

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VINCENT DELL' AVERSANO,

Defendant.

Civil Action No. 17-cv-1342 JEJ

CONSENT DECREE

A. On September 22, 2017, Plaintiff United States of America, acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint against Defendant Vincent Dell’Aversano (“Settling Defendant”) alleging claims under Sections 106(a) and (b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9606(a) and 9606(b)(1).

B. The complaint seeks to enforce an EPA administrative order issued to Settling Defendant pursuant to CERCLA Section 106(a) on September 27, 2004, Docket No. CERC-3-2004-0125DC (“2004 Order”). The 2004 Order replaced an earlier order issued to Settling Defendant on October 13, 1999. The 2004 Order required Settling Defendant to take and refrain from certain actions in order to prevent potential threats to human health and the environment arising out of the release of hazardous substances at the Delaware Sand & Gravel Superfund Site in New Castle County, Delaware (“the Site”).

C. Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in the complaint.

D. Plaintiff has reviewed financial information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay a civil penalty. Based its review of this financial information, Plaintiff has determined that Settling Defendant has limited financial ability to pay a civil penalty.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith 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 Consent Decree, and without adjudication of any issue of fact or law, it is ORDERED, ADJUDGED, AND DECREED:

I. 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. §§ 9607 and 9613(b). Solely for the purposes of this Consent Decree and the underlying Complaint, this Court has personal jurisdiction over Settling Defendant. Settling Defendant shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant. Any change in corporate or other legal status of Settling Defendant shall in no way alter the responsibilities of Settling Defendant under this Consent Decree.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, 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:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.
- b. “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.
- c. “Constructed Remedy” shall mean the physical structures and systems constructed on the Site as part of the remedial action selected in the 1988 ROD, as amended by the 1993 ROD Amendment, except for the engineered low-permeability cap over the Drum Disposal Area which will be installed during the Remedial Action for the 2017 ROD Amendment. The Constructed Remedy includes, but is not limited to: engineered low-permeability caps constructed at the Grantham South Area and the Inert Area (which includes the Surface Barrier Area); the construction of a low-permeability, subterranean wall around the perimeter of the Drum Disposal Area and associated treatment facilities; and all supporting features including the ingress/egress roadways thereof, along with associated gas vents, landfill gas monitoring and extraction wells, landfill gas venting systems, piping, drainage ditches, channels, sedimentation ponds, groundwater monitoring and extraction wells, groundwater conveyance piping, perimeter security fencing and utilities such as electric, water and sewer; and a 10-foot buffer zone around those features identified above.

d. “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.

e. “DDA Response Area” shall mean the portions of the Settling Defendant’s Site Property that are depicted together on the map attached to this Consent Decree as Appendix A.

f. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

g. “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court.

h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. “ICs Notice” shall mean the Notice of Institutional Controls, Access, and Obligations Regarding Successors-in-Interest attached as Appendix B to this Consent Decree.

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

k. “Parties” shall mean the United States and Settling Defendant.

l. “Plaintiff” shall mean the United States.

m. “RD/RA Consent Decree” shall mean the consent decree signed by the United States on behalf of EPA, the State of Delaware (“State”), and thirty-one Site responsible parties, and entered in the United States District Court for the District of Delaware on June 14, 1995.

n. “RD/RA Defendants” shall mean the thirty one responsible parties who signed the RD/RA Consent Decree as settling defendants.

o. “Response Action” or “Response Actions” shall mean all activities performed or to be performed at the Site as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). Response Actions include, but are not limited to, activities to implement the 1988 ROD; the 1993 ROD Amendment; the 2003 ESD; the 2017 ROD Amendment; installation and operation of an extraction well located between the Drum Disposal Area and the Inert Area (“PW-1”); and the low-flow extraction and discharge of contaminated groundwater at the Drum Disposal Area begun in May of 2009.

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

q. “Settling Defendant” shall mean Vincent Dell’Aversano.

r. “Settling Defendant’s Site Property” or “Site Property” shall mean the real property delineated by the dashed lines in Appendix C hereto (Geographic Coordinates of Settling Defendant’s Site Property). The Settling Defendant’s Site Property contains the following features, depicted on the map attached hereto as Appendix A: the Inert Area (which includes the Surface Barrier Area); an approximately 0.15 acre portion of the Grantham South Area; the DDA Response Area; the engineered low-permeability subterranean wall; cap systems; groundwater and landfill gas extraction wells; groundwater and landfill gas monitoring wells; associated drainage ditches, piping and venting systems, channels and sedimentation ponds; the ingress/egress roads thereto; the associated utilities, including electric, water and sewer facilities; perimeter security fences; and a ten-foot buffer zone around all of these features.

s. “Site” shall mean the Delaware Sand and Gravel Superfund site located in New Castle, Delaware, and which is identified in greater detail at

<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0300034&msspp=med>

t. “State” shall mean the State of Delaware.

u. “Surface Barrier Area” shall mean the approximately five-acre area within the approximately eleven-acre Inert Area as outlined within a black dashed line on the map attached hereto as Appendix A.

v. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

w. “Work” shall mean the Settling Defendant’s compliance obligations set forth in Section IV of this Consent Decree.

x. “1988 ROD” shall mean the Record of Decision issued by EPA for the Site on April 22, 1988.

y. “1993 ROD Amendment” shall mean the amendment to the 1988 ROD issued by EPA on September 30, 1993.

z. “2003 ESD” shall mean the Explanation of Significant Differences issued by EPA on July 8, 2003 which modified the deed restriction portion of the 1993 ROD Amendment.

aa. “2017 ROD Amendment” shall mean the amendment to the 1988 ROD issued by EPA on December 12, 2017.

IV. COMPLIANCE OBLIGATIONS

4. Use Restrictions on Settling Defendant’s Site Property. Settling Defendant shall refrain from (i) using the Site in any manner which could compromise or adversely affect the

effectiveness or protectiveness of the Constructed Remedy, the remedy selected in the 2017 ROD Amendment or of any additional Response Actions; and (ii) interfering with, obstructing or disturbing the performance, support or supervision of the Constructed Remedy, the remedy selected in the 2017 ROD Amendment or of any additional Response Actions. In addition, unless (i) required for implementation of the Work, (ii) otherwise determined to be necessary by EPA, or (iii) otherwise agreed to by Settling Defendant and EPA, the Settling Defendant shall comply with the following restrictions and requirements:

a. Settling Defendant shall refrain from all use of the DDA Response Area until EPA determines that all Response Actions there are completed.

