

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

UNITED STATES OF AMERICA,  
Plaintiff

CIVIL ACTION NO. 1:CV-93-1482

v.

KEYSTONE SANITATION COMPANY,  
INC.; KENNETH F. NOEL,  
individually and f/d/b/a  
KEYSTONE SANITATION COMPANY;  
ANNA M. NOEL, individually and  
f/d/b/a KEYSTONE SANITATION  
COMPANY; QUEBEC OR PRINTING  
FAIRFIELD, INC.; C & J CLARK,  
AMERICA, INC.; THE ESAB GROUP,  
INC.; THE GENLYTE GROUP, INC.;  
HANOVER BRONZE AND ALUMINUM  
FOUNDRY, INC.; KEMPER INDUSTRIES,  
INC.; R.H. SHEPPARD COMPANY,  
INC.; and SKF USA, INC.,

Defendants

and

QUEBEC OR PRINTING FAIRFIELD,  
INC., et al.,

Third Party  
Plaintiffs

v.

ADVANCED DISPOSAL SERVICE,  
et al.,

Third-party  
Defendants  
and

AGRICULTURAL COMMODITIES, INC.,  
et al.,

Fourth-Party  
Plaintiffs


v.

ADAMS COUNTY MEM. RES. CENTER,  
et al.,

Fourth-Party  
Defendants

**FILED**  
HARRISBURG, PA

SEP 10 1999

MARY E. D'ANDREA, CLERK  
Per 

**MEMORANDUM**

[RE: 1456-1]

Re: Consent Decree With Third and Fourth Party Defendants

I. Procedural History

On September 27, 1993, the United States initiated this action pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to recover costs expended by the Environmental Protection Agency ("EPA") in responding to the contamination of the Keystone Sanitation Landfill Site ("Site") up until September 27, 1990. The complaint also seeks a declaratory judgment of the liability of Defendants for future response costs that will be incurred in implementing remedial action at the Site. Pursuant to CERCLA's § 107(a) framework, the United States named eleven Defendants as potentially responsible parties ("PRPs"). Eight of the original PRPs – those referred to as the "Original Generator Defendants"<sup>1</sup> – were joined under § 107(a)(3), on the theory that they contracted, agreed, or otherwise arranged to dispose of hazardous waste at the Site or transport such waste to the Site. The other three original PRPs – those referred to as the Keystone Defendants<sup>2</sup> – were joined under § 107(a)(1), (2), and/or (3) as the owners or operators of the Site and arrangers and transporters of waste to the Site.

The Original Defendants ("OGD's") thereafter impleaded approximately 180 Third-Party Defendants to obtain, inter alia, contribution for response costs pursuant to CERCLA § 113(f) and the Pennsylvania Hazardous Sites Cleanup Act, 35 Pa. Stat. Ann. §§ 6020.702(a) and 6020.1101. Subsequently, certain Third-Party Defendants ("Fourth-

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<sup>1</sup>The Generator Defendants consist of QUEBEC OR Printing Fairfield, Inc.; C&J Clark, America, Inc.; The ESAB Group, Inc.; The Genlyte Group, Inc.; Hanover Bronze and Aluminum Foundry, Inc.; Kemper Industries, Inc.; R.H. Sheppard Company, Inc.; and SKF USA, Inc.

<sup>2</sup>The Keystone Defendants consist of Keystone Sanitation Company, Inc.; Kenneth F. Noel, individually and f/d/b/a Keystone Sanitation Company; Anna M. Noel, individually and f/d/b/a Keystone Sanitation Company.

Party Plaintiffs") Plaintiffs filed a complaint against approximately 600 Fourth-Party Defendants seeking, inter alia, contribution, which complaint was subsequently amended to add approximately 40 Fourth-Party Defendants.

The United States has since worked diligently towards resolving this mammoth litigation. On October 22, 1997, the United States filed a Notice of Consent Decree. On July 16, 1998, the United States and the Commonwealth of Pennsylvania filed a joint motion to enter the consent decree lodged on October 22, 1997.

Owner/Operator Defendants Keystone Sanitation, Inc., Kenneth and Anna Noel, and Waste Management oppose the motion conditionally.<sup>3</sup>

## II. Discussion

The instant consent decree provides to the 376 settling Third and Fourth Party Defendants Site-wide releases from Plaintiff for liability at the Site, subject to certain limited exceptions, and provides them with protection from contribution actions for matters addressed in the settlement consistent with CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2). The decree also provides for the settling Third and Fourth Party Defendants to reimburse \$1.25 million of the United States' past costs, to pay \$2.9 million into a Site Special Account to be used for future work at the Site, and to pay \$80,000 for potential future natural resource damage at the Site. The settling defendants and the settling federal agencies also resolve their liability to the Pennsylvania Department of Environmental Protection. The state will receive a payment of \$66,775 as reimbursement for its past response costs and state natural resource damages. (Consent Decree, Section VIII.)

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<sup>3</sup>The court will not address the OGD's opposition in light of the disposition of the consent decree filed on their behalf.

The issue before the court is whether the settlement is fair, reasonable, and consistent with the objectives of CERCLA. United States v. Borough of Lemoyne, No. 4:CV-94-0667, slip op. at 15 (M.D. Pa. Nov. 17, 1994); United States v. Cannons Engineering Corp., 899 F.2d 79, 84 (1st Cir. 1990).

The Owner/Operator Defendants oppose entry of the consent decree on the basis that it is premature. They argue that the substantive fairness of the Third and Fourth Party settlements cannot be judged until after the final off-site groundwater remedy has been selected, the Owner/Operator Defendants' proposed alternative remedy has been reviewed, and total Site costs have been determined. The Owner/Operator Defendants cite United States v. Montrose Chemical Corp. Of Calif., 50 F.3d 741 (9th Cir. 1995), in support of rejecting the consent decree.

In Montrose the court found there was "no evidence on [the] record from which the district court could have made any determination with respect to estimates of responsibility and damage." Id. at 746-47. The court went on to note "that the proper way to gauge the adequacy of settlement amounts to be paid by settling PRPs is to compare the proportion of total projected costs to be paid by the settlors with the proportion of liability attributable to them, and then to factor into the equation any reasonable discounts for litigation risks, time, savings, and the like, that may be justified." Id. at 747 (citing United States v. Charles George Trucking, Inc., 34 F.3d 1081, 1087 (1st Cir. 1994)).

The court has reviewed the declarations of Leo J. Mullen, an EPA Civil Investigator for cost recovery in CERCLA actions, and Cynthia Tibbott, senior Environmental Contaminants Specialist for the United States Fish and Wildlife Service.

The court believes that the cost estimates presented by Mullen are sufficient to support the United States' projected remedial costs. The court points out that:

CERCLA's policy of encouraging early settlements is strengthened when a government agency charged with protecting the public interest "has pulled the laboring oar in constructing the proposed settlement." . . . Although "the true measure of the deference due depends on the persuasive power of the agency's proposal and rationale," a district court reviewing a proposed consent decree "must refrain from second-guessing the Executive Branch." . . . Such deference is appropriate given "[t]hat so many affected parties, themselves knowledgeable and represented by experienced lawyers, have hammered out an agreement at arm's length and advocate its embodiment in a judicial decree."

