

I. JURISDICTION AND GENERAL PROVISIONS

- 1.1 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Director of the Hazardous Site Cleanup Division, EPA Region III. This Settlement Agreement pertains to property located in the Borough of Columbia, Lancaster County, Pennsylvania. The property, known as the UGI Columbia Gas Plant Superfund Site will hereinafter be referred to as the "UGI Site" or "the Site," and is further described in paragraph 3.1 below.
- 1.2 All terms and conditions of this Settlement Agreement, including any modifications hereto, are required by this Settlement Agreement. The Respondents agree to undertake all actions required by the terms and conditions of this Settlement Agreement and to comply with all such terms and conditions.
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- 1.4 The Respondents consent to and will not contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Settlement Agreement, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site by the installation of a cap, including the demolition of on-Site buildings and the excavation and off-Site disposal of contaminated soils to facilitate the installation of a cap, and the installation of groundwater monitoring wells.

III. FINDINGS OF FACT

- 3.1 The Site includes a former manufactured gas plant (the "MGP Facility") which occupies approximately 1.6 acres and is located approximately four hundred feet northeast of the Susquehanna River. The Site also includes the Borough of Columbia's ("Borough's") municipal garage; the Lancaster Water Authority ("LWA") pumping station; railroad
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- tracks owned by Consolidated Rail Corporation ("CONRAIL"); and a pedestrian tunnel which extends underneath the railroad tracks on the northern side of the MGP Facility.
- 3.2 Respondent PPL Electric, a Pennsylvania Corporation, is the current owner of the MGP Facility, and various predecessors in interest, were the owners and/or operators of the MGP Facility at the time that Hazardous Substances were disposed there.
- 3.3 Respondent UGI, as corporate successor to United Gas Improvement Company which merged with Lancaster County Gas Company, owned the MGP Facility at the time that Hazardous Substances were disposed there.
- 3.4 Gas was historically produced at the MGP Facility through a coal gasification process which included reacting steam with hot coal, coke and wood. The gas went from two gas generating sets through a washbox, condenser, washer cooler, and then was stored in a gas holder. From the gas holder, the gas went through a coal tar separator and a purifier and finally to a relief holder for distribution in the City of Columbia.
- 3.5 The primary waste stream generated during the coal gasification process was liquid coal tar. Coal tar is a mixture of organic chemicals comprising volatile organic compounds ("VOCs") including benzene, toluene, and xylene ("BTEX"); semi-volatile organic compounds ("SVOCs") including polycyclic aromatic hydrocarbons ("PAHs"), and inorganics including metals and cyanide.
- 3.6 On or about December 7, 1984, PPL Electric and UGI voluntarily agreed with the Pennsylvania Department of Environmental Resources ("PADER"), which was subsequently renamed the Pennsylvania Department of Environmental Protection ("PADEP"), to perform a Site Investigation to determine the nature and extent of contamination at the Site. Samples collected during the Site Investigation revealed that on-Site soils and groundwater were contaminated with VOCs, PAHs, heavy metals, and cyanide.
- 3.7 Following the completion of the Site Investigation, and at various times over the years thereafter through 1998, PPL Electric and UGI voluntarily undertook several cleanup actions at the Site, including capping of the gas and relief holders, removing approximately 100 cubic yards of tar contaminated material from the pedestrian tunnel, constructing a concrete floor inside the tunnel, removing approximately 3,350 gallons of tar from the gas holders and removing approximately 750 tons of contaminated sediments from the Susquehanna River.
- 3.8 In or around January 1991, EPA conducted an Expanded Site Investigation ("ESI") at the Site. Sampling results from the ESI revealed that MGP-related wastes containing VOCs, PAHs, and cyanide had migrated into groundwater, soil and bedrock.
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- 3.9 EPA proposed the Site for inclusion on the Superfund National Priorities List ("NPL") in June 1993 and added the Site to the NPL in August May 1994.
- 3.10 In or around August 1993, PADEP requested the lead for further interim response activities at the Site under the Pennsylvania Hazardous Site Cleanup Act and the Remedial Investigation ("RI") and Feasibility Study ("FS") process. EPA agreed to PADEP's request, but EPA retained its authority to review Site-related activities to ensure compliance with CERCLA and the NCP and to select the final remedy for the Site.
- 3.11 In April 1996, PPL Electric entered into a Consent Order and Agreement ("Consent Order") with PADEP to conduct an RI/FS and a Risk Assessment ("RA") to, among other things, determine the nature and extent of contamination at the Site; characterize the risks to human health and the environment, and evaluate alternatives to clean up the contamination at the Site. For purposes of consistency with the Superfund program, EPA oversaw the work done by PPL Electric under the Consent Order with PADEP.
- 3.12 The PADEP-approved RI identified approximately 15,000 cubic yards of remaining contaminated surface and subsurface soils at the Site. The RI also identified contamination in on-Site groundwater that had migrated from the MGP Facility and was detected in deep groundwater near the Susquehanna River.
- 3.13 In 2002, PADEP approved the FS which proposed options for addressing the remaining contamination at the Site. The FS recommended installing additional groundwater monitoring wells at the Site in order to demonstrate whether natural gradient flushing of Site-related contaminants was occurring.
- 3.14 The manufactured gas plant operations have caused Site soils, groundwater, bedrock, and sediments of the Susquehanna River to become contaminated with hazardous substances including BTEX; PAHs, metals and cyanide. All of these substances are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), because they are listed at 40 C.F.R. Section 302.4.
- 3.15 In an Action Memorandum approved on November 2, 2006 by the Director of the Hazardous Site Cleanup Division, EPA determined that a threat to public health, welfare and/or the environment exists due to the actual or threatened release of hazardous substances from the Site.

