

TABLE OF CONTENTS

I.	JURISDICTION	2
II.	BACKGROUND	2
III.	PARTIES BOUND	2
IV.	DEFINITIONS.....	3
V.	PAYMENT OF RESPONSE COSTS.....	4
VI.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT	5
VII.	COVENANTS BY EPA	6
VIII.	RESERVATIONS OF RIGHTS BY EPA	6
IX.	COVENANTS BY SETTLING PARTY.....	7
X.	EFFECT OF SETTLEMENT/CONTRIBUTION	8
XI.	PROPERTY REQUIREMENTS	9
XII.	RETENTION OF RECORDS	12
XIII.	NOTICES AND SUBMISSIONS	13
XIV.	INTEGRATION/APPENDICES	14
XV.	PUBLIC COMMENT	14
XVI.	ATTORNEY GENERAL APPROVAL	14
XVII.	EFFECTIVE DATE.....	14

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the Director of the Superfund and Emergency Management Division on April 15, 2019, by EPA Region III Delegation No. 14-14-D.

2. This Settlement Agreement is made and entered into by EPA and Consolidated Lands, LLC (“Settling Party”). Settling Party consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Transportation Drive PCB Site (“Site”) located in Hazle Township, Luzerne County, Pennsylvania. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response actions at the Site, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA.

7. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party’s responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

a. “Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site.

b. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

c. “Day” or “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 or State holiday, the period shall run until the close of business of the next working day.

d. “DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

e. “Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVII.

f. “Environmental Covenant” shall mean the covenant executed and recorded in compliance with Paragraph 32 in substantially the same form as Appendix B, which shall run with the land.

g. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

h. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

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

k. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

- l. “Parties” shall mean EPA and Settling Party.
- m. “Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through August 13, 2019, plus accrued Interest on all such costs through such date.
- n. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- o. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- p. “Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.
- q. “Settling Party” shall mean Consolidated Lands, LLC.
- r. “Site” shall mean the Transportation Drive PCB Superfund Site, encompassing approximately 12.5 acres, located in an industrial area of Hazle Township, Luzerne County, Pennsylvania, and generally shown on the map included in Appendix A.
- s. “State” shall mean the Commonwealth of Pennsylvania.
- t. “Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- u. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

10. **Payment of Past Response Costs.** Within 30 days after the Effective Date, Settling Party shall pay to EPA \$250,000.

11. Settling Party shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Settling Party by EPA. The payment shall reference Site/Spill ID Number A3XW and the EPA docket number for this action.

12. **Deposit of Payment.** The total amount to be paid by Settling Party pursuant to Paragraph 10 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

13. **Notice of Payment.** At the time of payment, Settling Party shall send notice that payment has been made:

- (a) Via email to: CINWD_AcctsReceivable@epa.gov;
- (b) Via email to: R3_Hearing_Clerk@epa.gov; and
- (c) Via email to: eiseman.robin@epa.gov.

Such notice shall reference Site/Spill ID Number A3XW and the EPA docket number for this action.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. **Interest on Late Payments.** If Settling Party fails to make any payment required by Paragraph 10 (Payment of Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 10 (Payment of Past Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14 (Interest on Late Payments), \$250 per day that such payment is late.

b. If Settling Party fails to record the Environmental Covenant in accordance with Paragraph 32 (Environmental Covenant), Settling Party shall be in violation of this Settlement Agreement and shall pay, as a stipulated penalty, \$250 per day for each day of such noncompliance.

c. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. If EPA sends a written demand for payment of stipulated penalties, a copy of the demand will be sent:

- (1) Via email to: CINWD_AcctsReceivable@epa.gov; and
- (2) Via email to: R3_Hearing_Clerk@epa.gov.

d. Settling Party shall make all payments required by this Section to EPA at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Settling Party by EPA. The payment shall reference Site/Spill ID Number A3XW and the EPA docket number for this action.

e. At the time of payment, Settling Party shall send notice that payment has been made in accordance with the following:

- (1) Via email to: CINWD_AcctsReceivable@epa.gov;
- (2) Via email to: R3_Hearing_Clerk@epa.gov; and
- (3) Via email to: eiseman.robin@epa.gov.

Each notice required hereunder shall reference the Settling Party's name, street/P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement; the amount of the payment; and the method of payment.

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs and shall continue to accrue through the date of payment or the

final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

16. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

18. **Covenants by EPA.** Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

19. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 18 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANTS BY SETTLING PARTY

21. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

22. 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).

