

SETTLEMENT AGREEMENT

among

THE DEPARTMENT OF COMMERCE and
THE DEPARTMENT OF THE INTERIOR
of the UNITED STATES OF AMERICA

and

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, and
THE FISH AND BOAT COMMISSION
of the COMMONWEALTH OF PENNSYLVANIA

AND

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
BALTIMORE GAS AND ELECTRIC COMPANY
JERSEY CENTRAL POWER AND LIGHT COMPANY
LONG ISLAND LIGHTING COMPANY d/b/a LIPA
METROPOLITAN EDISON COMPANY
ORANGE AND ROCKLAND UTILITIES, INC.
PECO ENERGY COMPANY
POTOMAC ELECTRIC POWER COMPANY
PPL ELECTRIC UTILITIES CORPORATION
VIRGINIA ELECTRIC AND POWER COMPANY, and
DELMARVA POWER & LIGHT COMPANY

I. INTRODUCTION

A. This Settlement Agreement is entered into to resolve, without litigation, civil claims pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, and Section 507 of the Pennsylvania Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, as amended (“HSCA”), 35 P.S. § 6020.507. The resolved claims are for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the reasonable costs of assessing the injuries, resulting from hazardous substances released at the Metal Bank Superfund Site in Philadelphia, Pennsylvania (the “Site”).

B. The resolved claims are alleged by the United States of America, on behalf of the Department of Commerce acting through the National Oceanic and Atmospheric Administration (“NOAA”), and the Department of the Interior (“DOI”) acting through the United States Fish and Wildlife Service; and the Commonwealth of Pennsylvania, acting through the Department of Environmental Protection (“PADEP”), the Department of Conservation and Natural Resources (“DCNR”), and the Fish and Boat Commission (“PFBC”) (collectively, the “Trustees”), against Consolidated Edison Company of New York, Inc., Public Service Electric and Gas Company, Baltimore Gas and Electric Company, Jersey Central Power and Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, Inc., PECO Energy Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Virginia Electric and Power Company, and Delmarva Power & Light Company (collectively, “Settling Defendants”).

C. NOAA and DOI have been delegated authority to act as the Federal Trustees for natural resources impacted by the release of hazardous substances at or from the Site pursuant to

Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300. PADEP, DCNR, and PFBC are acting in their capacity as Commonwealth Trustees for natural resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605.

D. The execution of this Settlement Agreement shall not constitute an admission of liability by Settling Defendants, and shall not be used in any other action against Settling Defendants as proof of liability.

II. PARTIES BOUND

1. The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendants, and all of their successors and assigns, and upon Trustees.

III. DEFINITIONS

2. Unless otherwise expressly provided herein, the terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Commonwealth Trustees” means the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Conservation and Natural Resources, and the Pennsylvania Fish and Boat Commission.

“Day” means 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 Settlement Agreement, 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.

“DOI” means the United States Department of the Interior.

“Effective Date” means the date that this Settlement Agreement goes into effect as provided by Section XII (Effective Date) below.

“Federal Trustees” means the DOI and NOAA.

“HSCA” means the Pennsylvania Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, as amended, 35 P.S. §§ 6020.101-6020.1305.

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

“Natural Resource” or “Natural Resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the Commonwealth.

“Natural Resource Damages” means any damages recoverable by the United States or the Commonwealth on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources as a result of the release of hazardous substances at the “Site,” including, but not limited to: (i) the reasonable costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

“Natural Resource Damage Assessment Costs” means costs incurred by the Trustees in assessing the Natural Resource Damages that have occurred at the Site.

“Natural Resource Restoration Projects” means the projects or project to be developed and overseen by the Trustees to restore, replace, or acquire the equivalent of the Natural Resources that have been injured as a result of releases of hazardous substances at the Site.

“NOAA” means the National Oceanic and Atmospheric Administration.

“NRDAR Fund” means the Natural Resource Damage Assessment and Restoration Fund managed by the Department of the Interior.

“Paragraph” means a portion of this Settlement Agreement identified by an arabic numeral or an upper case letter.

“Parties” means the United States, the Commonwealth, and the Settling Defendants.

“Settling Defendants” means Defendants Consolidated Edison Company of New York, Inc., Public Service Electric and Gas Company, Baltimore Gas and Electric Company, Jersey Central Power and Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, Inc., PECO Energy Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Virginia Electric and Power Company, and Delmarva Power & Light Company.

“Settlement Agreement” shall mean this agreement between the United States, the Commonwealth, and the Settling Defendants.

“Site” means the Metal Bank Superfund Site in Philadelphia, Pennsylvania at which the U.S. Environmental Protection Agency certified that construction of the remedy was complete in March 2010 and, after inspections in 2012 revealed structural defects and damage to a sheet-pile

wall caused by movement of the wall toward the adjacent Delaware River, approved work to repair these defects and damage in December 2016.

