

RECEIVED

NOV 27 2019

WHITPAIN TOWNSHIP

ROMAN M. PRONCZAK, P.E.  
TOWNSHIP MANAGER  
WHITPAIN TOWNSHIP  
960 WENTZ ROAD  
BLUE BELL, PA. 19422

12/2/19

R Fox  
E Went  
RMP  
DJM  
JEB  
TLF

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and  
COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

v.

WHITPAIN TOWNSHIP

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION

NO. 19-3240

**ORDER**

**AND NOW**, this 20th day of November, 2019, upon consideration of the Government's "Unopposed Motion To Enter Proposed Consent Decree" (Docket No. 5), **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. Contemporaneous with this Order, this Court will file a fully executed copy of the Consent Decree that the parties previously filed at Docket No. 3. **JUDGMENT IS ENTERED** in accordance with the Consent Decree in favor of the plaintiffs and against the defendant.

BY THE COURT:

/s/ John R. Padova

---

John R. Padova, J.

RECEIVED

NOV 27 2019

WHITPAIN TOWNSHIP

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA and  
COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Plaintiffs,

v.

WHITPAIN TOWNSHIP,

Defendant.

Civil Action No. 2:19-cv-03240-JP

**FILED**

NOV 21 2019

KATE BARKMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

CONSENT DECREE

## TABLE OF CONTENTS

I.	BACKGROUND .....	1
II.	JURISDICTION .....	3
III.	PARTIES BOUND .....	3
IV.	DEFINITIONS .....	3
V.	GENERAL PROVISIONS .....	7
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANT .....	7
VII.	PROPERTY REQUIREMENTS .....	11
VIII.	FORCE MAJEURE .....	16
IX.	DISPUTE RESOLUTION .....	17
X.	FAILURE TO COMPLY WITH CONSENT DECREE .....	19
XI.	EMERGENCY RESPONSE.....	23
XII.	COVENANTS BY PLAINTIFFS.....	23
XIII.	COVENANTS BY SETTLING DEFENDANT .....	24
XIV.	EFFECT OF SETTLEMENT; CONTRIBUTION .....	26
XV.	ACCESS TO INFORMATION .....	28
XVI.	RETENTION OF RECORDS.....	29
XVII.	NOTICES AND SUBMISSIONS .....	29
XVIII.	RETENTION OF JURISDICTION .....	31
XIX.	APPENDICES .....	32
XX.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	32
XXI.	SIGNATORIES/SERVICE.....	32
XXII.	FINAL JUDGMENT .....	33



## I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) (collectively “Plaintiffs”) filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607, and Sections 701 and 1103 of the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.701 and 6020.1103 (“HSCA”).

B. Plaintiffs in their complaint seek, *inter alia*, performance of response actions by Whitpain Township (“Settling Defendant”) at the BoRit Asbestos Superfund Site in the Borough of Ambler, Upper Dublin Township, and Whitpain Township, Pennsylvania (“Site”) consistent with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified PADEP on March 28, 2018, of negotiations with Settling Defendant regarding the implementation of certain operation and maintenance (“O&M”) activities for the Site, and EPA has provided PADEP with an opportunity to participate in such negotiations and be a party to this Consent Decree (“Consent Decree”).

D. Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

E. Keasbey & Mattison Company (“K&M”), owned and operated a facility for the manufacture of asbestos-containing products (e.g., millboard, electrical insulation, brake linings, piping, conveyor belts, high pressure packings, roofing shingles and cement siding) from 1897 until 1964 when all operations ceased.

F. Beginning in the 1930s, K&M disposed of asbestos-containing waste at the Site. As early as 1937, K&M disposed of an estimated 195,000 cubic yards of out-of-specification asbestos manufacturing products and other solid wastes on the Park Parcel of the Site. The Park Parcel was used as a park from 1973 until it was officially closed to the public in September 1984.

G. In response to a release or substantial threat of release of a hazardous substance at or from the Site, in 2008 EPA commenced a Removal Action at the Site. The Removal Action included, *inter alia*, stream bank stabilization, dewatering, regrading, lining, covering, refilling an on-Site reservoir, and capping-asbestos containing material at the Site. As of July 28, 2017, EPA had disposed of approximately 3,068 tons of asbestos-containing material at an off-Site landfill in accordance with CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3).

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on April 9, 2009, 74 Fed. Reg. 16,126.

I. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, on February 13, 2009, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

J. EPA completed a Remedial Investigation ("RI") Report on May 22, 2015, and EPA completed a Feasibility Study ("FS") Report on November 18, 2016.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the Proposed Plan for Remedial Action ("PRAP") on December 4, 2016, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the PRAP. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Superfund and Emergency Management Division, EPA Region III, based the selection of the Remedial Action.

L. The decision by EPA on the Remedial Action for the Site is embodied in a final Record of Decision ("ROD"), executed on July 28, 2017, on which PADEP has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

M. The Remedial Action selected in the ROD encompassed the items performed by EPA during the Removal Action and also included implementation of institutional controls, confirmation sampling, long term monitoring, O&M, and five-year reviews.

