

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiffs,

v.

THE CITY OF PHILADELPHIA and
THE PHILADELPHIA
REDEVELOPMENT AUTHORITY
Settling Defendants.

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Case No. 2:19-cv-02433-MMB

FILED

AUG - 5 2019

KATE GARKMAN, Clerk
By _____ Dep. Clerk

CONSENT DECREE

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I. BACKGROUND

1. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint (“Complaint”) in this matter pursuant to Sections 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), against the City of Philadelphia (the “City”) and the Philadelphia Redevelopment Authority (the “PRA”) (collectively, the “Settling Defendants”).

2. The United States (hereafter, “Plaintiff”) in its Complaint alleges that the City is a “covered person” under 42 U.S.C. § 9607(a) of CERCLA because of its past and present ownership of property within the boundaries of Operable Unit 1 (“OU1”) of the Lower Darby Creek Area Superfund Site (“Site”) in Darby Township, Delaware County, and Philadelphia, Philadelphia County, Pennsylvania, and as a person who transported to, and arranged for, the disposal of hazardous substances at the Clearview Landfill which is also located within the boundaries of OU1.

3. Plaintiff further alleges that the PRA is a “covered person” under 42 U.S.C. § 9607(a) of CERCLA because of its ownership of property within the boundaries of OU1 and as a person who conducted operations involving the disposal of hazardous substances within the boundaries of OU1.

4. In its Complaint, Plaintiff seeks the reimbursement of response costs incurred or to be incurred by the United States, together with accrued interest for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at OU1.

5. The Settling Defendants do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the Complaint or as described in this Consent Decree.

6. The Plaintiff and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

8. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the claim arose, and the threatened and actual releases of hazardous substances occurred, in this District.

III. PARTIES BOUND

9. This Consent Decree is binding upon the Plaintiff and upon the Settling Defendants and Settling Defendants' successors and assigns. Any change in Settling Defendants' ownership of property within the boundaries of the Site or Settling Defendants' legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. STATEMENT OF PURPOSE

10. By entering into this Consent Decree, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Defendants to make a cash payment which includes a premium, to resolve their alleged civil liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to OU1 as provided in the Covenants by the United States in Section VIII, subject to the Reservation of Rights by the United States in Section IX and to protect public health or welfare or the environment.

V. DEFINITIONS

11. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree 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 Consent Decree or its appendices, the following definitions shall apply:

“Affected Property” shall mean all real property within OU1 owned or controlled by either Settling Defendant where EPA determines, at any time, that access, or land,

water, or other resource use restrictions, are needed to implement response actions at OUI;

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

“Clearview Landfill” shall mean the approximately 39-acre, privately owned landfill located along the eastern banks of Darby and Cobbs Creek, at 83rd Street and Buist Avenue in Philadelphia, Pennsylvania. Clearview Landfill is located entirely in Darby Township, Delaware County, Pennsylvania and further described as Delaware County Parcel Number 15-10 -001:000 or Folio Number 15-00-00972-00 and is generally delineated on the map attached hereto as Appendix A;

“Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control;

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

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities;

“Eastwick Neighborhood” refers to the area generally located to the east of the Clearview Landfill and the City Park and consists of the contaminated residential properties and common areas, including all hardened surfaces such as sidewalks, streets

and roadways, where Site contamination may have spread. The Eastwick Neighborhood is generally delineated on the map Attached hereto as Appendix B;

“Eastwick Regional City Park” or “City Park” shall mean the approximately 27-acre parcel located adjacent to the north and east sides of the Clearview Landfill which is owned by the City and located entirely within the City of Philadelphia, Philadelphia County, Pennsylvania. The City Park is generally delineated on the map attached hereto as Appendix C;

“Effective Date” shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever is first, as recorded in the Court’s docket;

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities;

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

“Future Response Costs” shall mean all costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), including, but not limited to, direct and indirect costs, and enforcement costs, that the United States incurs in connection with OU1, after the Effective Date of this Consent Decree;

“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>;

“Lower Darby Creek Area OU1 Special Account” or “LDCA OU1 Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for OU1 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3);

“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;

“Operable Unit 1” or “OU1” shall refer to the portion of the Lower Darby Creek Area Superfund Site which includes waste, soils, and shallow leachate associated with the Clearview Landfill, the City Park, and the Eastwick Neighborhood. The approximate boundaries of the Clearview Landfill, the City Park, and the Eastwick Neighborhood are delineated in the map attached hereto as Appendix A;

