

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

UNITED STATES OF AMERICA
and the
COMMONWEALTH OF
PENNSYLVANIA

Plaintiffs,

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
("SEPTA");
NATIONAL RAILROAD
PASSENGER CORPORATION
("Amtrak"); and
CONSOLIDATED RAIL
CORPORATION ("Conrail")

Defendants

CIVIL ACTION NO. 86-1094

FILED APR 20 1986

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CONSENT DECREE

WHEREAS, the United States Environmental Protection Agency ("EPA") and the Commonwealth of Pennsylvania ("Commonwealth"), (collectively "Plaintiffs") and the Southeastern Pennsylvania Transportation Authority ("SEPTA"), the National Railroad Passenger Corporation ("Amtrak"), and the Consolidated Rail Corporation ("Conrail") (collectively "Settling Defendants"), have entered into five separate partial preliminary consent decrees and have undertaken a number of response actions pursuant to those partial preliminary consent decrees, consistent with the NCP, both within the Rail Yard Portion of the Site and on the Non-Rail Yard Portion of the Site, as described in Section I.J, below;

Whereas, Settling Defendants have performed substantial work at

the Site and have demonstrated a high degree of cooperation with federal and state officials in efforts to limit or prevent any harm to the public health or the environment;

Whereas, based upon the information available, it is the contention of the parties to this decree that the degree of involvement by American Premier Underwriters Inc. in the disposal of hazardous substances and the operation at the Site is at least equal to or maybe greater than the degree of involvement by all of the Settling parties combined;

Whereas, prior to issuance of the Administrative Order for Remedial Design/Remedial Action, EPA Docket No. III-96-89-DC, American Premier Underwriters, Inc. had not cooperated with federal and state officials in the performance of any response actions at the Site;

Whereas, the response costs incurred by Settling Defendants prior to this Decree when added to the estimated response costs to be incurred by Settling Defendants and government Past Costs to be reimbursed pursuant to this Decree by Settling Defendants constitute a significantly higher percentage of overall total Site response costs than the costs projected to be incurred by American Premier Underwriters, Inc. in response to the Administrative Order for Remedial Design/Remedial Action, EPA Docket No III-96-89-DC;

Whereas, the United States and the Commonwealth wish to facilitate the equitable allocation of responsibilities in a manner that is fair, reasonable and consistent with CERCLA, including Section 113 of CERCLA, without waiver of their position that all

parties, including Settling Defendants, are jointly and severally liable for all response costs at the Site;

Whereas, American Premier Underwriters, Inc, is a potentially responsible party at this Site, a third-party Defendant in this action and is a Defendant in a related CERCLA action: United States v. Penn Central Corporation, Civil Action No. 92-6119, and neither the third-party action nor the Civil Action 92-6119 are being terminated or resolved by this Consent Decree;

WHEREAS, on July 21, 1992, EPA, in consultation with the Commonwealth, issued a final Record of Decision ("ROD") for the Paoli Rail Yard Superfund Site ("Site" or "Paoli Site") as described below in Section I.N.;

WHEREAS, Settling Defendants have agreed to performance of the Work, as that term is defined in Section IV.4, and in accordance with the Performance Standards and the Remedial Action as those terms are defined in this Consent Decree;

WHEREAS, Plaintiff, United States has made certain changes to the ROD which are embodied in the Explanation of Significant Differences ("ESD"), attached hereto as Appendix D;

WHEREAS, for purposes of this Consent Decree, the scope of the remedy that Settling Defendants have agreed to perform is limited to the components set forth in paragraph 13.b;

WHEREAS, Plaintiff, United States, and Settling Defendants wish to finally conclude in accordance with the terms of this Consent Decree, including, without limitation, the reservations of rights set forth in Section XXII (Covenants Not To Sue By Plaintiffs), all

claims and causes of action set forth in the matter of U.S. v. SEPTA, et al., Civil Action No. 86-1094, which was commenced on February 25, 1986;

WHEREAS, Plaintiff, the Commonwealth, wishes to finally conclude all claims and causes of action resulting from its status as Plaintiff Intervenor in U.S. v. SEPTA et al., Civil Action No. 86-1094, which intervention action was commenced on May 22, 1986 and the claims amended on June 19, 1990;

WHEREAS, Plaintiffs and the Settling Defendants acknowledge that the above-named Settling Defendants do not comprise the entire list of responsible parties at the Site.

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the EPA, filed a complaint in this matter against SEPTA, Amtrak, and Conrail, on February 25, 1986, in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 86-1094, pursuant to Sections 104, 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a) and 9607; Section 7 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2606; and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

B. The United States in its complaint sought: (1) injunctive relief to address, among other things, the alleged imminent and substantial endangerment to public health caused by the presence of polychlorinated biphenyls ("PCBs") at the Paoli Rail Yard Superfund

Site (as defined below) (hereinafter "Site" or "Paoli Site") in Paoli, Pennsylvania; and (2) reimbursement of costs incurred by EPA and the United States Department of Justice ("DOJ") for response actions at the Site and other response costs, including, but not limited to, planning, legal and other activities necessary or appropriate to plan and direct response actions and for enforcement purposes at the Paoli Site, together with accrued interest.

C. On May 22, 1986, the Plaintiff-Intervenor, the Commonwealth, filed a complaint in intervention in the instant matter against SEPTA, Conrail and Amtrak, Civil Action No. 86-1094. On June 19, 1990, the Commonwealth filed an amended complaint in intervention. The Amended Complaint sought relief pursuant to the Clean Streams Law, 35 P.S. §§ 691.1 et seq., including enforcement of a 1979 Administrative Order; and Section 1917-A of the Administrative Code, 71 P.S. §§ 510-17.

D. On May 29, 1986, the United States filed a Petition for Leave to File a Complaint against the Penn Central Corporation ("Penn Central") in the bankruptcy matter pending before the District Court in the Eastern District of Pennsylvania. The proposed complaint, attached as an exhibit to the Petition, sought reimbursement of response costs, including investigation and enforcement costs, incurred, and to be incurred, at the Site.

E. The District Court denied the Petition on August 8, 1990, In the Matter of Penn Central Transportation Company, Bky. No. 70-437, Memorandum and Order No. 4331. The Third Circuit reversed the District Court in an opinion dated September 19, 1991, In the

Matter of Penn Central Transportation Company, Nos. 90-1676, 90-1677 and 90-1678. On November 8, 1991, Penn Central filed a Petition for Writ of Certiorari with the United States Supreme Court which was denied in March 1992. On October 23, 1992, the United States filed a complaint against Penn Central under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607. U.S. v. Penn Central Corporation, Civil Action No. 92-6119 (E.D. Pa.). SEPTA, Amtrak and Conrail also filed first and third party complaints against Penn Central.

F. In its complaint against Penn Central, the United States sought, among other things: (1) a declaratory judgment on liability for response costs by the United States of America against Penn Central that would be binding on any subsequent action or actions to recover further response costs; and (2) reimbursement of all costs incurred by the United States for response activities related to the Site, including prejudgment interest.

G. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth on August 3, 1992 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this settlement.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.

§ 9622(j)(1), EPA notified the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") on May 6, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

I. 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 August 30, 1990, 55 Fed. Reg. 35302.

J. Settling Defendants entered into five separate court-approved Partial Preliminary Consent Decrees (hereinafter "Partial CDs") with the Plaintiffs, United States and the Commonwealth, to conduct various response activities at the Site. These response activities included: installation and maintenance of a security fence and a geotextile fabric fence; conducting an engineering study addressing erosion control; performance of off-site soil sampling; conducting an environmental investigation, including soil sampling, of approximately 400 acres surrounding the facility; removing approximately 3,000 cubic yards of contaminated soil from the Non-Rail Yard Site Property; removing approximately 150 cubic yards of contaminated soil from the Rail Yard Site Property; and initiating and maintaining a program for recovery and disposal of fuel oil. Pursuant to the third Partial CD, SEPTA, Amtrak and Conrail, on or about July 13, 1987, commenced a Remedial

Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP, 40 C.F.R. § 300.430.

K. On May 15, 1987, SEPTA entered into a Worker-Protection Stipulation with EPA which Stipulation was filed with the United States District Court for the Eastern District of Pennsylvania on or about July 13, 1987 under Civil Action No. 86-1094, which addressed contamination inside the Paoli Car Shop, and pursuant to which SEPTA decontaminated specific areas in the Car Shop and implemented a maintenance program for particular areas in the Car Shop. The Worker-Protection Stipulation also specified certain protocols to be followed by SEPTA Paoli Car Shop workers. The Worker-Protection Stipulation has been terminated with the signature of the ESD.

L. SEPTA, Amtrak and Conrail, completed a draft Remedial Investigation ("RI") Report on or about October 29, 1990, and completed a draft Feasibility Study ("FS") Report on or about June 28, 1991.