N. Based on the information presently available to EPA and PADEP, EPA and PADEP believe that the implementation of institutional controls and O&M required by the ROD will be properly and promptly conducted by Settling Defendant if conducted in accordance with this Consent Decree and its appendices.

O. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the implementation of institutional controls and O&M required by the ROD to be performed by Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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



## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367, and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b), and 35 P.S. § 6020.1103. This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the 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 PADEP and upon Settling Defendant and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

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

## 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 meaning assigned to them in CERCLA or in such regulations, or if not defined in CERCLA or in regulations promulgated under CERCLA, then as defined in HSCA or the regulations promulgated under HSCA. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

a. "Asbestos Pile Parcel" shall mean the six-acre parcel, primarily located in in Ambler Borough, Montgomery County, Pennsylvania, that is depicted on the Site map, which is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, *as amended*, 42 U.S.C. §§ 9601-9675.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XIX). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

d. "Day" or "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 or state holiday, the period shall run until the close of business of the next working day.

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

f. "Effective Date" shall mean the date upon which the approval of this Consent Decree is recorded on the Court's docket.

g. "Environmental Covenant" shall mean the covenant executed and recorded in compliance with Paragraph 14 in substantially the same form as Appendix E, which shall run with the land.

h. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

i. "EPA Final O&M Plan" shall mean the O&M plan for the Site, dated November 26, 2018, which is attached as Appendix D.

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

k. "Institutional Controls" or "ICs" shall mean Environmental Covenants, state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

l. "HSCA" shall mean the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.101-6020.1305.

m. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, 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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

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



o. “Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the Remedial Action as specified in the EPA-approved Whitpain Work Plan.

p. “PADEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the State.

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

r. “Park Parcel” shall mean the 11-acre parcel primarily located in Whitpain Township, Montgomery County, Pennsylvania, that is depicted on the Site map, which is attached as Appendix A. The Park Parcel contains a former asbestos disposal area (now the closed Whitpain Wissahickon Park). On April 5, 1993, the Township of Whitpain (Successor to Whitpain Township Municipal Improvement Authority) conveyed the Park Parcel to the Township of Whitpain, recorded at Book 5041, Page 151, which is attached as Appendix B.

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

t. “Plaintiffs” shall mean the United States and PADEP.

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

v. “Record of Decision” or “ROD” shall mean (1) the EPA Record of Decision for the Site signed on July 28, 2017, by the Director of the Hazardous Site Cleanup Division, EPA Region III, or his/her delegate and all attachments thereto, and (2) any Explanations of Significant Difference EPA subsequently issues in connection therewith. The EPA Record of Decision signed on July 28, 2017, is attached as Appendix C.

w. “Remedial Action” shall mean the remedial action selected in the ROD.

x. “Reservoir Parcel” shall mean the 15-acre parcel, primarily located in Upper Dublin Township, Montgomery County, Pennsylvania, that is depicted on the Site map attached as Appendix A hereto. The Reservoir Parcel contains a manmade reservoir that is not used for drinking water supply.

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

z. “Settling Defendant” shall mean Whitpain Township, Montgomery County, Pennsylvania.

aa. "Significant Weather Event," as it is defined in Section 2.2.4 of the EPA Final O&M Plan, shall mean a storm event (significant weather event) as having one or more of the following characteristics:

- The occurrence of storms and other significant weather phenomena having sufficient intensity to cause loss of life, injuries, significant property damage, and/or disruption to commerce.
- Rare, unusual, weather phenomena that generate media attention.
- Other significant meteorological events, such as record maximum or minimum temperatures or precipitation, as well as high winds that occur in connection with another event.

bb. "Site" shall mean the BoRit Asbestos Superfund Site, which encompasses three adjacent parcels, totaling approximately 33 acres, near the intersection of West Maple Street and Butler Pike, located in the Borough of Ambler, Upper Dublin Township, and Whitpain Township, and is depicted generally on the map, which is attached as Appendix A. The three adjacent parcels comprising the Site are the Park Parcel, the Reservoir Parcel, and the Asbestos Pile Parcel.

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

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

ee. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

ff. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Section 261a.3, Title 25 of the Pennsylvania Code, 25 Pa. Code § 261a.3.

gg. "Whitpain Work Plan" shall mean the document describing the activities Settling Defendant must perform to implement the O&M for the Park Parcel.

hh. "Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except the activities required under Section XVI (Retention of Records).



## **V. GENERAL PROVISIONS**

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by implementation of certain discreet operation and maintenance activities at the Park Parcel by Settling Defendant and to implement land use restrictions at the Park Parcel.

6. **Commitments by Settling Defendant.** Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all deliverables developed by Settling Defendant and approved or modified by EPA, in consultation with PADEP, pursuant to this Consent Decree.

