

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

The Folcroft Landfill and :
The Folcroft Landfill Annex :
:
:
The Boeing Company :
Browning-Ferris Industries, Inc. :
ConocoPhillips Company :
Delaware County Solid Waste :
Authority :
E.I. duPont de Nemours and :
Company :
FMC Corporation :
General Electric Company :
Wilbur C. Henderson, Jr./ :
Henderson Columbia Corporation :
Kimberly Clark Corporation :
M.A. Bruder, Inc. :
PECO Energy Company :
PPG Industries, Inc. :
Rohm and Haas Company, and :
Waste Management Disposal Services :
of Pennsylvania, Inc. f/k/a :
SCA Services of Pennsylvania, :
Inc., :
Settling Parties :
:
:
Proceeding under sections 104(a), 107, :
122(a), and 122(h) of the Comprehensive :
Environmental Response, :
Compensation, and Liability Act :
of 1980, as amended, 42 U.S.C. :
§§ 9604, 9607 and 9622 :

Docket No. CERC-03-2007-0033DC

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EPA REGION III PHILA, PA

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
FOR THE FOLCROFT LANDFILL AND FOLCROFT LANDFILL ANNEX
COMPONENTS OF THE LOWER DARBY CREEK AREA SUPERFUND SITE**

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
FOR THE FOLCROFT LANDFILL AND FOLCROFT LANDFILL ANNEX
COMPONENTS OF THE LOWER DARBY CREEK AREA SUPERFUND SITE

The parties to this Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), The Boeing Company, Browning-Ferris Industries, Inc., ConocoPhillips Company, Delaware County Solid Waste Authority, E.I. duPont de Nemours and Company, FMC

Corporation, General Electric Company, Wilbur C. Henderson, Jr./Henderson Columbia Corporation, Kimberly Clark Corporation, M.A. Bruder, Inc., PECO Energy Company, PPG Industries, Inc., Rohm and Haas Company, and Waste Management Disposal Services of Pennsylvania, Inc. f/k/a SCA Services of Pennsylvania, Inc., and any additional Potentially Responsible Parties identified in Appendix A, which execute this Settlement Agreement ("Settling Parties") and the U.S. Environmental Protection Agency ("EPA") have agreed to the issuance of this Settlement, and the Settling Parties agree to undertake all actions required by this Settlement Agreement. This Settlement Agreement concerns the preparation of, and performance of, a Remedial Investigation/Feasibility Study ("RI/FS") for the Folcroft Landfill and Folcroft Landfill Annex areas (hereinafter jointly referred to as "the Folcroft Landfill" or the "Site") which are located predominantly in the John Heinz National Wildlife Refuge at Tinicum, in Delaware County, Pennsylvania and comprise Operable Unit #2 ("OU#2") of the Lower Darby Creek Area Superfund Site (the "LDCA"). It is therefore agreed and ordered that:

I. JURISDICTION

- A. This Settlement Agreement is signed in partial settlement of disputed issues of fact and is issued pursuant to the authority vested in the President of the United States by sections 104(a), 107, 122(a) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604(a), 9607, 9622(a), and 9622(h), and delegated to the Administrator of the EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926, and further delegated to the Region III's Director, Hazardous Site Cleanup Division by EPA Delegation No. 14-14-C.
- B. The Settling Parties consent to and will not contest EPA's jurisdiction regarding this Settlement Agreement.

II. STATEMENT OF PURPOSE

- A. In entering into this Settlement Agreement, the mutual objectives of EPA and the Settling Parties are to complete satisfactorily an RI/FS for the Folcroft Landfill, as hereinafter described. The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Folcroft Landfill, and assessing risk to human health and the environment ("Risk Assessments"). The Risk Assessments shall be incorporated into the Remedial Investigation Report. The Feasibility Study shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum

extent practicable. In evaluating the alternatives, the Settling Parties shall address the factors required to be taken into account by section 121 of CERCLA, 42 U.S.C. §9621, and section 300.400(e) of the NCP, 40 C.F.R. §300.400(e).

- B. The activities conducted pursuant to this Settlement Agreement are subject to approval by EPA and shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.
- C. The activities conducted under this Settlement Agreement shall provide all necessary information for the RI/FS, and for a Record of Decision ("ROD") for selection of a remedial action that is consistent with CERCLA and the NCP.
- D. In entering into this Settlement Agreement, both EPA and the Settling Parties agree that it is consistent with and conducive to the Statement of Purpose of this Settlement Agreement for additional Potentially Responsible Parties to become Settling Parties and signatories to this Settlement Agreement, even after its Effective Date. Accordingly, this Settlement Agreement may be amended.
- E. The Parties intend, by entering into this Settlement Agreement, to compromise disputed claims and to avoid burdensome litigation.
- F. EPA and the Settling Parties acknowledge that this Settlement Agreement has been negotiated in good faith and that the actions taken by the Settling Parties in accord with this Settlement Agreement do not constitute an admission of liability.
- G. The Settling Parties do not admit and specifically reserve the right to contest in any subsequent proceeding, other than a proceeding to enforce this Settlement Agreement, EPA's Findings of Fact and EPA's Conclusions of Law as set forth in Section III and IV of this Settlement Agreement.

III. EPA'S FINDINGS OF FACT

EPA finds the following facts which the Settling Parties neither admit nor deny. The Settling Parties, however, do consent to the issuance of this Settlement Agreement:

- A. Each of the Settling Parties is a corporation operating and existing under the laws of the United States, with the exception of Mr. Wilbur C. Henderson, who is an individual, and the Delaware County Solid Waste Authority which is a municipal authority, operating pursuant to the laws of the Commonwealth of Pennsylvania.
- B. At various times relevant to the Settlement Agreement, portions of the Folcroft Landfill were owned by the Folcroft Landfill Corporation, Philadelphia Electric Company, Wilbur C. Henderson and/or Henderson Columbia Corporation.

- C. From 1961 through 1963 portions of the Folcroft Landfill property were leased to the now defunct Landfill Corporation of Pennsylvania, Inc. The lease expired in 1963 and the land was then leased through 1974 to Folcroft Landfill Corporation which is now defunct. Landfill operations commenced in 1961. The Folcroft Landfill operated under Pennsylvania Department of Environmental Resources ("PADER") Solid Waste Permit Number 10053 and was permitted to accept sanitary waste only as defined by the United States Public Health Service.
- D. In 1973, PADER ordered the landfill closed. In 1974, landfill operations ceased and closure operations commenced, including the placement of a cover over the landfill. On October 22, 1977, the Commonwealth issued a letter confirming the satisfactory closure of the landfill.
- E. In 1980, Congress authorized the U.S. Department of the Interior ("DOI") to purchase land including the majority of the Folcroft Landfill to increase the size of the John Heinz National Wildlife Refuge ("Refuge"). Pursuant to the authorization, DOI purchased all of the Folcroft Landfill property except for the property then, and currently, owned by the Philadelphia Electric Company. PECO owns four acres of the 11-acre Folcroft Landfill Annex. The United States Fish and Wildlife Service ("FWS") currently manages the Refuge.
- F. The Refuge, a 1,200 acre freshwater wetland, is located in the eastern portion of Folcroft Borough in Delaware County, Pennsylvania along Darby Creek. The Folcroft Landfill is bordered by Darby Creek and Thoroughfare Creek on the south and east, Hermesprot Creek on the west, and the former Delaware County Incinerator on the north. The Folcroft Landfill Annex is bordered by Hermesprot Creek on the east and south, the former Delaware County Incinerator on the east, commercial properties on the north, and wooded areas of the Refuge on the west.
- G. EPA proposed the Lower Darby Creek Area for the National Priorities List ("NPL") on May 11, 2000, at 65 Fed. Reg. 30489. At the time of proposal, the Lower Darby Creek Area included the Folcroft Landfill and Folcroft Landfill Annex and five other properties along Darby Creek. In the final listing on the NPL on June 14, 2001, at Fed. Reg. 32235, the Lower Darby Creek Area Superfund Site ("LDCA") included two former landfills, the Clearview Landfill and the Folcroft Landfill and Annex, that are located in southeastern Delaware County, Pennsylvania. The Clearview Landfill is on the east side of Darby Creek and approximately two miles upstream of the Folcroft Landfill and Annex.
- H. EPA issued notice letters to a number of private parties as well as to a number of Federal Agencies, alleging that they are responsible under CERCLA for response costs at the Folcroft Landfill.