M. 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 on March 15, 1992, in the Philadelphia Inquirer, a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on July 21, 1992, on which the Commonwealth has concurred. The ROD includes EPA's documentation of significant changes between the final plan and the proposed plan as well as a summary of responses 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). This ROD addresses the final remedy for the Site.

O. The remedy, as required by the ROD, is generally comprised of 5 separate components which include: 1) excavation and onsite treatment, using stabilization/solidification technology, of rail yard soil with PCB concentrations exceeding 25 parts per million ("ppm"), erosion and sedimentation controls to manage storm water runoff and sediment from the Rail Yard, and institutional controls; 2) onsite pumping of ground water contaminated with fuel oil in the vicinity of the maintenance building using extraction wells, fuel oil recovery, ground water treatment using activated carbon, and discharge of the treated ground water through an infiltration gallery and long-term monitoring; 3) decontamination of Car Shop building and surfaces having PCB concentrations in excess of 10ug/100cm²; 4) excavation of residential soils to achieve an average PCB concentration of 2 ppm for individual residential properties and transport of those soils back to the Rail Yard for treatment and disposal on the Rail Yard Site Property; and 5) excavation of stream sediments exceeding 1 ppm. In addition, the ESD requires the following components: decontamination of the Car

Shop and associated buildings in preparation for demolition and recycling or off-site disposal. The ROD also requires that the Worker-Protection Stipulation remain in effect throughout the course of the remedy.

P. Based on the information presently available to EPA and the Commonwealth, EPA and the Commonwealth believe that the Work as required by this Consent Decree will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this CD and its appendices.

Q. The portions of the ROD to be implemented pursuant to this Consent Decree and the Work performed by the Settling Defendants pursuant to this Consent Decree shall constitute response actions taken or ordered by the President solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

R. The Settling Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the Rail Yard Site Property cleanup and 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 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants 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 applies to and is binding upon the United States and the Commonwealth and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any 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 Defendants or their contractors shall

provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with 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 the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

b. "Commonwealth" shall mean the Commonwealth of Pennsylvania, Department of Environmental Protection, and any successor departments or agencies of the Commonwealth.

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

d. "Day" shall mean a calendar day unless expressly stated to

be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "DOI" shall mean the United States Department of the Interior and any successor departments or successor agencies of the United States.

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

g. "Explanation of Significant Differences" or "ESD" shall mean the document attached to this Consent Decree at Appendix D.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States, or the Commonwealth, as it applies, incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VI (Performance of the Work by Settling Defendants), X (Access and Institutional Controls) (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XVI (Emergency Response), and Paragraph 83 of Section XXII (Covenants Not to Sue By Plaintiffs).

Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 14, 1996 to the date of entry of this Consent Decree.

i. "HSCA" shall mean the Hazardous Sites Cleanup Act, 35 P.S. § 6020.512.

j. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between June 1, 1996 and the date of entry of this Consent Decree, and/or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"Interim Response Costs" shall also mean all costs, including direct and indirect costs, (a) paid by the Commonwealth in connection with the Site between July 1, 1996 and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree, but paid after that date.

k. "Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

l. "Matters Addressed in this Consent Decree" shall mean all claims asserted by the United States and the Commonwealth in their respective complaints and all claims of the United States and the Commonwealth against the Settling Defendants for recovery of "Past Response Costs", "Interim Response Costs", "Future Response

Costs," and "Natural Resource Damages" as those terms are defined in this Consent Decree, and all claims of the United States and the Commonwealth for the costs of all past response actions performed by the Settling Defendants, the costs of, or performance of, the "Work" as that term is defined in this Consent Decree, and the cost or performance of all Work to implement that portion of the ROD which Settling Defendants are not being required to implement under this Consent Decree excluding those items covered under the reservation of rights and reopener provisions of Section XXII.

m. "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.

n. "Natural Resource Damages" shall mean federal and state statutory damages, including costs of damages assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, or Section 702(a)(4) of HSCA, 35 P.S. § 6020.702(a)(4), for injury to, destruction of, or loss of any and all natural resources at or relating to the Site.

o. "Natural Resource Trustees" shall mean those federal officials designated under 40 C.F.R. § 300.600 to act on behalf of the public as trustees for natural resources under federal trusteeship, and those state officials designated under 40 C.F.R. § 300.605 to act on behalf of the public as trustees for natural resources under state trusteeship, and for the purposes of this Consent Decree shall mean DOI and the Pennsylvania Fish and Boat

Commission..

p. "Non-Rail Yard Site Property" shall mean that portion of the Site, exclusive of the Rail Yard Site Property, comprising the 400-acre watershed which includes the residential areas, as depicted on the aerial photograph at Appendix C.

q. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Work Plans, including, without limitation, the operation of the fuel oil recovery program as set forth in the ROD.

r. "Oversight Costs" shall mean, for purposes of this Consent Decree only, that portion of Future Response Costs incurred by EPA in monitoring and supervising the Settling Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, inter alia: (1) the costs of direct action by EPA to investigate, evaluate or monitor a release, threat of release, or a danger posed by such release or threat of release; (2) the costs of litigation or other enforcement activities; (3) the costs of determining the need for or taking direct response actions by EPA to conduct a removal or remedial action at the Site, including but not limited to, the cost of activities by EPA pursuant to Sections

VII (Remedy Review); and XVI (Emergency Response) of this Consent Decree; (4) the cost of undertaking the five-year review set forth in Section VII (Remedy Review) or otherwise determining whether or to what extent the Work has reduced the release or threat of release at the Site; (5) the cost of enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution); (6) the cost of securing access under Section X (Access and Institutional Controls); and (7) the cost of work performed under Section VI (Performance of Work by Settling Defendants), Paragraph 13 of this Consent Decree.

s. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

t. "Parties" shall mean the United States, the Commonwealth of Pennsylvania and the Settling Defendants.

u. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 14, 1996 plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. Past Response Costs shall also mean all costs, including, but not limited to, indirect costs, arising from the release or threat of release of hazardous substances at the Site incurred by the Commonwealth prior to July 1, 1996 with the exception of costs not included in the Commonwealth's cost package, and all interest on such costs accrued prior to July 1, 1996.

v. "Performance Standards" shall mean the cleanup standards and other measures of achievement for the goals of the Remedial Action, set forth on ROD pages 56-62 (for Rail Yard Site Property), 62-64 (only for acceptance and disposal on the Rail Yard Site Property of residential soils and stream sediments) and 64-73 (only to the extent the discussion applies to performance of the Work for Rail Yard Site Property as defined in this Consent Decree), and any modifications to those standards as established by EPA pursuant to the "technical impracticability" provisions of Section VIII of the CD, and which are not inconsistent with the NCP.

w. "Plaintiffs" shall mean the United States and the Commonwealth of Pennsylvania.

x. "Rail Yard Site Property" shall mean that portion of the Site, exclusive of the 400-acre watershed and the residential areas, as depicted on the aerial photograph at Appendix B."

y. "Rail Yard Site Property Portion of the ROD" shall mean: 1) Rail Yard Soils -- Excavation and onsite treatment and containment, using stabilization/solidification, of contaminated rail yard soils with PCB concentrations exceeding 25 parts per million ("ppm"); 2) Erosion and Sedimentation Controls -- Maintenance of the storm water collection system consisting of catch basins, diversion controls, and filter fabric which systems effectiveness shall be evaluated and recommendations submitted during the remedial design to ensure management and control of storm water runoff and sediment from the Rail Yard; 3) Deed Restrictions -- Deed restrictions prohibiting the use of a) the Rail Yard Site Property for

residential or agricultural purposes, b) the ground water for domestic purposes including drinking water; 4) Additional Treatability Studies -- An expanded treatability study to further assess the stability and physical characteristics of the stabilization/ solidification process and to demonstrate the predicted effectiveness of the stabilization/solidification process; 5) Fuel Oil Soils -- Maintenance of the asphalt cover containing subsurface soils contaminated with PCBs and fuel oil located in the vicinity of the Car Shop with PCB concentrations ranging from 1 ppm to greater than 500 ppm; 6) Decontamination of Rail Yard Site Property Buildings and Structures -- Decontamination of Rail Yard Car Shop buildings and structures having PCB concentrations in excess of 10 ug/100cm²; 7) Ground Water Treatment and Fuel Oil Recovery -- Continued implementation of the fuel oil recovery and ground water treatment program consisting of pumping and treatment of ground water contaminated with fuel oil; 8) Long-Term Ground Water Monitoring -- Long-term ground water monitoring to evaluate the effectiveness of the ground water pumping, treatment and fuel oil recovery systems; 9) Excavated Non-Rail Yard Site Property Soils and Sediments -- Excavated Non-Rail Yard Site Property soils and sediments shall be accepted for treatment, if necessary, and for containment on the Rail Yard Site Property; and 10) ESD - decontamination of the Car Shop and associated buildings in preparation for demolition and recycling or off-site disposal.

z. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation

and Recovery Act).

aa. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on July 21, 1992, by the Regional Administrator, EPA Region III, all attachments thereto and the ESD issued by EPA, attached hereto as Appendix D. The ROD is attached as Appendix A.

ab. "Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement the Rail Yard Site Portion of the ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

ac. "Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

ad. "Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

ae. "Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

af. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

ag. "Settling Defendants" shall mean the Southeastern Pennsylvania Transportation Authority ("SEPTA"), the National Railroad Passenger Corporation ("Amtrak") and the Consolidated Rail

Corporation ("Conrail").

ah. "Site" or the "Paoli Site" shall mean the facility, as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), which includes the 28-acre rail yard and the surrounding 400-acre watershed, including the residential area, located in Willistown and Treddyfrin Townships, Paoli, Chester County, Pennsylvania as further described in the ROD issued by EPA on July 21, 1992 and depicted more particularly on the maps attached as Appendix B (Rail Yard Site map) and Appendix C (Non-Rail Yard Site map).