7. **Compliance with Applicable Law.** Nothing in this Consent Decree limits Settling Defendant's obligations to comply with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD. The activities conducted pursuant to this Consent Decree, if approved by EPA, after consultation with PADEP, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

### **8. Permits.**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e) and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the aerial extent of the contamination or in very close proximity to the contamination and necessary for implementation of the Work).

b. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

### **9. Coordination and Supervision**

#### **a. Project Coordinators**

(1) Settling Defendant's Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendant's Project Coordinator may not be an attorney representing Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendant's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify Settling Defendant of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene

coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Park Parcel constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) PADEP shall designate and notify EPA and the Settling Defendant of its Project Coordinator and Alternate Project Coordinator. PADEP may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, PADEP's Project Coordinator also may participate. Settling Defendant shall notify PADEP reasonably in advance of any such meetings or inspections.

(4) Settling Defendant's Project Coordinators shall meet with EPA's and PADEP's Project Coordinators at least every six months.

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

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

(1) Settling Defendant shall designate, and notify EPA and PADEP, within 10 days after the Effective Date, of the names, titles, contact information, and qualifications of Settling Defendant's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review, after a reasonable opportunity for review and comment by PADEP, for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by PADEP, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendant shall, within 30 days, submit to EPA and PADEP a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA, in consultation with PADEP, shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA and PADEP of Settling Defendant's selection. EPA, in consultation with PADEP, may disapprove a previously approved Project Coordinator or Supervisory Contractor at any time. In such event, Settling



Defendant shall submit a list of proposed replacements in accordance with this Paragraph.

(3) Settling Defendant may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of Paragraphs 9.c(1) and 9.c(2).

**10. Operation and Maintenance.** Settling Defendant shall operate, maintain, and monitor the effectiveness of the Remedial Action in accordance with this Consent Decree.

a. Within 30 days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 9, Settling Defendant shall submit to EPA and PADEP a work plan for the O&M at the Park Parcel ("Whitpain Work Plan"). The Whitpain Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the O&M, except to the extent such persons have been disapproved by EPA. The Whitpain Work Plan shall provide for the activities listed below, which are identified in the EPA Final O&M Plan for the Site. Upon its approval by EPA, after a reasonable opportunity for review and comment by PADEP, the Whitpain Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the time the Whitpain Work Plan is submitted, Settling Defendant shall also submit a Health and Safety Plan for O&M activities to EPA and PADEP, which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Whitpain Work Plan shall include the following sections from the EPA Final O&M Plan for the Site, which is attached as Appendix D:

- (1) Submit Health and Safety Plan ("HASP") for EPA acceptance [Section 1.3.2];
- (2) Observe Site conditions [Section 2.2.1.1];
  - i. Inspect the integrity of stream bank stabilization [Section 2.2.2];
  - ii. Inspect the Integrity of other engineered controls [Section 2.2.3]
  - iii. Post-Significant Weather Event inspection [Section 2.2.4]
- (3) Physical Remedy Maintenance Activities [Section 2.3]
  - i. Surficial repair of minor breaches in soil cap (e.g., normal park maintenance) [Section 2.3.1]
  - ii. Vegetation and Tree Maintenance [Section 2.3.3]
  - iii. Repair of Breaches to Protective Covers Due to Underground Utility Modifications/Repairs [Section 2.3.4]

iv. Park Parcel Maintenance Activities [Section 2.3.5]

(4) Reporting Requirements [Section 4]

i. Routine Reports – [Section 4.1]

ii. Special Reports – [Section 4.2]

c. Upon approval of the Whitpain Work Plan by EPA, after a reasonable opportunity for review and comment by PADEP, and submittal of the Health and Safety Plan for all field activities described in Paragraphs 10.b(2)-(3) to EPA and PADEP, Settling Defendant shall commence implementation of, and thereafter, implement the Whitpain Work Plan in accordance with the schedules and methodologies contained therein.

d. Settling Defendant shall submit to EPA and PADEP all plans, submittals, or other deliverables required under the approved Whitpain Work Plan in accordance with the approved schedule therein for review and approval. Unless otherwise directed by EPA or required under the Whitpain Work Plan, Settling Defendant shall not commence implementation of O&M activities at the Park Parcel prior to approval of the Whitpain Work Plan.

**11. Modification of the Whitpain Work Plan**

a. If EPA, after consultation with PADEP, determines that it is necessary to modify the Whitpain Work Plan to carry out and maintain the effectiveness of the Remedy set forth in the ROD, and such modification is consistent with the scope of the Remedy set forth in the ROD, then EPA may notify Settling Defendant of such modification. Within 14 days of receiving EPA's notification, Settling Defendant may object in writing to the modification. If EPA and Settling Defendant cannot reach agreement on the modification, Settling Defendant may, within 30 days after EPA's receipt of Settling Defendant's written objection or such longer time as the Parties may agree to in writing, seek dispute resolution under Section IX.

b. All work plans and other documents impacted by a modification issued by EPA shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into the Whitpain Work Plan and enforceable under this Consent Decree, and Settling Defendant shall implement all work required by such modification.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

12. Nothing in this Consent Decree or the Whitpain Work Plan or any deliverable required pursuant to this Consent Decree constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Whitpain Work Plan will maintain the Performance Standards.