IV. CONCLUSIONS OF LAW

- 4.1 The UGI Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 Respondents are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 BTEX, PAHs, arsenic and cyanide are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.
- 4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the UGI Site and are currently present there.
- 4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 Respondent PPL Electric is an "owner or operator of a vessel or a facility" within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and is a "person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- 4.7 Respondent UGI is a "person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- 4.8 EPA has determined that Respondents are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record for the Site, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
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- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.
- 5.4 The Index to the Administrative Record supporting the issuance of this Settlement Agreement is set forth in Attachment A.

VI. PARTIES BOUND

- 6.1 This Settlement Agreement shall apply to and be binding upon EPA and its agents, and upon Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of Respondents, nor a change in ownership or control of the Site, shall in any way alter Respondents' responsibilities under this Settlement Agreement.
- 6.2 In the event of any change in ownership or control of the Site or of Respondents' corporate status, Respondents shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Settlement Agreement to the transferee in interest of the Site prior to any agreement for transfer.
- 6.3 In the event that either Respondent files for or is placed into bankruptcy, that Respondent shall notify EPA within three (3) days of such event.
- 6.4 Respondents shall provide a copy of this Settlement Agreement to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondents to conduct any portion of the Work to be performed by Respondents pursuant to this Settlement Agreement. Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Settlement Agreement.
- 6.5 The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms of this Settlement Agreement and to execute and legally bind such Respondent to this Settlement Agreement.
- 6.6 Respondents are jointly and severally liable for compliance with the provisions of this Settlement Agreement. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one Respondent to comply with all or any part of this Settlement Agreement shall not in any way excuse or justify noncompliance by the other Respondent. Further, the compliance by one Respondent

with all or part of this Settlement Agreement shall not in any way excuse or justify noncompliance by the other Respondent.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Settlement Agreement has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 Respondents shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within fifteen (15) calendar days of the effective date of this Settlement Agreement, Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondents who will conduct all or any portion of the response action no less than five (5) days prior to commencement of the response action to be performed by such persons. Respondents shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response actions shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel and other persons who will perform the response action; the Respondents' Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondents shall notify EPA within fifteen (15) calendar days of receipt of such EPA disapproval of the Respondents' selection of person(s) who will replace the one(s) disapproved by EPA. If a person's selection for specified work is disapproved by EPA, they shall not perform such specified response action.
- 8.3 Respondents shall accomplish the following items:
- (a) Install at a minimum an eight (8)-inch concrete cap over the area of the former holders as depicted in Figure 5-2 in the FS (See Attachment B for a copy of Figure

