RB

be the same more or less but subject to all legal highways.

00290

To Have and to Hold the above granted and bargained premises, with the appurtenances thereunto belonging, unto the said Granter, its successors and assigns forever, And... the said Granter does for itself and its successors and assigns covenant with the said Granter, its successors and assigns, that at and with the ensueing of these presents, it is well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and has good right to bargain and sell the same in manner and form as above written, that the same are free and clear from all incumbrances whatsoever except encumbrances of record, and real estate taxes and first mortgage to Firsttown Bank which grantee assumes and agrees to pay. and that it with WARRANT AND DEPEND said premises, with the appurtenances thereunto belonging, to the said Granter, its successors and assigns forever, against all lawful claims and demands whatsoever except those stated above.

In Witness Whereof said Corporation hereunto sets its hand and corporate seal, by Hyman Badoeff its President and Joseph N. Crombleigh, Jr. its Secretary this 17th day of December in the year of our Lord One Thousand Nine Hundred and Seventy-Nine.

Signed and acknowledged in presence of [Signatures] BY: Hyman Badoeff, President; Joseph N. Crombleigh, Jr., Secretary.

State of Ohio, County of Stark, before me, a Notary Public in and for said County and State personally appeared the above named

INDUSTRIAL EXCESS LANDFILL, INC. by Hyman Badoeff its President and Joseph N. Crombleigh, Jr. its Secretary who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of said Corporation, and the free act and deed of each of them personally and as such officers.

In Testimony Whereof, I have hereunto set my hand and official seal, at Akron, Ohio this 17th day of December, 1979.

This instrument prepared by [Signature] Notary Public

Vertical stamp: INDUSTRIAL EXCESS LANDFILL, INC. TO HYBRID EQUIPMENT CORPORATION

County of Stark, Ohio. Received for Record on the day of July 10 1980. Notary Public: Joseph E. Robinson. Recorder's Fee \$ 57.00

Appendix D

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211072

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that, CHARLES M. KITTINGER and MERLE B. KITTINGER, Husband and Wife, the Grantors, who claim title by or through instrument recorded in Volume Page County Recorder's Office, for the consideration of One Dollar and other valuable consideration (\$1.00) received to their full satisfaction of INDUSTRIAL EXCESS LANDFILL, INC. a corporation organized and existing under the laws of the State of Ohio, the Grantees whose TAX MAILING ADDRESS will be

do Give, Grant, Bargain, Sell and

Convey unto the said Grantee, its heirs, successors, and assigns, the following described premises, situated in the Township of Lake, County of Stark and State of Ohio:

*[Handwritten signature and initials]*  
 MAY 29 1968  
 3:46  
 316

And known as and being a part of the Southeast Quarter and part of the Southwest Quarter of Section #7, Township #12 Range #8, described as follows: Beginning at the center of Section #7; thence South along the quarter line about 865.5 feet to an iron pin near the Southwest corner of a 4.9 acre lot belonging to L. A. and E. M. Loutzenheiser which is the true place of beginning; thence South 86° 10' East, 1346.5 feet to an iron pin on J. W. Richards West line; thence South 4° 36' West 786.82 feet to an iron pin; thence North 86° 10' West 1483.3 feet to the middle of the Canton Road; thence North 10° East 786.82 feet to a point; thence South 86° 10' East 65.8 feet to the place of beginning, containing 26 acres of land, be the same more or less, but subject to all legal highways.

RECEIVED FOR RECORD  
 MAY 29 1968  
 3:46  
 RECORDED MAY 31 1968  
 In Stark County Recorder's Office  
 Vol. 3319 Page 251  
 KENNETH E. MOTTS Recorder Fee 5.00

Also the following described property, known as being a tract in said quarter section; beginning at the Northwest corner of said quarter section South 865.5 feet to a point; thence West 65.8 feet to a point; thence South West 786.82 feet to a point and the true place of beginning of said tract; thence continuing South 10° West 298.2 feet to a point; thence South 85° 44' East 150.8 feet to a point; thence North 4° 56' East 303 feet to a point; thence North 86° 10' West 1483.3 feet to the place of beginning containing 10.245 acres of land, more or less.