## **VII. PROPERTY REQUIREMENTS**

13. **Agreements Regarding Access and Non-Interference.** Settling Defendant shall, with respect to the Park Parcel: (i) provide EPA and PADEP, and their representatives, contractors, and subcontractors with access at all reasonable times to the Park Parcel to conduct any activity regarding the Consent Decree, including those listed in Paragraph 13.a (Access Requirements); and (ii) refrain from using the Park Parcel in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in Paragraph 13.b (Land, Water, or Other Resource Use Restrictions). Settling Defendant shall provide a copy of such access and use restriction agreement(s) to EPA and PADEP.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Park Parcel:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or PADEP;
- (3) Conducting investigations regarding 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 Defendant or its agents, consistent with Section XV (Access to Information);
- (7) Assessing Settling Defendant's compliance with the Consent Decree;
- (8) Determining whether the Park Parcel is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (9) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions, as selected in the ROD, applicable to the Park Parcel:

(1) Activities or modifications that could disturb or otherwise adversely impact the two-foot soil cover on the capped areas are prohibited unless prior written approval from EPA, in consultation with PADEP, is obtained authorizing the specific activity. Any proposed future use of the Site shall be reviewed by EPA, in consultation with PADEP, to ensure that such activity will not adversely impact the Remedial Action or compromise the protection of human health and the environment.

(2) Construction activities are prohibited unless prior written approval from EPA, in consultation with PADEP, is obtained authorizing the specific activity. Prohibited construction activities include, but are not limited to, piling installation, dredging, drilling, digging, excavation, or use of heavy equipment in the capped areas.

(3) Any modifications to the drainage pattern on the Site are prohibited unless EPA, in consultation with PADEP, determines that such activity will not adversely impact the Remedial Action.

(4) Public access shall be restricted after Significant Weather Events until the property has been inspected for any signs of damage or erosion, especially in the 100-year floodplain.

(5) The Remedial Action will be protective for maintenance workers, recreational visitors, and commercial workers. Any other use of the parcels shall require further investigations and plans, which shall be reviewed and approved by EPA, in consultation with PADEP.

(6) Maintain vegetation at stabilized stream banks.

(7) Trees are prohibited along the stream banks of Wissahickon Creek (where geocells were utilized to stabilize the slope), and on the stream banks of Rose Valley Creek and Tannery Run (where CCM<sup>1</sup> is present to stabilize the slope).

14. **Environmental Covenant.** Settling Defendant shall execute and record an Environmental Covenant for the Park Parcel in the Office of the Recorder for Montgomery County Pennsylvania, in accordance with the procedures of this Paragraph 14 and pursuant to Sections 6501-6517 of the Pennsylvania Uniform Environmental Covenants Act, 27 Pa.C.S. §§ 6501-6517. The Environmental Covenant shall: (i) grant a right of access to conduct any activity regarding this Consent Decree, including those activities listed in Paragraph 20.a (Access

---

<sup>1</sup> Cable-concrete mats



Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 20.b (Land, Water, or Other Resource Use Restrictions). The Environmental Covenant shall be in substantially the form set forth in Appendix E and enforceable under the laws of the Commonwealth of Pennsylvania.

a. **Grantees.** The Environmental Covenant shall identify Settling Defendant as the "Grantee" and a "Holder." The Environmental Covenants shall specify EPA as the "Agency," as defined by 27 Pa.C.S. § 6502, which shall have the right to enforce the covenant, pursuant to 27 Pa.C.S. § 6511.

b. **Initial Title Evidence.** Settling Defendant shall, within 45 days after the Effective Date:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, PADEP, the Settling Defendant, or "To Be Determined;" (ii) covers the Park Parcel, which is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Environmental Covenant is the owner of the Park Parcel; (iv) identifies all record matters that affect title to the Park Parcel, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Park Parcel, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. **Release or Subordination of Prior Liens, Claims, and Encumbrances**

(1) Settling Defendant shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Park Parcel revealed by the title evidence or otherwise known to any Settling Defendant, unless EPA waives this requirement as provided under Paragraphs 14.c(2)-(4).

(2) Settling Defendant may, by the deadline under Paragraph 14.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 14.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Environmental Covenant and cannot interfere with the Remedial Action or result in unacceptable exposure to Waste Material.

(3) Settling Defendant may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of

the requirements of Paragraph 14.c(1) regarding any particular Prior Encumbrance on the grounds that Settling Defendant could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Settling Defendant shall complete its obligations under Paragraph 14.c(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

**d. Update to Title Evidence and Recording of Environmental Covenant**

(1) Settling Defendant shall submit to EPA for review and approval, by the deadline specified in Paragraph 14.c(5), the draft Environmental Covenant in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the Commonwealth of Pennsylvania, and draft instruments addressing Prior Encumbrances.