Montrose, 50 F. 3d at 746 (citations omitted). To the extent that the total remedial costs are subject to variation, the court is mindful of the general federal policy rewarding early settlements in CERCLA cost recovery actions.

Congress explicitly created a statutory framework that left nonsettlers at risk of bearing a disproportionate amount of liability . . . . Disproportionate liability, a technique which promotes early settlements and deters litigation for litigation's sake, is an integral part of the statutory plan. . . . Congress purposed that all who choose not to settle confront the same sticky wicket of which appellants complain.

United States v. Cannons Engineering Corp., 899 F.2d 79, 91-92 (1st Cir. 1990), see also, Arizona v. Nucor Corp., 825 F. Supp. 1452 (D. Ariz. 1992), aff'd, 66 F.3d 213 (9th Cir. 1995). Accordingly, the court will not reject the decree as premature.

The Owner/Operator Defendants also argue that the consent decree is not substantively fair based on the EPA's own statement. They cite to an editorial, which states, in pertinent part:

In October [1997], EPA also proposed to settle with 376 third and fourth-party defendants for \$4.25 million. These defendants generated 74% of the waste at Keystone. But their \$4.25 million liability is only 22% of the \$21.5 million cleanup costs. Any lesser amount would be unlikely to get Court approval.

(Owner/Operator Def.'s attachment to Opp. to consent decree, Ex. E.)

The Owner/Operator Defendants argue that assuming total Site costs are \$23 million, the cash out of \$4.25 million represents at most 18.5% of total Site costs. Thus, they argue, the proposed consent decree falls short of the 22% which EPA believes is likely to be required.

The court points out that the writer is not expressing agency policy but only guessing what this court might or might not approve. As settling parties note, the writer assumed that settling Third and Fourth Party Defendants are responsible for 74% of waste sent to the Site. Settling Third and Fourth Party Defendants argue that

while the potential volumetric contribution of waste to the Site by all Third and Fourth Party Defendants was calculated to be about 70% of the total volume, about 15% to 20% of the total volume is attributable to Third and Fourth Party Defendants which are defunct, non-viable, non-settling parties, or which fell into the de micromis settlements. The settling Third and Fourth Party Defendants were potentially responsible for approximately 55% to 60% of the waste volume delivered to the Site. Thus, the \$4.25 million settlement represents 57% of the share remaining to be allocated among generators.

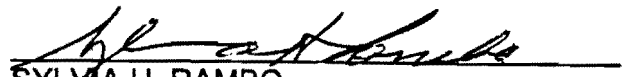
(Third Party Def.'s Reply Br. at 10; see also Gov't Br. In Supp. Of Entry of Consent Decree, Ex. 2, Decl. of Leo J. Mullen, and Ex. B & E.)

In determining the fairness and reasonableness of the settlement, this court must also consider the composition of the waste, the type of business involved, the size

of business and financial resources of the settling parties. According to Leo Mullen, most of the waste disposed by settling Third and Fourth Party Defendants was municipal solid waste which went to the Site while non-municipal solid waste containing hazardous substances went to other facilities. (Gov't Br. In Supp. Of Entry of Consent Decree, Ex. 2, Decl. of Leo J. Mullen at ¶ 30.) Many of the Fourth Party Defendants are restaurants, convenience stores, apartment buildings, camp grounds, and retail operations. (*Id.* at ¶ 35.) In light of these facts, this court believes the settlement is reasonable.

III. Conclusion

Considering that the funds are already in escrow giving the government the ability to respond promptly to problems at the Site, and that the settling Third and Fourth Party Defendants are bearing an appropriate amount of the costs and responsibility for the remedy, the court finds the objectives of CERCLA are being met. Accordingly, the court will enter the consent decree.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: September 10, 1999.

*Hickory.*

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEYSTONE SANITATION COMPANY,  
et al.

CIVIL ACTION NO. 1:CV-93-1482

*Cash out  
3 + 4 = 1 Packer*

CONSENT DECREE [Re: 1456-1]

FILED  
HARRISBURG, PA

SEP 10 1999

*[Signature]*  
CLERK

FILED  
HARRISBURG, PA  
SEP 10 1999  
MARY E. D'AMOREA, CLERK  
Per *[Signature]*

*9011-2 636A*

## TABLE OF CONTENTS

I.	BACKGROUND . . . . .	1
II.	JURISDICTION . . . . .	6
III.	PARTIES BOUND . . . . .	6
IV.	DEFINITIONS . . . . .	7
V.	STATEMENT OF PURPOSE . . . . .	14
VI.	REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES . . . . .	16
VII.	FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS CONSENT DECREE . . . . .	22
VIII.	REIMBURSEMENT OF STATE RESPONSE COSTS. . . . .	24
IX.	COVENANTS BY PLAINTIFF AND STATE . . . . .	25
X.	COVENANTS NOT TO SUE BY SETTLING DEFENDANTS. . . . .	34
XI.	EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION. . . . .	38
XII.	STATE CONTRIBUTION PROTECTION . . . . .	41
XIII.	RETENTION OF RECORDS . . . . .	42
XIV.	NOTICES AND SUBMISSIONS . . . . .	45
XV.	EFFECTIVE DATE . . . . .	46
XVI.	RETENTION OF JURISDICTION . . . . .	46
XVII.	APPENDICES . . . . .	47
XVIII.	MODIFICATION . . . . .	47
XIX.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT . . . . .	47
XX.	SIGNATORIES/SERVICE . . . . .	48

## I. BACKGROUND

A. On September 27, 1993, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g), against eleven Defendants ("Original Defendants").

B. The United States in its complaint seeks: (i) reimbursement pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, of response costs incurred by the United States (as hereinafter defined), together with accrued interest, in response to the release or threatened release of hazardous substances at or from the Keystone Sanitation Landfill Site, located in Union Township, Adams County, Pennsylvania (the "Site"); (ii) a declaration of Original Defendants' liability pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that will be binding on any subsequent actions to recover further response costs; and (iii) such other relief as the Court finds appropriate.

C. The Original Defendants thereafter filed a complaint against approximately 180 third-party defendants ("Third-Party Defendants") seeking, inter alia, contribution for response costs pursuant to CERCLA § 113(f) and the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.702(a) and 6020.1101.

D. In approximately June of 1995, certain Third-Party Defendants ("Fourth-Party Plaintiffs") informed the Court of

their intent to name some 900 parties as fourth parties ("Fourth Party Defendants") in this action. In a June 22, 1995 Order, the Court indicated that before such joinder could occur, Fourth-Party Plaintiffs would need to show that the substances contributed to the Site by each of the proposed Fourth-Party Defendants were hazardous. Subsequently, Fourth-Party Plaintiffs filed a complaint against approximately 600 Fourth-Party Defendants seeking, inter alia, contribution, which complaint was subsequently amended to add approximately 40 Fourth-Party Defendants.