b. Settling Defendant shall refrain from all use of the Inert Area (except for the Surface Barrier Area of the Inert Area) and the Grantham South Area, unless at least forty-five (45) days prior to any proposed use of such areas of the Site, Settling Defendant submits to EPA for review and approval a plan for Settling Defendant's use of such areas of the Site. Approval by EPA shall not be unreasonably withheld. The Grantham South Area and the Inert Area, outside the Surface Barrier Area, are steeply sloped and vegetated to promote wildlife habitat. The vegetated impermeable caps over these areas are subject to harmful wear and cannot withstand loads. Unless otherwise directed by EPA, Settling Defendant shall not commence any activities on such areas prior to Settling Defendant's receipt of EPA's written approval of such plan.

c. With respect to the Surface Barrier Area of the Inert Area, the Settling Defendant shall:

i. Place protective material beneath or around any activity that may result in spillage of oil, transmission fluid, coolant or other potentially dangerous materials during equipment maintenance, salvage or movement;

ii. Promptly clean up any spills on the Surface Barrier Area. This clean up shall initially include chemical treatment with surfactants and detergents. A ready and adequate supply of treatment chemicals shall be available for immediate use at all times. Should the initial clean up not resolve the spill, Settling Defendant shall remove the stained gravel and replace with clean gravel or other acceptable material. Should EPA determine during a Site inspection that any observed stained gravel or spills need to be cleaned up, Settling Defendant shall have thirty (30) days to do so, with reasonable extensions granted by EPA;

iii. Prevent rutting, gouging and erosion caused by use of the Surface Barrier Area. A trailer or truck or weight-approved equipment shall be used to move items on or off the Surface Barrier Area. Nothing shall be brought onto the Surface Barrier Area without wheels or the use of a trailer or truck or weight-approved equipment. Nothing shall be dragged on the Surface Barrier Area;

iv. Promptly repair all ruts, gouges and eroded areas on the Surface Barrier Area should any such deformity be caused by use occur there. Should EPA determine during a Site inspection that any observed ruts, gouges and eroded areas need to be repaired, Settling Defendant shall have thirty (30) days to do so, with reasonable extensions granted by EPA;

v. Not conduct welding activities within 75 feet of any gas vent constructed into the engineered cap;

vi. Not conduct any digging or any excavation of any portion of the Surface Barrier Area, unless that action is required by, and is being performed in accordance with, subparagraph 4.c.ii, above;

vii. Not drive, park or allow anyone else to drive or park any rubber-tired vehicle with an axle load greater than 25,000 pounds or a tire air pressure exceeding 80 pounds per square inch (psi);

viii. Not place, store or allow anyone else to place or store any object which does not meet the following compliance requirements, unless EPA approves in writing an exception, which such approval shall not be unreasonably withheld:

(1) The load exerted by any object with a footprint (contact point) smaller than 72 square inches (in.^2) shall not exceed 1,000 pounds. Should any such object penetrate the gravel more than three inches, Settling Defendant shall place rigid plates beneath the object to prevent the object from penetrating the gravel.

(2) The contact pressure of any object with a footprint between 72 and 144 in.^2 shall not exceed 56 psi.

(3) The contact pressure of any object with a footprint greater than 144 in.^2 shall not exceed 14 psi.

ix. Not place or allow anyone else to place any object on the Surface Barrier Area which could damage the underlying impermeable or drainage layers of the Surface Barrier Area; and

x. Immediately inform EPA pursuant to Section XIII of this Consent Decree if anything happens that damages or may damage the Surface Barrier Area or any other component of the Constructed Remedy.

d. The Settling Defendant shall not install, or allow to be installed, any public or domestic drinking water supply wells on the Settling Defendant's Site Property.

5. Reporting Obligations. Settling Defendant shall submit to EPA at least once every two years an Operation and Maintenance Report ("O&M Report") providing a status summary of conditions on the Surface Barrier Area. The first O&M Report shall be submitted on or before January 15th of the calendar year following the entry date of the Consent Decree, and on or before January 15th of every second calendar year thereafter. Each respective O&M Report shall provide a written inventory of all objects on the Surface Barrier Area and identify all corrective actions completed pursuant to subparagraphs 4.c.ii and iv of this Consent Decree. The O&M Report shall describe the objects in sufficient detail to enable EPA to assess the approximate footprint and load of each object in addition to the total load on the Surface Barrier Area.

6. Notice of Obligations to Successors-in-Interest and EPA.

a. With respect to Settling Defendant's Site Property, within thirty (30) days after the Effective Date of this Consent Decree, Settling Defendant shall record the ICs Notice with the Recorder of Deeds of New Castle County, State of Delaware. The recording shall be done in order to make future owners of the Settling Defendant's Site Property aware of this Consent Decree and its obligations. The Settling Defendant shall not modify or release the ICs Notice without prior written approval of EPA. Settling Defendant shall include in each future deed, title, or other instrument of conveyance for property executed by the Settling Defendant

regarding Settling Defendant's Site Property, or any portion thereof, a similar notification stating that the property may be subject to the requirements set forth in Section IV of this Consent Decree, and to any lien held by EPA pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), and shall reference the recorded location of the ICs Notice, the Consent Decree and all restrictions applicable to Settling Defendant's Site Property under the Consent Decree. The Settling Defendant shall provide EPA with a copy of any such future deed, title, or other instrument of conveyance within ten (10) days of recording it.

b. At least thirty (30) days prior to any change in control or the conveyance of any interest in Settling Defendant's Site Property, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, the Settling Defendant shall give the grantee(s) or transferee(s)-in-interest a written description of the requirements set forth in Section IV of this Consent Decree. At least thirty (30) days prior to such conveyance, the Settling Defendant shall also give written notice to EPA of the proposed conveyance, including the name(s), address(es) and telephone number(s) of the grantee(s) or transferee(s)-in-interest, a description of the intended use by the grantee(s) or transferee(s)-in-interest, a copy of the notice of the requirements of Section IV of this Consent Decree which was given to the grantee(s), and the date on which the notice was given.

c. In the event that the Settling Defendant conveys less than a fee simple absolute interest in all or a portion of Settling Defendant's Site Property, the Settling Defendant's obligations under the Consent Decree, including, but not limited to, his obligation to provide access to and restrict use of Settling Defendant's Site Property, pursuant to Section IV of this Consent Decree, shall continue to be met by the Settling Defendant with respect to any such conveyance. In no event shall such a conveyance release or otherwise affect the Settling

Defendant's obligation to comply with all provisions of the Consent Decree, absent the prior written consent of EPA.

d. In the event that the Settling Defendant files for bankruptcy or is placed involuntarily in bankruptcy proceedings, the Settling Defendant shall notify EPA within three (3) working days of such filing.

e. Notice requirements: The Settling Defendant is required to include in any instrument conveying any interest in any portion of Settling Defendant's Site Property including, but not limited to, deeds, leases and mortgages, a Disclosure which is in substantially the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A NOTICE OF INSTITUTIONAL CONTROLS, ACCESS AND OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST AND THE TERMS, CONDITIONS AND RESTRICTIONS CONTAINED THEREIN, DATED _____. THE NOTICE OF INSTITUTIONAL CONTROLS, ACCESS AND OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST WAS RECORDED ON _____ IN THE RECORDER'S OFFICE FOR NEW CASTLE COUNTY, DELAWARE IN _____.