(2) Upon EPA's approval of the proposed Environmental Covenant and instruments addressing Prior Encumbrances, Settling Defendant shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 14.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Defendant shall record the Environmental Covenant and instruments addressing Prior Encumbrances in the Office of the Recorder for Montgomery County, Pennsylvania. Otherwise, Settling Defendant shall secure the release, subordination, modification, or relocation under Paragraph 14.c(1), or the waiver under Paragraphs 14.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Environmental Covenant and instruments addressing Prior Encumbrances.

(3) If Settling Defendant submitted a title insurance commitment under Paragraph 14.b(1) (Record Title Evidence), then upon the recording of the Environmental Covenant and instruments addressing Prior Encumbrances, Settling Defendant shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or lesser amount approved by EPA; (iii) is issued to the United States, Settling Defendant, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.



(4) Settling Defendant shall, within 30 days after recording the Environmental Covenant and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Environmental Covenant: (i) certified copies of the recorded Environmental Covenant and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Environmental Covenant and instruments.

e. Settling Defendant shall monitor, maintain, and enforce the Environmental Covenant and shall report on the Environmental Covenant as required under this Consent Decree.

f. Settling Defendant shall not Transfer the Park Parcel unless it has executed and recorded the Environmental Covenant and instruments addressing Prior Encumbrances regarding the Park Parcel in accordance with this Paragraph.

15. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Settling Defendant would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, the Environmental Covenant, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Park Parcel, as applicable. If Settling Defendant is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the United States, EPA, and PADEP and include a description of the steps taken to comply with the requirements. If either the United States or PADEP deem it appropriate, they may assist Settling Defendant, or take independent action, in obtaining such access and/or use restrictions, Environmental Covenants, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Park Parcel, as applicable.

16. If EPA determines in a decision document prepared in accordance with the NCP, after consultation with PADEP, that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed for the Park Parcel, Settling Defendant shall cooperate with EPA's and PADEP's efforts to secure and ensure compliance with such Institutional Controls.

17. In the event of any Transfer of the Park Parcel, unless the United States otherwise consents in writing, after consultation with PADEP, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Park Parcel, and to implement, maintain, monitor, and report on Institutional Controls.

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



### VIII. FORCE MAJEURE

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

20. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify EPA's and PADEP's Project Coordinators orally or, in his or her absence, EPA's and PADEP's Alternate Project Coordinators or, in the event both of EPA's and PADEP's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region III, or, in the case of PADEP, if its Alternate Project Coordinator is unavailable, notify the PADEP Southeast Regional Program Manager of the Environmental Cleanup and Brownfields Program, within three days of when Settling Defendant first knew that the event might cause a delay. Within 10 days thereafter, Settling Defendant shall provide in writing to EPA and PADEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 19 and whether Settling Defendant has exercised its best efforts under Paragraph 19, EPA, after consultation with PADEP, may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or complete notices under this Paragraph.

21. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by PADEP, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and



comment by PADEP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by PADEP, agrees that the delay is attributable to a force majeure, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

22. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 19 and 20. If Settling Defendant carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

23. The failure by EPA to timely complete any obligation under the Consent Decree or under the Whitpain Work Plan is not a violation of the CD, provided, however, that if such failure prevents Settling Defendant from meeting one or more deadlines, Settling Defendants may seek relief under this Section.

## **IX. DISPUTE RESOLUTION**

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

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

### **26. Statements of Position**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position(s) advanced by EPA, in consultation with PADEP, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and PADEP a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 27 (Record Review) or 28.



b. Within 30 days after receipt of Settling Defendant's Statement of Position, EPA, after consultation with PADEP, will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 27 (Record Review) or 28. Within 20 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 27 (Record Review) or 28, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 27 and 28.

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

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

b. The Director of the Superfund and Emergency Management Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 27.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 27.c and 27.d.

c. Any administrative decision made by EPA pursuant to Paragraph 27.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund and Emergency Management Division Director is arbitrary and capricious or otherwise not in



accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 27.a.

28. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund and Emergency Management Division, EPA Region III, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 26. The Superfund and Emergency Management Division Director's decision shall be binding on Settling Defendant unless, within 10 days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph O (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

29. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, as agreed by EPA and PADEP, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 36. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Failure to Comply with Consent Decree).

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

30. **Stipulated Penalty.** Settling Defendant shall be liable to the United States and PADEP, with fifty percent (50%) to be paid to EPA and fifty percent (50%) to be paid to PADEP, for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree, unless excused under Section VIII (Force Majeure). "Comply" as used in the previous sentence includes compliance by Settling Defendant with all applicable requirements of this Consent Decree, within the deadlines established under this Consent Decree.