23. Waiver of Claims by Settling Party

a. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

b. Exceptions to Waiver

(1) The waiver under this Paragraph 23 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Settling Party.

(2) The waiver under Paragraph 23.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

24. Except as provided in Paragraph 23 (Waiver of Claims by Settling Party), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Party), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 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 give rise to contribution protection pursuant to Section 113(f)(2).

25. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is 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, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs.

26. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

27. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

28. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VII.

29. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 25, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XI. PROPERTY REQUIREMENTS

30. **Land, Water, or Other Resource Use Restrictions.** Settling Party shall refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restriction:

a. Any work conducted on the Property, which could potentially disturb or cause the release of PCB contaminated soil shall be conducted in accordance with 40 C.F.R. § 761.

b. Obtain prior written approval from EPA, after a reasonable opportunity for review and comment by the Pennsylvania Department of Environmental Protection, prior to performing any activities or modifications that could potentially disturb the soil at greater than 24 inches below the ground surface.

31. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Party shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

32. **Environmental Covenant.** Settling Party shall execute and record an Environmental Covenant for the Affected Property in the Office of the Recorder for Luzerne County Pennsylvania, in accordance with the procedures of this Paragraph 32 and pursuant to Sections 6501-6517 of the Pennsylvania Uniform Environmental Covenants Act, 27 Pa.C.S.

§§ 6501-6517. The Environmental Covenant shall grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 30.a (Land, Water, or Other Resource Use Restrictions). The Environmental Covenant shall be in substantially the form set forth in Appendix B and enforceable under the laws of the Commonwealth of Pennsylvania.

a. **Grantees.** The Environmental Covenant shall identify Settling Party as the “Grantee” and a “Holder.” The Environmental Covenants shall specify EPA as the “Agency,” as defined by 27 Pa.C.S. § 6502, which shall have the right to enforce the covenant, pursuant to 27 Pa.C.S. § 6511.

b. **Initial Title Evidence.** Settling Party shall, within 45 days after the Effective Date:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Settling Party, or “To Be Determined;” (ii) covers the Affected Property, which is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Environmental Covenant is the owner of the Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. **Release or subordination of Prior Liens.**

(1) Settling Party shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Settling Party, unless EPA waives this requirement as provided under Paragraph 32.c(2)-(4).

(2) Settling Party may, by the deadline under Paragraph 32.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 32.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Environmental Covenant and cannot interfere with the response action or result in unacceptable exposure to Waste Material.

(3) Settling Party may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 32.c(1) regarding any particular Prior Encumbrance on the grounds that

Settling Party could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Settling Party shall complete its obligations under Paragraph 32.c(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Environmental Covenant.

(1) Settling Party shall submit to EPA for review and approval, by the deadline specified in Paragraph 32.c(5), the draft Environmental Covenant, in substantially the form attached hereto as Appendix B, and draft instruments addressing Prior Encumbrances, enforceable under the laws of the Commonwealth of Pennsylvania.

(2) Upon EPA's approval of the proposed Environmental Covenant and instruments addressing Prior Encumbrances, Settling Party shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 32.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Party shall record the Environmental Covenant and instruments addressing Prior Encumbrances in the Office of the Recorder for Luzerne County, Pennsylvania in accordance with the terms of Paragraph 9 (Recording and Notification of Recording) of the Environmental Covenant. Otherwise, Settling Party shall secure the release, subordination, modification, or relocation under Paragraph 32.c(1), or the waiver under Paragraph 32.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Environmental Covenant and instruments addressing Prior Encumbrances.

(3) If Settling Party submitted a title insurance commitment under Paragraph 32.b(1) (Record Title Evidence), then upon the recording of the Environmental Covenant and instruments addressing Prior Encumbrances, Settling Party shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, Settling Party, or other person approved by EPA; and (iv) is issued on a current American Land Title Association ("ALTA") form or other form approved by EPA.

(4) Settling Defendant shall, within 90 days after recording the Environmental Covenant and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Environmental Covenant: (i) certified copies of the recorded Environmental Covenant and instruments addressing Prior Encumbrances showing the clerk's recording stamps;

and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Environmental Covenant and instruments.

e. Settling Party shall monitor, maintain, and enforce the Environmental Covenant and shall report on the Environmental Covenant as required under this Consent Decree.

f. Settling Party shall not Transfer the Affected Property unless it has executed and recorded the Environmental Covenant and instruments addressing Prior Encumbrances regarding the Affected Property in accordance with this Paragraph.

33. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement, including its obligation to ensure compliance with any land, water, or other resource use restrictions.

34. Notwithstanding any provision of this Settlement Agreement, Settling Party retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. RETENTION OF RECORDS

35. Until 5 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site or that relate to the liability of any person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

36. After the conclusion of the 5-year record retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 37 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

37. Privileged and Protected Claims.

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Party shall retain all Records that it claims to be privileged or protected until the United

States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

c. Settling Party may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Party is required to create or generate pursuant to this Settlement Agreement.

38. **Business Confidential Claims.** Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

39. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIII. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Robin E. Eiseman (3RC10)
Senior Assistant Regional Counsel
U.S. EPA Region III
eiseman.robins@epa.gov

As to Settling Party: Consolidated Lands, LLC
199 North Church Street
Hazleton, PA 18201

XIV. INTEGRATION/APPENDICES

41. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" is the map of the Site, and "Appendix B" is the draft Environmental Covenant.

XV. PUBLIC COMMENT

42. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVI. ATTORNEY GENERAL APPROVAL

43. The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVII. EFFECTIVE DATE

44. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

Linda Dietz, Acting Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region III

UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of CERCLA-03-2021-0009CR relating to the Transportation Drive PCB Superfund Site in Hazle Township, Luzerne County, Pennsylvania:

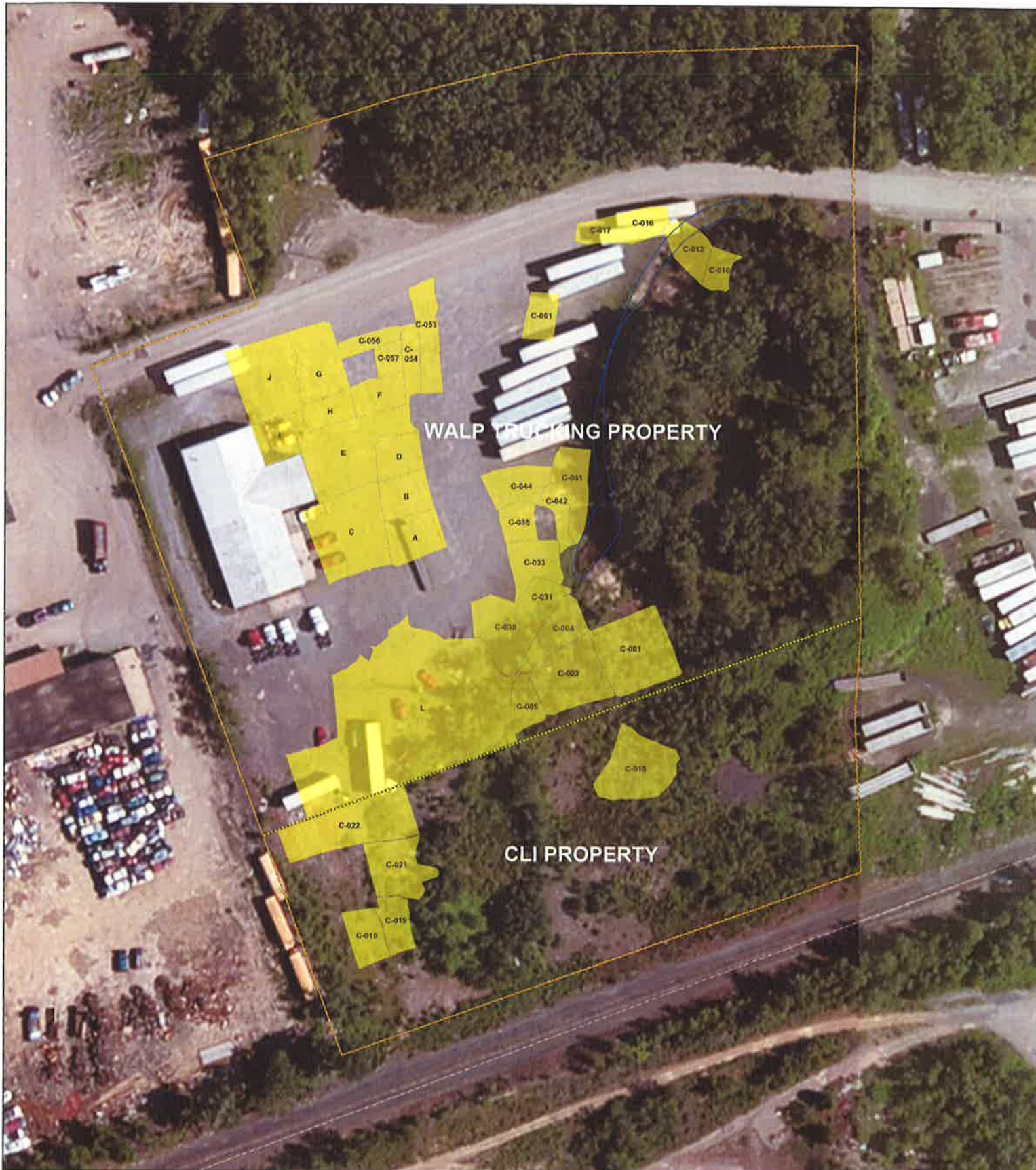
FOR CONSOLIDATED LANDS, LLC:



Manager
199 North Church Street
Hazleton, PA 18201


2/3/2021

Dated



- Legend**
-  Site Boundary
 -  Property Boundary
 -  Norfolk Southern
 -  Drainage Feature

Excavation Areas (Total PCB)

-  1-25 ppm

Imagery:
ESRI, DigitalGlobe, GeoEye
Mapping Service 2014



Coordinate System:
WGS84 UTM Zone 18N Feet



Transportation Drive PCB Site
Hazle Township, Luzerne County, PA

Post Excavation Soil PCB Results
Areas containing < 25 ppm

TDD#: W501-15-07-020
Contract: EP-S3-15-02
Prepared: 7/27/2017



Appendix B

When recorded, return to:
Mark Van Loon, Esq.
Rosenn Jenkins & Greenwald, LLP
15 South Franklin Street
Wilkes-Barre, PA 18711-0075
570.826.5678
mvanloon@rjglaw.com

The County Parcel Identification No. of the Property is: 27-U7-00A-33D

GRANTOR: Consolidated Lands, LLC

PROPERTY ADDRESS: 553 Transportation Drive, Hazle Township, PA 18201

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed pursuant to the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501-6517 (UECA). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document. As indicated later in this document, this Environmental Covenant has been approved by the United States Environmental Protection Agency (EPA).

1. **Property affected.** The property affected by this Environmental Covenant (Property) is located at 553 Transportation Drive in Hazle Township, Luzerne County. The Property is part of the Transportation Drive PCB Superfund Site (Site).

The latitude and longitude of the center of the Property is: Latitude: 40.932829; Longitude -75.998466. The Property has been known by the following name(s): Transportation Drive PCB Superfund Site.

A complete description of the Property is attached to this Environmental Covenant as **Exhibit A**. A map of the Property is attached to this Environmental Covenant as **Exhibit B**.

2. **Property Owner / GRANTOR/GRANTEE.** Consolidated Lands, LLC (CL) is the owner of the Property, the GRANTOR and GRANTEE, and a “holder,” as that term is defined in 27 Pa. C.S. § 6502, of this Environmental Covenant.

3. The mailing address of the owner is: Consolidated Lands, LLC, 199 North Church Street, Hazleton, PA 18201.

4. **Description of Contamination and Remedy.**

- The majority of the Site is owned by Walp Trucking, Inc. However, a smaller unused portion to the rear of the Site is owned by CL and is the Property subject to this Environmental Covenant.
- EPA conducted a removal site assessment in June 2014. Total polychlorinated biphenyls (PCBs) were detected at concentrations greater than the Toxic Substance Control Act (TSCA) action

level of 50 milligrams per kilogram (mg/kg) in soil samples throughout the Site, including the Property. The maximum concentration of PCBs detected in a soil sample was 210,000 mg/kg.

- EPA initiated a response action at the Site, including the Property, in June 2015.
- The response action consisted of the removal and off-Site disposal of PCB contaminated electrical equipment, soil, and debris that contained PCBs at concentrations greater than 1 mg/kg.
- In accordance with 40 C.F.R §761.61(a)(4)(i)(B), soils contaminated with PCBs less than 25 mg/kg were left in place on-Site at a depth below 2 feet. Areas where soil was removed were backfilled with clean fill/soil and revegetated (Covered Areas). However, prior to backfilling, orange safety fence was placed on top of areas of soil that contained PCBs greater than 25 mg/kg below 2 feet to serve as a visible barrier.
- Approximately 4,741.26 tons of impacted PCB hazardous soil was excavated and removed from the Property. Approximately 4,402 cubic yards of clean fill was placed on the Property, along with 351 tons of topsoil.
- The Property was then reseeded and a rain garden was added to assist with water runoff.