“Subparagraph” means a portion of this Settlement Agreement identified by a lower case letter or an arabic numeral in parentheses.

“Trustees” means the Federal Trustees and the Commonwealth Trustees.

“United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

IV. PAYMENTS BY SETTLING DEFENDANTS

3. The Settling Defendants shall pay a total of \$950,000 to the Trustees as set forth below:

a. Payments to the United States for Natural Resource Damage Assessment Costs. Within 30 days after the Effective Date, Settling Defendants shall pay \$414,807 to the United States to reimburse the Trustees for Natural Resource Damage Assessment Costs incurred at the Site.

(1) \$74,807 will reimburse DOI for Natural Resource Damage Assessment Costs which it has incurred relating to this Site; and

(2) \$340,000 will reimburse NOAA for Natural Resource Damage Assessment Costs which it has incurred relating to this Site.

b. Payments for Natural Resource Restoration Projects. Within 30 days after the Effective Date, Settling Defendants shall pay \$535,193 to the United States for Natural Resource Restoration Projects to be implemented by the Trustees.

4. Payment of the amounts set forth in Paragraph 3 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with

current EFT procedures, referencing DOJ Case Number 90-11-2-1183/2. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Eastern District of Pennsylvania. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The total amount to be paid by Settling Defendants pursuant to this Subparagraph 4 shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by the Department of the Interior for the joint benefit and use of the Trustees to pay for Trustee-sponsored Natural Resource Restoration Projects. The FLU will provide the payment instructions to:

Jeffrey Martin, Esq.
Hunton Andrews Kurth LLP
jmartin@HuntonAK.com
(202) 955-1552

At the time of payment, Settling Defendants shall send a written and electronic notice of payment and a copy of any transmittal documentation to:

Grant Blumberg
Attorney-Advisor
Natural Resources Section
NOAA Office of General Counsel
263 13th Avenue South, Suite 176
St. Petersburg, FL 33701
grant.blumberg@noaa.gov

and

Chief, Environmental Enforcement Section
U.S. Department of Justice
DJ #90-11-2-1183/2
P.O. Box 7611
Washington, D.C. 20044-7611

and

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Bruce Nessler, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
Bruce_nessler@ios.doi.gov

and

Mark Barash, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
15 State Street, 8th Floor
Boston, MA 02109-3502
mark.barash@sol.doi.gov

5. If Settling Defendants fail to make any of the payments specified in Paragraph 3 when due, they shall pay Interest on those payments at the rate specified in 33 U.S.C.

§ 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.

6. In addition, if Settling Defendants fail to make any of the payments specified in Paragraph 3 when due, they shall pay \$500 as a stipulated penalty for each day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full. Separate stipulated penalties shall accrue for failure to make each such payment.

7. A stipulated penalty for failure to make the payment specified in Paragraph 3 shall be paid to the Department of the Interior NRDAR Fund in accordance with the payment instructions in Paragraph 4.

8. The stipulated penalty is due and payable within 30 days of the date of the demand for payment.

9. Payments made under Paragraphs 5 and 6 shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendants' failure to comply with the requirements of this Settlement Agreement.

10. Notwithstanding any other provisions of this Section IV, the Trustees may, in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement. Such waiver of payment shall not be construed as a waiver of any other payment(s) required under this Settlement Agreement.

11. Settling Defendants shall be liable for attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

12. The obligations of Settling Defendants to make the payments required under this Section IV are joint and several. In the event of the insolvency or other failure of any one Settling Defendant to implement the requirements of this Settlement Agreement, the remaining Settling Defendants shall complete all such requirements.

V. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY TRUSTEES

13. In consideration of the payments to be made by Settling Defendants pursuant to Section IV (Payments by Settling Defendants), the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendants pursuant to CERCLA, 42 U.S.C. § 9607, and HSCA, 35 P.S. § 6020.507, for Natural Resource Damages, and costs, attorneys' fees, other fees, or expenses incurred by the Trustees to recover Natural Resource Damages.

14. The covenant not to sue in Paragraph 13 is not effective until, and is conditioned upon, complete and satisfactory performance by Settling Defendants of their obligations under

Section IV (Payments by Settling Defendants) of this Settlement Agreement. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

15. Notwithstanding any other provision of this Settlement Agreement, the United States and the Commonwealth reserve, and this Settlement Agreement is without prejudice to, any claims not expressly included in Paragraph 13, including, but not limited to:

a. Claims based upon a failure of Settling Defendants to meet a requirement of this Settlement Agreement;

b. Criminal claims;

c. Claims for costs of removal or remedial action at the Site;

d. Claims for injury to, destruction of, or loss of natural resources that the United States, other than NOAA or FWS, may have under applicable law;

e. Claims for injury to, destruction of, or loss of natural resources that the Commonwealth of Pennsylvania, other than PADEP, DCNR, or PFBC, may have under applicable law; and

f. Claims for damages for injury to, destruction of, or loss of natural resources unrelated to the Site.