“Operable Unit 2” or “OU2” shall refer to the portion of the Lower Darby Creek Area Superfund Site which includes the Folcroft Landfill and the Folcroft Landfill Annex areas which are located predominantly in the John Heinz National Wildlife Refuge at Tinicum, Delaware County, Pennsylvania and as further delineated in the map attached hereto as Appendix D;

“Operable Unit 3” or “OU3” shall refer to the portion of the Lower Darby Creek Area Superfund Site which includes only ground water contamination related to the Clearview Landfill and all locations where such groundwater has come to be located;

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower-case letter;

“Parties” shall mean the United States, the City and the PRA;

“Past Response Costs” shall mean all response costs relating to OU1, including but not limited to direct and indirect costs, enforcement costs, and allocated Site Wide Response Costs that the United States has paid or incurred through the Effective Date of this Consent Decree, plus accrued Interest on all such costs through such date;

“Record of Decision for OU1” or “ROD-OU1” shall mean the Record of Decision for the Lower Darby Creek Area Superfund Site, OU1 – Clearview Landfill Soils & Waste signed on September 26, 2014, by Cecil Rodrigues, Director, Hazardous Site Cleanup Divisions, EPA, Region III, and all attachments thereto;

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral;

“Settling Defendants” shall collectively mean the City of Philadelphia and the Philadelphia Redevelopment Authority;

“Site” shall mean the Lower Darby Creek Area Superfund Site, encompassing Operable Units 1, 2, and 3 as defined above, and as generally delineated on the map included in Appendix D;

“Site Wide Response Costs” shall mean all response costs, including but not limited to Interest and direct and indirect costs, that EPA and DOJ, on behalf of EPA, has paid at or in connection with the Site, that have not been otherwise attributed to a specific operable unit;

“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; and

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including but not limited to EPA.

VI. PAYMENT OF RESPONSE COSTS

12. The City shall pay, in accordance with the provisions of this Paragraph, the amount of \$6,540,000 to the EPA in four (4) equal amounts. In the event that this Consent Decree is entered by the Court on or before June 1, 2019, the City shall make payments as specified in the table below, plus Interest calculated from the dates shown through date of payment.

Payment	Amount	Payment Due
First Payment	\$1,635,000 [No Interest shall be due if payment made within 60 days of Effective Date]	60 Days from Effective Date
Second Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	10/01/2019
Third Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	10/01/2020
Final Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	10/01/2021

a. In the event that this Consent Decree is entered after June 1, 2019, the City shall make payments as specified in the table below, plus Interest calculated from the dates shown through date of payment.

Payment	Amount	Payment Due
First Payment	\$1,635,000 [No Interest shall be due if payment made within 60 days of Effective Date]	60 Days from Effective Date
Second Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	08/15/2020
Third Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	08/15/2021
Final Payment	\$1,635,000 Plus interest from 60 days after the Effective Date	08/15/2022

13. The PRA shall pay, in accordance with the provisions of this Paragraph, the amount of \$1,863,000 to the EPA in four (4) equal amounts. In the event that this Consent Decree is entered by the Court on or before June 1, 2019, PRA shall make payments, as specified in the table below, plus Interest calculated from the dates shown through date of payment.

Payment	Amount	Payment Due
First Payment	\$465,750 [No Interest shall be due if payment made within 60 days of Effective Date]	60 Days from Effective Date
Second Payment	\$465,750 Plus interest from the 60 days after Effective Date	10/01/2019
Third Payment	\$465,750 Plus interest from the 60 days after Effective Date	10/01/2020
Final Payment	\$465,750 Plus interest from 60 days after the Effective Date	10/01/2021

a. In the event that this Consent Decree is entered after June 1, 2019, PRA shall make payments as specified in the table below, plus Interest calculated from the dates shown through date of payment.

Payment	Amount	Payment Due
First Payment	\$465,750 [No Interest shall be due if payment made within 60 days of Effective Date]	60 Days from Effective Date
Second Payment	\$465,750 Plus interest from 60 days after the Effective Date	08/15/2020
Third Payment	\$465,750 Plus interest from 60 days after the Effective Date	08/15/2021
Final Payment	\$465,750 Plus interest from 60 days after the Effective Date	08/15/2022

14. Payments by Settling Defendants to EPA shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions that shall be provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Eastern District of Pennsylvania. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

For The City Of Philadelphia:

Patrick K. O'Neill Esq.
Divisional Deputy City Solicitor, Environmental Law
City of Philadelphia Law Dept.
One Parkway Bldg. 16th Floor
1515 Arch Street
Philadelphia, PA 19102
Telephone: 215-683-5172

Facsimile: 215-683-5175
Email: patrick.oneill@phila.gov

For The Philadelphia Redevelopment Authority:

Ryan D. Harmon, Esq.
General Counsel
Philadelphia Redevelopment Authority
1234 Market Street, 16th Floor
Philadelphia, PA 19107
Telephone: (215) 209-8624
Facsimile: (215) 209-8644
Email: Ryan.Harmon@pra.phila.gov

15. Each Settling Defendant may change the individual to receive payment instructions on the Settling Defendant's behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVI. (Notices and Submissions).

