

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
 : Civil No. 1:14-CV-01625-RJL
 v. :
 :
 ANTHONY SPANOS, INC., *et al.* :
 :
 :
 Defendants. :
----- X

**CONSENT DECREE
FOR SETTLEMENT OF CLAIMS INVOLVING
ANTHONY SPANOS, INC. AND GUS DINOS**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 104, 107, and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9613 (“CERCLA”), seeking, among other things, reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Georgia Avenue PCE Superfund Site in Washington, DC (“the Site”), as well as civil penalties for failure to comply with the requirements of an Information Request.

B. 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, and may undertake additional response actions in the future. EPA’s response actions addressed the release and threatened release of Perchloroethylene (“PCE”) at the Site. EPA’s time-critical removal action included, *inter alia*, removal assessment, the placing of portable, temporary carbon-filter units at the Site, and installation of soil-vapor-extraction systems to reduce the potential of releases of PCE.

C. In performing response actions at the Site, EPA has incurred response costs and may incur additional response costs in the future.

D. On March 19, 2012, based on EPA’s reasonable belief that there may be a release or a threat of a release of a hazardous substance, pollutant or contaminant from the Georgia Avenue PCE Site, a duly authorized representative of the President mailed an Information Request, certified mail/return receipt requested, pursuant to Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), (“Information Request”) to Anthony Spanos, Inc. (“ASI”) and Gus Dinos (“Dinos”) (together “Settling Defendants”).

E. EPA issued the Information Request to determine the need for a response or choosing or taking any response action under CERCLA, or otherwise enforcing the provisions of CERCLA.

F. The Settling Defendants that have entered into this Consent Decree do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. In its Complaint, the United States alleges that Settling Defendant ASI is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. The United States’ Complaint also alleges that Settling Defendants ASI and Dinos are liable parties pursuant to Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B).

H. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendant ASI to determine whether Settling Defendant ASI is financially able to pay civil penalties or for response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant ASI has limited financial ability to pay civil penalties or for response costs incurred and to be incurred at the Site.

I. The United States has reviewed the Financial Information submitted by Settling Defendant Dinos to determine whether Settling Defendant Dinos is financially able to pay civil penalties incurred in connection with the Information Request. Based upon this Financial Information, the United States has determined that Settling Defendant Dinos has limited financial ability to pay for civil penalties incurred in connection with the Information Request.

J. The United States 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.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. 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. §§ 9604, 9607 and 9613(b) and also has personal jurisdiction over 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. The Complaint states claims against Settling Defendants upon which relief may be granted. 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.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant ASI and any of its agents, successors and assigns and upon Settling Defendant Dinos and his estate, successors and assigns. Any change in ownership or corporate or other 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 Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. 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 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

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

“Civil penalties” shall mean penalties permitted under Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B).

“Complaint” shall mean the complaint filed by the United States in this action.

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

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

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

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on 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.

“Effective Date” shall have the definition provided in Section XVIII.

“Financial Information” shall mean those financial documents identified in Appendix A and Appendix C.

“Insurance Information” shall mean those insurance documents identified in Appendix B.

“Insurance Policies” shall mean all property, casualty, and/or liability insurance policies that have ever been issued to or for the benefit of Settling Defendant ASI and/or any predecessor in interest to Settling Defendant ASI, including all policies for which Settling Defendant ASI and/or its predecessor is an “insured,” “named insured,” or “additional insured,” and including but not limited to all policies for general, public, comprehensive, primary, excess, excess/umbrella, pollution legal liability, cleanup cost cap or stop loss policies, Institutional Controls and Past Remediation Care Insurance, and environmental impairment liability insurance. This includes, but is not limited to, the Insurance Information included in Appendix B.

“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 <http://www.epa.gov/superfund/superfund-interest-rates>.

“Monetary Judgment” shall mean the final judgment, which is entered pursuant to Paragraph 46 of this Consent Decree, in the amount of \$2,089,424.03.

“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.

“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 and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and DOJ on behalf of EPA has paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

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

“Removal Action” shall mean the response action EPA conducted at the Site to address the release of perchloroethylene (“PCE”) at and from the Site.