- I. The United States, through FWS, is the current owner of the majority of the Folcroft Landfill and Annex to be addressed by this Settlement Agreement and for purposes of CERCLA 107(a)(1) and has been the owner of the closed permitted landfill since 1980.
- J. In consultation with DOI and FWS, EPA has determined that the Remedial Investigation and Feasibility Study ("RI/FS") will be performed under the requirements of section 120(e)(6) of CERCLA, 42 U.S.C. section 9620(e)(6) by a group of potentially responsible parties under EPA oversight.
- K. PADER performed periodic inspections of a portion of the Folcroft Landfill between 1969 and 1973. In 1977 FWS performed several environmental studies at the Folcroft Landfill, including a Soils Exploration and Site Study as well as a Master Plan and Environmental Assessment. EPA conducted various inspections during the 1980's, including an on-site inspection and sampling of portions of the Folcroft Landfill on October 29, 1980.
- L. On July 13, 1983 a grass fire burned on or in the vicinity of the Folcroft Landfill Annex and on surrounding property. In response to the 1983 grass fire, EPA conducted a removal action to remove and stabilize drums discovered at the area of the fire. In addition, EPA capped the area of the fire.
- M. Investigations at the Folcroft Landfill by FWS and EPA were published in a September 1986 report entitled, "An Investigation of Potential Environmental Hazards at Tinicum National Environmental Center" and a September 1989 report entitled, "Site Investigation Report for the Folcroft Landfill and Tinicum Marsh."
- N. During a 1988 investigation, five (5) monitoring wells were installed by FWS on the Folcroft Landfill. Monitoring wells 1, 2, and 3 were installed in the toe of the Folcroft Landfill, monitoring well 5 was installed at the Folcroft Landfill Annex and monitoring well 4 was installed north of the Folcroft Landfill on a neighboring property. Since their installation in 1988, FWS has monitored groundwater quality from these five wells on an annual basis.
- O. In May 1998 as part of the Preliminary Assessment/Site Investigation ("PA/SI") EPA collected one soil sample and one leachate sample from the Folcroft Landfill.

IV. EPA'S CONCLUSIONS OF LAW

Based on EPA's Findings of Fact, as set forth above, which the Settling Parties neither admit nor deny, EPA has determined that;

- A. The Folcroft Landfill is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. §9601(9).

- B. Each Settling Party is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. §9601(21).
- C. “Hazardous substances”, as defined in section 101(14) of CERCLA, 42 U.S.C. §9601(14), are alleged to have been disposed of at the Folcroft Site and to currently be present there.
- D. The presence of hazardous substances at the Folcroft Landfill and the past, present, and/or potential migration of hazardous substances at or from the Folcroft Landfill constitutes an actual and/or threatened “release” as defined in section 101(22) of CERCLA, 42 U.S.C. §9601(22).
- E. The Settling Parties are liable under section 107(a) of CERCLA, 42 U.S.C. §9607(a).

V. EPA DETERMINATIONS

Based on EPA’s Findings of Fact and EPA’s Conclusions of Law set forth above, EPA has determined that:

- A. The actions required by this Settlement Agreement are necessary to protect the public health and welfare and the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.
- B. EPA has determined that the Settling Parties are qualified to conduct the RI/FS within the meaning of section 104(a) of CERCLA, 42 U.S.C. §9604(a), and will carry out the work properly and promptly if the Settling Parties comply with this Settlement Agreement.

VI. PARTIES BOUND

- A. This Settlement Agreement shall apply to and be binding upon EPA, upon Settling Parties and their successors and assigns, and upon all persons, contractors and consultants acting under or for the Settling Parties. No change in ownership or corporate or partnership status of the Settling Parties or the Folcroft Landfill will in any way alter each Settling Party’s obligations under this Settlement Agreement.
- B. In the event of any change in ownership or control of the Folcroft Landfill which becomes known to the any of the Settling Parties, such Settling Party shall notify EPA, in writing, at least five (5) business days in advance of the change, or as soon as practical after learning of the change in ownership or control, of the name, address and telephone number of the transferee in interest and the proposed date of the transfer, and the nature of the proposed transfer or change. Further, such Settling Party shall provide EPA with a copy of any indemnification agreement which may be executed within five (5) business days of its execution. Moreover, such Settling Party shall provide a copy of this

Settlement Agreement to the transferee in interest prior to any agreement for transfer, or as soon as practical after learning of the change in ownership or control.

- C. The Settling Parties shall provide a copy of this Settlement Agreement to all contractors, subcontractors, laboratories, consultants, and supervisory personnel retained to conduct or monitor any portion of the work performed pursuant to this Settlement Agreement within seven (7) calendar days of the effective date of this Settlement Agreement or on their date of retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Settlement Agreement. Notwithstanding the terms of any contract, the Settling Parties are responsible for complying with this Settlement Agreement and for ensuring that their contractors, subcontractors, laboratories, consultants, supervisory personnel, and agents comply with this Settlement Agreement.

VII. NOTICE TO THE COMMONWEALTH OF PENNSYLVANIA

EPA is notifying the Commonwealth of Pennsylvania (the "Commonwealth") that this Settlement Agreement is being issued by providing a copy to the Commonwealth.

VIII. WORK TO BE PERFORMED

- A. The Settling Parties shall perform an RI/FS for the Site in accordance with the RI/FS Work Plan and its supporting documents ("Work Plan") attached hereto as Appendix "B" along with the requirements of CERCLA, the NCP, this Settlement Agreement (including any EPA-approved documents submitted as a requirement of this Settlement Agreement), and all applicable EPA guidances, policies and procedures, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01; October 1988 or subsequently issued guidance), "Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites" (EPA/540/P-91/001, February 1991), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, as may be amended or modified by EPA.
- B. All response work performed pursuant to this Settlement Agreement shall be under the direct supervision of qualified personnel. Any documents, submissions or notifications that are required under this Settlement Agreement that have been previously submitted by the Settling Parties need not be resubmitted under this Settlement Agreement, unless EPA determines that such submittal is inadequate. The Settling Parties shall provide to EPA within thirty (30) calendar days after the effective date of this Settlement Agreement a list of all documents, submissions, and notifications to EPA relating to the RI/FS Work.
1. Within five (5) calendar days after the Effective Date of this Settlement Agreement, the Settling Parties shall notify EPA in writing of the identity and

qualifications of the primary contractor(s) and/or supervisory personnel to be used in carrying out the work to be performed pursuant to this Settlement Agreement. The Settling Parties have a continuing obligation to notify EPA of the identity and qualifications of any contractors, subcontractors, and supervisory personnel that will perform or oversee work required by this Settlement Agreement within ten (10) calendar days after their retention.

2. EPA may, in its discretion, disapprove of the use of any contractor, subcontractor, or supervisory personnel EPA considers to be unqualified or otherwise unable to perform the work, or to continue to perform any part of the work required by this Settlement Agreement, by providing the Settling Parties notice of such disapproval in writing. In the event of a disapproval, the Settling Parties shall notify EPA within twenty-one (21) calendar days of receipt of such disapproval of the identity and qualifications of the person, contractor, subcontractor, or supervisory personnel that will replace the one that was disapproved.

3. In the event EPA subsequently disapproves of any replacement contractor, subcontractor, or supervisory personnel, EPA reserves the right to conduct a complete RI/FS, or any portion thereof, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs and/or to seek any other appropriate relief.

4. EPA will provide a notice of acceptance of the prime contractor to the Settling Parties. Nothing herein shall limit EPA's right to subsequently disapprove of such contractor.

C. Thirty (30) calendar days after EPA's acceptance of the prime contractor, the Settling Parties shall submit to EPA a schedule for submitting the submissions listed in Section VIII (Work to be Performed) in order to complete the RI and FS Reports. The schedule shall include projected start-up and delivery dates for draft, interim, and final memos and reports as well as any necessary meetings with EPA to discuss required submissions and the Risk Assessments.