- 5-2) sufficient to prevent the migration of contaminants through surface water runoff and infiltration;
- (b) Install a four (4)-inch asphalt and/or concrete cap over areas where MGP-related waste remains in the subsurface as depicted in Figure 5-2 in the FS (See Attachment B for a copy of Figure 5-2) sufficient to prevent the migration of contaminants through surface water runoff and infiltration;
 - (c) Demolish two (2) on-Site buildings to facilitate installation of the caps pursuant to (a) and (b), above;
 - (d) Excavate any soils and MGP-related wastes as necessary to facilitate installation of the caps pursuant to (a) and (b), above;
 - (e) Characterize soils excavated pursuant to (d), above, and dispose off-Site all such soils in accordance with the requirements of this Settlement Agreement including, without limitation, Section 8.12 (pertaining to off-site transfers);
 - (f) Place clean fill on MGP Facility as necessary to facilitate installation of the caps pursuant to (a) and (b), above;
 - (g) Install groundwater monitoring wells in locations accepted by EPA for the purpose of monitoring MGP-related contaminants in the groundwater plume;
 - (h) Conduct sampling and analysis of groundwater from wells installed pursuant to (g), above, for the purpose of monitoring MGP-related contaminants in the groundwater plume;
 - (i) Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Settlement Agreement. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (July 5, 1988);

(j) Develop and follow an expeditious schedule for implementation of the RAP.

- 8.4 By December 15, 2006, Respondents shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. The RAP shall include, among other things, a schedule for expeditious performance of such response actions. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response action required by this Settlement Agreement. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.
- 8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within fifteen (15) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.
- 8.6 Within ten (10) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondents shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondents to correct or re-perform such portion of the response action pursuant to this Settlement Agreement, Respondents shall correct or re-perform such response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.7 Beginning seven (7) business days subsequent to the date of receipt of EPA approval of the RAP and every seven (7) business days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondents that the response action is complete, the Respondents shall provide EPA with a progress report for each preceding 7-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports

shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Settlement Agreement; 2) a description of all data anticipated and activities scheduled for the next seven (7) business days or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XIV of this Settlement Agreement during the reporting period.

- 8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Settlement Agreement, shall be sent by certified or overnight mail or electronically, as agreed to by the EPA Project Coordinator, to the EPA Project Coordinator designated pursuant to Section IX.
- 8.9 All reports, plans, specifications, schedules and attachments required by this Settlement Agreement are subject to EPA approval and shall be deemed incorporated into this Settlement Agreement upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted under this Settlement Agreement, the approved portion shall be enforceable under this Settlement Agreement. In the event of conflict between this Settlement Agreement and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Settlement Agreement shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing and/or (2) submit its own modifications to Respondents. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within fifteen (15) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. In the event that EPA submits its own modifications to Respondents, the Respondents are hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval; or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Settlement Agreement. Determination(s) of non-compliance will be made by EPA.
- 8.10 In addition to the information and documents otherwise required by this Settlement Agreement, Respondents shall provide to EPA, upon written request, any and all information and documents in their possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a

licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondents' compliance with Quality Assurance and Quality Control requirements of this Settlement Agreement; information and documents relating to Respondents' efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

- 8.11 Within thirty (30) business days of the date Respondents conclude they have completed implementation of the RAP and the items identified in paragraph 8.3 of this Settlement Agreement, Respondents shall submit a draft Final Report to EPA subject to EPA approval described in Paragraph 8.9 above. The draft Final Report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3 of this Settlement Agreement. EPA will review the adequacy of Respondents' implementation of the RAP and accomplishment of the items specified in paragraph 8.3 above. EPA will notify Respondents, in writing, of any discrepancies in the draft Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 of this Settlement Agreement and the actions required to correct such discrepancies or deficiencies. Within fifteen (15) business days of receipt of notification by EPA, or as otherwise specified by EPA in its discretion, Respondents shall, as directed by EPA, amend the draft Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies and shall certify the written Final Report in accordance with the terms of Section XXII of this Settlement Agreement. Any additional plan or amendment to the RAP will be subject to the approval procedures in paragraphs 8.5 and 8.9 above. Respondents shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations as required by the NCP.
- 8.12 Respondents shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Settlement Agreement and all applicable Federal, State and local laws and regulations, as required by the NCP. Any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility required by this Settlement Agreement shall be performed in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility for treatment, storage, or disposal required by this Settlement Agreement shall be performed in accordance with 40 C.F.R. § 300.440.
- 8.13 Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to

paragraph 8.6. Neither Respondent shall interfere in any way with the performance of Work in accordance with this Settlement Agreement by the other Respondent, nor may either Respondent impede or prevent the other Respondent from reasonable access to any area of the Site to comply with the requirements of this Settlement Agreement.