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

aj. "TSCA" shall mean the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692.

ak. "United States" shall mean the United States of America.

al. "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), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); or the Pennsylvania Solid Waste Management Act 35 P.S. § 6018.101 et seq .

am. "Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

an. "Worker-Protection Stipulation" shall mean the Stipulation filed with the United States District Court for the Eastern

District of Pennsylvania on or about July 13, 1987 under Civil Action No. 86-1094, and entered into between Plaintiff, United States, and Settling Defendant, SEPTA, which addressed PCB contamination at the Paoli Car Shop.

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 at the Site by the design and implementation of the Remedial Action at the Site by the Settling Defendants, to reimburse response costs of the Plaintiffs, and to resolve all Plaintiffs' claims against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. The Settling Defendants shall finance and perform the Work as specified in Section VI of this Consent Decree. Settling Defendants shall also reimburse the Plaintiffs for Past Response Costs as provided in Paragraphs 53.a. and b. of this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the Commonwealth under this Consent Decree are joint and several. In the event of the insolvency or other failure of any Settling Defendant to implement the requirements of this Consent Decree the remaining Settling Defendants shall complete all such requirements.

c. In the event that any of the Settling Defendants files for bankruptcy or is placed involuntarily in bankruptcy

proceedings, such Settling Defendant shall notify the United States within three (3) days of such filing.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the Work Plans. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no Federal, state or local permit shall be required for any portion of the Work conducted entirely on the Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not onsite requires a federal or state or local permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a

failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. Notice of Obligations to Successors-in-Title

a. Within twenty (20) days after the entry of this Consent Decree, the Settling Defendants shall record a certified copy of this Consent Decree with the Recorder of Deeds Office, Chester County, Commonwealth of Pennsylvania. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. In addition, each deed, title or other instrument of conveyance for property included in the Site shall comply with the provisions of Section 512 of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.512, with regard to the conveyance of the property.

b. The obligations of the Settling Defendants with respect to the provision of access under Section X (Access and Institutional Controls) and the implementation of institutional controls as required by the ROD shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter

"Successors-in-Title"). Within twenty (20) days after the entry of this Consent Decree, Settling Defendants shall record at the Recorder of Deeds Office a notice of obligation to provide access under Section X (Access and Institutional Controls) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Amtrak, and/or the other Settling Defendants and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section X (Access and Institutional Controls), shall continue to be met by the Settling Defendants. In addition, if the United States and the Commonwealth approve, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

10. Selection of Supervising Contractor for Rail Yard Site Property Portion of the ROD

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), IX (Quality Assurance, Sampling and Data Analysis), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the Commonwealth. Within ten (10) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the Commonwealth, in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the Commonwealth, and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA, and the Commonwealth, the names of at least three (3) contractors, including the qualifications of each contractor that would be acceptable to them within ten (10)

days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth, of the name of the contractor selected within seven (7) days of receipt of EPA's authorization to proceed. If EPA fails to provide written notice of its acceptance or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree.

c. Within ten (10) days after the Supervising Contractor has been accepted and prior to commencement of any Work thereunder, the Settling Defendants shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors, including the name(s) and qualifications of the individual(s) or entities responsible for completion of Remedial Design submittal (the "Remedial Design Professional"). Settling Defendants shall notify EPA of the date the contract is entered into with the Remedial Design Professional. The Remedial Design Professional shall provide a Professional Engineer to be present during Rail Yard Site Property construction to ensure that the Work is performed in accordance with the approved Remedial Design submittal(s). EPA retains the right to disapprove any additional

contractors and subcontractors selected to perform the Work. Within fourteen (14) days of receipt by EPA of the names of the additional contractors or subcontractors, EPA will notify Settling Defendants of its acceptance or disapproval of the selection of additional contractors or subcontractors. If EPA disapproves any additional contractor or subcontractor selection, Settling Defendants may submit further information to EPA giving reasons why the additional contractor or subcontractor selection should be accepted. Within fourteen (14) days of the receipt of the notice of disapproval, Settling Defendants shall notify the United States of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Decree a decision is made by Settling Defendants to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure).

d. Within one hundred and fifty (150) days after the Remedial Action Work Plan has been approved and prior to commencement of any Work thereunder, the Settling Defendants shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors, including the name(s)

and qualifications of the individual(s) or entities responsible for implementation of the Remedial Design (the "Remedial Action Constructor"). Settling Defendants shall notify EPA of the date the contract is entered into with the Remedial Design Professional. EPA retains the right to disapprove any additional contractors and subcontractors selected to perform the Work. Within fourteen (14) days of receipt by EPA of the names of the additional contractors or subcontractors, EPA will notify Settling Defendants of its acceptance or disapproval of the selection of additional contractors or subcontractors. If EPA disapproves any additional contractor or subcontractor selection, Settling Defendants may submit further information to EPA giving reasons why the additional contractor or subcontractor selection should be accepted. Within fourteen (14) days of the receipt of the notice of disapproval, Settling Defendants shall notify the United States of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Decree a decision is made by Settling Defendants to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure).

11. Remedial Design/Remedial Action for Rail Yard Site Property Portion of the ROD

a. Within forty-five (45) days after EPA's acceptance of the selection of a Remedial Design Professional, the Settling Defendants shall submit to EPA for approval a work plan for the design of the Remedial Action ("Remedial Design Work Plan") and shall submit a Sampling and Analysis Plan (SAP), which includes the Quality Assurance Project Plan (QAPP, as described in Section IX), prepared in accordance with Section IX. The Remedial Design Work Plan shall provide for the design of the remedy set forth in the Rail Yard Site Property Portion of the ROD which is covered by this Consent Decree and for achievement of the related Performance Standards and other requirements. Upon its approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Defendants shall also submit to EPA and the Commonwealth, at the time the Remedial Design Work Plan is submitted, a Health and Safety Plan for field design activities 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 Remedial Design Work Plan shall provide a step-by-step plan for the design of the remedy and shall include plans, schedules, and methodologies for implementation of all necessary remedial design and pre-design tasks, including, but not limited to: (1) a SAP, prepared in accordance with Section IX, (2) work plans and schedules for the design and implementation of

treatability studies and other pre-design studies, and (3) plans and schedules for the preparation and submission of preliminary, intermediate, pre-final and final design submittal. The treatability study work plans shall include Treatability Study Construction Quality Assurance Project Plans applicable to necessary construction. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

c. Upon approval of the Remedial Design Work Plan, the Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendants shall submit all plans, submittals, and other deliverables required in accordance with the approved schedule therein for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Comment). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal, as required by 11.b, above, begins with the initial design and ends with completion of approximately 30% of the design effort and shall include, at a minimum, the following: (1) design criteria; (2) available results of treatability and other pre-design studies; (3) available results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required

specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design, as required by 11.b, above, is a continuation and expansion of the preliminary design submittal. The intermediate design shall be submitted at and consist of approximately 60% of the design effort. The intermediate design shall clearly address comments from the preliminary design review.

f. The pre-final and final design submittal required under Paragraph 11.b, above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans: (1) final designs and specifications for the Remedial Action; (2) an Operation and Maintenance Plan; (3) a Remedial Action Construction Quality Assurance Plan (CQAP); (4) a Sampling and Analysis Plan including a Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (5) a Groundwater Monitoring Plan for fuel oil recovery system; (6) complete specifications for preparation of a Health and Safety Plan for field activities required by the pre-final/final design; (7) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials (the "Decontamination Plan"); and (8) a Remedial Action Contingency Plan. The pre-final design shall be submitted at approximately 90% of the design effort. Settling Defendants shall ensure that specifications required under item 6, above, as accepted by EPA, after a reasonable opportunity for review and comment by the