16. Notwithstanding any other provision of this Settlement Agreement, the United States and the Commonwealth each reserves the right to file claims against Settling Defendants seeking recovery of natural resource damages at the Site if conditions are discovered or information is received by the Trustees, not known to the Trustees on the Effective Date of this Settlement Agreement, that, together with any other relevant information, indicates that there is injury to, impairment of, destruction of, loss of, diminution of value of, or loss of use of natural resources of a type unknown or of a magnitude that is substantially greater than was known by

the Trustees, as of the date of their execution of this Settlement Agreement. For purposes of this Paragraph, the conditions and information known to the Trustees on the Effective Date of this Settlement Agreement shall include the conditions and information set forth in any sampling data and other data and information in the possession or control of the United States or the Commonwealth at any time prior to the Effective Date of this Settlement Agreement, and/or all analyses, diagrams, maps, reports, and surveys performed at the Site by or on behalf of the United States or the Commonwealth.

VI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

17. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the Trustees, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for:

- a. Claims related to Natural Resource Damages at the Site; or
- b. Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.

18. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth related to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section V (Covenant Not to Sue and Reservation of Rights by Trustees) herein.

VII. SIGNATORIES

19. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such Party to this Settlement Agreement.

VIII. ENTIRE AGREEMENT

20. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Settlement Agreement or the settlement it represents, nor shall it be used in construing the terms of this Settlement Agreement.

IX. MODIFICATION

21. The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. EXECUTION

22. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. PUBLIC COMMENT

23. Final approval by the Trustees and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than 60 days after publication of notice of this Settlement Agreement in the Federal Register and, pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, in the Pennsylvania Bulletin and in a newspaper of general circulation in the area of the Site. If public comments disclose facts or considerations which

indicate that this Settlement Agreement is inappropriate, improper, inadequate, or not in the public interest, the Trustees may, in their reasonable discretion, withdraw their approval of this Settlement Agreement. Settling Defendants agree not to withdraw their consent to this Settlement Agreement pending consideration of public comments and, if the Trustees withdraw their approval of this Settlement Agreement, until the Trustees have notified the Settling Defendants in writing of the Trustees' withdrawal of approval.

XII. EFFECTIVE DATE

24. The Effective Date of this Settlement Agreement shall be the date upon which the United States and the Commonwealth issue written notice to the Settling Defendants that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement.

Settlement Agreement to Resolve Natural Resource Damages Claims at the Metal Bank
Superfund Site, Philadelphia, Pennsylvania:

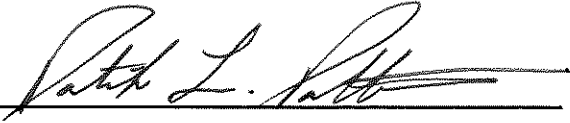
FOR THE UNITED STATES OF AMERICA:



NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Settlement Agreement to Resolve Natural Resource Damages Claims at the Metal Bank
Superfund Site, Philadelphia, Pennsylvania:

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:



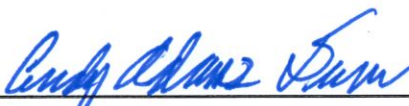
FOR THE PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES:

FOR THE PENNSYLVANIA FISH AND BOAT COMMISSION:

Settlement Agreement to Resolve Natural Resource Damages Claims at the Metal Bank
Superfund Site, Philadelphia, Pennsylvania:

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

FOR THE PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES:


Cindy Adams Dunn, Secretary

FOR THE PENNSYLVANIA FISH AND BOAT COMMISSION:

Settlement Agreement to Resolve Natural Resource Damages Claims at the Metal Bank
Superfund Site, Philadelphia, Pennsylvania:

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

FOR THE PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES:

FOR THE PENNSYLVANIA FISH AND BOAT COMMISSION:



8/31/20

Settlement Agreement to Resolve Natural Resource Damages Claims at the Metal Bank Superfund Site, Philadelphia, Pennsylvania:

FOR THE SETTLING DEFENDANTS (AS DEFINED IN PARAGRAPH 2 AND LISTED BELOW) BY THEIR DULY AUTHORIZED REPRESENTATIVE:


Jeffrey Martin, Esq.
Hunton Andrews Kurth LLP

1. Consolidated Edison Company of New York, Inc.
2. Public Service Electric and Gas Company
3. Baltimore Gas and Electric Company
4. Jersey Central Power and Light Company
5. Long Island Lighting Company d/b/a LIPA
6. Metropolitan Edison Company
7. Orange and Rockland Utilities, Inc.
8. PECO Energy Company
9. Potomac Electric Power Company
10. PPL Electric Utilities Corporation
11. Virginia Electric and Power Company
12. Delmarva Power & Light Company