16. All amounts to be paid pursuant to Paragraphs 12 and 13 shall be deposited by EPA in the Lower Darby Creek Area OU1 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Each payment shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number D366, and the DOJ docket number (90-11-3-10909) for this action.

17. At the time a Settling Defendant makes a payment, the Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI. (Notices and Submissions), and by email to EPA and DOJ at acctsreceivable.cinwd@epa.gov and EESCCaseManagement.ENRD@usdoj.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, DC 20044-7611

The notice shall reference the CDCS Number, Site/Spill ID Number D366, and DOJ case number 90-11-3-10909.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

18. If the City fails to make payment in accordance with the schedule set forth in Paragraph 12 above, or if the PRA fails to make payment in accordance with the schedule set forth in Paragraph 13, above, Interest shall accrue on any unpaid balance from the date due through date of payment.

19. Stipulated Penalties. If amounts due under Paragraphs 12 and 13 are not paid in full by the required due date, the defaulting Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, in addition to the Interest provided by Paragraph 18, above, the following stipulated penalties, per day such payment is late.

Penalty Per Day Per Violation	Period of Non-Compliance
\$250	1 st through 14 th Day
\$500	15 th Day through 30 th Day
\$800	Beyond 30 th Day

20. If either Settling Defendant fails to comply with the provisions specified in Section XIII. (Property Requirements) below, the non-complying Settling Defendant

shall be in violation of this Consent Decree and shall pay to the United States a stipulated penalty of \$300.00 dollars per day, per violation for such non-compliance.

21. If either Settling Defendant fails to comply with any other provision of this Consent Decree, the non-complying Settling Defendant shall be in violation of this Consent Decree and shall pay to the United States a stipulated penalty of \$250.00 dollars per day, per violation, for such non-compliance.

22. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Section shall be identified as "Stipulated Penalties" and shall be made by FEDWIRE EFT to:

Federal Reserve Bank of New York
ABA=021030004
Account 68010727
SWIFT address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill Number D366 and the DOJ docket number (90-11-3-10909). At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 17, above.

23. Penalties shall accrue as provided in this Section regardless of whether EPA has notified the affected Settling Defendant of a violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after performance or the day a violation occurs and shall continue to accrue until the final day of correction of the noncompliance or completion of the activity. Nothing in

this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

24. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

25. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

26. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI. (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY UNITED STATES

27. Except as specifically provided for in Section IX. (Reservation of Rights by United States), the United States covenants not to sue or take administrative action against the Settling Defendants for Matters Addressed under: (a) Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for response actions and Past or Future Response Costs; and (b) Section 7003 of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, for abatement of an imminent hazard. These covenants shall take effect as to each Settling Defendant upon the Effective Date. These covenants are conditioned upon the satisfactory performance by each Settling Defendant of its obligations under this Consent Decree. These covenants extend only to the Settling Defendants and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

28. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all matters not expressly included within the Covenants by the United States, Section VIII. of this Consent Decree. Notwithstanding any other provision of this Decree, the United States reserves all rights against the Settling Defendants with respect to:

- a. liability for failure of a Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based upon a Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by that Settling Defendant;
- e. liability for response costs incurred or to be incurred or response actions taken or to be taken by the United States in connection with OU2 or OU3;
- f. liability for any claims for contribution pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for response costs incurred or to be incurred in connection with OU 2 or OU 3 of the Site.
- g. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the OU1; and

- h. any claims for contribution pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for response costs incurred or to be incurred by the Commonwealth of Pennsylvania in connection with OU 1 of the Site.

29. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief against a Settling Defendant, other than as provided in this Decree, if the disclosures provided by that Settling Defendant in response to information requests propounded to that Settling Defendant by EPA under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), is false or, in any material respect, inaccurate, or incomplete.