Commonwealth, and under item 7, above, as approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, are met by Settling Defendants' contractor(s) in preparing the Health and Safety Plan and the Decontamination Plan. The Decontamination Plan shall be submitted by Settling Defendants for approval, and the Health and Safety Plan for field activities for acceptance, in accordance with the schedule set forth in the final design submittal, and upon approval of the Decontamination Plan and acceptance of such Health and Safety Plan, such plans shall be incorporated in, and enforceable as part of this Consent Decree. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify appropriate quality control personnel to conduct a quality assurance program during the construction phase of the project. The quality control personnel shall be responsible for examining and testing various materials, procedures and equipment during implementation of the construction activities. The quality control personnel shall perform inspections of the Rail Yard Site Property Work to assess compliance with project standards, verify that the construction quality assurance plan is implemented, and report to the Settling Defendants and EPA the results of all inspections.

g. Upon approval, approval upon conditions, or modification by EPA, as provided in Paragraphs 37 and 38 of Section XII (EPA Approval of Plans And Other Submissions, Commonwealth Review and Comment), below, of all components of the final design submittal, the final design submittal shall be incorporated into

and become enforceable as part of this Consent Decree, and shall be enforceable under this Consent Decree. The Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

h. Not later than sixty (60) days after EPA approves all submissions which require EPA approval pursuant to the Remedial Design and EPA accepts the Health and Safety Plan, Settling Defendants shall submit a Remedial Action Work Plan to EPA and the State, for approval by EPA. The Remedial Action Work Plan is the basis for the Settling Defendants' approach to the implementation of the Remedial Action and shall be developed in accordance with the ROD and shall be consistent with the Remedial Design, as approved by EPA, and shall provide for implementation of the ROD. The Remedial Action Work Plan shall include, at a minimum: (a) a narrative describing the approach to implement the Remedial Design; (b) tentative formation of the Remedial Action Team, including the key personnel, descriptions of duties and lines of authorities in the management of construction activities; (c) a description of the roles and relationships of the Settling Defendants, the Settling Defendants' Project Coordinator, Resident Engineer, quality control personnel, Remedial Design Professional and Remedial Action Constructor; (d) a process for selection of the Remedial Action Constructor; (e) a schedule for the Remedial Action and the process to continuously update the project schedule; (f) a method to implement the Construction Quality Assurance Plan, including the

criteria and composition of the quality control personnel; (g) a strategy for implementing the Contingency Plan; (h) procedures for data collecting during the Remedial Action to validate the completion of the project; (i) requirements for project closeout. Upon approval by EPA, the Remedial Action Work Plan is incorporated into this Consent Decree as a requirement of this Consent Decree. The Settling Defendants shall submit all plans, submittals, or other deliverables required under the Remedial Action Work Plan which EPA determines to be necessary as a result of the implementation of the remedial action, in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Comment). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Defendants shall not commence physical implementation of the Rail Yard Site Property Remedial Action activities prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan and as approved by EPA's Project Coordinator.

i. Not later than forty-five (45) days after EPA's acceptance of Settling Defendants' Remedial Action Constructor(s) in accordance with Paragraph 10.d, of this Consent Decree, Settling Defendants shall submit to EPA and the State, for approval by EPA, a Construction Management Plan. The Construction Management Plan is prepared by the Remedial Action Constructor and shall identify key personnel, their experience, their qualifications, and their responsibilities for construction activities, and shall include a

detailed schedule for completing all construction activities. Upon approval by EPA, the Construction Management Plan shall be incorporated in, and become an enforceable part of this Consent Decree.

j. Within seven (7) days after EPA approves the Construction Management Plan, Settling Defendants shall begin on-site implementation of the Remedial Action. Upon approval by EPA of the Construction Management Plan, Settling Defendants shall implement and comply with the schedules and terms of all requirements relating to Remedial Action including the Remedial Action Work Plan and the Construction Management Plan.

12. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards.

13. Modification of the Work.

a. If EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that modification of the Work specified in the work plans developed pursuant to that portion of the ROD covered by this Consent Decree is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in that portion of the ROD covered by this Consent Decree, EPA may (1) require that such modification be incorporated into the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or any other plan relating to such Work, and/or (2) require that the Settling Defendants submit a plan for EPA approval which

incorporates such modification to the Work and implement such approved plan; provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the Rail Yard Site Property Portion of the ROD covered by this Consent Decree.

b. For the purposes of this Paragraph 13 and Paragraphs 49 and 50 of Section XV (Certification of Completion), only, the scope of the remedy selected in the Rail Yard Site Property Portion of the ROD covered by this Consent Decree, and as modified in the ESD is:

- Rail Yard Soils -- Excavation and onsite treatment and containment, using stabilization/solidification, of contaminated rail yard soils with PCB concentrations exceeding 25 parts per million ("ppm");
- Erosion and Sedimentation Controls -- The storm water collection system consisting of catch basins, diversion controls, and filter fabric which systems effectiveness shall be evaluated and recommendations submitted during the remedial design to ensure management and control of storm water runoff and sediment from the Rail Yard;
- Deed Restrictions -- Deed restrictions prohibiting the use of 1) the Rail Yard Site Property for residential or agricultural purposes, 2) the ground water for domestic purposes including drinking water;
- Additional Treatability Studies -- An expanded treatability study to further assess the stability and

physical characteristics of the stabilization/solidification process and to demonstrate the predicted effectiveness of the stabilization/solidification process;

- Fuel Oil Soils -- Maintenance of the asphalt cover containing subsurface soils contaminated with PCBs and fuel oil located in the vicinity of the Car Shop with PCB concentrations ranging from 1 ppm to greater than 500 ppm.
- Decontamination of Rail Yard Site Property Buildings and Structures -- Decontamination of Rail Yard Car Shop buildings and structures having PCB concentrations in excess of 10 ug/100cm²;
- Ground Water Treatment and Fuel Oil Recovery -- Continued implementation of the fuel oil recovery and ground water treatment program consisting of pumping and treatment of ground water contaminated with fuel oil;
- Long-Term Ground Water Monitoring -- Long-term ground water monitoring to evaluate the effectiveness of the remedy, including the ground water pumping, treatment and fuel oil recovery systems;
- Excavated Non-Rail Yard Site Property Soils and Sediments -- Excavated Non-Rail Yard Site Property soils and sediments shall be accepted for treatment, if necessary, and for containment on the Rail Yard Site Property;
- Explanation of Significant Differences -- the Car Shop and associated building will be decontaminated in

preparation for demolition and recycling or off-site disposal.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph 13, they may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 64 (record review). The Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan and/or in work plans developed in accordance with this Paragraph.

e. 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.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will achieve the Performance Standards. Such compliance by the Settling Defendants shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment

of Waste Material from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipment when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Materials are to be shipped; (2) the type and quantity of the Waste Materials to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Materials to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the written notification required by this Section VI.15, including the information required by Paragraph 15.a, as soon as practicable after the award of the contract, but in no case less than fourteen (14) days before the Waste Materials are actually shipped.

VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA, after reasonable opportunity for review and comment by the Commonwealth, determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 80 or Paragraph 81 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XX

(Dispute Resolution) to dispute: (1) EPA's determination that the reopener conditions of Paragraph 80 or Paragraph 81 of Section XXII (Covenants Not To Sue by Plaintiffs) are satisfied; (2) EPA's determination that the Remedial Action is not protective of human health and the environment; or (3) EPA's selection of further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 64 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. TECHNICAL IMPRACTICABILITY

21. This section applies solely to the ground water extraction and treatment system remedy as set forth on pages 60-62 of the ROD.

a. The Settling Defendants may petition EPA to waive compliance with one or more of the Performance Standards for ground water contaminants at the Site pursuant to Section 121(d)(4)(C) of CERCLA, based upon a demonstration that it is technically impracticable, from an engineering perspective, to attain those standards. The determination of whether attainment of a particular Performance Standard is technically impracticable will be made by EPA, after reasonable opportunity for review and comment by the Commonwealth, and will be based on the engineering feasibility and

reliability of the remedy.

i. EPA will consider a petition for a waiver of Performance Standards on technical impracticability grounds only after the selected ground water remedy has been functioning and operational for a sufficiently long period to make reliable predictions concerning its ability to achieve the Performance Standards. This determination will be made by EPA based on site-specific data and conditions. If the first petition is rejected, a subsequent petition will be considered by EPA only if EPA determines that it is based on significant new site-specific data which could not have been developed at the time the previous petition was submitted.