D. Work shall be performed in accordance with the terms, conditions, and schedule of the RI/FS Work Plan ("Work Plan") appended to this Settlement Agreement as Appendix "B." Settling Parties shall prepare and submit to EPA for approval pursuant to Section IX (Submissions Requiring EPA Approval) of this Settlement Agreement, the following:

1. Human Health Risk Assessment and Ecological Risk Assessment. The Settling Parties will perform and submit for EPA review and approval a Human Health Risk Assessment and an Ecological Risk Assessment ("Risk Assessments") in accordance with the RI/FS Work Plan and applicable EPA guidance. For the Human Health Risk Assessment the following guidance documents are applicable: 1) EPA's Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A), Interim Final, December 1989, 2) EPA's Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund

Risk Assessments), Interim, January 1998, 3) EPA's Exposure Factors Handbook, Volumes I - III, August 1997, and 4) EPA's Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (part E, Supplemental Guidance for Dermal Risk Assessment), Interim, September 2001 or subsequently issued guidance. For the Ecological Risk Assessment the following guidance document is applicable: 1) "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) and OSWER Directive 9285.7-28 P dated October 7, 1999 or subsequently issued guidance.

2. Draft Remedial Investigation Report. One hundred and twenty (120) calendar days after receiving approval by EPA of the Interim Report on Human Health Risk Assessment listed in Section VIII.G.1., the Settling Parties shall submit to EPA for review and approval a draft Remedial Investigation Report. The draft RI Report shall contain the Risk Assessments listed in Section VIII.D.1. The Settling Parties shall refer to Table 3-13 of the RI/FS Guidance for the content and format of the draft RI Report.
3. Development and Screening of Alternatives. The Settling Parties shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives by submitting a memoranda for EPA review and approval. In accordance with Section VIII.G.2., the Settling Parties shall meet and/or consult with EPA on the remedial alternatives. The memoranda shall include remedial action objectives for engineering controls and for institutional controls and shall summarize the development and screening of remedial alternatives, including institutional controls, that may become components of the remedial action.
4. Treatability Studies: The Settling Parties shall conduct treatability studies, except where the Settling Parties can demonstrate to EPA's satisfaction that they are not needed. Major components of such treatability studies include a determination of the need for and scope of studies, the design of the studies, and the completion of the studies. If EPA determines that a treatability study is required, the Settling Parties shall provide EPA with a treatability study workplan that contains the following: a.) Identification of Candidate Technologies Memorandum. The Settling Parties shall identify candidate remedial technologies. b.) Treatability Testing Statement of Work. The Settling Parties shall submit a treatability testing statement of work. c.) Treatability Testing Work Plan. The Settling Parties shall submit a treatability testing work plan, including an expeditious schedule, sampling and analysis plan, and a health and safety plan. Upon completion of the treatability study the Settling Parties shall submit to EPA a Treatability Study Evaluation Report.
5. Draft Feasibility Study Report: The Settling Parties shall conduct a detailed analysis of remedial alternatives, as described in the RI/FS Guidance. Within one hundred and sixty (160) calendar days after EPA approves the memorandum

described in Paragraph D. 3., the Settling Parties shall submit to EPA for review and approval a Draft Feasibility Study Report which will contain a comparative analysis of the remedial alternatives against the nine evaluation criteria as described in the NCP and EPA's RI/FS guidance. The Settling Parties shall refer to Table 6-5 of the RI/FS Guidance for the content and format of the FS Report.

6. Final RI Report and Final FS Report: After incorporating EPA comments on the draft RI and FS Reports, the Settling Parties shall submit to EPA a revised version of the RI and FS Reports. The final RI and FS Reports, and the administrative record, shall provide the basis for the Proposed Remedial Action Plan to be issued by EPA under CERCLA Sections 113(k) and 117(a) by EPA.
- E. The Settling Parties shall provide EPA with a monthly progress report by the 15th day starting on the month following the Effective Date of this Settlement Agreement as defined in Section XXX. Monthly progress reports may be submitted electronically and, at a minimum, these progress reports shall include:
1. a description of the actions that have been taken toward achieving compliance with this Settlement Agreement and the tasks set forth in the RI/FS Work Plan appended hereto;
 2. a summary of all results of sampling, tests, analytical data that have been through Quality Assurance/Quality Control review and all other information received by the Settling Parties;
 3. a description of all data anticipated and activities scheduled for the next thirty (30) calendar day period;
 4. a description of any problems encountered, any actions taken or to be taken to remedy or mitigate such problems, and a schedule of when such actions will be taken, and;
 5. revised schedule as necessary for the submission of documents for EPA review and approval.
- F. The Settling Parties shall meet and/or consult with EPA technical representative(s) forty-five (45) calendar days after the Effective Day of this Settlement Agreement to facilitate execution of the Settlement Agreement. EPA may, in its discretion, waive the meeting.
- G. Prior to submitting the draft RI Report and the draft FS Report to EPA, the Settling Parties shall submit interim submissions on 1) the Human Health Risk Assessment, 2) the Ecological Risk Assessment and 3) the development of the remedial alternatives. In preparation of these interim submissions, the Settling Parties shall meet and/or consult with EPA to

present and discuss Settling Parties' data, findings, and the format to be used by the Settling Parties to prepare these interim submissions. Subject to Section XIV.E of this Settlement Agreement, the Settling Parties shall supply additional documentation requested by EPA relative to the RI Report within thirty (30) calendar days of any such request. However, EPA shall not determine that a deliverable is untimely where EPA recognizes that EPA's failure to submit a response to , or comments upon a prior deliverable is a substantial cause of the delay in the subsequent submission.

1. Prior to submitting the draft RI Report, the Settling Parties will prepare and submit for EPA review and approval an Interim Report on Human Health Risk Assessment using information developed pursuant to this Settlement Agreement and other information as appropriate. The Interim Report on Human Health Risk Assessment will include tables 1-4 from EPA's Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), Interim, January 1998. No later than thirty (30) calendar days prior to submitting the Interim Report on Human Health Risk Assessment, the Settling Parties shall meet and/or consult with EPA on items such as, but not limited to, current and future site use scenarios and exposure assumptions.
 2. No later than thirty (30) calendar days prior to submitting the Memoranda listed in Section VIII.D.3., the Settling Parties shall meet and/or consult with EPA to discuss the development and screening of remedial alternatives.
 3. Thirty (30) calendar days prior to submitting the draft FS Report, the Settling Parties shall meet and/or consult with EPA to discuss the draft FS, the detailed analysis of remedial alternatives evaluated to achieve appropriate cleanup levels.
 4. EPA shall not determine that a deliverable is untimely where EPA recognizes that EPA's failure to submit a response to, or comments on, a prior deliverable is a substantial cause of the delay in the subsequent submission.
- H. EPA and the Settling Parties recognize that, while undertaking an RI/FS, certain information and/or knowledge about the Site or technology or investigative methods may arise from public meetings, data collection, and other sources that may require modification to the Work Plan or to the field work. Any such modifications must be made in conformance with Section XXIX of this Settlement Agreement.
- I. EPA reserves its right to disapprove of work performed by the Settling Parties and reserves its right to request that the Settling Parties perform response actions in addition to those actions required by, or as modified in the RI/FS Work Plan, if EPA determines that such actions are necessary and that the Settling Parties are qualified and can carry out such actions properly and promptly. In the event that the Settling Parties decline to

perform such additional and/or modified actions, EPA reserves the right to undertake such action(s) and to seek reimbursement of its costs and/or to seek any other appropriate relief.

J. EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under CERCLA and the NCP, and to seek reimbursement for any costs incurred or seek any other appropriate relief.

K. 1. A “responsible official” of each Settling Party, or his/her duly authorized representative participating in the oversight of RI/FS activities, shall sign a certification to the final RI and FS reports in accordance with the requirements of this provision.

2. For a corporation, a “responsible official” means a president, secretary, treasurer, vice president in charge of a principal business function, other person who performs similar policy or decision-making functions for the corporation, or, if authority to sign documents has been assigned or delegated to him/her in accordance with corporate procedures, the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3). For a partnership or sole proprietorship, “responsible official” means a general partner or the proprietor, respectively.

3. A person is a “duly authorized representative” within the meaning of this subsection only if:

(a) The authorization is made in writing by a responsible corporate official, and

(b) The authorization specifies either the Settling Parties’ Project Manager or an individual or a position within the Settling Party’s organization responsible for overseeing performance of the RI/FS, and

(c) The written authorization has been approved to EPA prior to the certification.