30. Nothing in this Consent Decree 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, which the United States may have against any person, firm, corporation or other entity not a signatory to this Decree.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

31. Except as specifically provided for in Section XI. (Reservation of Rights by Settling Defendants), each Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, any department or agency or bureau thereof, or its contractors or employees, for Matters Addressed, as defined in Paragraph 36 of this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections

106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claims arising out of response actions at or in connection with the OU1, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to OU1.

32. Except as provided in Paragraph 41 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Section IX. (Reservation of Rights by the United States), other than in Paragraph 28.a (liability for failure to meet a requirement of this Consent Decree) or Paragraph 28.b (criminal liability), but only to the extent that the Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

33. Nothing in this Consent Decree 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).

XI. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS

34. Settling Defendants reserve, and this Consent Decree is without prejudice to:

- a. Any claims against the United States for contribution pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for response costs incurred or to be incurred by the Commonwealth of Pennsylvania in connection with OU 1 of the Site; and
- b. Any claims against the United States for contribution pursuant to Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), for response costs incurred or to be incurred in connection with OU 2 or OU 3 of the Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

35. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2). Settling Defendants reserve all rights to pursue contribution, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), against any person not a Party to this Consent Decree for costs paid under this Consent Decree.

36. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which the Settling Defendants have, 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 are entitled as of the Effective Date to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “Matters Addressed” in this Consent Decree. The

“Matters Addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with OU1, by the United States or any other person, except for the Commonwealth of Pennsylvania, provided, however, that if the United States exercises rights under the reservations in Section IX. (Reservations of Rights by United States), other than in Paragraphs 28.a (liability for failure to meet a requirement of the Consent Decree) or 28.b (criminal liability), the Matters Addressed will no longer include those response costs or response actions that are within the scope of the exercised reservation.

37. The Parties further agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a settlement pursuant to which each Settling Defendant 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).

38. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than ten (10) days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within thirty (30) days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within thirty (30) days after service or receipt of any Motion for Summary Judgment and within thirty (30) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

39. In any subsequent administrative or judicial proceeding initiated by United States, for injunctive relief, recovery of response costs, or other relief relating to OU1, the

Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section X.

40. Effective upon signature of this Consent Decree by a Settling Defendant, such Settling Defendant agrees that the time period commencing on the date of its signature and ending on the date the United States receives from such Settling Defendant all payment(s) required by Section VI. (Payment of Response Costs) and, if any, Section VII. (Failure to Comply with Consent Decree) 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 and that, in any action brought by the United States related to the Matters Addressed, such Settling Defendant 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 the United States gives notice to Settling Defendants that it will not make this Consent Decree effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by the United States pursuant to Section XVI. (Notices and Submissions).

XIII. PROPERTY REQUIREMENTS

41. Each Settling Defendant shall, with respect to its Affected Property:

Access

- a. Provide the United States and its representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site identified in subparagraphs 41.a.i. through 41.a.viii., below. The United States to the extent possible will give the affected Defendant(s) five (5) days advance notice of its intent to enter prior to the first time EPA accesses an Affected Property.
 - i. Conducting the remedial action for OU1;
 - ii. Verifying any data or information submitted to the United States;
 - iii. Conducting investigations regarding contamination at or near the OU1;
 - iv. Obtaining samples;
 - v. Assessing the need for, planning, implementing, or monitoring response actions;
 - vi. Assessing a Settling Defendant's compliance with the Consent Decree;
 - vii. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
 - viii. Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

Prohibited Acts

- b. Refrain from using its Affected Property in any manner that EPA determines, after consultation with the applicable Settling Defendant, will (1) pose an

unacceptable risk to human health or to the environment due to exposure to hazardous substances or (2) interfere with or adversely affect the implementation, integrity, or protectiveness of remedial actions at OU1 or OU3, including the following restrictions:

- i. Prohibiting the following activities which could interfere with response actions: disturbance of the surface of the land by filling, drilling, excavation, removal of topsoil, rocks or minerals, or change in the topography of the land, construction of any new structures within the boundaries of the evapotranspiration cover or other remedial components, removal of trees, shrubs or other vegetation in place on evapotranspiration cover, disturbance of storm water management areas, stream bank stabilization features, leachate collection trench, engineered treatment wetlands and associated infrastructure other than for activities as required for operation and maintenance, except that the City, after consultation with EPA, shall be allowed to design and construct the City Park bike path trail, provided such reconstruction does not interfere with any component of the remedy or institutional controls;
- ii. Prohibiting extraction, surface discharge or other use of contaminated groundwater;
- iii. Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: excavation of soils from beneath hardened surfaces (i.e., concrete, asphalt) in the Eastwick Neighborhood without characterization and appropriate off-site disposal,