Within thirty (30) days of the date any such instrument of conveyance is executed, Settling Defendant shall provide EPA with a certified true copy of said instrument, if it has been recorded in the public land records, its recording reference.

7. Provision of Access. Settling Defendant shall provide EPA, the State of Delaware, and their representatives (including the RD/RA Defendants, other responsible parties performing RA, and contractors working on behalf of EPA, the State of Delaware, the RD/RA Defendants, and other responsible parties) with access at all reasonable times to Settling Defendant's Site Property for the purpose of conducting any activity related to implementation of the 1988 ROD, the 1993 ROD Amendment, the 2003 ESD, the 2017 ROD Amendment, the operation of extraction well PW-1, or any additional Response Actions including, but not limited to, the following activities:

- a. Verifying any data or information submitted to EPA or the State of Delaware;
- b. Conducting investigations relating to contamination at the Settling Defendant's Site Property, including the collection of environmental samples;
- c. Assessing the need for, planning, or implementing additional Response Actions at or near the Settling Defendant's Site Property;
- d. Implementing Response Actions at the Site;
- e. Assessing the RD/RA Defendants' compliance with the RD/RA Consent Decree or other responsible parties' compliance with any other enforcement instrument requiring Response Actions at the Site; and
- f. Determining whether the Settling Defendant's Site Property is being used in a manner that is prohibited or restricted by the Consent Decree.

V. FAILURE TO COMPLY WITH CONSENT DECREE

8. Although Settling Defendant is not required to pay a civil penalty under this Consent Decree in view of his limited financial means, Settling Defendant shall be liable for

stipulated penalties for violation of the requirements of Section IV (Compliance Obligations) of this Consent Decree, unless excused under Section VI (Force Majeure) or unless Settling Defendant prevails with respect to the violation in any formal dispute resolution procedure under Section VII (Dispute Resolution). Specifically, if anytime after entry of the Consent Decree, EPA determines that Consent Decree violations have occurred and Settling Defendant has not satisfactorily addressed them and returned to compliance within 30 days of being notified of its non-compliance by EPA, or within the time allotted by EPA upon any request for extension by Settling Defendant, Settling Defendant shall owe the following amounts specified by the year in which the violations occurred:

Year One:	\$15,000
Year Two:	\$15,000
Year Three:	\$10,000
Year Four:	\$7,500
Year Five:	\$5,000
Years Six-Ten	\$1,000

For purposes of this Paragraph 8, Year One shall conclude within 12 months of entry of the Consent Decree, Year Two within 24 months of entry, and so on. The reduced stipulated penalty amount owed in any year shall be conditioned upon the Settling Defendant's full compliance with his Consent Decree obligations during the prior year.

9. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. Settling Defendant shall make such stipulated penalty payment by Fedwire EFT, referencing the Site/Spill ID Number 0345 and DOJ Number 90-11-3-11545. The Fedwire EFT payment must be sent as follows:

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”

10. Any payment pursuant to Paragraph 9 shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 0345, and DOJ Case Number 90-11-3-11545. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions) and to the following:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

Penalties shall accrue as provided in this Section, and need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity.

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

12. 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.

VI. FORCE MAJEURE

13. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant’s best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force Majeure” does not include financial inability to complete the Work.

14. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify EPA orally within fourteen (14) days of when Settling Defendant first knew that the event might cause a delay. Within seven (7) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to

a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 13 and whether Settling Defendant has exercised his best efforts under Paragraph 13, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or complete notices under this Paragraph. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

15. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

16. If EPA denies that force majeure event has occurred, Settling Defendant may elect to invoke the dispute resolution procedures set forth in Section VII (Dispute Resolution) by no later than 15 days after receipt of EPA's notice provided pursuant to Paragraph 15. In any

such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were and will be exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 13 and 14, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

VII. DISPUTE RESOLUTION

17. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

18. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this

Section by providing to the United States 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 the Settling Defendants.

b. Within twenty-one (21) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant EPA's 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. Within fourteen (14) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

19. Formal dispute resolution for all disputes arising under this Consent Decree pertain 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 and shall be conducted pursuant to the procedures set forth in this Paragraph 19. For purposes of this Paragraph, the adequacy of any Response Action includes, without limitation, Settling Defendant's timely and adequate compliance with the requirements of Section IV (Compliance Obligations). Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the provisions of the 1988 ROD, the 1993 ROD Amendment, the 2003 ESD or the 2017 ROD Amendment.

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 Hazardous Site Cleanup Division, EPA Region 3, will issue a final administrative decision resolving the dispute based on the administrative record

described in Paragraph 19.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 19.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 19.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on the United States Department of Justice and the EPA at the address contained in this Consent Decree 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 Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph 19, Settling Defendant shall have the burden of demonstrating that the decision of the Hazardous Site Cleanup Division Director 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 Paragraph 19.a.

20. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendant's under this Consent Decree, except as agreed by EPA, or as determined by the Court. Stipulated penalties 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 Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V (Failure to Comply With Consent Decree). In the

event that Settling Defendant does prevail on the disputed issued, no stipulated penalties shall be assessed on that issue.

VIII. COVENANT NOT TO SUE BY UNITED STATES

21. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for the claims of violations alleged in the complaint filed by Plaintiff in this action, and for performance of the Work. This covenant not to sue shall take effect on the Effective Date of this Consent Decree and is conditioned upon satisfactory performance by Settling Defendant of the Work. This covenant not to sue is also conditioned upon the veracity and completeness of the financial information provided to EPA by Settling Defendant and the financial certification made by Settling Defendant in Paragraph 29. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

22. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Section VIII. Notwithstanding any other provision of this Consent Decree, but without any admission or waiver by Settling Defendant as to the following, the United States reserves all rights, if any, against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the Settling Defendant's past, present, or future disposal, release or threat of release of hazardous substances outside of the Site;

- c. liability based upon the Settling Defendant's ownership or operation of the Site after signature of this Consent Decree by the Settling Defendant;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law by Settling Defendant that occur during or after implementation of the Work;
- g. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, to the extent such injunctive relief or administrative order enforcement concerns the performance of response actions other than the Work.