- 8.14 Respondents shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party as required by law in the event of any action or occurrence during the pendency of this Settlement Agreement which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at or from the Site, or which may create a danger to public health, welfare or the environment.
- 8.15 In the event that EPA believes that response actions or other activities at the Site by Respondents are causing or may cause a release or potential release of hazardous substances or are a threat to public health or welfare or to the environment, EPA may in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 The Project Coordinator for Respondents is:

Mr. Scott R. Miller, P.E.
Project Manager
Clean Sites
46161 Westlake Drive, Suite 230-B
Potomac Falls, VA 20165
(703) 519-2142

Designation of a Project Coordinator shall not relieve Respondents of their obligation to comply with all requirements of this Settlement Agreement. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator shall not be their legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Settlement Agreement, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

David Turner
Remedial Project Manager
U.S. Environmental Protection Agency
Removal Enforcement Section (3HS22)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3216

- 9.3 Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondents. EPA's intent is to notify Respondents as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondents at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Settlement Agreement:
- (a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised November 1984));
 - (b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and
 - (c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).
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- 10.2 The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

- 11.1 As of the effective date of this Settlement Agreement, Respondents shall provide to each other, EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondents wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Settlement Agreement.
- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than either of the Respondents, the Respondents shall use their best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than within thirty (30) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for Respondents and their employees, agents, consultants, contractors and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlines in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondents shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.
- 11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records,

files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Site.

- 11.4 Respondents may make a claim of business confidentiality for information submitted pursuant to this Settlement Agreement in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondents.
- 11.5 The Respondents may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Settlement Agreement including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or disposal facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Settlement Agreement.
- 11.7 Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- 12.1 Except as provided elsewhere in this Settlement Agreement, if the Respondents object to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Settlement Agreement, including actions taken under Paragraph 15.3, below, and billings for oversight costs, the Respondents shall notify EPA in writing of their

- objection(s) within fourteen (14) calendar days of receipt of such notification or action ("notification of objection").
- 12.2 EPA and the Respondents shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondents. Unless otherwise agreed by EPA, Respondents' obligations under this Settlement Agreement shall not be tolled during dispute resolution under this Section XII.
- 12.3 In order to prevail in any dispute regarding oversight costs, Respondents must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.
- 12.4 Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondent does not prevail upon resolution of any dispute involving any contested costs other than oversight costs, Respondent shall submit to EPA, within fourteen (14) calendar days of receipt of such resolution, all such costs determined to be owed to EPA, including any accrued interest, as specified in paragraph 13.1 below. Payment of oversight costs, including interest, following resolution of a dispute shall be governed by Paragraph 21.3 of this Settlement Agreement.
- 12.5 Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 13.1 For each day, or portion thereof, that Respondents fail to comply with any requirement of this Settlement Agreement at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to the following address, or to such other address(es) as EPA may provide in writing to the Respondent in the future:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

Payment shall be made by cashiers or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Settlement Agreement and to: EPA Region III Hearing Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103.

- 13.2 Stipulated penalties shall accrue in the amount of \$2000 per calendar day per violation for the first 15 days and \$5000 per calendar day per violation for each day thereafter. Neither the accrual of nor demand for stipulated penalties set forth in this Section shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondents' failure to comply with the requirements of this Settlement Agreement.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- 14.1 The Respondents, through their Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondents or either one of them becomes aware or should have become of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondents or either one of them becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Settlement Agreement and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall ensure that their Project Coordinator provides Respondents with immediate notification of any project delays. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent Respondents intend to claim that any delay or anticipated delay described by Respondents in accordance with paragraph 14.1 was or will be caused by circumstances beyond each of their control, Respondents shall, within fourteen (14) calendar days after Respondents become aware or should have become aware of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondents fully demonstrate that the delay was caused by circumstances beyond each of their control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondents took all reasonable measures

to avoid and minimize delay. The Respondents shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondents pursuant to paragraph 22.2 of this Settlement Agreement.

- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondents or either one of them and (2) that cannot be overcome by due diligence on Respondents' part, shall not be deemed to be a violation of Respondents' obligation(s) under this Settlement Agreement, and shall not subject Respondents to stipulated penalties under this Settlement Agreement for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Settlement Agreement or changed economic circumstances shall not be considered circumstances beyond the control of Respondents. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2 above.
- 14.4 Failure of the Respondents to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and Respondents cannot agree that any delay in compliance with the requirements of this Settlement Agreement has been or will be caused by circumstances beyond the control of the Respondents that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Settlement Agreement.

XV. RESERVATION OF RIGHTS

- 15.1 The covenant not to sue set forth in Section XXVII below does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:
- (a) claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - (b) liability for costs other than oversight costs recoverable under Section XXI of this Settlement Agreement;
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- (c) liability for performance of response action other than the Work;
- (d) criminal liability;
- (e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (f) liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site; and
- (g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

15.2 Except as expressly provided in this Settlement Agreement, (1) all parties reserve all rights, claims, interests and defenses they may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, including the right to seek injunctive relief and/or the imposition of statutory penalties.

15.3 As provided by this Settlement Agreement, EPA expressly reserves its right to disapprove of Work performed by Respondents; to halt Work being performed by Respondents if Respondents have not complied with an approved RAP or this Settlement Agreement, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondents correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondents perform response actions in addition to those required by this Settlement Agreement. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondents, and Respondents decline, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Settlement Agreement, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.

15.4 EPA reserves the right to bring an action against Respondents for recovery of all recoverable costs incurred by the United States related to this Settlement Agreement which are not reimbursed by Respondents, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.

- 15.5 This Settlement Agreement concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Settlement Agreement. EPA reserves all rights including, without limitation, the right to institute legal action against Respondents and/or any other parties in connection with the performance of any response actions not addressed by this Settlement Agreement.
- 15.6 Nothing in this Settlement Agreement shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- 16.1 Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Settlement Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

XVII. OTHER LAWS

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 18.1 The effective date of this Settlement Agreement shall be the date on which it is signed by EPA.
- 18.2 This Settlement Agreement may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
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- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement are, upon approval by EPA, incorporated into this Settlement Agreement. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement Agreement and will subject the Respondents to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.
- 18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondents or the requirements of this Settlement Agreement will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Settlement Agreement, and to comply with the requirements of this Settlement Agreement unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents or of their employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- 20.1 Respondents agree to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondents or their contractors in carrying out the work required by this Settlement Agreement.

XXI. REIMBURSEMENT OF OVERSIGHT COSTS

- 21.1 EPA shall submit to Respondents periodic and/or a final accounting of oversight costs incurred by the U.S. Government with respect to this Settlement Agreement. Oversight costs shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with EPA's oversight of the Work.

- 21.2 Respondents shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Settlement Agreement.
- 21.3 In the event the Respondents dispute, pursuant to Section XII of this Settlement Agreement, payment of any costs identified in the accounting provided pursuant to Paragraph 21.1, the Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested costs. The Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondents shall initiate the Dispute Resolution procedures in Section XII of this Settlement Agreement. If EPA prevails in the dispute, within five (5) business days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Section XIII of this Settlement Agreement. If the Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Section XIII of this Settlement Agreement; Respondents shall be disbursed any balance of the escrow account.

XXII. CERTIFICATION OF COMPLIANCE

- 22.1 (a) Unless otherwise required by the terms of this Settlement Agreement, any notice, report, certification, data presentation or other document submitted by Respondents under or pursuant to this Settlement Agreement which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondents' compliance or non-compliance with any requirement(s) of this Settlement Agreement shall be certified by each Respondent, a responsible official of each Respondent or by the Project Coordinator for the Respondents. The term "responsible official" means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production or
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operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

- (b) The written Final Report required by paragraph 8.11 of this Settlement Agreement, any written notification described in paragraph 12.1 of this Settlement Agreement and any "Notice of Force Majeure" described in paragraph 14.2 of this Settlement Agreement shall be certified by each Respondent or a responsible official of each Respondent.