**31. Stipulated Penalty Amounts - Work**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 31.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$750
15th through 30th day	\$1,500
31st day and beyond	\$3,000

**b. Obligations**

- (1) Timely designation of a Project Coordinator and Supervisory Contractor, including replacements thereof, under Paragraph 9;
- (2) Performance of the O&M, under Paragraph 10;
- (3) Requirements regarding access and non-interference under Paragraph 13;
- (4) Requirements regarding the Environmental Covenant under Paragraph 14 and use of best efforts under Paragraph 15;
- (5) Requirements to cooperate with efforts to secure and ensure compliance with Institutional Controls under Paragraph 15;
- (6) Notification of delay requirements under Paragraph 20;
- (7) Timely payment of stipulated penalties demanded under Section X;
- (8) Notification of suits or claims under Paragraphs 54 and 55;
- (9) Providing requested information and documents under Paragraph 57; and
- (10) Record retention and notice requirements under Section XVI.

32. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a decision by the Director of the Superfund and Emergency Management Division, EPA Region III, under Paragraph 27.b or 28.a of Section IX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director



issues a final decision regarding such dispute; or (b) with respect to judicial review by this Court of any dispute under Section IX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

33. Following EPA or PADEP's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA or PADEP may give Settling Defendant written notification of the same and describe the noncompliance. EPA and/or PADEP may send Settling Defendant a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA and/or PADEP has notified Settling Defendant of a violation.

34. All penalties accruing under this Section shall be due and payable to the United States and PADEP within 30 days after Settling Defendant's receipt from EPA and/or PADEP of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section IX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 35 (Payment Instructions for Stipulated Penalties). Any payments due to PADEP shall be made in accordance with Paragraph 35.d.

**35. Payment Instructions for Stipulated Penalties**

a. For all payments to the United States subject to Paragraph 34, Settling Defendant shall make such payment by Fedwire EFT, referencing Site/Spill ID A3EN and DJ number 90-11-3-11909. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

b. For all payments to the United States made under Paragraph 34, Settling Defendant must include references to the Site/Spill ID A3EN and DJ number 90-11-3-11909. At the time of any payment required to be made in accordance with Paragraph 34, Settling Defendant shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with Section XVII (Notices and Submissions). All notices must include references to the Site/Spill ID A3EN and DJ number 90-11-3-11909.

c. The total amount to be paid by Settling Defendant to the United States pursuant to Section X (Failure to Comply with Consent Decree) shall be deposited by EPA to the EPA Hazardous Substance Superfund.



d. For all payments to PADEP made subject to Paragraph 34, Settling Defendant shall make such payment by corporate check or the like to the "Pennsylvania Hazardous Site Cleanup Fund" and send to PADEP's Environmental Program Manager in the manner set forth in Paragraph 64. Except as provided herein, it is understood that the payment of money hereunder shall constitute neither a waiver of Settling Defendant's duty to meet the obligations under this Consent Decree, nor preclude PADEP or EPA from commencing an action to compel compliance with the terms and conditions of this Consent Decree, or any applicable statute, regulation, permit, or order of PADEP and/or EPA. The payment resolves only Settling Defendant's liability for stipulated civil penalties arising from the violation of this Consent Decree for which the payment is made.

e. In the event that PADEP and/or EPA brings a successful action to collect any payment required under this Consent Decree, Settling Defendant shall reimburse PADEP and/or EPA for all costs of such action, including, but not limited to, reasonable attorney's fees.

36. Penalties shall continue to accrue as provided in Paragraph 32 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States and/or PADEP prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA and PADEP within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 36.c;

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

37. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 36 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 34 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States and/or PADEP may institute proceedings to collect the penalties and Interest.



38. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

39. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or PADEP to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, 42 U.S.C. § 9622(I) or Section 1104 of HSCA, 35 P.S. § 6020.1104, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(I) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

40. Notwithstanding any other provision of this Section, the United States and/or PADEP may, in its or their unreviewable discretion, waive any portion of stipulated penalties owed to it pursuant to this Consent Decree.

#### **XI. EMERGENCY RESPONSE**

41. If any action or occurrence during performance of the Work causes or threatens a release of Waste Material on, at, or near the Park Parcel and that either constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 42, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's and PADEP's Project Coordinators, or, if their Project Coordinators are unavailable, their Alternate Project Coordinators. If neither of these persons is available, Settling Defendant shall notify the EPA Region III Hotline at (215) 814-3255 and PADEP through its Southeast Regional Emergency Contact Number at (484) 250-5900. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to this Consent Decree.

42. Subject to Section XII (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, EPA, or PADEP, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Park Parcel, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Park Parcel.

#### **XII. COVENANTS BY PLAINTIFFS**

43. **Covenants for Settling Defendant by United States.** The United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by

Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

44. **Covenants for Settling Defendant by PADEP.** Subject to the General Reservation of Rights, and pursuant to Sections 706, 1102 and 1113 of HSCA, PADEP covenants not to sue or take administrative or judicial action against Settling Defendant for response actions, response costs, civil penalties, or injunctive relief, including encumbering the Park Parcel (through lien or otherwise), arising from or relating to the release and/or threatened release of Waste Material on, at, or from the Site. These covenants extend only to Settling Defendant as stated below and may terminate at PADEP's sole discretion upon Settling Defendant's failure to meet any of the requirements of this Consent Decree. These covenants shall take effect upon the Effective Date.