23. 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 provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 29, is false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANT

24. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its employees, with respect to the Work or 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;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Delaware 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

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which 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.

26. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are the Work.

27. The Parties 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 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). Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the Complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

28. 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 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 provisions and enforceability of the Covenant Not to Sue by the United States set forth in Section IX.

XII. FINANCIAL CERTIFICATION

29. Settling Defendant certifies that, to the best of his knowledge and belief, after thorough inquiry, he has submitted to EPA financial information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

30. 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOJ, and Settling Defendant, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-11545)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Debra Rossi
Remedial Project Manager (3HS23)
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

Benjamin Cohan
Senior Assistant Regional Counsel (3RC43)
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

As to Settling Defendant:

Mr. Vincent Dell'Aversano
770 Grantham Lane
New Castle, DE 19720

XIV. RETENTION OF JURISDICTION

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

XV. APPENDICES

32. The following Appendices are attached to and incorporated into this Consent Decree:

Appendix A is the map entitled “Delaware Sand and Gravel: New Castle Hundred.”

Appendix B is the “Notice of Institutional Controls, Access, and Obligations Regarding Successors-in-Interest.”

Appendix C is the map entitled “Geographic Coordinates of Settling Defendant’s Site Property.”

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate. Subject only to Paragraph 34, Settling Defendant consents to the entry of this Consent Decree without further notice.

34. 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 either party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. EFFECTIVE DATE/TERMINATION OF ORDER

35. The Effective Date of the Consent Decree shall be the date upon which it is entered by the Court. The unilateral administrative order pursuant to Section 106(a) of CERCLA on September 27, 2004, Docket No. CERC-3-2004-0125DC, shall be considered terminated as of the Effective Date.

XVIII. SIGNATORIES/SERVICE

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

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

XIX. MODIFICATION

38. The schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

39. Except as otherwise provided in this Section, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendant, and the Court. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XX. FINAL JUDGMENT

40. Upon approval and 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 Defendant. 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 _____, 2019.

Hon. John E. Jones, III
United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Vincent Dell' Aversano, relating to the Delaware Sand and Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA

6/18/2019
Date


NATHANIEL DOUGLAS
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

6/18/19
Date


JOHN SITHER
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
601 D Street, NW
Washington D.C., 20004
Phone: 202-514-5484
Fax : 202-616-6583
E-mail: john.sither@usdoj.gov

6/20/2019
Date

/s/ Laura D. Hatcher
LAURA D. HATCHER
Civil Chief
Office of the United States Attorney
District of Delaware
1007 N. Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046
Phone: 302-573-6205
Fax: 302-573-6431
E-Mail: laura.hatcher@usdoj.gov

6.04.19

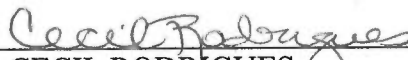
Date



COSMO SERVIDIO
Regional Administrator
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103

5/31/2019

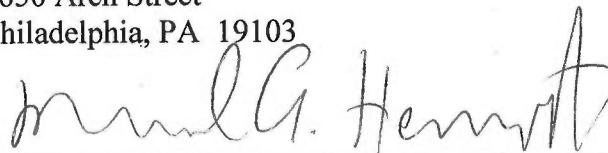
Date



CECIL RODRIGUES
Acting Regional Counsel
U.S. EPA, Region 3
1650 Arch Street
Philadelphia, PA 19103

May 23, 2019

Date



MICHAEL A. HENDERSHOT
Senior Assistant Regional Counsel
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029






FOR VINCENT DELLAVERSANO

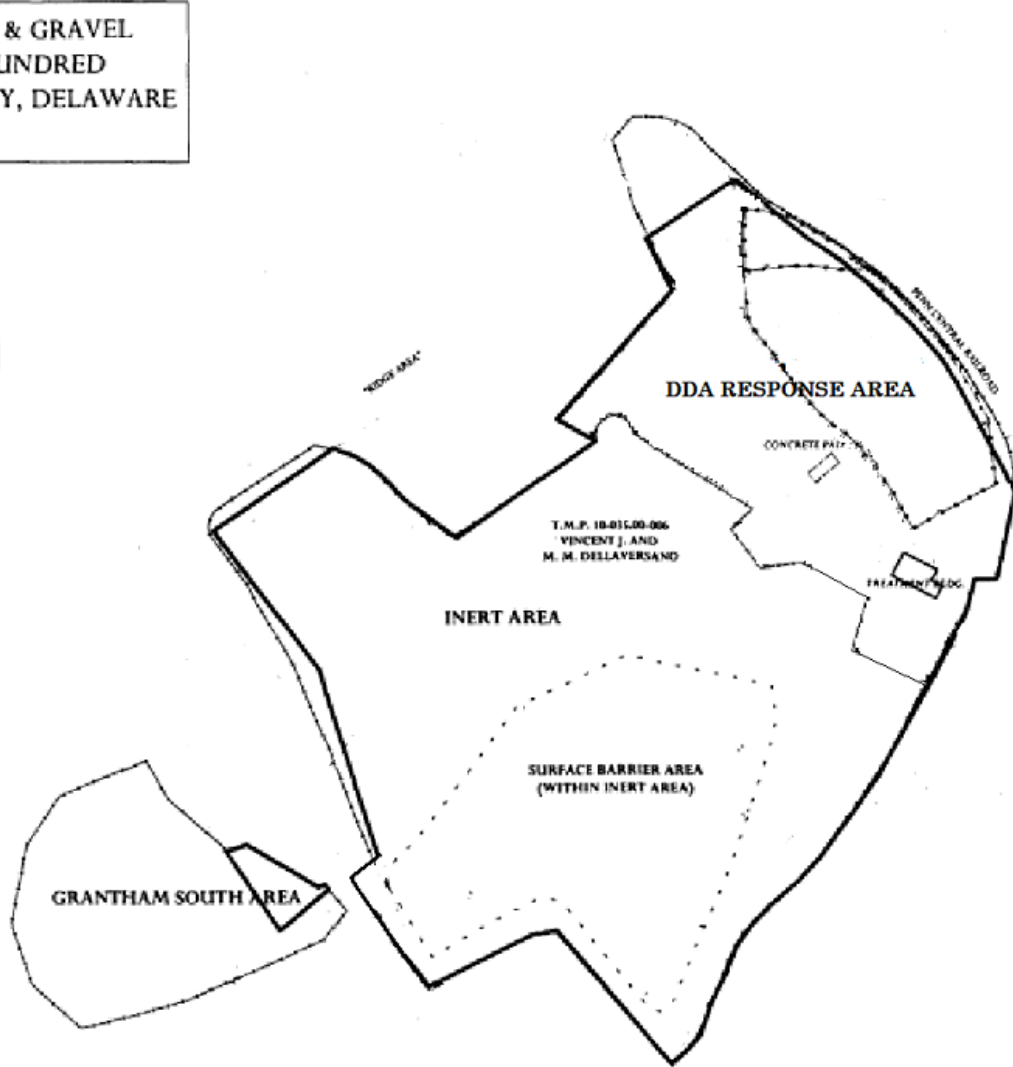
March 12, 2019
Date

Vincent Dellaversano
VINCENT DELLAVERSANO

APPENDIX A

DELAWARE SAND & GRAVEL
NEW CASTLE HUNDRED
NEW CASTLE COUNTY, DELAWARE

-  Fence Line
-  Building
-  Surface Barrier Area
-  Slurry Wall
-  Settling Defendant's Site Property