E. The United States did not sue any of the Third and Fourth Party Defendants and objected to the joinder of the Fourth Party Defendants. The United States has expressed its concern with the number of parties joined that contributed only small amounts of municipal solid waste, consisting of household trash or its equivalent, to the Site, and has taken a number of steps, both in the litigation and in settlement, to reduce the transaction costs of these parties.

F. In addition to offering 167 de micromis settlements to Third- and Fourth-Party Defendants who sent only minuscule amounts of hazardous substances to the Site, Plaintiff has responded to the requests of a large number of the remaining Third- and Fourth-Party Defendants for a global settlement to resolve their potential liability in this action. As a result, Plaintiff has focused its settlement efforts with this diverse group on the terms (including an internal allocation) that the

Third- and Fourth-Party Defendants themselves have formulated.

G. The "Settling Defendants" consist of a group of both Third- and Fourth-Party Defendants in this matter who intend to resolve their potential liability in this matter in accordance with the terms of this Consent Decree.

H. The Original Defendants and Third Party Defendants/Fourth Party Plaintiffs have also asserted claims seeking contribution from the United States.

I. 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 has notified the Commonwealth of Pennsylvania and the State of Maryland of negotiations with the Settling Defendants. To enable the Settling Defendants to be released from the pending claims under the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §§ 6020.702(a) and 6020.1101, raised by the Third- and Fourth-Party Plaintiffs, the Commonwealth of Pennsylvania ("State") has participated in negotiations with the Settling Defendants and is now a party to this settlement, under Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F).

J. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), the United States notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration of EPA's negotiations with the Settling Defendants regarding the release of hazardous substances

at the Site to invite those agencies to assess whether such releases may have resulted in injury to the natural resources under Federal and State trusteeship, and the Department of Interior agreed to participate in the negotiations.

K. The Settling Defendants which have entered into this Consent Decree do not admit any liability to the United States or to the State or to any other person or entity under Sections 106, 107, or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 or 9613, or under Sections 701, 702(a), or 1101 of HSCA, 35 P.S. §§ 6020.701, 6020.702(a), or 6020.1101, arising out of the transactions or occurrences alleged in the complaints filed against them. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim or third party claim asserted by the Settling Defendants or any claim asserted by the State.

L. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed the Site for inclusion on the CERCLA National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B. The Site was placed on the NPL in July 1987.

M. In 1989, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA began a Remedial Investigation and Feasibility Study ("RI/FS") at the Site pursuant to the NCP. The RI/FS was finalized by EPA in 1990.

N. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the

Proposed Remedial Action Plan ("PRAP") on July 20, 1990 in major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the PRAP. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

O. Following the public comment period on the PRAP, EPA selected a Remedial Action for Operable Unit One ("OU1") to be implemented at the Site. It is embodied in a final Record of Decision ("ROD") for OU1 issued on September 30, 1990, on which the Pennsylvania Department of Environmental Resources, now the Pennsylvania Department of Environmental Protection, has given its concurrence. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

P. The ROD for OU1 also called for a second operable unit for the Site ("OU2") to further study offsite contamination, for which EPA is currently conducting the Remedial Investigation and a Focused Feasibility Study. EPA contemplates that it will issue an Amendment to the OU1 ROD, or other decision document, selecting a response action to address any off-site groundwater contamination.

Q. The remedy selected pursuant to the ROD for OU1 is being implemented by the Original Defendants, Respondents to a CERCLA § 106 Unilateral Administrative Order, EPA Docket No. III-91-56-DC, issued on June 28, 1991, as modified on September 6,

1991 ("the UAO Order").

R. The State seeks reimbursement pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and Sections 101(12)(i), 301(2), 701 and 702 of HSCA, 35 P.S. §§ 6020.101(12)(i), 6020.301(2), 6020.701, and 6020.702, of response costs incurred by the State, in response to the release or threatened release of hazardous substances at or from the Keystone Sanitation Landfill Site.

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

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

## **II. JURISDICTION**

A. 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. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

A. This Consent Decree applies to and is binding upon the

United States, the State, and upon Settling Defendants and their successors, heirs, and assigns. Any change in ownership or corporate or legal status by the Settling Defendants including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendants' rights and responsibilities under this Consent Decree.

#### IV. DEFINITIONS

A. 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:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended as of the date of this Consent Decree, 42 U.S.C. §§ 9601-9675.

2. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3), 42 U.S.C. § 9622(f)(3), that the Final Remedial Action has been completed and the performance standards met at the Site in accordance with the requirements of the NCP, the ROD(s), and any consent decree or administrative order requiring the performance of some or all of the remedial action at the Site.

3. "Consent Decree" shall mean this Decree and all

appendices attached hereto.

4. "Date of Lodging" shall mean the date on which the United States files a Notice of Lodging of this Consent Decree with the Court.

5. "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.

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

7. "Duly Authorized Representative" shall mean a person designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

8. "Entry of this Consent Decree" shall mean the date the Decree, or any order entering the Decree, is signed by the Court.

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

10. "Final Remedial Action" shall mean all those activities for all operable units, exclusive of remedial design and operation and maintenance, consistent with a permanent remedy taken or to be taken at the Site, and within the scope of

§ 101(24) of CERCLA.

11. "Group" shall refer to the three groups of Settling Defendants: Group One consists of the fourth-party defendants listed in Appendix B.1, whose liaison counsel is David Garrison of Stevens & Lee ("Garrison Group"); Group Two consists of the fourth party defendants listed in Appendix B.2, whose liaison counsel are Malatesta, Hawke & McKeon LLP/Saul, Ewing, Remick & Saul LLP ("Malatesta Group"); Group Three consists of the third party defendants listed in Appendix B.3 ("Third Party Defendants").

12. "HSCA" shall mean the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101 et seq.

13. "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).

14. "Matters Addressed in this Settlement" as that term is used in CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), shall mean (a) all response actions taken or to be taken, including but not limited to response actions to implement the OU1 ROD and the OU1 ROD Amendment, and to address off-site contamination being evaluated or studied by EPA at the date of signing of this decree by the Regional Administrator for EPA Region III as reflected in the documents set forth in Section IX, Paragraph A.1; (b) all CERCLA response costs incurred or to be

incurred by the United States or any other person, including private parties, with respect to the Site; and (c) state and federal claims for Natural Resource Damages. The Matters Addressed in this Settlement do not include (a) those response costs, response actions or federal claims for Natural Resource Damages as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations; or (b) those response costs, response actions, or state claims for Natural Resource Damages as to which the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the State asserts rights against Settling Defendants coming within the scope of such reservations.

15. "Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes are essentially the same as waste normally generated by households. Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include

combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

16. "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, as amended as of the date of this Consent Decree.