- and use of the City Park and any other current non-residential Affected Property for residential or agricultural purposes;
- iv. Ensuring that any new structures on the Affected Property will not be constructed in a manner which could interfere with response actions at OU1 such as construction within the boundaries of the evapotranspiration cover or other remedial components;
- v. Ensuring that any new structures on the Affected Property intended for routine occupancy, including, but not limited to, a warehouse or office building, will be constructed in a manner that will minimize potential risk of inhalation of contaminants such as use of radon-resistant construction practices, inclusion of sampling ports in the foundation that will allow for subsurface sampling of gases and vapors;
- vi. Affected Property shall not be used in a manner inconsistent with this Consent Decree or any future remedy, including without limitation any institutional controls that may be established as part of an EPA-selected remedy;
- vii. Decisions and directives by EPA under this Section XIII. (“Property Requirements”) shall be subject to the Dispute Resolution provisions of this Consent Decree; and
- viii. EPA shall be provided within sixty (60) calendar days advance written notice of any proposal to use or perform any work on the Affected Property in a manner that would either impede the implementation of any response action, or likely cause any change which could affect the

protectiveness, permanence, or functional integrity of any response action. The Settling Defendants shall not make any alteration of any kind in, to or about any portion of the Affected Property inconsistent with this Consent Decree unless they have received prior written approval from EPA. In addition, to the extent practicable, the Settling Defendant shall not allow any action of any kind on the Affected Property which would either impede the implementation of any response action or affect the protectiveness, permanence or functional integrity of any response action, unless they have received prior written approval from EPA.

42. The ROD-OU1 requires institutional controls to maintain the integrity of the remedy, prevent exposure to contaminants, and prevent use of groundwater. If EPA determines that institutional controls are needed regarding the Affected Property each Settling Defendant shall coordinate and cooperate with EPA to secure compliance with such institutional controls, including, if requested by EPA, coordinate and cooperate in executing and recording institutional controls in accordance with the Pennsylvania Uniform Environmental Covenants Act (UECA) in the appropriate land records.

43. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations

XIV. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve

disputes regarding this Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

Informal Dispute Resolution.

45. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this Consent Decree shall in the first instance under this Paragraph be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

Formal Dispute Resolution.

46. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 45, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, a Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States, pursuant to Section XVI. (Notice) a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by a Settling Defendant. The Statement of Position shall specify a Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 51 (Record Review) or 52.

47. Within thirty (30) days after receipt of a Settling Defendant's Statement of Position, EPA will serve on that Settling Defendant its Statement of Position, including,

but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 51 (Record Review) or 52. Within fifteen (15) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

48. If there is disagreement between EPA and a Settling Defendant as to whether dispute resolution should proceed under Paragraph 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if a Settling Defendant ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 51 and 52.

49. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

- a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation,

submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

- b. The Director of the Superfund and Emergency Management Division, EPA Region 3, will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 51.a. This decision shall be binding upon SDs, subject only to the right to seek judicial review pursuant to Paragraphs 51.c and 51.d.
- c. Any administrative decision made by EPA pursuant to Subparagraph 49.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by a Settling Defendant with the Court and served on all Parties within ten (10) days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to a Settling Defendant's motion.
- d. In proceedings on any dispute governed by this Paragraph, a Settling Defendant shall have the burden of demonstrating that the decision of the Director of the Superfund and Emergency Management Division is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Subparagraph 51.a.

50. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

- a. The Director of the Superfund and Emergency Management Division, EPA Region 3, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 48. The Superfund and Emergency Management Division Director's decision shall be binding on a Settling Defendant unless, within ten (10) days after receipt of the decision, that Settling Defendant files with the Court and, pursuant to Section XVI. (Notice), serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.
- b. Judicial review of any dispute governed by this Paragraph 50 shall be governed by applicable principles of law.

51. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of any Settling Defendant under this Consent Decree. Stipulated penalties, if applicable, with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue

from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that a Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII. (Failure to Comply With Consent Decree) or as the Court shall determine.

XV. RETENTION OF RECORDS

52. Until five (5) years after the Effective Date, each Settling Defendant 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, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

53. At the conclusion of the document retention period, Settling Defendants shall notify the United States pursuant to Section XVI. (Notices and Submissions) at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, Settling Defendants shall deliver such Records to EPA.

54. Each Settling Defendant certifies individually 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 OUI, since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for information

regarding the OUI 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.