APPENDIX B

Parcel Number: 1003500006

Address: 230 Grantham Lane, New Castle, DE 19720

Prepared by: U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Return to: U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

**NOTICE OF INSTITUTIONAL CONTROLS, ACCESS, AND OBLIGATIONS
REGARDING SUCCESSORS-IN-INTEREST**

This Notice of Institutional Controls, Access, and Obligations regarding Successors-in-Interest ("Notice") is made this _____ day of 20___, by Vincent Dell'Aversano ("Owner" or "Settling Defendant"), for property having an address referenced in the New Castle County tax records as 230 Grantham Lane, New Castle, Delaware 19720 ("Site Property" or "Settling Defendant's Site Property"), which is a part of New Castle County Parcel Number 1003500006, and is also a part of the same real estate conveyed unto Vincent J. and Marcella M. Dell'Aversano from Joseph and Anita Dell'Aversano by Deed dated October 19, 1973, in Deed Book No. L88, Page No. 586, among the land records of New Castle County, Delaware. The Site Property is delineated by the dashed lines in Appendix A hereto (Geographic Coordinates of Settling Defendant's Site Property).

I. Purpose:

It is the purpose of this instrument to recite the Owner's obligations to comply with certain requirements of the Consent Decree in United States v. Vincent Dell'Aversano, Civil Action No. 17-cv-1342 JEJ ("Consent Decree") regarding the Site Property. Specifically, Section III of this Notice recites the Owner's Consent Decree obligations to (i) comply with use restrictions concerning the Site Property; (ii) provide access to the Site Property for the purpose of implementing certain Response Actions, as set forth in greater detail in Section II (Background), below; and (iii) to provide certain notifications to EPA and potential successors-in-interest should the Owner convey an interest in all or a portion of the Site Property.

II. Background:

The following paragraphs provide the basis for the Owner's Consent Decree obligations, which are set forth in Section III, below:

1. The Site Property is a portion of the Delaware Sand and Gravel Superfund Site ("Site"), a former sand and gravel quarry converted into an industrial waste landfill comprising approximately 27 acres and located approximately two miles southwest of the City of New Castle, Delaware. The Site is bordered to the east by railroad tracks and on the west and north by Army Creek, which discharges into the Delaware River approximately one mile to the east. Public roads near the Site include Grantham Lane which runs through the Site and Route 9 to the east. The Site Property is delineated by the dashed lines on the map attached as Appendix A hereto (Geographic Coordinates of Settling Defendant's Site Property). Features of the Site Property referenced in this Notice are depicted in Appendix B hereto (Features of Settling Defendant's Site Property).

2. "Hazardous substances," as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of within four distinct disposal areas at the Site. Disposal took place at the Site between approximately 1959 and 1976.

3. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40650.

4. On April 22, 1988, EPA issued a Record of Decision ("ROD") for the Site, on which the State of Delaware ("State") concurred. Notice of the ROD was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD describes the Remedial Action ("RA") which EPA selected for the Site. In recognition of the area-specific conditions defined by the Remedial Investigation/Feasibility Study, the ROD provided for specific remedial activities for each area. Those areas were the Drum Disposal Area, the Ridge Area, the Inert Area and the Grantham South Area.

5. Based on new information developed during preliminary design activities and promising advances in a developing innovative technology, EPA and the State determined that the ("RA") selected in the ROD should be amended.

6. On September 30, 1993, EPA issued an Amendment to the Record of Decision ("1993 ROD Amendment") for the Site, on which the State concurred. The 1993 ROD Amendment modified the RA selected in the ROD for the Drum Disposal, Ridge and Inert Areas. The 1993 ROD Amendment did not modify the RA selected in the ROD for the Grantham South Area, a two-acre landfill containing debris and mixed chemical waste. The RA for the Grantham South Area called for, among other things, the installation of perimeter fencing; the installation of a multi-layer cap; and the installation of a gas venting system. The 1993 ROD Amendment also did not modify the RA selected in the ROD for groundwater, which called for, among other things, pumping and treating of contaminated groundwater, discharging of treated water to the Army Creek, and monitoring of groundwater.

7. In the 1993 ROD Amendment EPA selected the following RA for the Drum Disposal, Ridge and Inert Areas:

a. Drum Disposal Area – Construction of a low-permeability, subterranean wall (“Slurry Wall”) around the perimeter of the Drum Disposal Area to minimize migration of hazardous substances to the groundwater; the removal of water within the around the Drum Disposal Area and on-site and off-site disposal of that water; the treatment of soils within the containment area using soil vapor extraction and bioremediation; the construction of a multi-layer cap; the installation of perimeter fencing; and the implementation of deed restrictions.

b. Ridge Area – The 1993 ROD Amendment selected, among other things, the excavation, and consolidation within the Slurry Wall at the Drum Disposal Area, of surface soils with contaminants concentrations which exceed soil cleanup standards.

c. Inert Area – The 1993 ROD Amendment selected, among other things, the construction of a multi-layer cap; the installation of perimeter fencing; and the implementation of deed restrictions.

8. The 1993 ROD Amendment also called for restrictions to be placed by the Site property owner (the “Owner” as set forth in this Notice) on the deed to the Site to (1) ensure that future use of the property would not compromise the containment component of the Inert Area, the treatment system or containment components of the Drum Disposal Area; and (2) prevent the installation of drinking water wells.