17. "Natural Resource Damages" shall mean damages, including costs of damage assessment, recoverable under Section 107 of CERCLA and under Sections 301(14) and 702(a)(4) of HSCA for injury to, destruction of, or loss of any and all natural resources, as defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and within the trusteeship of the United States Department of the Interior and PADEP, at the Site.

18. "Original Defendants" shall mean C & J Clark America, Inc., Quebecor Printing Fairfield Inc., The ESAB Group, Inc., Hanover Bronze & Aluminum Foundry, Inc., Kemper Industries, Inc., R.H. Sheppard Co., Inc., SKF USA Inc., and the Genlyte Group Incorporated.

19. "OU1 Record of Decision" or "OU1 ROD" shall mean the EPA Record of Decision for the first Operable Unit (OU1) and all attachments thereto, relating to the Keystone Sanitation Landfill Superfund Site, which document is set forth in Appendix A attached hereto and was signed on September 30, 1990, by the

Regional Administrator, EPA Region III.

20. "OU1 Record of Decision Amendment" or "OU1 ROD Amendment" shall mean any amendment to the OU1 ROD, or comparable decision document, selecting response actions to address groundwater contamination emanating from the Keystone Sanitation Landfill.

21. "PADEP" shall mean the Pennsylvania Department of Environmental Protection, formerly the Pennsylvania Department of Environmental Resources, and any successor departments or agencies of the Commonwealth.

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

23. "Parties" shall mean the United States of America, the State, and the Settling Defendants.

24. "Plaintiffs" shall mean the United States of America and the State.

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

26. "Record of Decision" or "ROD" shall mean a document in which EPA selects a remedy for an operable unit at the Site, prepared pursuant to Section 117(b) of CERCLA, 42 U.S.C. § 9617(b) and 40 C.F.R. § 300.430(f).

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

28. "Settling State Defendants" shall mean the

following departments, agencies, and instrumentalities of the Commonwealth of Pennsylvania: the Department of Environmental Protection, the Department of Conservation and Natural Resources, and the Department of Military and Veteran Affairs.

29. "Settling Defendants" shall mean the parties Listed in Column A (Named Parties) and Column B(Corrected Caption), and other parties ("Additional Parties") to the extent their liability arises solely from the liability of parties listed in Columns A and B, including but not limited to the successors, assigns, heirs, employees, officers, directors, and shareholders of the parties listed in Columns A and B. Settling Defendants shall consist of three groups: Group One consists of the fourth-party defendants listed in Appendix B.1, whose liaison counsel is David Garrison of Stevens & Lee ("Garrison Group"); Group Two consists of the fourth party defendants listed in Appendix B.2, whose liaison counsel are Malatesta, Hawke & McKeon/Saul, Ewing, Remick & Saul ("Malatesta Group"); Group Three consists of the third party defendants listed in Appendix B.3 ("Third Party Defendants"). Appendix B.4 is provided for convenience only and lists Settling Defendants from all groups in alphabetical order.

30. "Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States listed in Appendix C.

31. "Sewage Sludge" shall mean solid, semisolid, or liquid residue removed during the treatment of municipal waste

water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

32. "Site" shall mean the Keystone Sanitation Landfill Superfund Site, which consists of an inactive privately owned landfill situated on an approximately 40-acre tract of land. The "Site" is located in Union Township, Adams County, Pennsylvania, southwest of Hanover, Pennsylvania, and is approximately 800 feet north of the Pennsylvania-Maryland border, and depicted more particularly in Figure 1 of Appendix A. Notwithstanding the Site boundaries depicted in Appendix A, the Site shall include the areal extent of contamination, including but not limited to groundwater affected by the release of hazardous substances from the Keystone Sanitation Corporation landfill and areas where hazardous substances have otherwise come to be located, and all suitable areas in very close proximity to the contamination that are necessary for the implementation of the Final Remedial Action as provided in the NCP.

33. "State" shall mean the Commonwealth of Pennsylvania Department of Environmental Protection.

34. "United States" shall mean the United States, including all of its departments, agencies, and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

##### **A. Objectives of the Parties**

The purposes of this Consent Decree, as well as the intention of the Parties, are to: (i) protect the public health

and welfare and the environment from hazardous conditions which may be present by any release of hazardous substances, pollutants, or contaminants, at or from the Site; (ii) restore natural resources at the Site; (iii) reimburse the United States and the State for response costs incurred and to be incurred due to the release or threatened release of hazardous substances at or from the Site; (iv) resolve claims against and among the Settling Defendants and Settling Federal Agencies under CERCLA §§ 106, 107 and 113, 42 U.S.C. §§ 9606, 9607, and 9613, and HSCA §§ 701, 702(a) and 1101, 35 P.S. §§ 6020.701, 6020.702(a), and 6020.1101, for the release or threatened release of hazardous substances at or from the Site; (v) further the public interest by avoiding protracted litigation among all the parties to this lawsuit; (vi) provide repose from further CERCLA litigation at this Site to the de micromis parties and small volume generators of only Municipal Solid Waste consistent with the objectives of CERCLA and HSCA; (vii) provide a covenant to Settling Defendants and Settling Federal Agencies consistent with the objectives of CERCLA and HSCA; and (viii) provide contribution protection to Settling Defendants and Settling Federal Agencies under Section 113(f) and Section 122 of CERCLA, 42 U.S.C. §§ 9613(f) and 9622, and under Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2).

**B. Admissions**

No part of this Consent Decree shall constitute, or be construed as, an admission of liability under federal, state, common, or local law, as an admission of fact or evidence of

such, or as an admission of violation of any law or regulation. The participation of the Settling Defendants and Settling Federal Agencies in this Consent Decree shall not be admissible against the Settling Defendants and Settling Federal Agencies in any judicial or administrative proceeding other than one to enforce the terms of this Consent Decree.

**VI. REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES**

A. Settling Defendants shall pay to the United States a total of FOUR MILLION ONE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED EIGHTY SIX DOLLARS (\$4,124,686.00) for reimbursement of response costs incurred or to be incurred at or in connection with the Site, and of SEVENTY-NINE THOUSAND, ONE HUNDRED SIXTY ONE DOLLARS (\$ 79,161.00) in reimbursement of Natural Resource Damages. Payment shall be made as specified in this Section.

B. Each group of Settling Defendants shall make the following payments:

<u>Group</u>	<u>Amount</u>
Group 1 (Garrison group)	\$ 973,359.00
Group 2 (Malatesta, et al.)	\$ 1,015,712.00
Group 3 (Third-Parties)	\$ 2,214,776.00

Settling Defendants within each Group shall be jointly and severally liable for the amount to be paid by each Group. No Group shall be liable for payments to be paid by any of the other Groups.

C. Prior to the lodging of this Consent Decree, each Group of Settling Defendants shall establish an interest-bearing escrow

account or similar trust account meeting the requirements of this Section and shall remit to such account funds in the amount set forth for that Group in Paragraph B of this Section.