XVI. NOTICES AND SUBMISSIONS

55. Whenever, under the terms of this Consent Decree, 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 Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

To the United States Department of Justice by mail:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Email: eescdcopy.enrd@usdoj.gov
Re: DJ# 90-11-3-10909

As to EPA:

Joshua Barber, Remedial Project Manager
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3HS23)
Philadelphia, PA 19103
Email: Barber.Joshua@epa.gov

and

Donzetta Thomas, Attorney
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC50)

Philadelphia, PA 19103
Email: Thomas.Donzetta@epa.gov

As to Settling Defendants:

Patrick K. O'Neill Esq.
Divisional Deputy City Solicitor, Environmental Law
City of Philadelphia Law Dept.
One Parkway Bldg. 16th Floor
1515 Arch Street
Philadelphia, PA 19102
Telephone: 215-683-5172
Facsimile: 215-683-5175
Email: patrick.oneill@phila.gov

Ryan D. Harmon, Esq.
General Counsel
Philadelphia Redevelopment Authority
1234 Market Street, 16th Floor
Philadelphia, PA 19107
Telephone: 215-209-8624
Facsimile: 215-209-8644
Email: Ryan.Harmon@pra.phila.gov

Larry Silver
Langsam Stevens Silver & Hollaender LLP
1818 Market Street, Suite 2610
Philadelphia, PA 19103
Telephone: 215-239-9023
Facsimile: 215-732-3260
Email: lsilver@lssh-law.com

XVII. RETENTION OF JURISDICTION

56. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

57. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement

embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a Map of the Clearview Landfill;

“Appendix B” is a Map of the Eastwick Neighborhood;

“Appendix C” is a Map of the Eastwick Regional City Park; and

“Appendix D” is a Map of the Lower Darby Creek Area Superfund Site.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

58. This Consent Decree shall be lodged with the Court for a period of at least thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

59. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

60. Each undersigned representative of a Settling Defendant and representative of the EPA and the Acting Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his designee, certifies that he or

she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

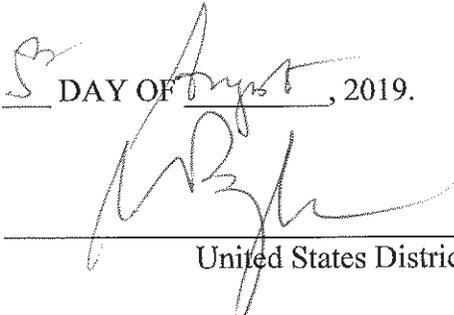
61. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

62. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

63. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 5 DAY OF August, 2019.



United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. the City of Philadelphia, et. al.

FOR THE UNITED STATES OF AMERICA:

June 2, 2019
Date

Jeffrey Bossert Clark
JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

JUNE 4th 2019
Date

John N. Moscato
JOHN N. MOSCATO
Senior Counsel
Environment and Natural Resources
Division
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace - Suite 370
Denver, CO 80202
Email: john.moscato@usdoj.gov
Telephone: (303) 844-1380
Facsimile: (303) 844-1350

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. the City of Philadelphia, et. al.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY:

4/19/2019

Date



COSMO SERVIDIO
Regional Administrator
U.S Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

4/19/2019

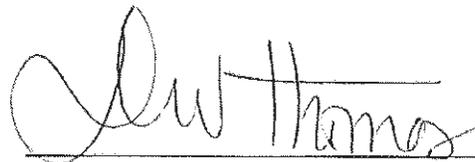
Date



CECIL RODRIGUES
Acting Regional Counsel
U.S Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

4/16/19

Date



DONZETTA W. THOMAS
Senior Assistant Regional Counsel
U.S Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. the City of Philadelphia, et. al.

FOR THE CITY OF PHILADELPHIA:



Brian Abernathy
Managing Director
1401 John F. Kennedy Boulevard
Suite 1430
Philadelphia, Pa 19102-1683



Marcel S. Pratt, Esq.
City Solicitor
1515 Arch St., 17th Fl.
Philadelphia, PA 19102
Attorney for City of Philadelphia



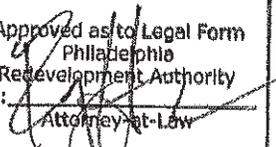
Patrick K. O'Neill Esq.
Divisional Deputy City Solicitor, Environmental
Law
City of Philadelphia Law Dept.
One Parkway Bldg. 16th Floor
1515 Arch Street
Philadelphia, PA 19102
215-683-5172 (phone)