ii. Neither the submission of a petition by Settling Defendants nor the granting of a waiver of one or more Performance Standards by EPA pursuant to this Section shall relieve Settling Defendants of their obligation to:

- (1) continue to operate the ground water remedy until the time specified by EPA;
- (2) attain Performance Standards for any contaminants for which EPA has not specifically granted a waiver; and
- (3) complete any other obligation under the Consent Decree.

b. Any petition submitted pursuant to VIII.a. shall include, at a minimum, the information and analyses required by EPA guidance on the technical impracticability of ground water remedies and the site-specific information described in Subparagraphs VIII.b.i. through VIII.b.ix., as follows:

i. A list of each Performance Standard for which a waiver is sought, and the spatial limits for which such a waiver is sought. The justification for a waiver required by items ii-xi, below, must be made for each contaminant or class of contaminants for which a waiver is sought.

ii. A description of known or suspected ground water contaminant sources at the site. The petition shall also describe source control and removal efforts that have been implemented and the effectiveness of those efforts.

iii. Comprehensive ground water monitoring data and an evaluation of the ground water remedy implemented, along with any other remediation actions performed which enhanced or affected this remedy. The monitoring data and performance evaluation shall demonstrate, using an appropriate engineering and statistical analysis, that the ground water remedy has been operating for a sufficiently long period of time as determined by EPA, to permit a reliable analysis of its performance and its ability to achieve Performance Standards. The petition shall also demonstrate that the remedy has been designed, constructed, and operated in a manner which is consistent with the approved RD/RA Work Plan and the conceptual models for the site contamination, and that the system has been modified or enhanced to the extent practicable, from an engineering perspective, to optimize its performance in an effort to attain the Performance Standards.

iv. A description of the conceptual model for evaluation of Site contamination, including geologic and

hydrogeologic characterization. A description of the distribution; characteristics; migration, potential migration and fate; and quantities of contaminants present at the site. These descriptions shall incorporate pertinent data obtained during the design, construction, and operation of the remedial system, as well as information obtained during previous site characterization efforts.

v. An analysis of the performance of the ground water remedy which describes the spatial and temporal trends in ground water contaminant concentration, within the ground water plume; for example, whether contaminant migration has been effectively prevented, as well as any reductions or changes in the overall size or location of the ground water plume, or stabilized or very slow decreases in contaminant concentrations. The petition shall discuss the factors which influence the remedy's ability to achieve the Performance Standards, and demonstrate how these factors inhibit the remedial system achieving the Performance Standards.

vi. A demonstration, including appropriate engineering analysis, that other conventional or innovative technologies which are potentially applicable at the Site cannot attain the Performance Standards in a manner that is practicable from an engineering perspective. This demonstration should include a prediction of the effectiveness of other technologies in meeting the ground water treatment Performance Standards.

vii. A predictive analysis of the approximate time frame required to achieve the Performance Standards with the existing ground water remedy, and any alternative remedial

strategies, if applicable, using methods appropriate for the data and the site-specific conditions. Such analyses shall also address the uncertainty inherent in these predictions.

viii. For the implemented remedy and for any alternative remedial strategies proposed as part of this petition, identification of the potential pathways by which humans and the environment are or may become exposed to the contaminated ground water left in place. Contaminant concentration and other data needed for EPA to perform risk analyses shall be provided as part of the petition.

ix. A description of the proposed alternative remedial strategy, or a comparison of two or more strategy options, proposed to be implemented by the Settling Defendants if a waiver is granted, and the level of containment and control of hazardous substances, pollutants, and contaminants the proposed alternative strategy(ies) will attain. Alternative remedial strategies must attain a level of containment which ensures protection of human health and the environment. Alternative remedial strategies may include the establishment of alternative Performance Standards, site-specific action levels, and other alternative remediation requirements to ensure protectiveness. Proposed modifications to the existing remedy and any additional response action proposed to be undertaken shall be described by the Settling Defendants in detail. EPA will make the final determination regarding the components of the alternative remedial strategy which shall be implemented at the Site by the Settling Defendants. EPA's

determination on the petition shall be consistent with the NCP, Section 121(d) of CERCLA, and any other applicable laws, regulations, and guidance in effect at the time.

c. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, grants any petition or other relief pursuant to this Section, that decision will be reflected in a post-ROD decision document. If modification of this Consent Decree is required to implement EPA's decision, such modification will be filed and, if necessary, Court approval will be sought in accordance with Section XXXII of this Consent Decree ("Modification").

d. Upon issuance of EPA's post-ROD decision document, filing of a modification with the Court and, if necessary, issuance of a court order approving the modification, Settling Defendants shall implement the modifications selected by EPA to the ground water portion of the remedial action or additional response actions relating ground water contamination, and achieve and maintain all Performance Standards, alternative Performance Standards, and remediation requirements established pursuant to this section. Unless expressly modified by EPA's decision on the petition submitted hereunder, all requirements of this Consent Decree, including Settling Defendants' obligation to achieve the alternative Performance Standards and to conduct long-term ground water monitoring, shall continue in force and effect.

e. In the event that EPA issues a post-ROD decision document which waives any of the Performance Standards under the

authority of Section 121(d)(4)(C) of CERCLA, the Commonwealth expressly reserves the right to challenge EPA's waiver or post-ROD decision document pursuant to federal or state law including, but not limited to, Sections 121(e)(2) and 121(f)(2)(A) of CERCLA through this subparagraph.

f. EPA's decisions pursuant to this Section VIII (Technical Impracticability) shall not be subject to Section XX (Dispute Resolution) or otherwise subject to judicial review.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA NEIC Policies and Procedures Manual", August 1991, EPA No. 330/9-78-001-R; "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," August 1994, EPA QA/R5; "Preparing Perfect Project Plans", October 1989, (EPA/600/9-88/087); "EPA's Data Quality Objective Process for Superfund", 1993, EPA/540/R-93/0071; and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, a Quality Assurance Project Plan ("QAPP") that is consistent with the above listed documents, the Work Plans, the NCP, and any amendments to these guidelines. If

relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods and have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by

EPA.

23. Settling Defendants shall provide data validation of analyses which were performed by the laboratory(ies) in accordance with the following: "Functional Guidelines for Data Review"; "US EPA Region III Innovative Approaches to Data Validation," June 1995; Region III Modifications to the National Functional Guidelines for Organic Data Review," September 1994; and "Region III Modifications to the National Functional Guidelines for Inorganic Data Review," April 1993, as amended, for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, Respondent must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports shall be submitted, along with sample data and summary sheets, to the EPA RPM in accordance with reporting requirements to be described in the RD and RA Work Plans, Remedial Design, and O&M Plan.

24. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Defendants shall notify EPA and the Commonwealth not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the

protection by railroad personnel, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the Commonwealth;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

The term "reasonable times" as used herein, shall, at a minimum, include but shall not be limited to, the hours of 8 a.m. to 5 p.m., Monday through Friday, and the hours during which work pursuant to this Consent Decree is being performed at the Site.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the Commonwealth and their representatives, including,

but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within forty-five (45) days of the date of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Defendants in writing or Settling Defendants identify that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States or the Commonwealth may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States and/or the Commonwealth, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

29. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

30. Within thirty (30) days of the Regional Administrator's signing of this Consent Decree, Settling Defendants shall place restrictions on the deed to the Rail Yard Site Property to prohibit: (1) use of the property for residential or agricultural

purposes; and, (2) the use of Rail Yard Site Property groundwater for domestic purposes, including drinking water. The deed restrictions shall be such as to run with the land and shall remain in effect until EPA, in consultation with the Commonwealth of Pennsylvania, determines that they are no longer required to protect human health and welfare and the environment.

XI. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the Commonwealth three (3) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and PERT charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any

modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 50.b of Section XV (Certification of Completion). If requested by EPA or the Commonwealth, Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

32. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA

Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region III, United States Environmental Protection Agency at (215) 566-3255, and the Commonwealth's Project Officer. These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

34. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit five (5) copies of all plans, reports, and data required by the Work, the Remedial Design Work Plan, the Remedial Action Work Plan, and any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit three (3) copies of all such plans, reports and data to the Commonwealth.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS; COMMONWEALTH REVIEW AND COMMENT

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as

provided in Section XXI (Stipulated Penalties).

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, within fourteen (14) days, or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the fourteen (14) day period or, otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is

disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

43. Within ten (10) days of lodging this Consent Decree, the Settling Defendants, the Commonwealth and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity

of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and Commonwealth contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$19,000,000 in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants;

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) (for these purposes, references in 40 C.F.R. 264.143(f) to "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean the amount of financial security specified above).

46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), they shall resubmit sworn statements conveying the information required

by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45, above, after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

48. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to

and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Approval) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants' Project

Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the Rail Yard Site Property remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Work Plans or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion.

c. Certification of Completion by Plaintiff, Commonwealth of Pennsylvania.