D. Prior to lodging of this Consent Decree, the Settling Defendants shall send to the United States, by overnight mail directed to the addressees specified in Section XIV (Notices and Submissions) of this Decree, copies of the documents establishing and funding each escrow or trust account, and for each account information containing the identities of the financial institution or investment company and of the escrow agent or trustee, the account number or other identifying designation under which the escrow account or trust fund is established, and a statement from the trustee for the trust fund or escrow agent for the escrow account for each Group demonstrating that the account or fund holds money in an amount at least equal to the amount set forth for the respective Group in Paragraph B of this Section. The correspondence shall also reference the civil action number of this case, and the Department of Justice ("DOJ") case number (90-11-2-656A).

E. All funds paid into the escrow account(s) or trust fund by each Group up to the amount the Group is obligated to pay as set forth in Paragraph B may not be withdrawn by any person except to make the payment required by Paragraph F of this Section, unless the Court determines that entry of this Consent Decree is not in the public interest and declines to enter it as an order. If the Court declines to enter the Consent Decree as

an order, and the parties are unable to resolve any issues identified by the Court as the basis for declining to enter it, the amounts to be paid to the United States by each Group shall instead be returned to the Settling Defendants in that Group in accordance with that Group's escrow or trust agreement, together with any accrued interest thereon.

F. Within ten (10) working days of Settling Defendants' receipt of notice of entry of the Consent Decree by the Court, each Group shall, through the escrow agent or trustee, remit the amount that Group is obligated to pay, as set forth in Paragraph B of this Section, to the United States, as set forth below:

1. Settling Defendants shall deposit \$1,250,000 (One Million Two Hundred Fifty Thousand Dollars) in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred at or in connection with the Site by EPA, with each Group to pay the following amount:

<u>Group</u>	<u>Amount</u>
Group 1 (Garrison group)	\$ 289,250.00
Group 2 (Malatesta, et al.)	\$ 302,085.00
Group 3 (Third Parties)	\$ 658,665.00

This payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the Keystone Sanitation Landfill Superfund Site and DOJ # 90-11-2-656A. Payment shall be made in accordance with the instructions provided by the United States to the Settling Defendants upon execution of the Consent Decree. Any EFT

received at the U.S. DOJ lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

2. Settling Defendants shall deposit \$2,874,686.00 (Two Million Eight Hundred Seventy-Four Thousand Six Hundred Eighty Six Dollars) in the Keystone Sanitation Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance any part of the response actions at or in connection with the Site that EPA deems appropriate. Each Group shall pay the following amount:

<u>Group</u>	<u>Amount</u>
Group 1 (Garrison group)	\$ 665,285.00
Group 2 (Malatesta, et al.)	\$ 694,803.00
Group 3 (Third Parties)	\$1,514,598.00

This payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the Keystone Sanitation Landfill Superfund Site Special Account and DOJ #90-11-2-656A. Payment shall be made in accordance with the instructions provided by the United States to the Settling Defendants upon execution of the Consent Decree. Any EFT received at the U.S. DOJ lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

3. Within ten (10) days of the effective date of this Consent Decree, Settling Defendants shall pay the following amounts to the United States for Natural Resource Damages, in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198 and the Keystone

Sanitation Landfill Superfund Site:

Group One (Garrison)	\$ 18,824.00
Group Two (Malatesta)	\$ 18,824.00
Group Three (Third Parties)	\$ 41,513.00

The Settling Defendants shall forward their payments by 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 2203

with a copy to:

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

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of DOI with respect to the Keystone Sanitation Landfill Superfund 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 XIV (Notices and Submissions).

G. Accrued interest and any other funds in the escrow account(s) or trust fund in excess of the settlement amounts of \$4,124,686.00 and \$ 79,161 to be transferred to the United States in accordance with paragraph F shall be retained by the Settling Defendants and distributed in accordance with their respective escrow and trust agreements.

H. Any balance remaining in the Keystone Sanitation

Landfill Site Special Account after completion of the response actions at or in connection with the Site shall be deposited in the EPA Hazardous Substance Superfund.

I. In the event this consent decree is entered and entry of that decree is appealed to the Third Circuit Court of Appeals, and that Court reverses the District Court's entry of this Consent Decree, and the parties are unable to resolve the issues identified by the Court of Appeals as a basis for such reversal, the United States shall return to the Settling Defendants the payments of \$ 4,124,686.00 and \$ 79,161 without interest.

J. As soon as reasonably practicable after the effective date of this Consent Decree, the United States on behalf of the Settling Federal Agencies other than the United States Postal Service shall cause to be paid \$33,984.93 to the Keystone Sanitation Landfill Site Special Account, and \$629.76 to the natural resource trustee at the address set forth in Paragraph VI(F)(3). The United States Postal Service shall pay \$11,328 to the Keystone Sanitation Landfill Site Special Account, and \$210.00 to the natural resource trustee at the address set forth in Paragraph VI(F)(3). These amounts represent reimbursement of the Settling Federal Agencies' allocable share of all response costs incurred or to be incurred at or in connection with the Site, and the Settling Federal Agencies' allocable share of Natural Resource Damages.

K. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal

Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

L. In the event that payments required by Paragraph J are not made within 120 days of the effective date of this Consent Decree, interest on the unpaid balance shall be paid to EPA at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121<sup>st</sup> day after the date of entry of this Consent Decree and accruing through the date of payment.

**VII. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS  
CONSENT DECREE**

**A. Interest on Late Payments**

In the event that any payment(s) of \$ 4,124,686.00 and \$79,161.00 required by Section VI (Reimbursement of Response Costs and Natural Resource Damages) are not made when due, Interest shall accrue on the unpaid balance from the date due through the date of payment.

**B. Stipulated Penalties**

1. In addition to any other remedies or sanctions available to the United States, if any Group of the Settling Defendants fails or refuses to make the payments required by Section VI of this Consent Decree, above, exclusive of the payments to be made

by the Settling Federal Agencies pursuant to Section VI, Paragraph J, they shall be liable to the United States upon demand for stipulated penalties of \$1000 for each day, or portion thereof. Settling Defendants within each Group shall be jointly and severally liable for payment of stipulated penalties as required by this Paragraph, but no Group shall be liable for the failure of another Group to make the required payments.

2. All stipulated penalties owed to the United States under Paragraph B.1. of this Section shall be due and payable within thirty (30) days of the Settling Defendants' receipt from the United States of a demand for payment of stipulated penalties. All payments of stipulated penalties shall be by certified check made payable to the "Treasurer of the United States of America." The check should identify the Keystone Sanitation Landfill Superfund Site and CERCLA Number 03L9 and should be mailed to the following:

EPA-Hazardous Substances Superfund  
U.S. EPA Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XIV. (Notices and Submissions).

3. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after 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. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

C. If the United States must bring an action to collect any payment required by this Consent Decree, the responsible Group of Settling Defendants shall reimburse the United States for all costs of such action, including, but not limited to, attorneys fees.