4. The certification required by this provision shall be in the following form:

“Except as provided below, I certify that the information contained in or accompanying this submission is true, accurate and complete.

“As to those portions of this submission for which I cannot personally verify their accuracy, I certify that this submission and all attachments were prepared at the direction of the Settling Parties’ Project Manager, in

accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the Settling Parties' Project Manager, the information submitted is true, accurate, and complete to the best of my knowledge, information, and belief.

"This certification shall not apply to information contained herein that was inserted into this submission by EPA, or was required by EPA to be inserted into this submission, over my objection."

- L. 1. In the event EPA elects to perform all or any portion of the Work required by this Settlement Agreement or to oversee performance of such Work by a party other than the Settling Parties, EPA shall so notify the Settling Parties in writing. Such notification ("Takeover Notice") shall identify the Work required by this Settlement Agreement which Settling Party shall not perform ("Takeover Work"). Upon receipt of any such Takeover Notice from EPA, Settling Parties shall be released from any further obligation under this Settlement Agreement to complete such Takeover Work. The Settling Parties shall not be released, however, from any other obligations under this Settlement Agreement and shall specifically remain liable for, among other things:
- (a) stipulated penalties for violations of this Settlement Agreement which occurred prior to the Settling Parties' receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Settlement Agreement relating to Takeover Work shall continue to accrue only until (1) EPA, or another party pursuant to an agreement with or order by EPA, commences performance of such Work, or (2) sixty (60) days from the date of the Settling Party's receipt of the Takeover Notice, whichever is less; and
 - (b) oversight costs incurred prior to the Settling Party's receipt of the Takeover Notice.
2. Unless otherwise provided in the Takeover Notice, the Settling Parties shall not be released from their obligations under this Settlement Agreement to perform any Work required by this Settlement Agreement other than the Takeover Work and shall remain subject to stipulated penalties and responsible for reimbursement of oversight costs relating to all such Work.

IX. SUBMISSIONS REQUIRING EPA APPROVAL

In accordance with the schedules established in this Settlement Agreement, the Settling Parties shall submit two (2) copies to EPA, one copy to the state, and one copy to the FWS of all deliverables including memos, plans, and reports required under this Settlement Agreement and the RI/FS Work Plan. Upon request by EPA, the Settling

Parties shall submit in electronic form all or portions of any plan, report or other deliverable that the Settling Parties are required to submit pursuant to provisions of this Settlement Agreement.

- A. After review of any plan, report, or other document submitted for EPA approval pursuant to this Settlement Agreement "Submission", EPA may: (1) approve, in whole or in part, the Submission; (2) approve the Submission upon specified conditions; (3) modify and approve the Submission to cure the deficiencies, however, EPA shall not modify a submission without first providing Settling Parties at least one notice of deficiency and opportunity to cure within twenty-one (21) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable; (4) direct Settling Parties to modify the Submission; (5) disapprove, in whole or in part, the Submission; (6) disapprove the Submission as substantially deficient; or (7) any combination of the above. However, EPA shall not modify a submission without first providing Settling Parties at least one notice of deficiency and opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.
- B. In the event EPA approves the Submission in whole, the Settling Parties shall take all actions required by the Submission. In all other cases, the Settling Parties shall take all actions required by portions of the Submission which are approved by EPA.
- C. Except as otherwise provided in paragraph D of this Section, the Settling Parties shall, upon receipt of a notice of disapproval or notice requiring modification of the Submission, correct the deficiencies and resubmit the Submission for approval within thirty (30) days of such receipt or such other time as may be specified by EPA in the notice.
- D. In the event that (1) any Submission is disapproved by EPA as substantially deficient, or (2) a resubmitted Submission, or portion thereof, is disapproved by EPA, the Settling Parties shall be in violation of this Settlement Agreement. EPA may, under such circumstances, conduct a complete RI/FS, or any portion thereof, and seek reimbursement of its costs; take any action described in paragraph A of this Section; and/or seek any other appropriate relief.
- E. All Submissions, or portions thereof, shall, upon approval by EPA, be enforceable as requirements of this Settlement Agreement.

- F. No failure by EPA to approve, disapprove, or otherwise respond to a Submission shall be construed as an approval of such Submission.
- G. Final approval of all Submissions as described in Section VIII (Work To Be Performed) rests solely with EPA. EPA will provide to FWS for review and comment the Submissions including, but not limited to the Draft RI Report, the Draft FS Report, and Treatability Studies, if any, submitted by The Settling Parties. EPA shall provide the Settling Parties with a complete set of all of FWS's comments on Submissions including but not limited to the Draft RI Report and Draft FS Report; however, the Settling Parties are only obligated to respond to those comments EPA determines should be addressed.

X. PUBLIC COMMENT

The administrative record file for the proposed remedial action, including the RI and FS Reports, the Risk Assessment, and documents considered by EPA in developing the Proposed Plan, will be available for public review and comment pursuant to 40 C.F.R. §300.430. Following the public review and comment period, EPA will notify the Settling Parties of the remedial action alternative(s) selected by EPA for implementation at the Site. For purposes of establishing the administrative record EPA may request the Settling Parties to submit additional copies of documents.

XI. DESIGNATED PROJECT MANAGERS

- A. Within ten (10) days of the effective date of this Settlement Agreement, EPA and the Settling Parties shall each designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Settlement Agreement. To the maximum extent possible, communications between the Settling Parties and EPA, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to this Settlement Agreement, shall be directed to the Project Managers by overnight or certified mail, with copies to such other persons as EPA and the Settling Parties may respectively designate.
- B. EPA and the Settling Parties shall each have the right to change their respective Project Manager(s). Such change shall be accomplished by notifying the other party in writing at least twenty (20) days prior to the change.
- C. EPA's Project Manager shall have the authorities specified in 40 C.F.R. §§ 300.120 and 300.430 and shall have the authority consistent with the NCP to, inter alia, halt, modify, conduct, or direct any tasks required by this Settlement Agreement and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.415.

- D. The absence of the EPA Project Manager from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of work.
- E. On or before the Effective Date of this Settlement Agreement, EPA will arrange for a qualified person to assist it in overseeing and reviewing the conduct of the RI/FS as required by section 104(a) of CERCLA, 42 U.S.C. §9604(a) (“Oversight Representatives”) provided however that such Oversight Representatives shall not include employees, or agents of the DOI or FWS.

XII. SITE ACCESS

- A. A substantial portion of the property included in the area under study pursuant to this Settlement Agreement is presently owned or controlled by the United States through the FWS. The EPA will work with the Department of the Interior, and the FWS to acquire reasonable access, to perform all activities required under this Settlement Agreement on property under the control of the FWS.
- B. With regard to any portion of the property included in the area of the study pursuant to this Settlement Agreement that is not owned or controlled by the United States, the Settling Parties shall use best efforts to obtain Site access agreements from the present owners as soon as possible but no later than ninety (90) days from the Effective Date of this Settlement Agreement. Such agreements shall provide reasonable access as detailed in paragraph D of this Section, for performance of all activities required under this Settlement Agreement for EPA, its authorized representatives, Oversight Representatives, representatives of the Commonwealth and the Settling Parties and their authorized representatives. In the event that the property owner refuse(s) to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Settling Parties shall so notify EPA, in writing and within ten (10) calendar days, of all efforts undertaken to obtain access agreements as required by this Settlement Agreement. EPA, solely in its discretion, may then take steps to obtain such access.
- C. Best efforts, as used in this Section shall include, but shall not be limited to, a certified letter from the Settling Parties to the present owners of such property requesting access agreements to permit the Settling Parties and EPA and its authorized and designated representatives to access such property.
- D. EPA and the State and their authorized and designated representatives shall have the authority to enter and freely move about all property at the Site owned or controlled by the Settling Parties at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Settling Parties 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 Settling Parties. In addition, EPA and/or its representatives shall have, for the purposes specified above, the authority to enter, at all reasonable times, all areas at which records related to the

performance of the RI/FS are retained. The Settling Parties 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 work undertaken pursuant to this Settlement Agreement. Confidentiality claims for any material so copied may be asserted in accordance with Section XIV of this Settlement Agreement. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Federal law.