9. In 1973, New Castle County, Delaware (“the County”) installed and began operating groundwater recovery wells in the Upper Potomac Aquifer to prevent contaminants released from the adjacent Army Creek Landfill Superfund Site (“ACL”) from migrating to private water supply wells, including Artesian Water Company’s Llangollen well field. In 1991, the County and seventeen additional CERCLA responsible parties entered into a Consent Decree under Sections 106 and 107 of CERCLA with the United States, on behalf of EPA, and the State, concerning ACL (“1991 Consent Decree”). Under the 1991 Consent Decree, the County agreed to install and operate a groundwater treatment plant and continue to operate groundwater recovery wells to 1) control the migration of contaminants released from ACL and the Site into the Upper Potomac Aquifer and 2) restore groundwater quality downgradient of the ACL property boundary to primary drinking water standards. The County’s groundwater recovery wells and groundwater treatment system were shut down with EPA approval in 2004, at which time groundwater recovery operations were shifted to a well (“PW-1”) located between the Drum Disposal Area and the Inert Area. Groundwater pumped from PW-1 is discharged to the Wilmington Wastewater Treatment Plant. PW-1 and several groundwater monitoring wells are located on the Settling Defendant’s Site Property (as defined herein).

10. On June 14, 1995, the United States District Court for the District of Delaware entered a consent decree (“Work Consent Decree”) which was signed by the United States on behalf of EPA, the State and by thirty-one settling defendants (“Work Defendants”). The Work Consent Decree called for performance of the remedial design/remedial action set forth in the

1993 ROD Amendment and reimbursement of a portion of EPA's past and future response costs at the Site. The Work Consent Decree also required the Work Defendants to conduct operation and maintenance for the areas requiring RA called for in the ROD and 1993 ROD Amendment.

11. EPA conducted the RA for the Grantham South Area between 1989 and 1991 pursuant to the ROD. The Work Defendants are conducting operation and maintenance for the Grantham South Area and are participating with the County in the groundwater Response Action for PW-1. The Work Defendants have completed the Constructed Remedy (as defined herein) and are continuing to implement operation and maintenance set forth in the ROD and the 1993 ROD Amendment.

12. The Work Defendants began implementing additional Response Actions at the Drum Disposal Area, as requested by EPA, in May 2009. Such additional Response Actions consist of low flow extraction of contaminated groundwater within the Drum Disposal Area and discharge of the groundwater to Wilmington's wastewater treatment plant.

13. In April 2010, EPA requested that Work Defendants perform a Feasibility Study and develop a comprehensive remediation strategy to address contamination in soil and shallow groundwater at the Drum Disposal Area and within the Upper Potomac Aquifer impacted by releases from the Drum Disposal Area.

14. On October 29, 2010, Work Defendants submitted a draft Feasibility Study Work Plan, including a proposed schedule of activities comprising the Feasibility Study, to EPA. The Work Defendants submitted a final Feasibility Study to EPA in May 2016.

15. Based on the results of the Feasibility Study, EPA and the State determined that the RA selected in the 1993 ROD Amendment should again be amended.

16. On December 12, 2017, EPA issued an Amendment to the Record of Decision ("2017 ROD Amendment") for the Site, on which the State concurred.

17. In the 2017 ROD Amendment EPA modified and added new components to the Site RA as follows:

a. Modified Components

i. Hydraulic control of contaminated groundwater within the slurry-wall enclosure using an enhanced low-flow groundwater extraction system;

ii. Installation and operation of extraction wells in areas determined to optimize capture and remove contaminant mass from the more highly-impacted areas of the Upper Potomac Aquifer, including the Upper Potomac Confining Unit Transition Zone; and

iii. Discharge of groundwater pumped from the Site extraction wells to the Wilmington Wastewater Treatment Plant.

b. New Components

- i. Pre-design investigations to develop supplemental information regarding the source and extent of contamination in the Upper Potomac Aquifer and hydraulic connections between hydrostratigraphic units within the Upper Potomac Aquifer, and confirm target capture zones within the Upper Potomac Aquifer;
- ii. Continued groundwater extraction at Artesian's Llangollen well field with treatment utilizing existing systems for bis(2-chloroethyl)ether and 1,4-dioxane and, if necessary, additional treatment systems targeting other contaminants of concern such as manganese;
- iii. A groundwater monitoring program to ensure that the remedial action is meeting the short-term goal of plume containment and will meet the long-term goal of aquifer restoration within a reasonable time frame; and
- iv. Institutional controls to prevent potential future exposure to Site contaminants in indoor air.

18. Pursuant to a cost sharing agreement with the County, Work Defendants are continuing to operate extraction well PW-1 located on a portion of the Site Property (designated in the 2004 Order as the "Temporary Area") adjacent to the Drum Disposal Area. In that regard, prior to EPA's issuance of the 2017 ROD Amendment, EPA and the Work Defendants had anticipated that Response Actions at the Drum Disposal Area would require the Work Defendants to temporarily utilize the Temporary Area for support of operational treatment facilities at the Drum Disposal Area. Once that Work at the Temporary Area was complete, EPA anticipated that restrictions on use of the Temporary Area would no longer be necessary. However, EPA has since determined that implementing the portion of the 2017 ROD Amendment addressing releases from the Drum Disposal Area into groundwater in the Upper Potomac Aquifer will require the installation and long-term use and maintenance of extraction and monitoring wells and related treatment equipment and security fencing in the Temporary Area. Therefore, the same long-term restrictions required for the Drum Disposal Area will also be necessary for the Temporary Area. Accordingly, the portions of the Site Property designated in the 2004 Order and in this Notice as the Temporary Area and the Drum Disposal Area have been combined together are designated in Appendix B and herein as the "DDA Response Area."

19. EPA and/or one or more responsible parties at the Site and ACL ("RPs") will be implementing the 2017 ROD Amendment. The Owner will not be required to implement the 2017 ROD Amendment.

20. On October 13, 1999, EPA issued to Owner a unilateral administrative order, Docket No. III-99-030-DC ("1999 Order"), pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which required the Owner to implement the deed restrictions selected in the 1993 ROD Amendment.

21. Following issuance of the 1999 Order, EPA determined that the description of the deed restriction portion of the 1993 ROD Amendment should be clarified. Accordingly, on July 8, 2003, EPA issued an Explanation of Significant Differences (“ESD”) which modified the deed restriction portion of the 1993 ROD Amendment. The ESD provided additional language clarifying that the institutional controls restricting use of the land which would interfere with the protectiveness, integrity and implementation of the RA be extended to the Grantham South Area, and that the restriction on installing drinking water wells be extended to the entire Site since all of the groundwater underlying the Site is contaminated. The ESD also described additional mechanisms available to implement the deed restriction portion of the 1993 ROD Amendment. In doing so, the ESD changed the term “deed restrictions” to the more general term “institutional controls.” Institutional controls are non-engineering measures, usually legal controls, intended to limit human activity in such a way as to prevent or reduce exposure to hazardous substances. The ESD can be found at <https://semspub.epa.gov/src/document/03/471071>

22. On September 27, 2004, EPA issued Owner another unilateral administrative order, Docket No. CERC-3-2004-0125DC (“2004 Order”), pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The 2004 Order terminated the 1999 Order.