D. Payments made under Sections VII. A and VII. B above, shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments required by this Consent Decree.

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

#### **VIII. REIMBURSEMENT OF STATE RESPONSE COSTS**

As reimbursement for the response costs incurred or to be incurred by the State and for State Natural Resource Damages in connection with Keystone Landfill for the Matters Addressed in this Settlement, the Settling Defendants and Settling Federal Agencies shall pay to the United States a total of \$66,775.75, which constitutes the response costs allocated to the Settling State Defendants in this Settlement.

## IX. COVENANTS BY PLAINTIFF AND STATE

### A. Covenant by the United States:

1. In consideration of the payments that will be made by the Settling Defendants and the Settling Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Subparagraph 2 of this Paragraph, the United States covenants not to sue or to take administrative action against Settling Defendants, and EPA covenants not to take administrative action against the Settling Federal Agencies, pursuant to Sections 106, 107(a), including federal claims for natural resource damages, and 113(g) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(g), and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. Except with respect to future liability, these covenants shall take effect upon the performance of payments as required by Section VI (Reimbursement of Response Costs) and Section VII (Failure to Comply with the Requirements of this Consent Decree). With respect to future liability, these covenants shall take effect upon Certification of Completion of the Final Remedial Action by EPA pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3). These covenants are conditioned upon the complete and satisfactory performance by the Settling Defendants and Settling Federal Agencies of their respective obligations under this Consent Decree. These covenants extend only to the Settling Defendants and Settling Federal Agencies and do not extend to any other persons.

### 2. Reservation of Rights by the United States

a. 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, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response only if, prior to Certification of Completion of the Final 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 Final Remedial Action is not protective of human health or the environment. For purposes of this Paragraph A.2.a of this Section IX, the information and conditions known to EPA shall include only that information and those conditions set forth in the OU1 ROD, the administrative record compiled for that ROD, the OU1 ROD Amendment, the administrative record compiled for that Amendment, all data collected at the Site and analyses performed thereon and available to EPA as of the date of the OU1 ROD Amendment, the documents related to the OU1 ROD submitted by the

Original Defendants to EPA pursuant to the UAO Order as of the date of signing of this Consent Decree by the Regional Administrator; and all pleadings, motions, briefs, and submissions (including documents referenced in those pleadings, motions, briefs, and submissions) filed by the Parties in this action prior to the date of signing of this Consent Decree by the Regional Administrator.

b. 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, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response only if, subsequent to Certification of Completion of the Final 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 Final Remedial Action is not protective of human health or the environment.. For purposes of this Paragraph A.2.b of this

Section IX, the information and the conditions known to EPA shall include only that information and those conditions set forth in the documents described in Paragraph A.2.a above, as well as, prior to Certification of Completion of the Final Remedial Action: any subsequent ROD or similar document selecting a remedy at the Site and the administrative record compiled for that ROD, any post-ROD administrative record and any information and those conditions set forth in documents in the possession and/or control of EPA acquired prior to the Certification of Completion of the Final Remedial Action.

B. Covenant by the State:

1. With regard to known environmental conditions at the Site, as defined in Paragraph B.2 of this Section, and in consideration for the satisfaction by the Settling Defendants and the Settling Federal Agencies of the requirements of Section VIII of this Consent Decree, and except as specifically provided in Subparagraph 2 of this Paragraph, the State covenants not to sue or to take administrative action against Settling Defendants and Settling Federal Agencies for any and all civil liability for the Matters Addressed in this Settlement, including but not limited to, liability for past and future response costs and Natural Resource Damages, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Sections 701, 702 and 1102 of HSCA, 35 P.S. §§ 6020.701, 6020.702, and 6020.1102, the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.1 et seq., the Pennsylvania Solid Waste Management Act, 35 P.S. §§ 6018.101 et seq., or any other state

or federal statutory or common law relating to the Site. Except with respect to future liability, these covenants shall take effect upon the satisfaction of the requirements of Section VIII (Reimbursement of State Response Costs) by the Settling Defendants and the Settling Federal Agencies. With respect to future liability, these covenants become effective when the State determines that the requirements of HSCA have been met by certification of the completion of the remedial action pursuant to Section 706(c) of HSCA, 35 P.S. § 6020.706(c). These covenants are conditioned upon the complete and satisfactory performance by the Settling Defendants and Settling Federal Agencies of their respective obligations under this Consent Decree. These covenants extend only to the Settling Defendants and Settling Federal Agencies and do not extend to any other persons.

2. Reservation of Rights by the State:

a. State's Pre-certification Reservations:

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, whatever rights the State may have to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants and Settling Federal Agencies (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response only if, prior to certification of completion of the remedial action by the state pursuant to Section 706(c) of HSCA,

35 P.S. § 6020.706(c):

- 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. For purposes of this Paragraph B.2.a of this Section IX, the information and conditions known to EPA shall include only that information and those conditions set forth in the OU1 ROD, the administrative record compiled for that ROD, the OU1 ROD Amendment, the administrative record compiled for that Amendment, all data collected at the Site and analyses performed thereon and available to EPA as of the date of the OU1 ROD Amendment, the documents related to the OU1 ROD submitted by the Original Defendants to EPA pursuant to the UAO Order as of the date of signing of this Consent Decree by the Regional Administrator; and all pleadings, motions, briefs, and submissions (including documents referenced in those pleadings, motions, briefs, and submissions) filed by the Parties in this action prior to the date of signing of this Consent Decree by the Regional Administrator.

b. State's Post-Certification Reservations.

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice

to, whatever rights the State may have to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants and Settling Federal Agencies, (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response only if, subsequent to certification of completion of the remedial action by the state pursuant to Section 706(c) of HSCA, 35 P.S. § 6020.706(c):

- 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. For purposes of this Paragraph B.2.b of this Section IX, the information and the conditions known to EPA shall include only that information and those conditions set forth in the documents described in Paragraph B.2.a above, as well as, prior to Certification of Completion of the Final Remedial Action: any subsequent ROD or similar document selecting a remedy at the Site and the administrative record compiled for that ROD, any post-ROD administrative record and any information and those conditions set forth in documents in the possession and/or control of EPA acquired prior to the Certification of Completion of the Final

Remedial Action.

C. Specific Reservations of Rights.

The covenants not to sue set forth in Paragraph A.1 and B.1 do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights of the United States and the State against Settling Defendants and EPA reserves, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- a. liability for the failure of Settling Defendants or the Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- c. criminal liability;
- d. liability for past, present or future violations of federal or state law other than liability resolved by this Consent Decree.

D. Federal Reservations For Natural Resource Damages:

Notwithstanding any other provision of this Decree, the United States, on behalf of its natural resource trustees, reserves the right to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of

natural resource damages, based on (1) conditions with respect to the Site, unknown to the United States at the date of lodging of this Decree, that result in 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, together with other relevant information, indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the United States at the date of lodging of this Decree.