The administrative record pertaining to the EPA response action is located at the location listed below:

EPA Administrative Records Room
Attention: Administrative Coordinator
1650 Arch Street
Philadelphia, PA
(215) 814-3157

The administrative record is also available online at: <https://semspub.epa.gov/src/collection/03/AR63702>.

5. **Activity and Use Limitations.** The Property is subject to the following activity and use limitations, which the then current owner of the Property, and its tenants, agents, employees and other persons under its control, shall abide by:

a. Any work conducted on the Property, which could potentially disturb or cause the release of PCB contaminated soil shall be conducted in accordance with 40 C.F.R. § 761.

b. Obtain prior written approval from EPA, after a reasonable opportunity for review and comment by the Department, prior to performing any activities or modifications that could potentially disturb the soil at greater than 24 inches below the ground surface.

6. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.

7. **Compliance Reporting.** By the end of every January following EPA's approval of this Environmental Covenant, the then current owner of the Property shall submit to EPA, written documentation stating whether or not the activity and use limitations in this Environmental Covenant are being abided by. In addition, within thirty days after a) written request by EPA, b) transfer of title of the Property or of any part of the Property affected by this Environmental Covenant, c) noncompliance with paragraph 5 (Activity and Use Limitations), or d) an application for a permit or other approval for any building or site work that could affect contamination on any part of the Property, the then current owner shall send a report to EPA. The report shall state whether or not there is compliance with paragraph 5. If there is noncompliance, the report will state the actions that will be taken to assure compliance.

8. **Access by EPA.** In addition to any rights already possessed by EPA, this Environmental Covenant grants to EPA a right of reasonable access of the Property in connection with implementation or enforcement of this Environmental Covenant.

9. **Recording and Notification of Recording.** Within 30 days after the date that EPA approves this Environmental Covenant, the Property owner shall file this Environmental Covenant with the Recorder of Deeds for Luzerne County, and send a file-stamped copy of this Environmental Covenant to EPA within 90 days of EPA's approval of this Environmental Covenant. Within 90 days after this Environmental Covenant has been filed with the Recorder of Deeds for Luzerne County, the Property owner shall send a file-stamped copy to each of the following:

- Hazle Township;
- Luzerne County; and
- The Department.

10. **Termination or Modification.** This Environmental Covenant runs with the land unless terminated or modified in accordance with 27 Pa. C.S. §§ 6509 or 6510, or other applicable law. The then current owner of the Property shall provide EPA and the Department with written notice of the pendency of any proceeding that could lead to a foreclosure, as referred to in 27 Pa. C.S. § 6509(a)(4), within seven calendar days of the owner's receiving notice of the pendency of such proceeding.

11. **The Department.**

(a) **Notification.** The then current owner shall provide the Department written notice of:

(1) any judicial action referred to in 27 Pa. C.S. § 6509(a)(5), within seven calendar days of the owner's receiving notice of such judicial action;

(2) any judicial action referred to in 27 Pa. C.S. § 6509(b), within seven calendar days of the owner's receiving notice of such judicial action; and

(3) termination or amendment of this Environmental Covenant pursuant to 27 Pa. C.S. § 6510, within seven calendar days of the owner's becoming aware of such termination or amendment.

(b) Enforcement. A civil action for injunctive or other equitable relief for violating this Environmental Covenant may be maintained by the Department.

12. EPA and the Department's Addresses. Communications with EPA and the Department regarding this Environmental Covenant shall be sent to:

Dominic Ventura, On-Scene Coordinator
United States Environmental Protection Agency – Region III
Superfund Emergency and Management Division
1650 Arch Street
Philadelphia, PA 19103

Environmental Cleanup & Brownfields Program Manager
Pennsylvania Department of Environmental Protection
DEP Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915.