23. EPA determined that in order to implement the ESD, the activities required by the 2004 Order needed to be performed.

24. The 2004 Order required the Owner to (a) provide access to the Settling Defendant’s Site Property for the purpose of implementing the ROD and 1993 ROD Amendment; (b) comply with use restrictions and affirmative requirements concerning the Site; and (c) provide certain notifications to EPA and potential successors-in-interest should the Owner convey an interest in all or a portion of the Settling Defendant’s Site Property. With respect to those notification requirements, the 2004 Order required the Owner to file a notice with the land records for New Castle County Recorder of Deeds reciting the requirements of the 2004 Order.

25. On September 22, 2017 the United States Department of Justice, on behalf of EPA, filed a complaint in the United States District Court for the District of Delaware against the Owner under Sections 106(a) and 106(b)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9606(a) and 9606(b)(1) (United States v. Vincent Dell’Aversano, Civil Action No. 17-cv-1342 JEJ). The complaint sought to compel the Owner to comply with the 2004 Order and to pay penalties for violating the 2004 Order.

26. The Owner and the United States have entered into the Consent Decree in order to resolve Civil Action No. 17-cv-1342 JEJ. Pursuant to the terms of the Consent Decree, Owner agrees to (i) comply with revised use restrictions concerning the Settling Defendant’s Site Property; (ii) provide access to the Settling Defendant’s Site Property for the purpose of implementing the ROD, the 1993 ROD Amendment, the 2017 ROD Amendment, and any additional Response Actions at Settling Defendant’s Site Property EPA determines are necessary to protect human health and the environment; and (iii) to provide certain notifications to EPA and potential successors-in-interest should the Owner convey an interest in all or a portion of the

Settling Defendant's Site Property. With respect to those notification requirements, the Consent Decree required the Owner to file this Notice with the land records for New Castle County Recorder of Deeds.

27. Upon entry of the Consent Decree by the Court, the 2004 Order was terminated.

28. The Consent Decree uses the following terms also used herein:

a. "Constructed Remedy" shall mean the physical structures and systems constructed on the Site as part of the RA selected in the ROD and the 1993 ROD Amendment, except for the engineered low-permeability cap over the Drum Disposal Area which will be installed during the Remedial Action for the 2017 ROD Amendment. The Constructed Remedy was completed by the Work Defendants under the Work Consent Decree, by New Castle County through cost sharing agreements, and by EPA. The Constructed Remedy includes, but is not limited to: engineered low-permeability caps constructed at the Grantham South Area and the Inert Area (which includes the Surface Barrier Area); the Slurry Wall and associated treatment facilities associated with the Drum Disposal Area; all supporting features including the ingress/egress roadways thereof, along with associated gas vents, landfill gas monitoring and extraction wells, landfill gas venting systems, piping, drainage ditches, channels, sedimentation ponds, groundwater monitoring and extraction wells, groundwater conveyance piping, perimeter security fencing and utilities such as electric, water and sewer; and a 10-foot buffer zone around those features identified above.

"Response Action" or "Response Actions" shall mean all activities as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

b. "Settling Defendant's Site Property" or "Site Property" shall mean the real property delineated by the dashed lines in in Appendix A hereto (Geographic Coordinates of Settling Defendant's Site Property). The Settling Defendant's Site Property contains the following features, depicted on the map attached hereto as Appendix B: the Inert Area (which includes the Surface Barrier Area); an approximately 0.15 acre portion of the Grantham South Area; the DDA Response Area; the Slurry Wall; cap systems; groundwater and landfill gas extraction wells; groundwater and landfill gas monitoring wells; associated drainage ditches, piping and venting systems, channels and sedimentation ponds; the ingress/egress roads thereto; the associated utilities, including electric, water and sewer facilities; perimeter security fences; and a ten-foot buffer zone around all of these features.

"Site" shall mean the Delaware Sand and Gravel Superfund Site, a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site includes Settling Defendant's Site Property.

"Surface Barrier Area" shall mean the approximately five-acre area within the approximately eleven-acre Inert Area as outlined within a black dashed line on the map attached hereto as Appendix B. The limits of the Surface Barrier Area are surrounded by concrete (jersey) barriers. The Work Defendants under the Work Consent Decree constructed a multilayer composite cap over the entire Inert Area and then modified the design of the Surface

Barrier Area portion of the Inert Area to allow for certain future use. This was accomplished by constructing a wear surface consisting of a fifteen-inch layer of compacted gravel/stone over the composite cap allowing for light industrial activities.

“Work” shall mean those activities the Work Defendants are required to perform under the Work Consent Decree; the groundwater Response Actions that were implemented by New Castle County in accordance with cost sharing agreements; activities by EPA and/or RPs to implement the RA for the 2017 ROD Amendment; and any activities to implement additional Response Actions EPA determines are necessary to protect human health and the environment.

“Work Defendants” shall mean the thirty-one settling defendants under the Work Consent Decree. Work Defendants shall also include New Castle County and its contractors implementing the groundwater Response Actions pursuant to cost sharing agreements.

III. Declaration of Institutional Controls, Access, and Obligations Regarding Successors-in-Interest

NOW, THEREFORE, intending to fulfill the terms of the Consent Decree, the Owner files this Notice so that the Site Property is subject to the advisory set forth below.

1. Restrictions on use: The following advisory applies to the use of the Site:

Commencing on the entry date of the Consent Decree, and thereafter, Section IV, Paragraph 4 of the Consent Decree requires the Owner to refrain from (i) using the Site in any manner which could compromise or adversely affect the effectiveness or protectiveness of the Constructed Remedy, the remedy selected in the 2017 ROD Amendment or of any additional Response Actions; and (ii) interfering with, obstructing or disturbing the performance, support or supervision of the Constructed Remedy, the remedy selected in the 2017 ROD Amendment or of any additional Response Actions. In addition, unless (i) required for implementation of the Work, (ii) otherwise determined to be necessary by EPA, or (iii) otherwise agreed to by Owner and EPA, Section IV, Paragraph 4, Subparagraphs a-d of the Consent Decree also requires the Owner to comply with the following restrictions and requirements:

A. Owner shall refrain from all use of the DDA Response Area until EPA determines that all Response Actions there are completed.