1. If, after the HSCA pre-certification inspection is conducted, Settling Defendants still believe that the Remedial Action has been fully performed and that the Performance Standards have been attained, Settling Defendants shall, within thirty (30) days of such inspection, submit a written report to the Commonwealth which requests HSCA certification of completion of the Work and demonstrates its basis. The report shall be signed by the Settling Defendants' Project Coordinator and a registered professional engineer.

2. If, after review of the written report, the Commonwealth determines that the Remedial Action has not been fully performed or the Performance Standards contained in the portion of

the ROD covered by this Consent Decree have not been attained, the Commonwealth will notify Settling Defendants in writing of the activities that remain to be completed before the Remedial Action is fully performed and the Performance Standards are fully achieved.

3. If, after review of the written report submitted by the Settling Defendants pursuant to Paragraph XV.49.c.1., the Commonwealth determines that the Remedial Action has been fully performed and the Performance Standards as defined in this Consent Decree have been attained, the Commonwealth will provide to the Settling Defendants a written HSCA certification of completion of the Remedial Action for purposes of the Commonwealth's Covenant Not to Sue with regard to future liability under HSCA pursuant to Section 706 of HSCA, 35 P.S. § 6020.706 and Paragraph 86 of this Consent Decree. This HSCA certification of completion is contingent upon Settling Defendants continuing performance of O & M as required by the portion of the ROD covered by this Consent Decree and shall not exceed the scope of the remedial action as contained in that portion of the ROD covered by this Consent Decree.

50. Completion of the Work

a. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the Commonwealth. If, after the pre-certification

inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the Commonwealth, or, in the case of O&M, EPA, or the Commonwealth determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA, or the Commonwealth will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA, or the Commonwealth may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the Rail Yard Site Property remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA, or the Commonwealth will set forth in the notice a schedule for performance of such activities consistent with this Consent Decree or require the Settling Defendants to submit a schedule to EPA, or the Commonwealth for approval pursuant to Section XII (EPA Approval

of Plans and Other Submissions; Commonwealth Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region III Hotline at (215) 566-3255. Settling Defendants 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, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the Commonwealth takes such action instead, Settling Defendants shall reimburse EPA and the Commonwealth all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the Commonwealth: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXII (Covenants Not to Sue by Plaintiffs).

XVII. REIMBURSEMENT OF RESPONSE COSTS

53. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendants shall:

a. Pay to the EPA Hazardous Substance Superfund \$500,000, in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds

transfer procedures, referencing U.S.A.O. file number 86-00456, the EPA Region and Site/Spill ID #03J9, and DOJ case number 90-11-2-152. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVII (Notices and Submissions) to:

Docket Clerk (3RC00)
U.S. EPA -- Region III
841 Chestnut Building
Philadelphia, PA 19107

b. Pay to the Commonwealth \$100,000 in reimbursement of past response costs. Such payment shall be made by certified check or the like, payable to "Hazardous Sites Cleanup Fund" and sent to:

Bruce D. Beitler, Manager
Environmental Cleanup Program
Lee Park -- Suite 6010
555 North Lane
Conshohocken, PA 19428

All payments made to the Commonwealth in accordance with the terms of this Consent Decree shall be made as prescribed in this paragraph.

c. Pay to the United States and the Commonwealth of Pennsylvania \$850,000 for natural resource damage assessment and restoration. Unless otherwise directed by the United States Department of Justice, payment shall be made in the form of a

certified check made payable to "U.S. Department of the Interior", and referencing Account Number 14X5198 and the name of the Site, the Paoli Rail Yard Superfund Site. The Settling Defendants shall forward the certified check by certified mail, return receipt requested to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, VA 22203

with copies to:

Marcia Gittes, Esquire
Office of the Regional Solicitor
United States Department of Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

and

Dennis Guise, Esquire
Deputy Executive Director/Chief Counsel
Pennsylvania Fish and Boat Commission
P.O. Box 67000
Harrisburg, PA 17106-7000

and shall reference that the payment is for natural resource assessment and damages for resources under the trusteeship of DOI and the Commonwealth of Pennsylvania with respect to the Site. A copy of the check paid pursuant to this subparagraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

1. Disbursement of Funds and Implementation of Restoration

The jurisdictions and trusteeships of DOI and the Commonwealth as natural resource trustees overlap. Accordingly, to facilitate the expeditious implementation of restoration, and to insure that the trustees' interests and concerns are fully

addressed, all monies recovered for natural resource damages arising from the Site shall, unless otherwise directed by the United States Department of Justice, be held by DOI in an interest bearing account in its Natural Resource Damage Assessment and Restoration Fund and said monies, together with all interest accrued thereon, shall only be spent for restoration, to reimburse past trustee assessment costs, and to fund future assessment activities associated with the Site. All of said expenditures, including, but not limited to, decisions as to the allocation of recovered natural resource damages among past and future assessment and restoration shall be made by the Natural Resource Trustees pursuant to and in conformity with the provisions and procedures set forth in a Memorandum of Agreement to be entered into between DOI and the Commonwealth of Pennsylvania. None of the monies recovered for natural resource damages arising from the Site, including interest accrued thereon, shall be obligated or expended prior to the execution of a mutually agreed upon Memorandum of Agreement.

53.d. In the event that the payments required by Paragraph 53.a-c are not made within thirty (30) days of the effective date of this Consent Decree, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and Commonwealth Past Response Costs under this Paragraph shall begin to accrue thirty (30) days after the effective date of this Consent Decree. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this

Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.a-c.

XVIII. INDEMNIFICATION AND INSURANCE

54. a. The United States and the Commonwealth do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the Commonwealth, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the Commonwealth all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based upon negligent or other wrongful

acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give Settling Defendants notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to Paragraph 54.a., and shall consult with Settling Defendants prior to settling such claim.

55. Settling Defendants waive all claims, including any and all counterclaims, past, present or future, against the United States and the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

56. No later than fifteen (15) days before commencing any Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.b. of Section XV (Certification of Completion), or shall ensure that their contractors secure and maintain, comprehensive general liability insurance with limits of \$5,000,000 dollars, combined single limit, and automobile liability insurance with limits of \$1,000,000 dollars, combined single limit, naming the United States and the Commonwealth as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the Commonwealth certificates of insurance documenting that such insurance has been secured by Settling Defendants, or their Supervising contractor(s) and/or subcontractor(s) on Settling Defendants' behalf and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies

each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA and the Commonwealth that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, or a failure to attain the Performance Standards, or increased costs.

58. If any event occurs or has occurred that may delay the

performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region III, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA and the Commonwealth 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; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by

Settling Defendants, or Settling Defendants' contractors knew or should have known.

59. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

60. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence

that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 57 and 58, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section. Nor shall this Section apply to disputes between the United States and the Commonwealth. Nor shall this Section apply to the procedures set forth in Section VIII (Technical Impracticability) of this Consent Decree.

62. Any dispute which arises under or with respect to 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 twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be

considered to have arisen when one party sends the other parties a written Notice of Dispute.

63. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 64 or 65.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants 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 64 or 65. Within fourteen (14) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under

Paragraph 64 or 65, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal 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 64 and 65.

64. 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: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA and/or the Commonwealth under this Consent Decree; and (2) 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 Defendants 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, after reasonable opportunity for review and comment by the Commonwealth, may allow submission of supplemental Statements of Position by the parties to the dispute.

b. The Associate Director of the Office of Superfund

Programs, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 64.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

c. Any final administrative decision made by EPA pursuant to Paragraph 64.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all parties within ten (10) days of 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 Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Associate Director of the Office of Superfund Programs, EPA Region III, 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 64.a. Where the dispute involves efforts by the Commonwealth to enforce any federal or state standard, requirement, criteria, or limitation to which the Work is required to conform, the Commonwealth shall have all rights which it is afforded under Section 121(e)(2) of CERCLA, 42 U.S.C.

§ 9621(e)(2).

65. 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. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 63, the Associate Director of the Office of Superfund Programs, EPA Region III, will issue a final decision resolving the dispute. The Associate Director's decision shall be binding on the Settling Defendants unless, within ten (10) days of receipt of the decision, the Settling Defendants file with the Court and serve 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 Defendants' motion.

b. Notwithstanding Paragraph Q of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law. Where the dispute involves efforts by the Commonwealth to enforce any federal or state standard, requirement, criteria, or limitation to which the Work is required to conform, the Commonwealth shall have all rights which it is afforded under Section 121(e)(2) of CERCLA, 42 U.S.C. § 9621(e)(2).