E. State Reservations For Natural Resource Damages:

Notwithstanding any other provision of this Decree, the State, as the trustee of the Commonwealth's natural resources, reserves the right to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the State at the date of lodging of this Decree, that result in 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, together with other relevant information, indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the State at the date of lodging of this Decree.

F. The State's participation in this matter shall be

governed by CERCLA and the NCP. The State reserves all of its rights under Federal and State laws, including but not limited to, the right to challenge, contest, or comment upon, any other consent decrees entered into by the United States and other parties to this action.

**X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS**

A. Upon entry of this Consent Decree, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action for Matters Addressed in the Settlement against the United States, or its contractors or employees, and the State, with respect to the Site or this Consent Decree, including, but not limited to, 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 Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613, or any other provision of law, any claim against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. 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). The Settling Defendants reserve, however, claims against the United States for matters not addressed in the settlement, including claims as to which the United States has reserved its rights in

Section IX of this Decree; and further reserve claims against the State for matters not addressed in the settlement, including claims as to which the State has reserved its rights in Section IX of this Decree.

B. 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 or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, 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 reservations in this Paragraph apply 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.

C. For Matters Addressed in the Settlement, upon entry of this Consent Decree, Settling Defendants agree to release and

waive all claims or causes of action under CERCLA §§ 106, 107 and 113, 42 U.S.C. §§ 9606, 9607, and 9613, RCRA § 7003, and HSCA, 35 P.S. §§ 6020.101 et seq., or claims for similar relief, that they may have, including for contribution, against any person or party; except that in the event a person or party files a claim against a Settling Defendant, that Settling Defendant may assert claims or defenses against such person or party as necessary to defend against such a claim.

D. For matters relating to the Site but not addressed in this settlement, including claims reserved under Section IX, Paragraphs A.2 and B.2, upon entry of this Consent Decree, Settling Defendants agree to forego, release and waive all claims or causes of action under CERCLA §§ 106, 107 and 113, 42 U.S.C. §§ 9606, 9607, and 9613, RCRA § 7003, and HSCA, 35 P.S. §§ 6020.101 et seq., or claims seeking similar relief, that they may have, including for contribution, against persons falling within either of the following subparagraphs:

1. any person (a) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (b) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, at the Site of only Municipal Solid Waste or Sewage Sludge owned by such person, and (c) whose volume of Municipal Solid Waste or Sewage Sludge disposed of at the Site does not exceed 18,000 cubic yards;

2. any person (a) whose liability to Settling

Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (b) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, at the Site of 1800 cubic yards or less, of which not more than 55 gallons or 100 pounds consisted of materials containing hazardous substances derived from commercial, institutional, or industrial processes or activities (except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site) and the balance consisted of Municipal Solid Waste or Sewage Sludge.

E. The United States reserves the right to enforce the waivers and releases in Paragraphs C. and D. of this Section under the terms of this Consent Decree. The Settling Defendants agree, and the Court by entering this Consent Decree finds, that the specified claims against parties that meet the criteria in Paragraphs C. and D. of this Section are barred. A party sued by the Settling Defendants may assert as a defense or bar to such an action that the party meets the criteria in Paragraphs C. and D. and, in the event the Court determines that they do satisfy those criteria, the claims shall be dismissed.

F. Upon entry of this Consent Decree, Settling Defendants except for the State agree that, for Matters Addressed in the Settlement, they shall: (1) agree not to challenge, contest, or submit comments upon any other consent decrees entered into by the United States and any other parties to this action to the

extent such settlements pertain to the Matters Addressed in this Settlement (except where other such parties have challenged this Consent Decree, or, if they have lodged a Consent Decree with the United States in this action, fail to immediately withdraw their objections to this Decree); (2) withdraw with prejudice their objections to the de micromis settlements pending before the Court at the time they sign this Consent Decree; and (3) withdraw with prejudice any pending challenges to the EPA-selected remedies at the Site.

G. Nothing herein shall bar Settling Defendants from asserting against the United States or any other party not within the scope of Paragraphs C. and D. claims they would otherwise have that arise in the future out of an action taken or claim made by EPA or the United States pursuant to the authority reserved in Section IX, Paragraph A.2 and B.2 of this Consent Decree. 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).

#### **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

A. Except as provided in Section X, Paragraphs C through E, 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 Consent Decree may have under applicable law.

Except to the extent provided in Section X, 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.

B. With respect to claims for contribution by any person, under any state or federal law or common law against Settling Defendants, Settling Federal Agencies and the State for Matters Addressed in this Settlement, the Parties hereto agree, and the Court by entering this Consent Decree finds, that the Settling Defendants, Settling Federal Agencies and the State are entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for Matters Addressed in this Settlement.

C. The Settling Defendants agree not to assert any additional contribution actions, pursuant to Section 107 or 113 of CERCLA, for the Matters Addressed in this Settlement for which they receive contribution protection. Settling Defendants, except for the State in its enforcement capacity, further agree that, with respect to any suit or claim for contribution pursuant to CERCLA brought by them for matters not addressed in this Consent Decree but relating to the Site, they will notify the United States in writing no later than sixty days prior to the initiation of such suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution

brought against them pursuant to CERCLA for matters related to this Site they will notify in writing the United States within ten days of service of the complaint. In addition, Settling Defendants shall notify the United States within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial on matters related to this Consent Decree. Settling Defendants acknowledge that the United States has no obligation to defend them in any suit or claim for contribution.

D. In any subsequent administrative or judicial proceeding initiated by the United States 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 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 IX (Covenants by Plaintiff).

E. Nothing in this Consent Decree shall be construed as an admission of any fact, law, or liability on the part of Settling Defendants and Settling Federal Agencies. The United States, the Settling Defendants and the State agree that neither this Consent Decree, nor any part hereof, nor the entry into, nor any

performance under this Consent Decree, by any of the Settling Defendants or Settling Federal Agencies, shall constitute or be construed as a finding or admission or acknowledgment of the factual or legal allegations contained in this Consent Decree or in the Complaint, or any liability, fault, wrongdoing, or evidence of such, or an admission or violation of any law, rule, regulation, or policy, by any Settling Defendant or Settling Federal Agency. This Consent Decree shall not be admissible into evidence in any proceeding for the purpose of establishing any liability on the part of Settling Defendants or Settling Federal Agencies relating to the Site, including without limitation any liability pursuant to the Unilateral Administrative Order, provided, however, that this Consent Decree may be offered into evidence by any party hereto in a proceeding to enforce the terms, conditions, or effect of this Consent Decree.

## **XII. STATE CONTRIBUTION PROTECTION**

A. Subject to the State's Reservation of Rights in Section IX, Paragraph B.2, each of the Settling Defendants and Settling Federal Agencies is a person that has resolved its liability to the State for the Site and it is entitled to protection from claims for contribution regarding Matters Addressed in the Settlement, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2). This contribution protection is intended to be as broad as permissible under CERCLA and HSCA for the Matters Addressed in this Settlement. This contribution protection

extends only to the Settling Defendants and Settling Federal Agencies.