45. **General Reservations of Rights.** The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve all rights against Settling Defendant with respect to:

- a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, or otherwise ordered by EPA and/or PADEP, after signature of this Consent Decree by Settling Defendant;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability; and
- f. liability for violations of federal or state law that occur during or after implementation of the Work.

### **XIII. COVENANTS BY SETTLING DEFENDANT**

46. **Covenants by Settling Defendant.** Subject to the reservations in Paragraph 48, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or PADEP with respect to the Site, and this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or the Hazardous Sites Cleanup Fund through HSCA §§ 705, 709, 901, 902, or any other provision of law;



b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree; or

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

47. Except as provided in Paragraphs 50 (Waiver of Claims by Settling Defendant) and 56 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or PADEP bring a cause of action or issue an order pursuant to any of the reservations in Section XI (Covenants by Plaintiffs), other than in Paragraphs 45.a (claims for failure to meet a requirement of the Consent Decree), 45.e (criminal liability), and 45.f (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or PADEP are seeking pursuant to the applicable reservation.

48. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's deliverables or activities.

49. 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).

**50. Waiver of Claims by Settling Defendant**

a. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such

person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials; and

(2) ***De Minimis/Ability to Pay Waiver.*** For response costs relating to the Site against any person that has entered or in the future enters into a final settlement based on limited ability to pay with EPA and/or PADEP with respect to the Site.

**b. Exceptions to Waivers**

(1) The waivers under this Paragraph 50 shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

(2) The waiver under Paragraph 50.a(1) (De Minimis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

**XIV. EFFECT OF SETTLEMENT; CONTRIBUTION**

51. Except as provided in Paragraph 50 (Waiver of Claims by Settling Defendant), 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 Section XIII (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, and Section 705 HSCA, 35 P.S. § 6020.705), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), or PADEP, pursuant to Sections 705(c) of HSCA, 35 P.S. §§ 6020.705(c), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA or Sections 705(c), 707, or 1113 of HSCA, 35 P.S. §§ 6020.705(c), 6020.707, or 6020.1113.



52. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and PADEP within the meaning of Section 705 of HSCA, 35 P.S. § 6020.705, and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA and Section 705(c) of HSCA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights under the reservations in Section XI (Covenants by Plaintiffs), other than in Paragraphs 45.a (claims for failure to meet a requirement of the Consent Decree), 45.e (criminal liability), or 45.f (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Consent Decree will no longer include those response actions that are within the scope of the exercised reservation.

53. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the Plaintiffs in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1) and Section 1103 of HSCA, and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), and PADEP within the meaning of Section 1103 of HSCA.

54. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States, EPA, and PADEP in writing no later than 60 days prior to the initiation of such suit or claim.

55. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States, EPA, and PADEP within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States, EPA, and PADEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

56. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or PADEP for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or PADEP in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XI (Covenants by Plaintiffs).



## **XV. ACCESS TO INFORMATION**

57. Settling Defendant shall provide to EPA and PADEP, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Settling Defendant's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Defendant shall also make available to EPA and PADEP, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **58. Privileged and Protected Claims**

a. Settling Defendant may assert that all or part of a Record requested by Plaintiff[s] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Settling Defendant complies with Paragraph 58.b, and except as provided in Paragraph 58.c.

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

c. Settling Defendant may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Settling Defendant is required to create or generate pursuant to this Consent Decree.

59. **Business Confidential Claims.** Settling Defendant may assert that all or part of a Record provided to Plaintiffs under this Section or Section XVI (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts business confidentiality claims. Records that Settling Defendant claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when it is submitted to EPA and PADEP, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2,



Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

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

#### **XVI. RETENTION OF RECORDS**

61. Until 10 years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

62. At the conclusion of this record retention period, Settling Defendant shall notify the United States and PADEP at least 90 days prior to the destruction of any such Records, and, upon request by the United States or PADEP, and except as provided in Paragraph 58 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA or PADEP.

63. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or PADEP and that it has fully complied with any and all EPA and PADEP requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

#### **XVII. NOTICES AND SUBMISSIONS**

64. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

**As to the United States:**

EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
eesdcopy.onrd@usdoj.gov  
Re: DJ # 90-11-3-11909

**As to EPA:**

Director, Superfund and Emergency Management  
Division (3SD00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

**and:**

Greg Voigt (3SD21)  
EPA Project Coordinator  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103  
voigt.greg@epa.gov  
215-814-5737

**As to EPA Cincinnati Finance  
Center:**

EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, OH 45268  
cinwd\_acctsreceivable@epa.gov



**As to PADEP:**

PADEP  
Environmental Cleanup and Brownfields Program  
Environmental Program Manager  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

**and:**

PADEP  
State Project Coordinator  
for the BoRit Site  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

**and:**

PADEP  
Air Quality Program Manager  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401  
jerebarchark@pa.gov

**As to Settling Defendant:**

Township Manager  
Whitpain Township  
960 Wentz Rd  
Blue Bell, PA 19422  
(610) 277-2400

**and:**

Robert Fox, Esq.  
Manko, Gold, Katcher, and Fox  
401 City Avenue Ste. 500  
Bala Cynwyd, PA 19004  
rfox@mankogold.com  
(484) 430-5700

### **XVIII. RETENTION OF JURISDICTION**

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

### **XIX. APPENDICES**

66. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is the April 5, 1993 Deed of Correction.

“Appendix C” is the Record of Decision, signed on July 28, 2017.

“Appendix D” is the EPA Final O&M Plan for the Site, dated November 26, 2018.

“Appendix E” is the draft Environmental Covenant for the Park Parcel.

### **XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

67. This Consent Decree shall be lodged with the Court for a period of not less than sixty (60) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, and Section 1113 of HSCA, 35 P.S. § 6020.1113. The United States and PADEP reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

### **XXI. SIGNATORIES/SERVICE**

69. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Regional Program Manager for the Environmental Cleanup and Brownfields Program and Supervising Counsel for PADEP certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

70. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States, after consultation with PADEP, has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

71. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the




formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## XXII. FINAL JUDGMENT

72. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the 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.

73. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, PADEP, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

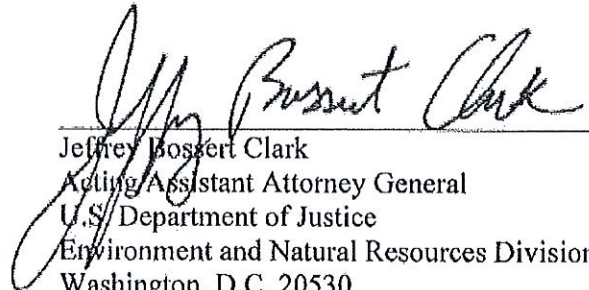
SO ORDERED THIS 21 DAY OF Nov., 2019

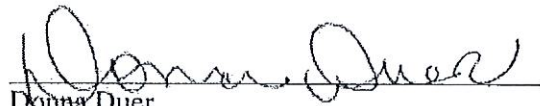
  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Whitpain Township*, relating to the BoRit Asbestos Superfund Site.

**FOR THE UNITED STATES OF AMERICA:**


7-9-19  
Dated

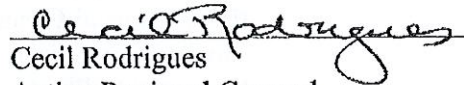
  
Jeffrey Bossert Clark  
Acting Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

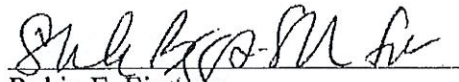
  
Donna Duer  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Whitpain Township*, relating to the BoRit Asbestos Superfund Site.

  
Cosmo Servidio  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

  
Cecil Rodrigues  
Acting Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

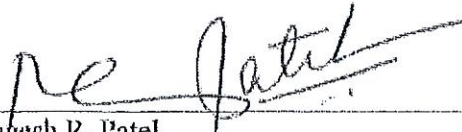
  
Robin E. Eisenman  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Whitpain Township*, relating to the BoRit Asbestos Superfund Site.

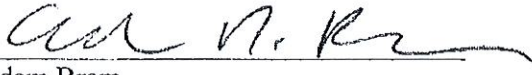
**FOR THE COMMONWEALTH OF  
PENNSYLVANIA,**

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION:**

6/27/2019  
Dated

  
Ragesh R. Patel  
Environmental Cleanup and Brownfields Program  
Environmental Program Manager  
Commonwealth of Pennsylvania,  
Department of Environmental Protection  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

6/28/19  
Dated

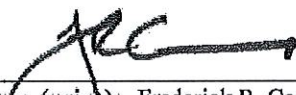
  
Adam Bram  
Supervisory Counsel  
Commonwealth of Pennsylvania,  
Department of Environmental Protection  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Whitpain Township*, relating to the BoRit Asbestos Superfund Site.

**FOR WHITPAIN TOWNSHIP:**

6-18-19  
Dated

  
Name (print): Frederick R. Conner, Jr.  
Title: Chairman, Board of Supervisors  
Address: 960 Wentz Road, Blue Bell, PA 19422

Agent Authorized to Accept Service on Behalf of Above-signed Party:	Name (print):	Roman M. Pronczak, P.E.
	Title:	Township Manager
	Company:	Whitpain Township
	Address:	960 Wentz Road
		Blue Bell, PA 19422
	Phone:	610-277-2400
	email:	rpronczak@whitpaintownship.org