EXCEPTING THEREFROM THE FOLLOWING SEVEN (7) DESCRIBED TRACTS:

1. Known as and being a part of the Southeast and Southwest Quarters of Section #7, Township #12, Range #8 Stark County, Ohio, beginning at the Northwest Corner of

REC'D  
 WITH GRANT 316  
 MAY 29 1968  
 J. E. YODER  
 R. E. Motts

4401

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the Southeast Quarter of Section #7; thence South along the West line of the Southeast Quarter of Section #7; thence South along the West line of the Southeast Quarter 865.56 feet to a point, thence North  $86^{\circ} 10'$  West 65.8 feet to the center of the Canton-Akron Road; thence South  $10^{\circ} 00'$  West along the center of said Road 379.02 feet to a point and the place of beginning of the tract herein described; thence South  $85^{\circ} 44'$  East 435.00 feet to a stake; thence  $10^{\circ} 00'$  West 150 feet to a stake; thence North  $85^{\circ} 44'$  West 435.00 feet to a point in the center of the Canton-Akron Road; thence North  $10^{\circ} 00'$  East along the center of said road 150.0 feet to a point and the place of beginning, containing 1.492. acres of land, more or less (Vol. 1456, Pg. 370)

2. Known as and being a part of the Southeast and Southwest Quarters of Section #7, Township #12, Range #8, described as follows: Beginning at the Northwest corner of the Southeast Quarter of Section #7, thence South along the West line of said Southeast Quarter Section, 865.5 feet to a point in the North line of said 26.0 acre tract; described above; thence along the North line of said 26.0 acre tract; thence North  $86^{\circ} 10'$  West, 65.8 feet to a point in the center line of the Canton-Akron Road; thence along the center line of said road South  $10^{\circ} 00'$  West 79.02 feet to a point and the place of beginning of the parcel herein described; thence along the center line of the Canton-Akron Road South  $10^{\circ} 00'$  West 300.0 feet to a point; thence South  $85^{\circ} 44'$  East 250.0 feet to an iron pipe; thence parallel with the center line of the Canton-Akron Road North  $10^{\circ} 00'$  East 300.0 feet to an iron pipe; thence North  $85^{\circ} 44'$  West 250.0 feet to the place of beginning and containing 1.713 acres as surveyed May 24, 1952 by E. A. Tewksbury, be the same more or less, (Vol. 2007, Pg. 185)

3. Beginning at the Northwest Corner of the Southeast Quarter of Section #7; thence South along the West line of the Southeast Quarter Section 865.5 feet to a point on the North line of the 26.0 acre tract described above; thence along the North line of said 26.0 acre tract North  $86^{\circ} 10'$  West 65.8 feet to a point in the center line of the Canton-Akron Road; thence along the center line of said road South  $10^{\circ} 00'$  West 529.02 feet to a point and the place of beginning of the tract herein described; thence continuing along the center line of said Canton-Akron Road South  $10^{\circ} 00'$  West 75.0 feet to a point; thence South  $85^{\circ} 44'$  East 250.0 feet to an iron pipe; thence parallel with the center line of said Canton-Akron Road North  $10^{\circ} 00'$  East 75.0 feet to an iron pipe; thence North  $85^{\circ} 44'$  West 250.0 feet to the true place of beginning and containing 0.428 acres as surveyed September 15, 1952 by E. A. Tewksbury, (Vol. 2131; Pg. 519).

4. Beginning at the Northwest corner of the Southeast Quarter of Section #7; thence South along the West line of said Southeast Quarter Section 865.5 feet to a point in the North line of the 26.0 acre tract described above; along the North line of said 26.0 acre tract North  $86^{\circ} 10'$  West 65.8 feet to a point in the center line of the

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Canton-Akron Road; thence along the center line of said Road South  $10^{\circ} 00'$  West 604.02 feet to a point and the place of beginning of the tract herein described; thence continuing along the center line of said Road South  $10^{\circ} 00'$  West 106.0 feet to a point; thence South  $85^{\circ} 44'$  East 250.0 feet to an iron pipe; thence parallel with the center line of said Road North  $10^{\circ} 00'$  East 106.0 feet to an iron pipe; thence North  $85^{\circ} 44'$  West 250.0 feet to the place of beginning and containing approximately 0.605 acres as surveyed September 15, 1952, by E. A. Tewksbury, (Vol. 2131, Pg. 519).

5. Beginning at the Northwest corner of the Southeast Quarter of Section #7; thence South along the West line of said Southeast Quarter Section 865.5 feet to a point in the north line of the 26.0 acre tract described above; thence along the North line of said 26.0 acre tract North  $86^{\circ} 10'$  West 65.8 feet to a point in the center line of the Canton-Akron Road; thence Along the center line of said Road South  $10^{\circ} 00'$  West 710.02 feet to a point and the place of beginning of the tract herein described; thence continuing along the center line of said Road South  $10^{\circ} 00'$  West 150.0 feet to a point; thence South  $85^{\circ} 44'$  East 250.00 feet to an iron pipe; thence parallel with the center line of said Canton-Akron Road; North  $10^{\circ} 00'$  East 150.0 to an iron pipe; thence North  $85^{\circ} 44'$  West 250.0 feet to the place of beginning and containing 0.861 acres as surveyed September 15, 1952 by E. A. Tewksbury, (Vol. 2131, Pg. 517).