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

“Settling Defendants” shall mean Anthony Spanos, Inc. and its agents, successors, and/or assigns and Gus Dinos and his estate, successors and/or assigns.

“Settling Defendant ASI” shall mean Anthony Spanos, Inc. and its agents, successors, and/or assigns.

“Settling Defendant Dinos” shall mean Gus Dinos and his estate, successors, and/or assigns.

“Site” shall mean the Georgia Avenue PCE Superfund Site, located in Washington, DC, at and around 6143 Georgia Avenue, NW, 6135 and 6137 Georgia Avenue, NW, and at other adjacent or nearby properties affected or potentially affected by the areal extent of contamination where EPA performed response actions as part of the Removal Action.

“Site Special Account” shall mean the Georgia Avenue PCE Site Special Account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the District of Columbia;

“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.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. §9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous substance” under D.C. Code § 8-632.02.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the United States and Settling Defendant ASI is to avoid litigation and resolve the United States' claims for response costs by requiring Settling Defendant ASI to assign to the United States its rights to claim proceeds from the Insurance Policies, as defined above, including but not limited to all proceeds under the Insurance Policies to address its alleged civil liability under Section 107(a) of CERCLA for the Site, as provided in the Covenant Not to Sue by Plaintiff in Section X and subject to the Reservations of Rights by Plaintiff in Section XI .

5. By entering into this Consent Decree, the mutual objective of the United States and Settling Defendants is to avoid litigation by requiring Settling Defendants to resolve their alleged civil liability under Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), through payment of a civil penalty.

VI. CONFESSION AND SATISFACTION OF JUDGMENT AS TO ASI

6. Upon the Effective Date of this Consent Decree, Settling Defendant ASI hereby agrees and confesses to entry of a Monetary Judgment against itself and in favor of Plaintiff in the amount of \$2,089,424.03. Upon approval and entry, this Consent Decree shall constitute the final Monetary Judgment for resolution of the Plaintiff's claims in the Complaint for reimbursement of response costs against Settling Defendant ASI, and no other form of Monetary Judgment shall be required or entered. This Monetary Judgment shall be satisfied solely through any recovery by Plaintiff of proceeds from any Insurance Policies, as defined in Paragraph 3. This Monetary Judgment shall remain in effect until Settling Defendant ASI has complied with all of its obligations under this Consent Decree.

7. Assignment of Insurance Rights; Payment of Insurance Proceeds. Settling Defendant ASI agrees to irrevocably assign to the United States all Settling Defendant ASI's rights to proceeds under the Insurance Policies, including but not limited to all rights to insurance proceeds relating to the Monetary Judgment as well as all rights to insurance proceeds relating to amounts previously spent, or to be spent, in connection with the Site by Settling Defendant ASI. Upon request of the United States, Settling Defendant ASI shall reasonably cooperate with and assist the United States in (i) asserting and pursuing claims for coverage under those policies and (ii) negotiating or litigating to obtain the most favorable resolution of claims under those policies as is reasonable. Settling Defendant ASI further agrees to execute all necessary documentation to effectuate this assignment and to allow the pursuit and collection by the United States, including EPA, or a designee of any insurance claims proceeds. The proceeds from the Insurance Policies shall be paid to the United States in accordance with the instructions provided in this Paragraph 7. Settling Defendant ASI shall not be required by this Consent Decree or the assignment to fund any litigation against the insurers. In the event an insurer brings a declaratory action on an Insurance Policy which names Settling Defendant ASI, and/or Settling Defendant Dinos, in his capacity as a corporate officer of ASI, the United States shall seek to dismiss the action as to Settling Defendant ASI, and/or Settling Defendant Dinos, in his capacity as a corporate officer of ASI, or to substitute itself for it as party to the action on the basis of the assignment of rights conferred by this Paragraph. Settling Defendant ASI shall not be required to participate at Settling Defendant ASI's own expense in any such declaratory action beyond the level of cooperation required in this Paragraph.