- 22.2 The certification required by paragraph 22.1 of this Settlement Agreement shall be in the following form:

I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name (print): _____

Title: _____

- 22.3 Submission of documents pursuant to this Settlement Agreement which are found by EPA to contain false information shall constitute a failure to comply with this Settlement Agreement and shall subject Respondents to, among other things, stipulated penalties whether or not a responsible official of the Respondents has certified the document.

XXIII. RECORD RETENTION

- 23.1 Until ten (10) years after Respondents' receipt of EPA's notification pursuant to Paragraph 26.1 (Notice of Completion), Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondents' receipt of EPA's notification pursuant to Paragraph 26.1 (Notice of Completion), Respondents shall also instruct their

contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

- 23.2 At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents 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 Respondents assert such a privilege, Respondents shall provide EPA 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 Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

XXIV. POST REMOVAL SITE CONTROL

- 24.1 Respondents agree to maintain the integrity of the response action pursuant to the arrangement proposed in Paragraph 8.3 (j), and approved by EPA pursuant to Paragraph 8.9, above.

XXV. DEFINITIONS

- 25.1 "Business days" as used in this Settlement Agreement shall mean every day of the week except Saturdays, Sundays and federal holidays.
- 25.2 "Calendar days" as used in this Settlement Agreement shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- 25.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.
- 25.4 "Work" as used herein shall mean all requirements of this Settlement Agreement, including any modifications hereto.
- 25.5 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.
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XXVI. NOTICE OF COMPLETION

- 26.1 When EPA determines, after EPA's review and approval of the written Final Report required pursuant to paragraph 8.11 of this Settlement Agreement, that the response action specified in Section VIII of this Settlement Agreement has been fully performed, and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Settlement Agreement, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States Government"), XX ("Indemnification and Hold Harmless"), and XXIII ("Record Retention") and XXV ("Post Removal Site Control"), EPA will provide a notice of completion to the Respondents.

XXVII. COVENANT NOT TO SUE BY EPA

- 27.1 From the effective date of this Settlement Agreement and for as long as EPA determines that the terms of this Settlement Agreement, including any modifications made hereto, are being fully complied with, and except for any proceeding to enforce its terms or collect any applicable costs or penalties, EPA agrees not to sue or take any administrative action against the Respondents for the Work required by this Settlement Agreement, including for reimbursement of costs incurred in connection with this Settlement Agreement.
- 27.2 Nothing in this Settlement Agreement shall be construed to limit the rights EPA has reserved under Section XV of this Settlement Agreement.
- 27.3 Nothing in this Settlement Agreement shall be construed to grant any rights to persons not a party to this Settlement Agreement. Further, nothing in this Settlement Agreement precludes the United States or the Respondents from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXVIII. COVENANT NOT TO SUE BY RESPONDENTS

- 28.1 Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, oversight costs paid under this Settlement Agreement, or this Settlement Agreement including, but not limited to:
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- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 28.3 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15.1.b., c., e., f., and g., but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

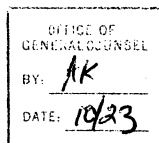
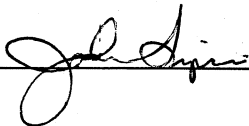
- 28.2 Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
- 28.3 Respondents agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if
- (a) the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.
 - (b) This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.
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XXIX. CONTRIBUTION

- 29.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that the Respondents are entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement is the Work and payment of costs under Section XXI of this Settlement Agreement.
- 29.2 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the effective date of this Settlement Agreement, resolved their respective liability to the United States for the Work and payment of costs under Section XXI of this Settlement Agreement.
- 29.3 Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).
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**FOR RESPONDENT
PPL ELECTRIC UTILITIES CORPORATION:**

[Signature]



Please Type the Following:

Name: JOHN F. SIPICS

Title: President-PPL Electric Utilities Corporation

Address: Two North Ninth St. Allentown, PA 18101

**FOR RESPONDENT
UGI UTILITIES, INCORPORATED:**

[Signature]



Please Type the Following:

Name: Peter G. Terranova

Title: Vice President - Operations
UGI Utilities, Inc.

Address: 225 Morgantown Road
Reading, PA 19612

FOR EPA:

 JAMES J. BURKE

Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency, Region III

11/29/06
Date