6. Beginning at the Northwest corner of the Southeast Quarter of Section #7; thence along the West line of said Southeast Quarter Section; thence South 865.5 feet to a point in the North line of the 26.0 acre tract described above; thence along the North line of said 26.0 acre tract North  $86^{\circ} 10'$  West 65.8 feet to a point in the center line of the Canton-Akron Road; thence along the center line of said Road South  $10^{\circ} 00'$  West 860.02 feet to a point; and the real place of beginning of the parcel herein described; thence continuing along the center line of said Road South  $10^{\circ} 00'$  West 100.0 feet to a point; thence South  $85^{\circ} 44'$  East 250.0 feet to an iron pipe; thence parallel with the center line of said Canton-Akron Road North  $10^{\circ} 00'$  East 100.0 feet to an iron pipe; thence North  $85^{\circ} 44'$  West 250.0 feet to the place of beginning and containing 0.571 acres as surveyed September 15, 1952 by E. A. Tewksbury, (Vol. 2131 Pg. 515).

7. Beginning at the Northwest corner of the Southeast Quarter of Section #7; thence South along the West line of said Southeast Quarter Section 865.5 feet to a point in the North line of the 26.0 acre tract described above; thence along the North line of said 26.0 acre tract North  $86^{\circ} 10'$  West 65.8 feet to a point in the center line of the Canton-Akron Road; thence along the center line of said Road South  $10^{\circ} 00'$  West 960.02 feet to a point, and the place of beginning of the parcel herein described; thence continuing along the center line of said Road South  $10^{\circ} 00'$  West 125.0 feet to a point;

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thence South 85° 44' East 250.00 feet to an iron pipe; thence parallel with the center line of the Akron-Canton Road North 10 00' East 125.00 feet to an iron pipe; thence North 85° 44' West 250.00 feet to the place of beginning and containing 0.717 acre as surveyed September 15, 1952 by E. A. Tewksbury, (Vol.2131, Pg. 513).

Leaving to be conveyed by this conveyance 29.855 acres more or less.

Reserving However, an easement across the entire North end of the conveyed tract of land, 40 feet in width for roadway purposes and for ingress and egress to other lands of the Grantor.

Be the same more or less, but subject to all legal highways.

TO HAVE AND TO HOLD, the above granted and bargained premises with the appurtenances thereof, unto the said Grantee, its heirs, successors and assigns forever.

And We, Charles M. Kittinger and Merle B. Kittinger, Husband and Wife, the Said Grantors, do for ourselves and our heirs, executors, and administrators, covenant with the said Grantee, its heirs, successors and assigns, that at and until the ensealing of these presents, we are well seized of the above described premises, as a good and indefeasible estate in FREE SIMPLE and have the good right to bargain and sell the same in manner and form as above written and that the same are FREE FROM ALL INCUMBRANCES WHATSOEVER except taxes, assessments, limitations, easements, restrictions and leases of record, if any, and that we will WARRANT and DEFEND said premises, with the appurtenances thereunto belonging to the said Grantee its heirs, successors, and assigns, against all lawful claims and demands whatsoever, except as hereinbefore set forth.

And for valuable consideration, I, Charles M. Kittinger, spouse of within Merle B. Kittinger and I, Merle B. Kittinger, spouse of with Charles M. Kittinger, do hereby remise, release and forever



Appendix E/Environmental Covenant  
Industrial Excess Landfill Property  
Page 1

**To be recorded with Deed  
Records - ORC § 317.08**

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Industrial Excess Landfill, Inc. ("Owner"), the Ohio Environmental Protection Agency ("Ohio EPA"), and the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, in a Record of Decision Amendment dated September 27, 2002 (the "ROD"), the EPA Region 5 Superfund Division Director selected a "remedial action" for the Site, which provides, in part, for the following actions: augmentation of existing vegetative cover; natural attenuation of groundwater contaminants and gas monitoring; and deed restrictions prohibiting residential use and drinking water wells.

Whereas, the parties hereto have agreed to 1) grant a permanent right of access over the Property to the United States, Ohio EPA, and the defendants performing work under a partial consent decree in United States and the State of Ohio, v. Industrial Excess Landfill, Inc. (N.D. Ohio), Case No. 5:89 CV 1988 and 5:91 CV 2559 ("Work Defendants"), and 2) to impose upon the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment.