a. Settling Defendant ASI shall make payments from the proceeds of any claims asserted under the Insurance Policies that are received by Settling Defendant ASI by Fedwire Electronic Funds Transfer EFT to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the District of Columbia after the Effective Date. The payment instructions provided by the FLU will 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 will provide the payment instructions to:

Robert F. Lawrence
Orrick, Herrington & Sutcliffe, LLP
1152 15th Street, NW
Washington, D.C. 20005
(202) 339-8430
rlawrence@orrick.com

on behalf of Settling Defendant ASI. Settling Defendant ASI may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XVII (Notices and Submissions). All payments shall be deposited by EPA in the Site 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.

b. Settling Defendant ASI agrees that 100% of any recovery from applicable Insurance Policies shall be paid to the United States or its designee. Settling Defendant ASI shall use best efforts to have these insurance proceeds paid to the United States or its designee, in accordance with the procedures specified in this Paragraph 7. If it is not practicable for the insurers to pay the United States or its designee directly, Settling Defendant ASI shall receive payment from the insurers and shall pay these insurance proceeds to the United States or its designee within thirty (30) days of receiving them, in accordance with the procedures specified in this Paragraph 7. All payments shall be deposited by EPA in the Site Special Account in accordance with Paragraph 7.a.

c. Notice of Payment. At the time of Settling Defendant ASI's payment to the United States or its designee, Settling Defendant ASI shall send notice that payment has been made to EPA in accordance with Section XVII (Notices and Submissions), (b) to DOJ in accordance with Section XVII; and (c) to the EPA Cincinnati Finance Center (CFC):

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number A3MT, and DJ Number 90-11-3-10721.

VII. COMPLIANCE WITH THE INFORMATION REQUEST

8. Settling Defendants hereby certify that they have provided to EPA copies of all documents and information available to them as requested in the Information Request, provided that (a) original documents previously provided by the Settling Defendants to or held by the Settling Defendants' former attorneys, Jackson & Campbell, have only been provided to EPA to the extent such original documents have been returned to the Settling Defendants (or their current attorneys) in response to Settling Defendants' written requests to their former attorneys, and (b) the information regarding Insurance Policies is that information available to the Settling Defendants to their knowledge, after reasonable inquiry to the issuer of such Insurance Policies.

VIII. PENALTIES

9. Settling Defendants shall pay a civil penalty of \$5,000 within thirty (30) days of the effective date of this Consent Decree to settle Plaintiff's claims under Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B). The payment shall be in the form of a certified check made payable to "EPA Hazardous Substances Superfund" and referencing Site/Spill ID Number A3MT and DJ Number 90-11-3-10721. Settling Defendants shall send the certified check by certified mail, return receipt requested, to

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000.

Payment of this civil penalty shall be an obligation of the estate of Settling Defendant Dinos in the event of his death, but shall not be a direct obligation of any of his heirs, should the net residual value of his estate be less than \$5,000.

IX. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Payments. If Settling Defendant ASI fails to make any payment required by Paragraph 7 or Settling Defendants fail to make any payment required by Paragraph 9 by the date and in the manner required under such Paragraph(s), Interest shall accrue on the unpaid balance from the date payment was due through the date of payment.

11. Stipulated Penalties.

a. If any amounts due to EPA from Settling Defendant ASI under Paragraph 7 or from Settling Defendants under Paragraph 9 are not paid by the required date, such Settling Defendant(s) shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10 (Interest on Payments), \$1000 per violation per day that such payment is late.

b. If a Settling Defendant does not comply with any other term or condition of this Consent Decree, such Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$1000 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph 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”

d. At the time of payment, such Settling Defendant(s) shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 7.c (Notice of Payment).

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified such Settling Defendant(s) 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 Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States brings an action against one or both Settling Defendants to enforce this Consent Decree, such Settling Defendant(s) shall reimburse the United States for all costs of such action, including but not limited to, costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of a Settling Defendant’s failure to comply with the requirements of this Consent Decree.