- E. In the event that EPA takes over the work pursuant to this Settlement Agreement, the Settling Parties agree to allow EPA and its authorized representatives access to any portions of the Site under their ownership or control for the purpose of conducting the RI/FS and performance of activities identified in paragraph D of this Section. The Settling Parties shall provide EPA access to the PECO portion of the Folcroft Landfill and Annex.
- F. If any Settling Party acquires title to or control over any portion of the Site to which it does not presently hold title or control, such Settling Party agrees that EPA shall have access rights to such property as specified in this Section.
- G. For purposes of this Section XII, EPA and/or its representatives shall not include employees or agents of the DOI and FWS.

XIII. QUALITY ASSURANCE

- A. While conducting sampling and analysis pursuant to this Settlement Agreement, the Settling Parties shall implement quality assurance, quality control, and chain of custody procedures including, but not limited to, those described in Appendix "B" and in:
 - 1. "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive No. 9355.3-01 (1988));
 - 2. "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" March 2001 (EPA QA/R-5).
 - 3. "Guidance for Quality Assurance Project Plans" December 2002 (EPA QA/G-5).
 - 4. "A Compendium of Superfund Field Operations Methods" (OSWER Directive No. 9355-0-14 (December 1987));
 - 5. "Guidance for Data Quality Objectives Process for Hazardous Waste Sites" January 2001(QA/G-4HW)
 - 6. Technical direction received from EPA at the meeting(s) described in Section VIII.F of this Settlement Agreement.

- B. The Settling Parties shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RI/FS Work Plan.
- C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Settlement Agreement, the Settling Parties shall at a minimum:
1. Use a laboratory(s) which has a documented Quality Assurance Program that complies with American National Standard, Quality Management and Quality System Elements for Laboratories-Guidelines, ANSI/ASQC Q2-1991.
 2. Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(s), records, and personnel utilized by the Settling Party for analysis of samples collected pursuant to this Settlement Agreement.
 3. Comply with the Quality Assurance Project Plan "QAPP" for the sample collection and analysis to be conducted pursuant to this Settlement Agreement which is a supporting document to the RI/FS Work Plan attached hereto as Appendix "B".
 4. Ensure that the laboratory(s) analyzing samples required by this Settlement Agreement use the analytical methods documented in the approved QAPP and submit deliverables delineated in the current "Statement of Work" for the EPA Contract Lab Program ("CLP")
 5. Except with respect to non-CLP samples as provided in paragraph C.9 of this Section, ensure that the laboratory(s) analyzing samples pursuant to this Settlement Agreement agrees to demonstrate its capability to perform analysis in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Manager for verification.
 6. Conduct an audit of the laboratory(s) that will analyze samples from the Site at some point during the time the laboratory(s) is conducting analyses as specified in the QAPP. The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the EAID Quality Assurance Team. Audit reports must be submitted to the EPA Project Manager within fifteen (15) days of completion of the audit. The Settling Party must report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take corrective actions to correct such deficiencies within seven (7) business days of the time the Settling Party knew of the deficiency. CLP Laboratories need not be audited.

7. Conduct at least one appropriate field audit as described in the approved QAPP during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Manager within fifteen (15) days of completion of the audit. The Settling Parties must report deficiencies and take corrective actions to correct such deficiencies within seven (7) business days of the time the Settling Party knew of the deficiency.
8. Provide data validation of analyses done by the laboratory(s) as described in the approved QAPP. This data validation shall determine data usability and shall be performed in accordance with the Region III Modifications to the National Functional Guidelines (Organic 1994 and Inorganic 1993)(Available from the EAID Quality Assurance Team) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. The data validation must be performed by a qualified third party independent of the laboratory. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Manager at the time sample results are provided to EPA.
9. The Settling Parties shall be permitted to use non-CLP methods and procedures only as provided in the approved QAPP.
- D. In the event that the Settling Parties fail to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to issue a Takeover Notice and to conduct a complete RI/FS or any portion thereof pursuant to its authority under CERCLA and the NCP and to seek reimbursement from the Settling Parties for the costs thereof and/or to seek any other appropriate relief.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. Upon request by EPA, the Settling Parties shall make available to EPA the results of all sampling and/or tests or other data generated by the Settling Parties, or on the Settling Parties' behalf, as required by this Settlement Agreement, and shall submit all such results no later than the date that the next monthly progress report is due. EPA will, upon request, make available to the Settling Parties validated data generated by EPA and its contractors with regard to the Site and the streams.
- B. At the request of EPA, the Settling Parties shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, which shall not include employees, or agents of the DOI or FWS of any samples collected by the Settling Parties pursuant to the approved RI/FS Work Plan. Unless otherwise agreed by EPA, the Settling Parties shall notify EPA not less than sixty (60) days in advance of any such sample collection activity.

- C. EPA will determine the contents of the administrative record file for the selection of the remedial action. The Settling Parties shall submit to EPA all documents developed during the course of the RI/FS upon which selection of the response action may be based. The Settling Parties shall, on or before the date of submission of the final FS Report, submit to EPA all documents and information which the Settling Parties wish EPA to consider in the development of the Proposed Plan.
- D. At the request of EPA, the Settling Parties shall provide any of the raw data and/or field notes under its custody or control relating to samples taken at the Site as required by this Settlement Agreement within thirty (30) days of receipt of such request.
- E. All data, factual information, and documents submitted by the Settling Parties pursuant to this Settlement Agreement shall be subject to public inspection unless at the time of submission the Settling Parties assert a confidential business information or trade secret claim pursuant to applicable Federal law. Except as provided below, the Settling Parties may assert such a claim covering information or documentation requested by or provided under 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. Any records, reports, or information subject to such a claim of confidentiality will be handled in accordance with the procedures set forth in section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7) and 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Settling Parties. The Settling Parties shall not assert a claim of confidentiality over physical, sampling, monitoring, or analytical data or the draft or final RI or FS Reports submitted to EPA.
- F. Nothing in this Settlement Agreement shall limit EPA's information gathering authority under Federal law.

XV. RECORD PRESERVATION

- A. Each Settling Party agrees to preserve, during the pendency of this Settlement Agreement and for a minimum of six (6) years after Settling Party's receipt of the Notice of Completion issued pursuant to Section XXVIII.B of this Settlement Agreement, all non-identical records and documents in its possession or in the possession of any of its divisions, officers, directors, employees, agents, contractors, consultants, successors, and assigns that relate in any way to implementation of this Settlement Agreement, or to hazardous substance management and/or disposal at the Site, including raw data, despite any document retention policy to the contrary. The Settling Parties will use their best efforts to establish a document repository and obtain for the repository copies of all such documents in the possession of its employees, agents, accountants, contractors, or

attorneys. After this six-year period, each Settling Party shall notify EPA at least sixty (60) calendar days prior to the destruction of any such documents. Within one hundred and twenty (120) days thereafter, EPA will then provide written notification to the Settling Party whether or not EPA wants to take possession of such documents. Upon written request by EPA to a Settling Party, the Settling Party shall provide EPA with the opportunity to take possession of any such documents, or at the end of one hundred and twenty (120) days and with the concurrence of EPA, such Settling Party is free to destroy the documents.

- B. Within ninety (90) days of the effective date of this Settlement Agreement each Settling Party shall designate a custodian for all documents required to be preserved pursuant to paragraph A of this Section ("Custodian") and shall notify EPA in writing of the identity of that Custodian. Any Settling Party may change its Custodian upon written notification to EPA of such change.
- C. Any agreement between Settling Parties and an agent, contractor, or consultant relating to performance of work under this Settlement Agreement shall require in writing that said agent, contractor, or consultant maintain and preserve during the pendency of this Settlement Agreement, and for six (6) years after its termination, all data, records, and documents within its respective possession which relate in any way to implementation of this Settlement Agreement or to hazardous substance management and/or disposal at the Site.
- D. A Settling Party shall not destroy any records relating to this Settlement Agreement until notified by EPA, in accordance with this Section, or as set forth in Paragraph A of this Section.