Now therefore, the Owner, the United States and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns the Industrial Excess Landfill, which is part of the Industrial Excess Landfill, Inc. Site (the "IEL Site" or the "Site"), that the U.S. EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054, 21064. Industrial Excess Landfill, Inc. owns a parcel of property located at 12646 Cleveland

Environmental Covenant  
IEL Property  
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Avenue, in Uniontown, Stark County, Ohio Stark County Parcel Number 2200248, which is part of the IEL Site (the "Property"). The Property is more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property"). [Note: For the environmental covenant relating to the Hybud Parcel, referenced in Paragraph 38 of the Consent Decree, the "Property" shall be the Hybud Parcel, not the IEL Parcel.]

3. Owner. Industrial Excess Landfill, Inc. ("Owner") is the owner of the Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations/Rights of Access. It is the purpose of this Environmental Covenant to convey property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. Owner hereby imposes and agrees to comply with the following activity and use limitations, and agrees to provide Ohio EPA, the United States, and the Work Defendants, subject to Paragraph 22, with an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of:
  - a) Implementing the response actions in the ROD, including but not limited to operation and maintenance of the vegetative cover, groundwater monitoring wells, gas venting system, and perimeter fencing; [The reference to "perimeter fencing" should be included only in the IEL Parcel's environmental covenant, and not the Hybud Parcel's environmental covenant.]
  - b) Verifying any data or information submitted by the Work Defendants;
  - c) Verifying that no action is being taken on the property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

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- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
  - e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations;
  - f) Implementing additional or new response actions if U.S. EPA, in its sole discretion, after review and comment by Ohio EPA, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.
6. Use Restrictions. Owner shall refrain from using the property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site, including (i) extracting, consuming, exposing, or using in any way the ground water underlying the Site without the prior written approval of U.S. EPA; (ii) undertaking any type of excavation on the Site without the prior written approval of U.S. EPA; (iii) allowing or conducting any residential use of the Site (iv) or any alternative land use at the Site that is not supported by a risk assessment and has not been approved by U.S. EPA; or (v) other restrictions that U.S. EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Site. [Note: Clause (iv) above should be included only in the IEL Parcel's environmental covenant, and not in the Hybud Parcel's environmental covenant.]
7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any

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Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination or expiration as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

8. Reserved Rights of Owner. The Owner hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and covenants granted herein.
9. Nothing in this document shall limit or otherwise affect U.S. EPA's or Ohio EPA's right to take response actions under CERCLA, the NCP, or other federal or state law.
10. Administrative jurisdiction. The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is U.S. EPA.
11. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 by the United States and Ohio EPA. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA or the United States from exercising any authority under applicable law.
12. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and U.S. EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.
13. Notice upon conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The

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notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:  
*[Insert the language that describes the activity and use limitations exactly as it appears in the Environmental Covenant.]*

Owner shall notify Ohio EPA and the United States within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

14. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:
- a) that the Owner is the sole owner of the Property;
  - b) that the Owner holds fee simple title to the Property which is *[use either of the following, as appropriate:]*  
  
*free, clear and unencumbered; [or]*  
  
*subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;*
  - c) that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
  - d) that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
  - e) that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other

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agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

15. Termination Rights. A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer, unless otherwise provided in the Consent Decree.
16. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
17. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
18. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Stark County Recorder's Office.
19. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Stark County Recorder.
20. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the United States, Ohio EPA, Stark County, and each person holding a recorded interest in the Property, if any; and any other person designated by Ohio EPA; see ORC § 5301.83.
21. Notice. Unless otherwise notified in writing by or on behalf of the current owner, the United States, or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

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Enforcement Coordinator  
Division of Emergency & Remedial Response  
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Larry Antonelli  
Site Coordinator  
Division of Emergency & Remedial Response  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

[title or position]  
[address]  
[for Owner]

U.S. Environmental Protection Agency  
Superfund Division  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3507

22. Expiration. This Environmental Covenant shall terminate and be of no further force or effect if the Consent Decree is entered by the Court but reversed on appeal after entry.

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.



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the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

U.S ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
[insert]

\_\_\_\_\_  
Date

State of Illinois     )  
                                  )  
County of \_\_\_\_\_ )     ss:

Before me, a notary public, in and for said county and state, personally appeared [insert] the \_\_\_\_\_ of Region 5 of the U.S. Environmental Protection Agency, who acknowledged to me that he did execute the foregoing instrument on behalf of the U.S. Environmental Protection Agency.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public