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

X. COVENANTS BY PLAINTIFF TO SETTLING DEFENDANT ASI

15. Except as specifically provided in Section XI (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant ASI pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) regarding the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant ASI of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Confession and Satisfaction of Judgment), and any Interest or stipulated penalties due thereon under Section IX (Failure to Comply with

Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Defendant ASI and the financial, insurance, and indemnity certification made by Settling Defendant ASI in Paragraph 36. These covenants extend only to Settling Defendant ASI and do not extend to any other person.

XI. RESERVATION OF RIGHTS BY UNITED STATES AS TO SETTLING DEFENDANT ASI

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant ASI with respect to all matters not expressly included within Paragraph 15 (Covenants by Plaintiff to Settling Defendant ASI). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant ASI with respect to:

- a. liability for failure of Settling Defendant ASI 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 on the ownership or operation of the Site by Settling Defendant ASI when such ownership or operation commences after signature of this Consent Decree by Settling Defendant ASI;
- e. liability based on Settling Defendant ASI's transportation, treatment, storage, or disposal, or arrangement for 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 Settling Defendant ASI; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

17. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant ASI, or the financial, insurance, or indemnity certification made by Settling Defendant ASI in Paragraph 36, is false or, in any material respect, inaccurate.

XII. COVENANTS BY SETTLING DEFENDANT ASI

18. Settling Defendant ASI 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 the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the 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; or

b. any claims under D.C. Code §§ 8-632.01, 8-634.01, or 8-634.07, or any other District law; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

d. 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, relating to the Site.

19. Except as provided in Paragraph 21 (claims against other Potentially Responsible Parties) and Paragraph 26 (Res Judicata and other Defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XI (Reservations of Rights by United States as to Settling Defendant ASI), other than in Paragraph 16.a (liability for failure to meet a requirement of the Consent Decree) or 16.b (criminal liability), but only to the extent that Settling Defendant ASI's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. 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).

21. Settling Defendant ASI 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 for response costs relating to the Site against any other person who is or may be a potentially responsible party under CERCLA at the Site, including, but not limited to, George A. Spanos, individually, and in his capacity as trustee of the George A. Spanos Living Trust. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant ASI.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION FOR SETTLING DEFENDANT ASI

22. Except as provided in Paragraph 21 (claims against other PRPs), 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. Except as provided in Section XII (Covenants by Settling Defendant ASI), the United States and Settling Defendant ASI expressly reserve any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that they 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 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).

23. The United States and Settling Defendant ASI agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Defendant ASI has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is 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 the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section XI (Reservations of Rights by United States as to Settling Defendant ASI), other than in Paragraphs 16.a (liability for failure to meet a requirement of Consent Decree) or 16.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

24. The United States and Settling Defendant ASI further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant ASI 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).

25. Settling Defendant ASI 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 sixty (60) days prior to the initiation of such suit or claim. Settling Defendant ASI 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 ten (10) days after service of the complaint or claim upon it. In addition, Settling Defendant ASI shall notify EPA and DOJ within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant ASI 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 Plaintiff set forth in Section X.

XIV. EFFECT OF SETTLEMENT FOR SETTLING DEFENDANT DINOS

27. The United States and Settling Defendant Dinos agree to entry of the Consent Decree to settle the claims made by the United States under Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), against Settling Defendant Dinos in the complaint filed in this action on September 26, 2014.

28. Settling Defendant Dinos 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 for response costs relating to the Site against George A. Spanos individually and in his capacity as trustee of the George A. Spanos Living Trust.

29. The United States shall have the right to reopen this Consent Decree if the United States obtains evidence that the information or representations of Settling Defendant Dinos is false or, in any material respect, inaccurate. The right shall be in addition to all other rights and causes of action, civil or criminal, the United State may have under law or equity in such event.

XV. ACCESS TO INFORMATION

30. Settling Defendants shall provide to EPA upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site, or to insurance information, or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

31. Privileged and Protected Claims.

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 31.b, and except as provided in Paragraph 31.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiff 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 Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim 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 Defendants' favor.

c. Settling Defendants 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 Defendants are required to create or generate pursuant to this Consent Decree.

32. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XVI (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 Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which

Settling Defendants assert a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA 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 Defendants 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 Defendants.

33. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVI. RETENTION OF RECORDS

34. 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 either of their possession or control, or that come into either of their possession or control, that relate in any manner to the Insurance Policies or evidence of the Insurance Policies or to their liability under CERCLA with respect to the Site, provided, however, that if a Settling Defendant is potentially liable as an owner or operator of the Site, such Settling Defendant must retain, in addition, all Records that relate to the liability of any other 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.

35. After the conclusion of the record retention period, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA or DOJ, except as provided in Paragraph 31 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

36. Each Settling Defendant certifies that, to the best of their knowledge and belief, after thorough inquiry, they each have:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to potential liability regarding the Site since notification of potential liability by the United States or the State, and that they have fully complied with any and all EPA and State requests for information regarding the Site and each Settling Defendant's financial circumstances, including but not limited to, insurance and indemnity information, 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;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time each Settling Defendant executes this Consent Decree; and

c. fully disclosed the existence of any Insurance Policies, or evidence of such policies, that may cover claims relating to cleanup of the Site, that Settling Defendant(s) continue to hold all rights under the Insurance Policies, and that except to the extent that insurance claims unrelated to the response costs sought in the above-captioned action have been made in the past

under one or more of the Insurance Policies, they have not settled, compromised, or assigned any insurance rights of the assigned claims prior to approval of this Consent Decree.

XVII. NOTICES AND SUBMISSIONS

37. 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.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10721

As to EPA: Robert S. Hasson (3RC41)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103
hasson.robert@epa.gov

As to Settling Defendant ASI: Gus G. Dinos
Registered Agent
ASI
11031 Earls Gate Lane
Rockville, MD 20852

As to Settling Defendant Dinos: Gus G. Dinos
11031 Earls Gate Lane
Rockville, MD 20852

XVIII. EFFECTIVE DATE

38. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. RETENTION OF JURISDICTION

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

XX. INTEGRATION/APPENDICES

40. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between 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 list of the financial documents submitted to EPA by Settling Defendant ASI.

“Appendix B” is a list of the insurance documents submitted to EPA by Settling Defendant ASI.

“Appendix C” is a list of the financial documents submitted to EPA by Settling Defendant Dinos.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

41. 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.

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

XXII. SIGNATORIES/SERVICE

43. Each undersigned representative of Settling Defendants and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 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.

44. Settling Defendants agree 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.

45. 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 its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants 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.

XXIII. FINAL JUDGMENT

46. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

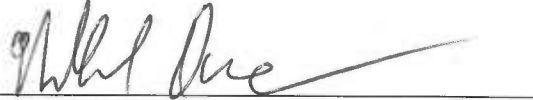
SO ORDERED THIS ____ DAY OF _____, 2017.

Richard J. Leon
United States District Judge

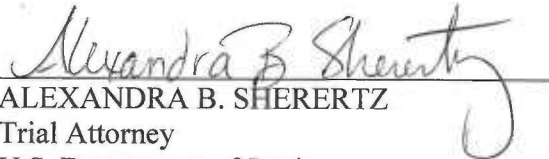
Signature Page for Consent Decree Regarding the Georgia Avenue PCE Superfund Site

FOR THE UNITED STATES OF AMERICA:

12/19/16
Dated

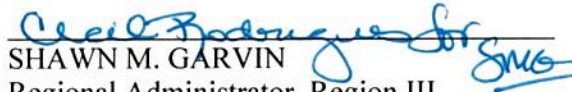


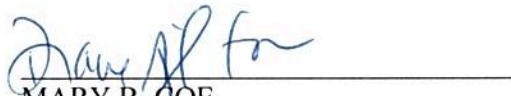
NATHANIEL DOUGLAS
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