XVI. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- A. For each day or any portion thereof that the Settling Parties fail to submit a report or document or otherwise fail to comply with the requirements of this Settlement Agreement at the time and in the manner set forth herein (including all documents submitted hereunder and approved by EPA), the Settling Parties shall be liable for and the Settling Parties shall pay, upon demand by EPA, the sums set forth below as stipulated penalties to EPA. Payment shall be due and owing within thirty (30) days from receipt of EPA's demand letter. 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-day period in conformance with 40 C.F.R. §13.11(a).
- B. Checks in payment of stipulated penalties shall be made payable to the Hazardous Substance Superfund and shall be addressed to:

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

All payments shall reference the name of the Site, the Settling Parties name and address, and the EPA docket number of this Settlement Agreement. Copies of the transmittal letter and check shall be sent simultaneously to the EPA Project Manager and to the:

Regional Hearing Clerk (3RC00)
U. S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

- C. Stipulated penalties shall accrue in the amount of \$1000 per day for the first twenty days, and \$2250 per day for each day thereafter.
- D. The stipulated penalties set forth in this Section, do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Settlement Agreement.
- E. All penalties and interest shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance.
- F. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Settlement Agreement.
- G. If the Settling Parties in good faith object to the imposition of stipulated penalties, they may invoke the dispute resolution procedures under Section XVIII of this Settlement Agreement. The Settling Parties shall not dispute stipulated penalty rates established in paragraph C of this Section. To the extent the Settling Parties do not prevail upon resolution of the dispute, the Settling Parties shall pay the penalties owed within thirty (30) days of receipt of notice of the resolution of the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute.
- H. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way the Settling Parties' obligation to comply with the requirements of this Settlement Agreement.

XVII. FORCE MAJEURE AND NOTIFICATION OF DELAY

- A. 1. A failure by the Settling Parties to comply with any requirement of this Settlement Agreement in the manner or in the time required by this Settlement Agreement (“Compliance Failure”) shall constitute a violation of this Settlement Agreement unless such Compliance Failure has resulted from a Force Majeure Event within the meaning of sub-paragraph 2 of this Section. To the extent that a delay is caused by a Force Majeure Event, the schedule for performance of work affected by the delay will be extended by EPA for the time necessary to complete such work which shall be at least the period of the delay directly resulting from the Force Majeure Event. Except as may be specifically provided by EPA, no such schedule extension shall affect the schedule for completion of any other tasks required by this Settlement Agreement.
2. A Force Majeure Event is any event which EPA agrees:
- (a) arises from causes not reasonably foreseeable and beyond the control of the Settling Parties, and
 - (b) results in delays or prevents performance by a date or manner required by this Settlement Agreement,
- provided that Settling Parties have used best efforts to perform as required by this Settlement Agreement. “Best efforts” as used in this Paragraph shall include, but not be limited to, efforts to expedite the performance of activities in order to minimize delays to the extent practicable. Neither increased costs of performance; changed economic circumstances; difficulties caused by reasonably foreseeable weather conditions; nor failure to obtain Federal, State, or local permits, which could have been overcome by best efforts, shall be considered a Force Majeure Event.
3. The Settling Parties shall have the burden of proving that a Force Majeure Event has occurred.
- B. The Settling Parties shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification shall be made orally as soon as possible but no later than two (2) business days after the Settling Parties or any of their agents or contractors becomes aware of such delay, or through the exercise of due diligence should have become aware of such delay, and in writing no later than seven (7) days after the Settling Party or any of its agents or contractors becomes aware, or through the exercise of due diligence should have become aware, of such a delay or anticipated delay. The written notification shall describe fully the nature of the delay; the reasons the delay is beyond the control of the Settling Parties (if applicable); the

actions that will be taken to mitigate, prevent, and/or minimize further delay; the anticipated length of the delay; and the timetable according to which the actions to mitigate, prevent, and/or minimize the delay will be taken. The Settling Parties shall adopt all reasonable measures to avoid and minimize any such delay. Failure of the Settling Parties to comply with the notice requirements of this Section shall constitute a waiver of the Settling Parties' right to invoke the benefits of paragraph A of this Section with respect to that event.

- C. In the event that EPA and the Settling Parties cannot agree that a particular delay in achieving compliance with the requirements of this Settlement Agreement has been or will be caused by a Force Majeure Event, EPA will notify the Settling Parties, and the dispute shall be resolved in accordance with the Dispute Resolution provisions of Section XVIII of this Settlement Agreement. The Settling Party shall have the burden of proving that the delay was caused by a Force Majeure Event.
- D. Modifications to this Settlement Agreement following a Force Majeure Event shall be made in accordance with Section XXIX of this Settlement Agreement.

XVIII. DISPUTE RESOLUTION

- A. The resolution of any dispute between EPA and the Settling Parties concerning this Settlement Agreement shall be conducted in accordance with this Section.
- B.
 - 1. If the Settling Parties object to any EPA notification or action under this Settlement Agreement, the Settling Parties shall notify EPA in writing of their objection(s) within fourteen (14) days of such action or receipt of such EPA notification.
 - 2. The written notification of objections from the Settling Parties referred to in paragraph B.1 of this Section ("Notice of Dispute") shall identify the issue(s) in dispute, the position the Settling Parties maintain should be adopted by EPA, the basis for the Settling Parties' position, and any matters the Settling Parties consider necessary for EPA's determination.
 - 3. Except as provided herein, EPA and the Settling Parties shall have fourteen (14) business days from EPA's receipt of the Notice of Dispute to resolve the dispute. As to any issue for which agreement is not reached during this period, EPA will provide a written statement of its decision to the Settling Party ("EPA Resolution Notice"). The EPA Resolution Notice shall be signed by the Chief, Superfund General Remedial Branch. EPA may extend the fourteen (14) day period up to an additional fourteen (14) days if EPA determines that more time is necessary for

resolution. The Settling Parties shall not invoke this Section to object to an EPA Resolution Notice.

4. Following resolution of the dispute by agreement (in the event the dispute has been resolved by agreement) or the Settling Parties' receipt of the EPA Resolution Notice (in the event EPA and the Settling Parties are unable to reach agreement), the Settling Parties shall perform the work that was the subject of the dispute in accordance with the agreement (if applicable) or the EPA Resolution Notice.
- C. Notwithstanding any other provisions of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Settlement Agreement.
- D. Neither invocation of the procedures set forth in this Section, nor EPA's consideration of matters placed into dispute, shall excuse, toll or suspend any compliance obligation or deadline required pursuant to this Settlement Agreement during the pendency of the dispute resolution process.
- E. The existence of a dispute under this Section shall not by itself expand the time frame for completing any work under this Settlement Agreement. Thus, in the event the Settling Parties prevail in the dispute, the task must be completed in the remaining amount of time originally specified in the Settlement Agreement unless the time frame is formally modified by EPA. Any such modifications to this Settlement Agreement shall be made in accordance with Section XXIX of this Settlement Agreement.
- F. The accrual of stipulated penalties shall continue notwithstanding the existence of a dispute or invocation of the procedures set forth in this Section.
- G. In order to prevail in any dispute concerning costs under Section XIX of this Settlement Agreement, the Settling Parties shall have the burden of proving that such costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

XIX. PAYMENT OF RESPONSE COSTS

- A. Reserved.
- B. Payments of Future RI/FS Oversight Costs.
 - a. The Settling Parties shall pay EPA all Future RI/FS Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send the Settling Parties a bill requiring payment that includes a cost summary, which includes direct and indirect costs

incurred by EPA and its contractors. The Settling Parties shall make all payments within sixty (60) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph D of this Section XIX. All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA-Hazardous Substances Superfund," shall be mailed to the following:

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

All payments shall indicate that the payment is for Future RI/FS Oversight Costs, and shall reference EPA Region III and Site/Spill ID Number, the EPA Docket Number for this action, and the name and address of the parties making payment. Copies of the transmittal letters and the checks shall simultaneously be sent to EPA's Project Coordinator, and to the following:

Docket Clerk (3RC00)
U. S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- C. If the Settling Parties do not pay Future RI/FS Oversight Costs within sixty (60) days of Respondents' receipt of a bill, the Settling Parties shall pay Interest on the unpaid balance of RI/FS Oversight Costs, respectively. The Interest on unpaid Future RI/FS Oversight Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph C shall be in addition to such other remedies or sanctions available to the United States by virtue of the Settling Parties' failure to make timely payments under this Section XIX, including but not limited to, payments of stipulated penalties pursuant to Section XVI. The Settling Parties shall make all payments required by this Paragraph C in the manner described in Paragraph B.
- D. The Settling Parties may contest payment of any Future RI/FS Oversight Costs under Paragraph B if they determine that EPA has made an accounting error or if they believe EPA incurred costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future RI/FS Oversight Costs and the basis for objection. In the event of an objection, the Settling Parties shall within the 30 day period pay all

uncontested Future RI/FS Oversight Costs to EPA in the manner described in Paragraph B. Simultaneously, the Settling Parties shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future RI/FS Oversight Costs. The Settling Parties shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future RI/FS Oversight 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 Settling Parties shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Parties shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph B. If the Settling Parties prevail concerning any aspect of the contested costs, the Settling Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph B. The Settling Parties shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Parties' obligation to reimburse EPA for its Future RI/FS Oversight Costs.