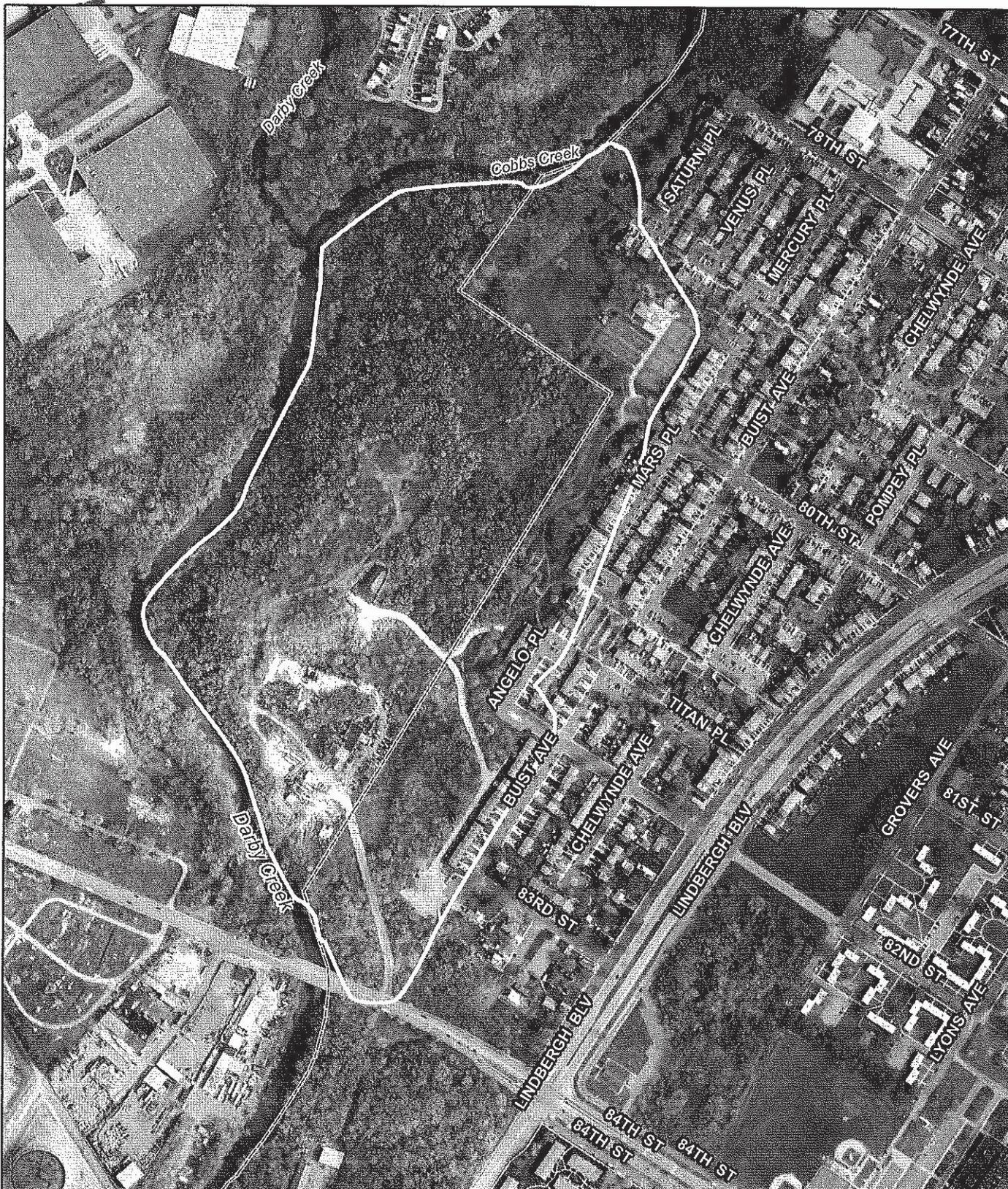
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. the City of Philadelphia, et. al.