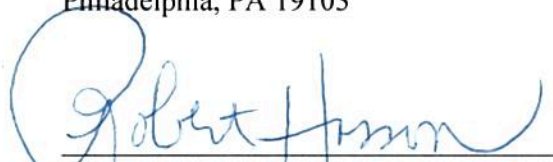


ALEXANDRA B. SHERERTZ
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
Email: Alexandra.Sherertz@usdoj.gov
Phone: (202) 514-0414

Signature Page for Consent Decree Regarding the Georgia Avenue PCE Superfund Site


SHAWN M. GARVIN
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103


MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103



ROBERT S. HASSON
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Signature Page for Consent Decree Regarding the Georgia Avenue PCE Superfund Site

FOR GUS DINOS:

12-13-16

Date



Name (print): Gus G. Dinos
Title: Authorized Officer
Address: 11031 EarlsGate Lane,
Rockville, MD 20852

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

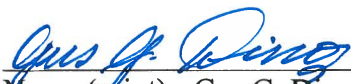
Name (print): Gus G. Dinos
Title: Registered Agent
Company: None
Address: 11031 EarlsGate Lane
Rockville, MD 20852
Phone: (301) 806-6143
email: None

Signature Page for Consent Decree Regarding the Georgia Avenue PCE Superfund Site

FOR ANTHONY SPANOS, INC.:

12-13-16

Date



Name (print): Gus G. Dinos

Title: President

Address: 11031 Earls Gate Lane
Rockville, MD 20852

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

Name (print): Gus G. Dinos

Title: None

Company: None

Address: 11031 Earls Gate Lane
Rockville, MD 20852

Phone: (301) 806-6143

Email: None

Appendix A

1. U.S. Corporate Income Tax Returns, Form 1120, Anthony Spanos, Inc. for the years ending December 31, 2010, and December 31, 2011.
2. Financial Statement of Corporate Debtor submitted by Anthony Spanos, Inc., signed October 4, 2015.

Appendix B

Insurer	Policy Number	Start Date	End Date
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-74	11/17/1974	11/17/1975
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-76	11/17/1976	11/17/1977
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-77	11/17/1977	11/17/1978
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-78	11/17/1978	11/17/1979
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-79	11/17/1979	11/17/1980
The Charter Oaks Fire Insurance Company	650-154A034-7-COF-80	11/17/1980	11/17/1981
The Aetna Casualty and Surety Company	053 SM 939907 FCA	11/17/1984	11/14/1985
The Aetna Casualty and Surety Company	053 SM 1021136 FCA	11/17/1985	11/17/1986
The Aetna Casualty and Surety Company	053 ACM 5497514	11/17/1989	11/17/1990
The Aetna Casualty and Surety Company	053 GL 21771319 CCI	11/17/1991	11/17/1992
The Aetna Casualty and Surety Company	053 GL 22933387 TCI	11/17/1992	11/17/1993
The Aetna Casualty and Surety Company	053 GL 23929405 TCI	11/17/1993	11/17/1994
The Aetna Casualty and Surety Company	053 GL 24432385 TCI	11/17/1994	11/17/1995
The Aetna Casualty and Surety Company	053 GL 25131748 TCI	11/17/1995	11/17/1996
The Travelers Indemnity Company	I-680-5127B598-IND-04	11/17/2004	11/17/2005
The Travelers Indemnity Company	I-680-5127B598-IND-05	11/17/2005	11/17/2006
The Travelers Indemnity Company	I-680-5127B598-IND-06	11/17/2006	11/17/2007
The Travelers Indemnity Company	I-680-5127B598-TIA-07	11/17/2007	11/17/2008
The Travelers Indemnity Company	I-680-5127B598-IND-08	11/17/2008	11/17/2009
The Travelers Indemnity Company	I-680-5127B598-TIA-09	11/17/2009	11/17/2010
The Travelers Indemnity Company	I-680-5127B598-TIA-10	11/17/2010	01/01/2011

Appendix C

1. U.S. Individual Income Tax Returns, Form 1040, Gus and Mary Dinos, for the years ending December 31, 2009, through December 31, 2014.
2. Financial Statement of Individual Debtor and attachments submitted by Gus Dinos, signed October 4, 2015.