XX. COVENANT NOT TO SUE BY EPA

A. In consideration of the actions that will be performed by the Settling Parties under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against the Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future RI/FS Oversight Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue extends only to the Settling Parties and their successors and assigns; solely to the extent that liability derives solely from the fact that they are a successor or assign of one of the signatories of this agreement.

XXI. RESERVATIONS OF RIGHTS BY EPA

A. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous

or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Settling Parties in the future to perform additional activities pursuant to CERCLA or any other applicable law.

B. The covenant not to sue set forth in Section XX above 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 the Settling Parties with respect to all other matters, including, but not limited to:

1. claims based on a failure by the Settling Parties to meet a requirement of this Settlement Agreement;
2. liability for costs;
3. liability for performance of response action other than the Work performed under this Settlement Agreement;
4. criminal liability;
5. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
6. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
7. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXII. COVENANT NOT TO SUE BY SETTLING PARTIES

A. The Settling Parties 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, Future RI/FS Oversight Costs or this Settlement Agreement, including, but not limited to:

1. 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;
2. any claim arising out of the Work or arising out of the response actions for which the Future RI/FS Oversight Costs have been incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth, 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. This

covenant shall not be construed in any way as affecting or limiting the rights or obligations of the Settling Parties or the United States under their various contracts; or

3. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future RI/FS Oversight Costs, except to the extent that the United States is a "covered person" with respect to the Site under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

B. Nothing in this Settlement 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).

XXIII CONTRIBUTION PROTECTION AND RIGHTS

A. 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 Settling Parties have resolved their liability to the United States for Work performed under this Settlement and Future RI/FS Oversight Costs.

B. 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 Settling Parties are entitled, as of the Effective Date, 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. "Matters Addressed" under this Settlement Agreement is defined as the Work to be performed as set out in this Settlement Agreement and Future RI/FS Oversight Costs.

C. Except as provided in Section XXII (Covenant Not to Sue by the Settling Parties), nothing in this Settlement Agreement precludes the United States or Settling Parties from asserting any claims, causes of action, or demands against any person not a party 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.

XXIV. OTHER CLAIMS

A. 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 arising out of or 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.

- B. This Settlement Agreement does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).
- C. By consenting to the issuance of this Settlement Agreement, the Settling Parties waive any claims to reimbursement for all work performed and expenses incurred under this Settlement Agreement it may have under section 106(b) of CERCLA, 42 U.S.C. §9606(b).

XXV. OTHER APPLICABLE LAWS

- A. All actions required to be taken pursuant to this Settlement Agreement shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations, except as provided in §121(e) of CERCLA.
- B. Except as provided herein, the Settling Parties shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment of hazardous substances. The requirements of this paragraph shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.
 - 1. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. The Settling Parties shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.
 - 2. The identity of the receiving facility and state will be determined by the Settling Parties following the award of the contract for the remedial investigation and feasibility study. The Settling Parties shall provide all relevant information on the off-site shipments, including information under the categories noted in paragraph B.1 of this Section, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

XXVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Settlement Agreement. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

XXVII. LIABILITY OF THE UNITED STATES GOVERNMENT

Neither the United States Government nor any agency thereof shall be potentially liable for any injuries or damages to persons or property resulting solely from acts or omissions of the Settling Parties, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Settlement Agreement, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by the Settling Parties in carrying out activities pursuant to this Settlement Agreement. Nothing in this Settlement Agreement shall be construed as a waiver by a Settling Party of any right it may have to include costs incurred in implementation of this Settlement Agreement, the Work, Future RI/FS Oversight Costs, or Past Response Costs or any other work at or in conjunction with the Site in its allowable costs for purposes of pricing under contracts with the United States, to the extent allowed by law, rule or regulation.

XXVIII. MISCELLANEOUS AND DEFINITIONS

- A. Except as otherwise provided in this Settlement Agreement, the term "days" shall mean calendar days. If a due date for any task or deliverable falls on a Federal holiday or weekend, the due date for that task or deliverable shall be the next working day.

- B. In the event that the Settling Parties become aware of conditions posing an immediate threat to human health or welfare or the environment, the Settling Parties shall notify EPA and the Commonwealth immediately. In the event of unanticipated or changed circumstances at the Site, the Settling Parties shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. The Settling Parties shall perform the Work Plan as modified or amended.
- C. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

“Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXX.

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

“Parties” shall mean EPA and the Settling Parties.

“Settling Parties” shall mean The Boeing Company, Browning-Ferris Industries, Inc., ConocoPhillips Company, Delaware County Solid Waste Authority, E.I. duPont de Nemours and Company, FMC Corporation, General Electric Company, Wilbur C. Henderson, Jr./Henderson Columbia Corporation, Kimberly Clark Corporation, M.A. Bruder, Inc., PECO Energy Company, PP&G Industries, Inc., Rohm and Haas Company, and Waste Management Disposal Services of Pennsylvania, Inc. f/k/a SCA Services of Pennsylvania, Inc.

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVII) and all documents

incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

“Work” shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XV (Retention of Records).

XXIX. SUBSEQUENT MODIFICATION

- A. This Settlement Agreement may be amended by mutual agreement of EPA and the Settling Parties. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA.
- B.
 - 1. Minor modifications to the requirements of the RI/FS Work Plan, specifically those which do not materially or significantly affect the nature, scope, or timing of the work to be performed, may be made by mutual agreement of the Project Managers. Any such modifications must be in writing and signed by both Project Managers. The effective date of the modification shall be the date on which the letter from EPA’s Project Manager is signed.
 - 2. Modifications to the requirements of the RI/FS Work Plan that are not minor modifications as described in paragraph B.1 of this Section may be made by mutual agreement of EPA and the Settling Parties. Any such modifications must be in writing and signed by the Settling Parties’ Project Manager and the Chief of the Superfund Eastern Pennsylvania Remedial Branch. The effective date of the modification shall be the date on which the modification is signed by EPA.
- C. The Settling Parties agree that any request for modification of this Settlement Agreement shall be accompanied by a statement of how such modification shall affect the Work Plan schedule.
- D. Following EPA approval of a modification to a schedule, the Settling Parties agree, within ten (10) days of receipt of the modification, to supply to EPA a revised Work Plan schedule and accompanying charts which shall reflect the approved modifications to such schedule.
- E. Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement and any modifications thereto are, upon approval by EPA, enforceable as requirements of this Settlement Agreement. Any non-compliance with such EPA-approved or modified reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement

Agreement and shall subject the Settling Party to, among other things, the requirements of Section XVI of this Settlement Agreement.

- F. No informal advice, guidance, suggestions, or comments by EPA, other than a formal approval as specified in Section XXIX.A or .B of this Settlement Agreement, regarding reports, plans, specifications, schedules, and any other writing submitted by the Settling Parties or regarding any other requirement of this Settlement Agreement will be construed as relieving the Settling Parties of their obligation to obtain formal approval when required by this Settlement Agreement, and to comply with requirements of this Settlement Agreement, unless formally modified.

XXX. EFFECTIVE DATE

The effective date of this Settlement Agreement shall be three (3) business days following the date on which EPA forwards a fully executed true and correct copy to the Settling Parties.