B. Each of the Settling Defendants and Settling Federal Agencies acknowledges that PADEP has no obligation to defend it in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of hazardous substances at the Site, arising out of the response actions at the Site, or arising out of this Consent Decree.

### XIII. RETENTION OF RECORDS

A. Until 10 years after entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in its possession or control or which come into its possession or control which relate in any manner to the liability of any person, including Settling Defendants, for response actions conducted and to be conducted at the Site, regardless of any retention policy to the contrary. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety days prior to the destruction of any such records, documents or information, and, upon request of EPA, Settling Defendants shall deliver all such documents, records and information to EPA.

B. Any Settling Defendant shall be deemed to have satisfied the requirements of Paragraph A if it has made a reasonable investigation and search for all documents relevant to its liability, either pursuant to these provisions of the Consent Decree, in order to respond to Requests for Information from EPA

pursuant to 104(e) of CERCLA or to discovery requests in this action, in order to complete de micromis questionnaires, or otherwise, and has placed documents located in that investigation in the common document depository maintained in this action by the parties in Harrisburg, PA, or provided them to EPA. The United States shall be notified at least ninety (90) days prior to closure of the document depository, by any parties still responsible for maintenance of the depository and, if pursuant to Court order, by the Court. Upon request of EPA, Settling Defendants at that time shall deliver all documents, records and information pertaining to their liability at the Site to EPA.

C. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff 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. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be

provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

D. Settling Defendants hereby certify that to the best of their knowledge and belief, after reasonable inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to Settling Defendants' potential liability regarding the Site since their joinder to this action, or the filing of any earlier suit against them regarding the Site, and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

E. Each Settling Federal Agency hereby certifies that (1) it has complied, and will continue to comply, with all applicable Federal record retention laws, regulations, and policies; (2) to the best of its knowledge and belief, after reasonable inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability by EPA or the filing of suit against it regarding the Site; and (3) 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).

#### XIV. NOTICES AND SUBMISSIONS

A. Except as otherwise provided herein, 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 specified in the particular Section of this Consent Decree at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, the Settling Federal Agencies, and the Settling Defendants, respectively.

As to the United States:

Joel Gross  
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 # 90-11-2-656A

As to the EPA:

Mary E. Rugala (3RC22)  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region III  
841 Chestnut Building  
Philadelphia, PA 19107

Leo Mullin (3HW12)  
CERCLA Cost Recovery Section  
United States Environmental Protection Agency  
-Region III  
841 Chestnut Building  
Philadelphia, PA 19107

As to the Settling Federal Agencies:

Chief, Environmental Defense Section  
Environment and Natural Resource Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Re: DOJ# 90-11-3-1240

As to the Department of Interior:

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

As to the State:

Beth Liss Shuman  
Assistant Counsel  
Rachel Carson State Office Bldg.  
400 Market Street, 9<sup>th</sup> Floor  
P.O. Box 8464  
Harrisburg, PA 17105-8464

Richard Morgan  
Project Officer  
South Central Regional Office  
One Ararat Boulevard  
Harrisburg, PA 17110

As to the Settling Defendants:

Liaison Counsel Listed in Appendix D

**XV. EFFECTIVE DATE**

The effective date of this Consent Decree shall be the Date of Entry of this Consent Decree, as defined in Section IV, except as otherwise provided herein.

**XVI. RETENTION OF JURISDICTION**

This Court retains jurisdiction over both the subject

matter of this Consent Decree and the Parties for purposes of interpreting and enforcing this Consent Decree.

#### **XVII. APPENDICES**

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

"Appendix A" is the OU1 ROD.

"Appendix B" is the list of Settling Defendants.

"Appendix C" is the list of Settling Federal Agencies.

"Appendix D" is the list of Liaison Counsel for purposes of notification pursuant to Section XIV.

#### **XVIII. MODIFICATION**

A. No modifications shall be made to provisions of this Consent Decree, without written notification to and written approval of the United States, the State, Settling Defendants and the Court.

B. Nothing in this Section shall be deemed to alter the Court's power to enforce, supervise or modify this Consent Decree.

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

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment consistent with the procedures set forth in Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State 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.

B. If for any reason the Court should decline to approve this Consent Decree in the form presented, or it is otherwise held invalid by a Court of competent jurisdiction, 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.

#### **XX. SIGNATORIES/SERVICE**

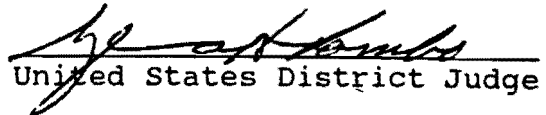
A. The undersigned representatives of the Settling Defendants to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice of the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.


B. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

C. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on 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, including, but not limited to, waiver of service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS [ 10 ] DAY OF Sept., 1999.

  
United States District Judge

**FILED**  
HARRISBURG, PA  
*Order of Consent*  
SEP 10 1999  
MARY E. D'ANDREA, CLERK  
Per 

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Keystone Sanitation Company relating to the Keystone Sanitation Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 10/15/87

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


Nancy Flickinger  
NANCY FLICKINGER  
MOLLY HALL  
Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
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Washington, D.C. 20530

Nancy Flickinger / Dan Dertke  
DAN DERTKE  
Attorney  
Environmental Defense Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

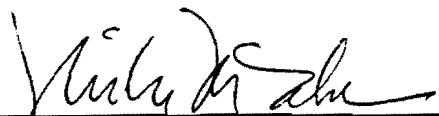
DAVID BARASCH  
United States Attorney  
Middle District of Pennsylvania

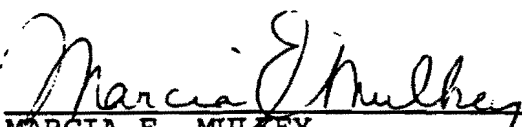
Date:


10/21/97

  
MARY CATHERINE FRYE  
Chief, Civil Division  
Middle District of Pennsylvania  
U.S. Department of Justice

OCT 20 1997  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
W. MICHAEL MCCABE  
Regional Administrator, Region III  
U.S. Environmental Protection  
Agency  
841 Chestnut Building  
Philadelphia, PA 19107

  
\_\_\_\_\_  
MARCIA E. MULKEY  
Regional Counsel, Region III  
U.S. Environmental Protection  
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841 Chestnut Building  
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\_\_\_\_\_  
MARY E. RUGALA  
PATRICIA C. MILLER  
THOMAS A. CINTI  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
841 Chestnut Building  
Philadelphia, PA 19107

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

Date: 100497



KAREN BASSETT

Acting Regional Director  
Southcentral Regional Office

Date: Oct. 10, 1997



BETH LISS SHUMAN

Assistant Counsel  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
P.O. Box 8464  
Harrisburg, PA 17105