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. 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 the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

67. Unless otherwise specifically set forth herein, failure to provide expressly for Dispute Resolution in any Section of this Consent Decree is not intended and shall not bar Settling Defendants from invoking this Section XX as to any dispute arising under this Consent Decree.

XXI. STIPULATED PENALTIES

68. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69 and 70, 50% to the United States and 50% to the Commonwealth, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance

with all applicable requirements of law, this Consent Decree, the Work Plans, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b, below, of this Section:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,000	15th through 30th day
\$6,000	31st day and beyond

b. Stipulated penalties will accrue for failure to comply with requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Remedy Review), Section IX (Quality Assurance, Sampling and Data Analysis), Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Comment), and Section XVI (Emergency Response).

70.a. The following stipulated penalties shall accrue per violation per day, 50% to the United States and 50% to the Commonwealth, for any noncompliance identified in subparagraph b, below, of this Section:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,500	15th through 30th day
\$5,000	31st day and beyond

b. Stipulated penalties will accrue for failure to comply with requirements of Section V (General Provisions), Section XI

(Reporting Requirements), Section XIV (Assurance of Ability to Complete Work), and Section XV (Certificate of Completion).

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable to EPA for a stipulated penalty in the amount of \$25,000.

72. 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: (1) with respect to a deficient submission under Section XII (EPA Approval of Plans and Other Submissions; Commonwealth Review and Comment), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Associate Director of the Office of Superfund Programs, EPA Region III, under Paragraph 64.b. or 65.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Associate Director of the Office of Superfund Programs, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (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 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

74. All penalties accruing under this Section shall be due and payable to the United States and the Commonwealth within thirty (30) days of the Settling Defendants' receipt from EPA and/or the Commonwealth of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

United States Environmental Protection Agency
Region III
Attention: Superfund Accounting
P.O. Box 36051
Pittsburgh, PA 15251-6515

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #03-J9 the DOJ

Case Number 90-11-2-152, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions), and to

Docket Clerk (3RC00)
U.S. EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

All payments to the Commonwealth under this Section shall be made in the manner provided in Paragraph 52(b).

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 66 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the Commonwealth within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the Commonwealth within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any

Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the Commonwealth into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the Commonwealth or to Settling Defendants to the extent that they prevail.

77.a. If Settling Defendants fail to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which Interest shall begin to accrue on the date of any demand made pursuant to Paragraph 73.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that for any particular violation of this Consent Decree, the United States shall be limited to either demanding stipulated penalties pursuant to this Section XXI of the Consent Decree or pursuing civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a

stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

78. Notwithstanding any other provision of this Section, the United States, in consultation with the Commonwealth, may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

79. In consideration of the actions that have been and will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 80, 81 and 33 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607, Section 7003 of RCRA, 42 U.S.C. § 9673, and Section 7 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2606, for any Matters Addressed in this Consent Decree. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 53 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the

Settling Defendants and do not extend to any other person.

80. United States' Pre-Certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

81. United States' Post-Certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of

Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

82. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree which information shall include those documents contained in the administrative record and Site file supporting the Record of Decision. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

83. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 79. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including

but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for future disposal of Waste Material at the Site, other than as provided in the Rail Yard Site Portion of the ROD covered by this Consent Decree, the Work Plans, or otherwise ordered by EPA;

(4) criminal liability;

(5) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(6) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the Work);

(7) liability for costs that the United States will incur related to the Rail Yard Site Property but are not within the definition of Future Response Costs.

a. Reservations concerning natural resource injury

Notwithstanding any other provision of this Decree, the United States and the Commonwealth, on behalf of their natural resource trustees, reserve the right to institute proceedings against Settling Defendants in this action or in a new action

seeking recovery of Natural Resource Damages, based upon: (1) conditions with respect to the Site, unknown to the United States or the Commonwealth at the date of lodging of this Consent Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources; or (2) information received after the date of lodging of the Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude significantly greater than was known, to the United States or the Commonwealth at the date of lodging of this Decree.

84. Work Takeover In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 64 to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and

reserve all rights to take any and all response actions authorized by law.

86. Covenants Not to Sue by Plaintiff Commonwealth of Pennsylvania.

a. Subject to the reservations provided in this Paragraph and Paragraph 87.a and 87.b of this Section and Settling Defendants' full compliance with this Consent Decree, and in consideration of the past actions taken and of payments to be paid by Settling Defendants, the Commonwealth covenants not to sue or order or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Sections 507, 701, 702, 1101, and 1102 of HSCA, 35 P.S. §§ 6020.507, 6020.701, 6020.702, 6020.1101, and 6020.1102, or any other statutory or common law provision for performance of the Work and recovery of Past Response Costs and Future Response Costs as defined in this Consent Decree. Except with respect to future liability under HSCA, this covenant not to sue shall take effect upon the signing of this Consent Decree by the Parties and the receipt by the Commonwealth of the payments required by Paragraph 53.b of Section XVII (Reimbursement of Response Costs). With respect to future liability under HSCA, this covenant not to sue shall become effective upon Certification of Completion of Remedial Action by the Commonwealth pursuant to Paragraph 49.c of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do

not extend to any other person.

87. The Commonwealth's Reservation of Rights.

a. Notwithstanding any other provision of this Consent Decree, the Commonwealth reserves the right to institute proceedings or institute an administrative action seeking to compel Settling Defendants to perform additional response actions relating to the Site and to reimburse the Commonwealth for additional response costs relating to the Site if:

(1) Conditions at the Site, including newly identified substances, previously unknown to the Commonwealth are discovered after the execution of this Consent Decree; or

(2) Information, including new toxicological information, previously unknown to the Commonwealth, in whole or in part, is received by the Commonwealth after the execution of this Consent Decree, and this information alone or together with other relevant information indicates that the Remedial Action is not protective of human health and the environment; or

(3) Settling Defendants, their officers, directors, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether the Remedial Action is protective of human health or the environment; or

(4) The completed remedy fails to continue to meet the Performance Standards contained in the portion of the ROD covered by this Consent Decree or the remedy fails to achieve the purposes for which it was designed, as set forth in the portion of the ROD covered by this Consent Decree.

For purposes of this Paragraph, conditions at the Site and information known to the Commonwealth shall include only those conditions and information set forth in the ROD, the Administrative Record, and Site file supporting the ROD.

b. The Commonwealth's Further Reservation of Rights

The covenants not to sue by the Commonwealth set forth in

paragraph 86 shall not apply to claims by the Commonwealth, against the Settling Defendants based upon:

- (1) Failure to meet the requirements of this Consent Decree, including, but not limited to, failure to perform the O & M; or
- (2) Past, present, or future disposal of hazardous substances or contaminants outside the boundaries of the Site; or
- (3) past, present, or future violations of federal or state criminal law;
- (4) violations of federal or state law other than those settled here which occur during or after implementation of the Remedial Action; and
- (5) costs that the Commonwealth may incur related to the Site or has incurred, but which are not within the definition of Past and Future Response Costs.

With regard to all matters not expressly addressed by the Consent Decree, the Commonwealth specifically reserves all rights to institute equitable, administrative, civil and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth.

XXIII. COVENANTS BY SETTLING DEFENDANTS

88. Covenant Not to Sue. Subject to the reservations in Paragraph 89, Settling Defendants hereby covenant not to sue and agree not to assert any claims, counterclaims, or causes of action against the United States or the Commonwealth with respect to the Site for the Work, past response actions, and Past and Future Response Costs as defined herein, or this Consent Decree, including, but not limited to:,

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal

Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law, including, but not limited to the existing claim filed by the Settling Defendants In the Matter of Paoli RailYard Site: U.S. v. SEPTA, et al., Petition for Reimbursement of Costs pursuant to Section 106(b)(2) of CERCLA, Appeal No. 94-5 which claim Settling Defendants will within ten (10) days of entry of this Consent Decree, dismiss with prejudice;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA §§ 107 or 113 related to the Site, or

c. any claims against the Commonwealth, including any department, agency or instrumentality of the Commonwealth under Section 505(f) of HSCA, 35 P.S. § 6020.505(f), or

d. any claims arising out of response activities at the Site, including claims based on EPA's and/or the Commonwealth's selection of response actions, oversight of response activities or approval of plans for such activities, and further agree to settlement and withdrawal of any and all existing claims and/or counterclaims which have not, as yet, been finally adjudicated, by this, or any other court.

89. The Settling Defendants reserve, 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, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope

of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

91. 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2), for Matters Addressed in this Consent Decree.

93. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim.

94. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the Commonwealth within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the Commonwealth within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

95. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may

not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth 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 XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

96. Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all documents and information within their possession or control or that of their 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 related to the Work. Settling Defendants shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

97.a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree 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). Documents or

information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

at or around the Site.