13. Severability. The paragraphs of this Environmental Covenant shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

Exhibit A

Legal Description of Property

All THAT CERTAIN piece, parcel, or tract of land situate in the Township of Hazle, County of Luzerne and Commonwealth of Pennsylvania, being a part of Parcel No. 2 as shown on a map entitled "Sub-Division of Land" dated July, 1965 and prepared by A. H. Schumacher, R. P. E., and being bounded and described as follows, to wit:

BEGINNING at an iron pin being the southwesterly corner of land now or formerly of Perchak, said iron pin being further described as being south seventy-four degrees thirty-two minutes west (S74°32'W) along the northerly right-of-way of the Oneida Branch now or formerly of the Lehigh Valley Railroad Company, four hundred twenty-six and eighty-three hundredths (426.83) feet from an iron pin marking the southeasterly corner of the Hertz Tract; thence along said northerly right-of-way line south seventy-four degrees thirty-two minutes west (S74°32'W) five hundred twenty-eight and zero hundredths (528.00) feet to an iron pin; thence north fifteen degrees twenty-eight minutes west (N15°28'W) one hundred sixty-five and zero hundredths (165.00) feet to a point; thence through the land of Jack Sugarman and Harold D. Sugarman, co-partners, north seventy-four degrees thirty-two minutes east (N74°32'E) five hundred twenty-eight and zero hundredths (528.00) feet to a point on the westerly line of the aforesaid land now or formerly of Perchak; thence along said westerly line of the same south fifteen degrees twenty-eight minutes east (S15°28'E) one hundred sixty-five and zero hundredths (165.00) feet to an iron pin, the place of Beginning.

CONTAINING two and zero hundredths (2.00) acres, more or less.

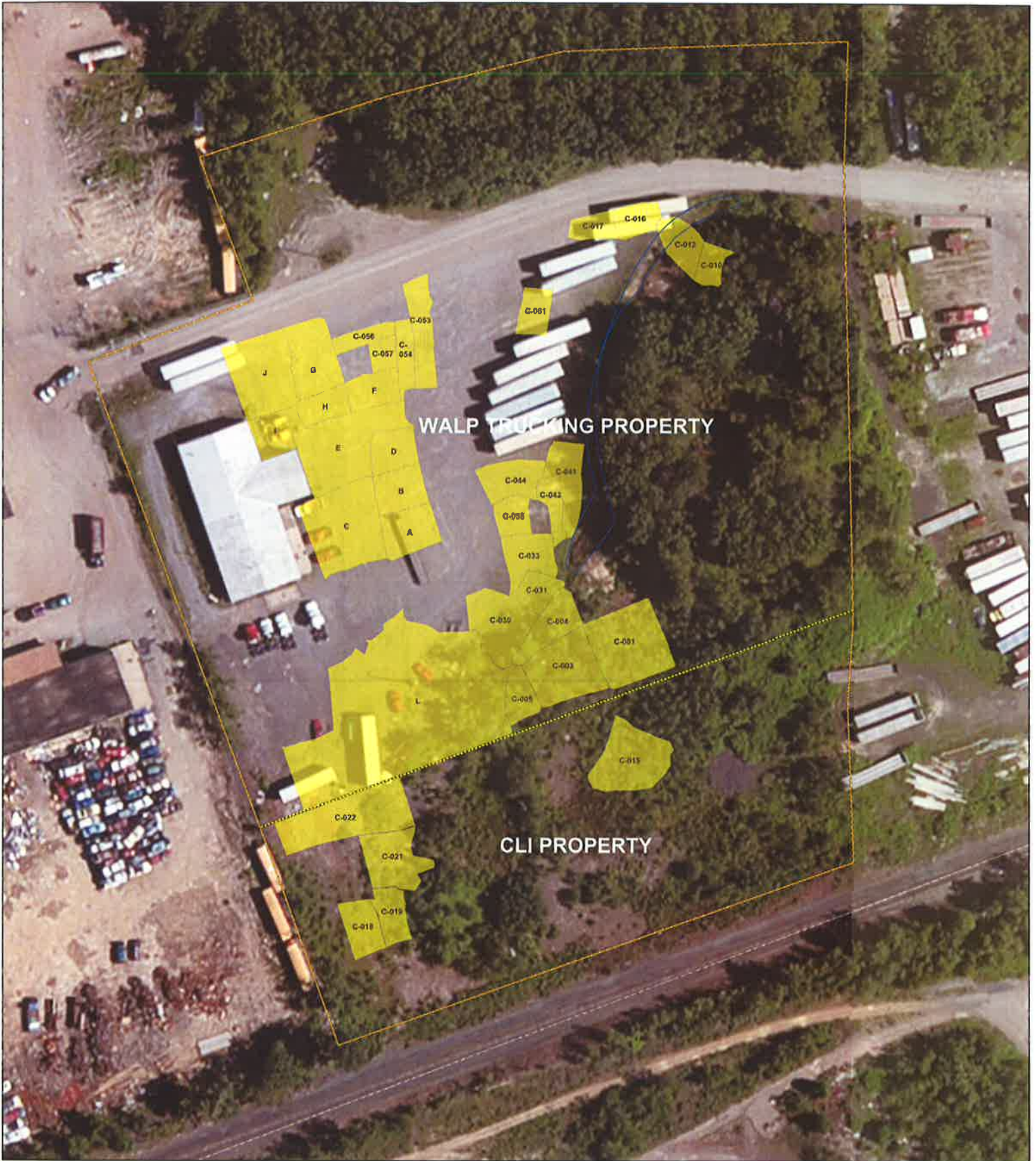
A map of the abovedescribed parcel of land is attached hereto as "Exhibit A" and made a part hereof.