**FOR THE PHILADELPHIA
REDEVELOPMENT AUTHORITY:**

 4/10/2019

Gregory Heller
Executive Director
Philadelphia Redevelopment Authority
1234 Market Street, 16th Floor
Philadelphia, PA 19107

Approved as to Legal Form
Philadelphia
Redevelopment Authority
By: 
Attorney-at-Law

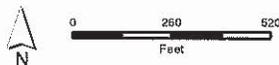


Legend

-  Historical Extent of Clearview Landfill
-  County Boundary Line

Coordinate System:
 State Plane Pennsylvania South FIPS 3702
 Linear Unit: Foot US

Datum: D North American 1983 (NAD 83)



Lower Darby Creek Area Site
 Delaware and Philadelphia Counties, PA

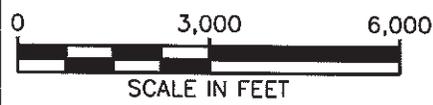
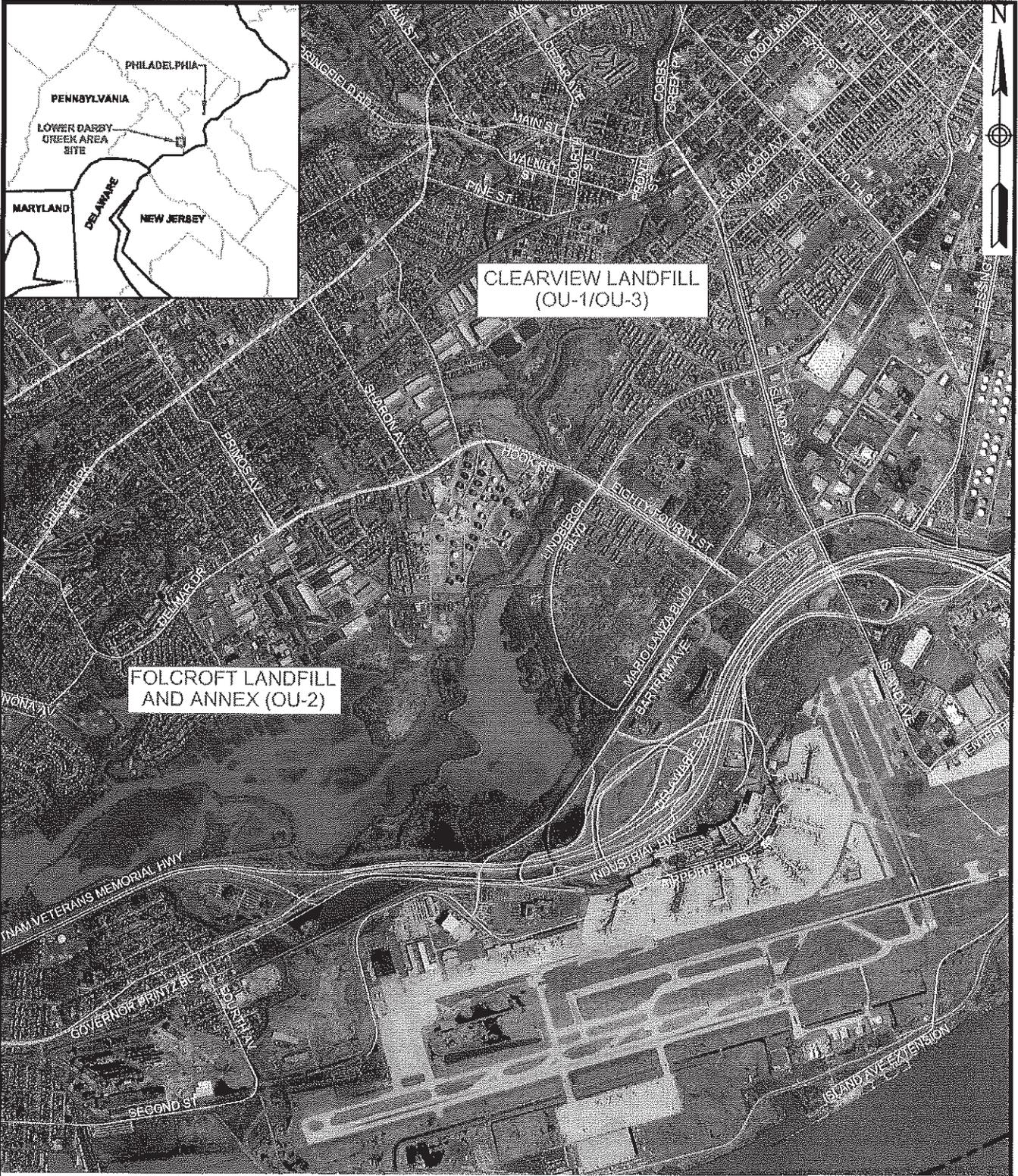
Appendix A
 Map of the Clearview Landfill





City Proper
Historical E

112G010671210112G01067GM09.DWG 02/08/12 MKC



Appendix D
Map of the Lower Darby Creek Area
Superfund Site