XXVI. RETENTION OF RECORDS

99. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.a of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the Commonwealth at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the Commonwealth, Settling Defendants shall deliver any such records or documents to EPA or the Commonwealth. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the

Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVII. NOTICES AND SUBMISSIONS

102. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the

other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth and the Settling Defendants, respectively.

As to the United States:

Section Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-2-152

and

Thomas C. Voltaggio (3HW00)
Director, Waste Management Division
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

Frances L. Costanzi (3HW21)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the State:

Tim Sheehan
Commonwealth Project Coordinator
Southeast Region -- Lee Park
555 E. North Lane - Suite 6010
Conshohocken, PA 19428-2233

As to the Settling Defendants:

Martin Brunges
SEPTA

1234 Market Street
Philadelphia, PA 19107

Thomas Pendergast
Conrail
2001 Market Street
6-A
P.O. Box 41406
Philadelphia, PA 19101-1406

Robert LaRosa
Amtrak
NEC Safety and Environmental Control Department
30th Street Station
5th Floor S
Philadelphia, PA 19104

XXVIII. EFFECTIVE DATE

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

104. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants 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 XX (Dispute Resolution) hereof.

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is an aerial photograph of the Rail Yard Site Property.

"Appendix C" is an aerial photograph of the Non-Rail Yard Site Property.

"Appendix D" is the Explanation of Significant Differences.

XXXI. COMMUNITY RELATIONS

106. Settling Defendants shall propose to EPA and the Commonwealth their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or relating to the Site.

XXXII. MODIFICATION

107. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

108. Except as otherwise provided in Paragraph 13 ("Modification of the Work"), no material modifications shall be made to provisions of the Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United

States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that does not materially alter the requirements of those documents may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

111. This Consent Decree shall be lodged with the Court until the requirements of Section 1113 of HSCA, 35 P.S. §§ 6020.1113, are met. These requirements include notice published in the Pennsylvania Bulletin and a newspaper of general circulation in the area of release, and a sixty (60) day public comment period. The

Commonwealth reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or not in the public interest.

112. 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.

XXXIV. SIGNATORIES/SERVICE

113. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice and the Commonwealth of Pennsylvania certifies that he/she/it 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.

114. Each Settling Defendant hereby 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, or the Commonwealth has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

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

set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXV. RELATIONSHIP BETWEEN CONSENT ORDER AND CONSENT DECREE

116. The United States and the Settling Defendants have agreed that certain portions of the Work shall commence in accordance with the Administrative Order on Consent, EPA Docket No. III-97-10-DC, ("Consent Order") prior to the effective date of this Consent Decree. Upon the effective date of this Consent Decree, and as set forth in Section III of the Consent Order, the Consent Order shall terminate. It is agreed by the Parties, that upon termination of the Consent Order due to entry of this Consent Decree, performance of work commenced under the Consent Order shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the Consent Order. To the extent that Settling Defendants have fulfilled obligations under the Consent Order that are also required by this Consent Decree, Settling Defendants shall also be deemed to have fulfilled such obligations under this Consent Decree.

SO ORDERED THIS 20th DAY OF April, 1999

Robert D. Kelly
United States District Judge

ENTERED: 4-21-99

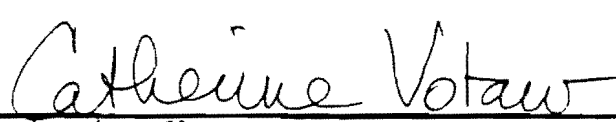
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 86-1094, relating to the Paoli Rail Yard Superfund Site.

FOR THE UNITED STATES OF AMERICA

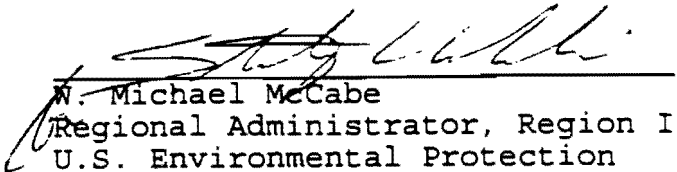
Date: 6/27/97


Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

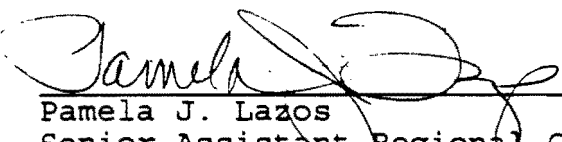

David L. Dain
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

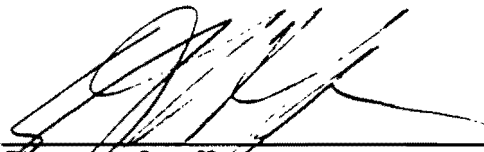

Catherine Votaw
Deputy Chief, Civil Division
United States Attorney
Eastern District of Pennsylvania
U.S. Department of Justice
615 Chestnut Street
Philadelphia, PA 19107

U.S. v. Southeastern Pennsylvania Transportation Authority - Civil Action #86-1094


W. Michael McCabe
Regional Administrator, Region III
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841 Chestnut Building
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Marcia E. Mulkey
Regional Counsel
U.S. Environmental Protection
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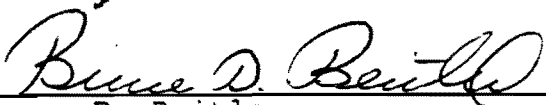

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Steven A. Herman
Assistant Administrator for Enforcement
Office of Compliance Assurance
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Washington, D.C. 20460

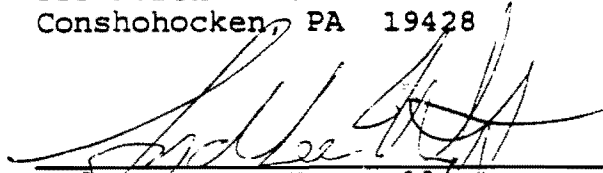
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 86-1094, relating to the Paoli Rail Yard Superfund Site.

FOR THE COMMONWEALTH OF PENNSYLVANIA

Date: 5-30-97



Bruce D. Beitler
Manager, Environmental Cleanup Program
Lee Park -- Suite 6010
555 North Lane
Conshohocken, PA 19428



Anderson Lee Hartzell
Supervising Counsel
Bureau of Hazardous Sites and
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Lee Park -- Suite 6015
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5/30/97

Dennis Guise, Esquire
Deputy Executive Director/Chief Counsel
Pennsylvania Fish and Boat Commission
P.O. Box 67000
Harrisburg, PA 17106-7000

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 86-1094, relating to the Paoli Rail Yard Superfund Site.

FOR THE COMMONWEALTH OF PENNSYLVANIA

Date: _____

Bruce D. Beitler
Manager, Environmental Cleanup Program
Lee Park -- Suite 6010
555 North Lane
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Anderson Lee Hartzell
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Bureau of Hazardous Sites and
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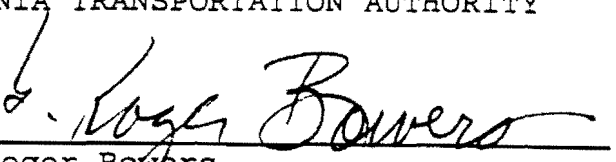


Dennis Guise, Esquire
Deputy Executive Director/Chief Counsel
Pennsylvania Fish and Boat Commission
P.O. Box 67000
Harrisburg, PA 17106-7000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 89-1094, relating to the Paoli Superfund Site.

FOR THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

Date: April 14, 1997


G. Roger Bowers
General Counsel
1234 Market Street
5th Floor
Philadelphia, PA 19107-3780

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

G. Roger Bowers
General Counsel
1234 Market Street
5th Floor
Philadelphia, PA 19107-3780
(215) 580-7321

Copy to: Eugene N. Cipriani
Assistant Deputy Counsel
1234 Market Street
5th Floor
Philadelphia, PA 19107-3780
(215) 580-7318

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 86-1094, relating to the Paoli Superfund Site.

FOR THE NATIONAL RAILROAD PASSENGER CORPORATION

Date:

16 May '97



Robert C. VanderClute
Vice President - Operations
60 Massachusetts Ave., N.E.
Washington, D.C. 20002

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

Dennis M. Moore
Associate General Counsel
Amtrak Law Department
60 Massachusetts Ave., N.E.
Washington, D.C. 20002
202-906-2750

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. SEPTA, et al., Civil Action No. 86-1094, relating to the Paoli Superfund Site.

FOR THE CONSOLIDATED RAIL CORPORATION

Date: May 9, 1997


Thomas P. Pendergast
Senior Director -
Environmental Quality
Consolidated Rail Corporation
2001 Market Street, 6A
Philadelphia, PA 19101-1406

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

Janet L. Scagnelli
General Counsel - Environmental
Consolidated Rail Corporation
2001 Market Street, 16-A
Philadelphia, PA 19101-1416
(215) 209-5021