XXXI. NOTICE OF COMPLETION

- A. When the Settling Parties believe that (1) the RI and FS have been fully performed in accordance with the requirements of this Settlement Agreement, (2) all costs reimbursable under Section XIX of this Settlement Agreement have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Settlement Agreement, if any, have been paid to EPA, the Settling Parties shall so notify EPA in writing in the Settling Parties' Completion Petition.
- B. If, following receipt of the Settling Parties' Completion Petition, EPA determines that (1) the RI and FS have been fully performed in accordance with the requirements of this Settlement Agreement, (2) all costs reimbursable under Section XIX of this Settlement Agreement have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Settlement Agreement, if any, have been paid to EPA, EPA shall so notify the Settling Parties in writing ["Notice of Completion"]. EPA's issuance of a Notice of Completion shall not alter or affect any provision of this Settlement Agreement including, without limitation, Sections XV (Record Preservation), XXI (Reservation of Rights by EPA), XIV (Other Claims), XXVI (Indemnification of the United States Government), and XXVII (Liability of the United States Government).
- C. If EPA does not agree that (1) the RI and FS have been fully performed in accordance with the requirements of this Settlement Agreement, (2) all costs reimbursable under Section XIX of this Settlement Agreement have been paid to EPA, or (3) all penalties assessed by EPA pursuant to this Settlement Agreement, if any, have been paid to EPA, EPA shall notify the Settling Parties in writing of the activities that must be undertaken to

complete such work. If applicable, EPA will set forth a schedule for performance of such activities consistent with this Settlement Agreement or may require the Settling Parties to submit a schedule for EPA approval. The Settling Parties shall perform all activities described in EPA's notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to the Settling Parties' right to invoke dispute resolution under Section XVIII of this Settlement Agreement, and shall submit a Completion Petition to EPA in accordance with paragraph A of this Section.

XXXII. FINANCIAL ASSURANCE

A. Within thirty (30) days of the Effective Date, the Settling Parties shall establish and maintain financial security for the benefit of EPA in the amount of \$ 1,500,000 in one or more of the following forms, in order to secure the full and final completion of Work by the Settling Parties:

1. surety bond unconditionally guaranteeing payment and/or performance of the Work;
2. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
3. a trust fund administered by a trustee acceptable in all respects to EPA;
4. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
5. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of the Settling Parties, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Parties; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or

6. a corporate guarantee to perform the Work by one or more of the Settling Parties, including a demonstration that any such Settling Party satisfies the requirements of 40 C.F.R. § 264.143(f).

B. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, the Settling Parties shall, within forty-five (45) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph A, above. In addition, if at any time EPA notifies the Settling Parties that the anticipated cost of completing the Work has increased, then, within forty-five (45) days of such notification, the Settling Parties shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. The Settling Parties' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

C. If the Settling Parties seek to ensure completion of the Work through a guarantee pursuant to Subparagraph A.5. or A.6. of this Section XXXII, the Settling Parties shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$1,500,000 for the Work at the Site shall be used in relevant financial test calculations.

D. If, after the Effective Date, the Settling Parties can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph A of this Section XXXII, the Settling Parties may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. The Settling Parties shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, the Settling Parties may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The Settling Parties may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

E. The Settling Parties may change the form of financial assurance provided under this Section XXXII at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Settling Parties may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

IT IS SO AGREED AND ORDERED:

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



James J. Burke
Director, Hazardous Site Cleanup Division
EPA Region III

11/14/06
Date

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Via Hand Delivery and E-Mail

October 23, 2006

Bonnie Pugh Winkler, Esquire
c/o Kristine Matzko
U.S. E.P.A. Region III
1650 Arch StreetA
Philadelphia, Pa. 19103

Re: Executed Signature Pages Folcroft AOC for RI/FS

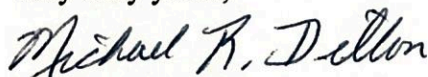
Dear Bonnie:

Enclosed please find executed signature pages for the Folcroft Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study from all fourteen (14) Folcroft Steering Committee members. Specifically enclosed in order are the signature pages for:

Boeing	Kirk J. Thomson
BFI/Allied Waste	Jo Lynn White
ConocoPhillips	William A. Kitchen
DCSWA	Joseph W. Vasturia
DuPont	Isidoros J. Zanikos
FMC	Robert T. Forbes
GE	Keith Mooneyhan
Henderson-Columbia	Wilbur C. Henderson, Jr.
Kimberly-Clark	Paul R. Wittekind
M.A. Bruder	Thomas A. Bruder, Jr.
PECO/Exelon	Allan Fernandes
PPG	Ronald J. Norton
Rohm and Haas	Robert A. Lonergan
Waste Management	Stephen T. Joyce

A pdf copy of the signature pages is simultaneously being sent as an attachment to an e-mail copy of this letter. We appreciate the Agencies' patience and cooperation on this project and look forward to the prompt execution of the AOC by EPA so that field work can begin Folcroft Landfill and Annex within the next few weeks.

Very truly yours,



Michael R. Dillon

Encls.

cc: All members Folcroft Landfill PRP Group Steering Committee via e-mail

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:



[Signature]

10-10-06
Date

Print Name: KIRK J. THOMSON

Title: DIRECTOR ENVIRONMENTAL AFFAIRS, THE BOEING CO.

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

JL White
[Signature]

9/21/06
Date

Print Name: Jo Lynn White

Title: Corporate Secretary

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

William A Kitchen
[Signature]



Sep 25, 2006
Date

Print Name: William A. Kitchen

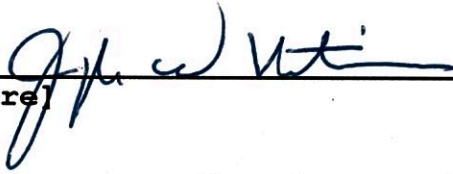
Title: Manager, Risk Management & Remediation

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

Delaware County Solid Waste Authority

[Signature]



Date

Print Name: Joseph W. Vasturia

Title: CEO

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:


[Signature]

9/29/06
Date

Print Name: Isidoros J. Zankos

Title: Remediation Business Team Manager
Depart

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

Robert T. Forbes
[Signature]

10/12/2006
Date

Print Name: Robert T. Forbes

Title: Director, Environment

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

Keith Mooneyhan
[Signature]

10/16/06
Date

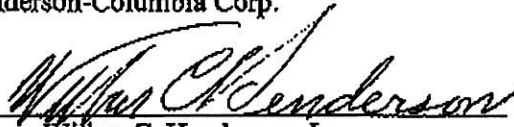
Print Name: Keith Mooneyhan

Title: General Manager EHS ; GE Consumer & Industrial

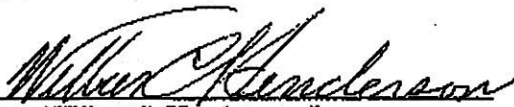
FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

Henderson-Columbia Corp.

By:  October 6, 2006
Wilbur C. Henderson, Jr. Date
Title: President

Wilbur C. Henderson, Jr.

By:  October 6, 2006
Wilbur C. Henderson, Jr. Date
(a/k/a Wilbur C. Henderson)

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

Kimberly - Clark Corporation, formerly Kimberly - Clark Tissue Company - Successor to Scott Paper Company.

By: *Paul R. Witterkind* 10/9/06
[Signature] Date

Print Name: PAUL R. WITTERKIND

Title: PLANT MANAGER

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

by Thomas A. Bruder Jr.
[Signature]

10/9/2006
Date

Print Name: THOMAS A. BRUDER JR.

Title: PRESIDENT

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

A. Fernandes 9/29/06
[Signature] Date

Print Name: ALLAN FERNANDES

Title: Interim Director - Env, Safety, IH

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

R.J. Norton

[Signature]

10/5/06

Date

Print Name: Reginald J. Norton

Title: Vice President, Environment, Health & Safety

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:

 9/28/06
[Signature] Date

Print Name: Robert A. Lonergan
Title: Vice President, General Counsel
and Corporate Secretary

FOR THE SETTLING PARTY:

The undersigned hereby certifies that he or she is authorized to execute this Settlement Agreement on behalf of the Settling Party for whom he or she is signing and to bind such Settling Party to the terms and conditions herein:



Signature

10/12/06
Date

Print Name: Stephen T. Joyce

Title: Director-CSMG

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

Name: Joseph F. O'Dea, Jr.

Title: Esquire

Address: Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186

E-Mail: jodea@saul.com

Phone: (215) 972-7109

Fax: (215) 972-1877