BEING part of the same premises conveyed by Leroy Long, Agent; Leroy Long and Emily Long, his wife, to the co-partners grantors herein by deed dated September 2, 1965 and recorded on September 27, 1965 in Deed Book Vol. 1577 at Page 26 in the office of the Recorder of Deeds in and for Luzerne County, Pennsylvania.

EXCEPTING AND RESERVING as the same appear in the chain of title hereto.

TOGETHER WITH a permanent and exclusive right-of-way and easement (and the permanent right to use and enjoy the same) for ingress, egress and regress by foot, motor vehicle, power equipment and in any other manner and by any other means whatsoever and for the construction, reconstruction, location, relocation, maintenance and repair of any and all water, sewer electric, telephone, gas and CATV lines and facilities and any and all other lines, facilities, signs etc. across, upon, over, under, on and in all that certain forty (40) foot wide area situate in said Township of Hazle and extending in length northwardly from the northerly line of the abovedescribed parcel of land and along the easterly line of the grantors' remaining land to the southerly line of the immediately belowdescribed forty (40) foot wide right-of-way or easement area a distance of approximately two hundred eighty (280) feet; and said right-of-way and easement area is marked by crosshatch lines and labelled as "40' WIDE EXCLUSIVE EASEMENT AREA" on said Exhibit A.

ALSO TOGETHER WITH a permanent right-of-way and easement (and the permanent right to use and enjoy the same) for ingress, egress and regress by foot, motor vehicle, power equipment and in any other manner and by any other means whatsoever and for the construction, reconstruction, location, relocation, maintenance and repair of any and all water, sewer, electric, telephone, gas and CATV lines and facilities and any and all other lines, facilities, signs etc. across, upon, over, under, on and in all those two (2) certain contiguous areas, one of which is forty (40) feet wide and the other of which is thirty (30) feet wide (and both of which encompass an existing road) and both of which are situate in said Township of Hazle, said forty (40) foot wide area extending in length eastwardly from what would be the westerly line of that part of the immediately abovedescribed forty (40) foot wide exclusive right-of-way or easement area, if the same, were extended to the northerly line of the grantors' remaining premises, for a distance of approximately nine hundred fifty-five (955) feet to the westerly line of said thirty (30) foot wide area and said thirty (30) foot wide area extending in length eastwardly from the easterly line of said immediately abovedescribed (in this same paragraph) forty (40) foot wide right-of-way or easement area for a distance of approximately two hundred nineteen (219) feet to the westerly right-of-way line of the public or state highway leading from Hazleton to McAdoo, also known as State Highway Traffic Route 309 or the Hazleton-McAdoo Highway; and said right-of-way and easement areas are marked by crosshatch lines and labelled as "40' WIDE EASEMENT AREA" and "30' WIDE EASEMENT AREA" respectively on said Exhibit A.



- Legend**
- Site Boundary
 - Property Boundary
 - Norfolk Southern
 - Drainage Feature

Excavation Areas (Total PCB)

- 1- 25 ppm

Imagery:
ESRI, DigitalGlobe, GeoEye
Mapping Service 2014



Coordinate System:
WGS84 UTM Zone 18N Feet



Transportation Drive PCB Site
Hazle Township, Luzerne County, PA

Post Excavation Soil PCB Results
Areas containing < 25 ppm

TDDR: W501-15-07-020
Contract: EP-S3-15-02
Prepared: 7/27/2017