B. Owner shall refrain from all use of the Inert Area (except for the Surface Barrier Area of the Inert Area) and the Grantham South Area, unless at least forty-five (45) days prior to any proposed use of such areas of the Site, Owner submits to EPA for review and approval a plan for Owner’s use of such areas of the Site. Approval by EPA shall not be unreasonably withheld. The Grantham South Area and the Inert Area, outside the Surface Barrier Area, are steeply sloped and vegetated to promote wildlife habitat. The vegetated impermeable caps over these areas are subject to harmful wear and cannot withstand loads. Unless otherwise directed by EPA, Owner shall not commence any activities on such areas prior to Owner’s receipt of EPA written approval of such plan.

C. With respect to the Surface Barrier Area of the Inert Area, the Owner shall:

i. Place protective material beneath or around any activity that may result in spillage of oil, transmission fluid, coolant or other potentially dangerous materials during equipment maintenance, salvage or movement;

ii. Promptly clean up any spills on the Surface Barrier Area. This clean up shall initially include chemical treatment with surfactants and detergents. A ready and adequate supply of treatment chemicals shall be available for immediate use at all times. Should the initial clean up not resolve the spill, Settling Defendant shall remove the stained gravel and replace with clean gravel or other acceptable material. Should EPA determine during a Site inspection that any observed stained gravel or spills need to be cleaned up, Owner shall have thirty (30) days to do so, with reasonable extensions granted by EPA;

iii. Prevent rutting, gouging and erosion caused by use of the Surface Barrier Area. A trailer or truck or weight-approved equipment shall be used to move items on or off the Surface Barrier Area. Nothing shall be brought onto the Surface Barrier Area without wheels or the use of a trailer or truck or weight-approved equipment. Nothing shall be dragged on the Surface Barrier Area;

iv. Promptly repair all ruts, gouges and eroded areas on the Surface Barrier Area should any such deformity be caused by use occur there. Should EPA determine during a Site inspection that any observed ruts, gouges and eroded areas need to be repaired, Owner shall have thirty (30) days to do so, with reasonable extensions granted by EPA;

v. Not conduct welding activities within 75 feet of any gas vent constructed into the engineered cap;

vi. Not conduct any digging or any excavation of any portion of the Surface Barrier Area, unless that action is required by, and is being performed in accordance with, Paragraph I.C.ii, above;

vii. Not drive, park or allow anyone else to drive or park any rubber-tired vehicle with an axle load greater than 25,000 pounds or a tire air pressure exceeding 80 pounds per square inch (psi);

viii. Not place, store or allow anyone else to place or store any object which does not meet the following compliance requirements, unless EPA approves an exception, which such approval shall not be unreasonably withheld:

a. The load exerted by any object with a footprint (contact point) smaller than 72 square inches (in.²) shall not exceed 1,000 pounds. Should any such object penetrate the gravel more than three inches, the Owner shall place rigid plates beneath the object to prevent the object from penetrating the gravel.

b. The contact pressure of any object with a footprint between 72 and 144 in.² shall not exceed 56 psi.

c. The contact pressure of any object with a footprint greater than 144 in.² shall not exceed 14 psi.

ix. Not place or allow anyone else to place any object on the Surface Barrier Area which could damage the underlying impermeable or drainage layers of the Surface Barrier Area.

x. Immediately inform EPA pursuant to Section XIII of the Consent Decree if anything happens that damages or may damage the Surface Barrier Area or any other component of the Constructed Remedy;

D. The Owner shall not install, or allow to be installed, any public or domestic drinking water supply wells on the Settling Defendant's Site Property.

E. Submit to EPA a biennial Operation and Maintenance Report ("O&M Report") providing a status summary of conditions on the Surface Barrier Area. The first O&M Report shall be submitted on or before January 15th of the calendar year following the entry date of the Consent Decree, and on or before January 15th of every second calendar year thereafter. Each respective O&M Report shall provide a written inventory of all objects on the Surface Barrier Area and identify all corrective actions completed pursuant to Paragraphs 1.C.ii and 1.C.iv. The O&M Report shall describe the objects in sufficient detail to enable EPA to assess the approximate footprint and load of each object in addition to the total load on the Surface Barrier Area.

2. Provision of Access: The following advisory applies to the provision of access to Settling Defendant's Site Property:

A. Commencing on the entry date of the Consent Decree, and thereafter, Section IV, Paragraph 7 of the Consent Decree requires the Owner to provide EPA, the State, and their representatives (including the Work Defendants, other RPs performing the Work, and EPA's, the State's, the Work Defendants' and other RPs' contractors) with access at all reasonable times to Settling Defendant's Site Property for the purpose of conducting any activity related to implementation of the ROD, the 1993 ROD Amendment, the ESD, the 2017 ROD Amendment, or any additional Response Actions including, but not limited to, the following activities:

i. Verifying any data or information submitted to EPA or the State;

ii. Conducting investigations relating to contamination at the Settling Defendant's Site Property, including the collection of environmental samples;

iii. Assessing the need for, planning, or implementing additional Response Actions at or near the Settling Defendant's Site Property;

iv. Implementing Response Actions at the Site;

v. Assessing the Work Defendants' compliance with the Work Consent Decree or other RPs' compliance with any other enforcement instrument requiring Work at the Site; and

vi. Determining whether the Settling Defendant's Site Property is being used in a manner that is prohibited or restricted by the Consent Decree.

B. No Public Access and Use: This instrument does not grant to the general public any right of access or use to any portion of the Settling Defendant's Site Property.

3. Provision of certain notifications to EPA and potential successors-in-interest: The following advisory applies to the provision of certain notifications to EPA and potential successors-in-interest required by the Consent Decree regarding conveyance by the Owner of an interest in all or a portion of Settling Defendant's Site Property:

A. With respect to Settling Defendant's Site Property, Section IV, Section 6.a of the Consent Decree requires the Owner to record this Notice with the Recorder of Deeds of New Castle County, State of Delaware. The recording shall be done in order to make future owners of the Site Property aware of the Consent Decree and its obligations. The Settling Defendant shall not modify or release the ICs Notice without prior written approval of EPA. Settling Defendant shall include in each future deed, title, or other instrument of conveyance for property executed by the Settling Defendant regarding Settling Defendant's Site Property, or any portion thereof, a similar notification stating that the property may be subject to the requirements set forth in Section IV of the Consent Decree, and to any lien held by EPA pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), and shall reference the recorded location of the ICs Notice, the Consent Decree and all restrictions applicable to the Property under the Consent Decree. In accordance with Section IV, Paragraph 6.a of the Consent Decree, the Settling Defendant shall provide EPA with a copy of any such future deed, title, or other instrument of conveyance within ten (10) days of recording it.

B. At least thirty (30) days prior to any change in control or the conveyance of any interest in Settling Defendant's Site Property, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, the Owner shall give the grantee(s) or transferee(s)-in-interest a written description of the requirements set forth in Section IV of the Consent Decree. At least thirty (30) days prior to such conveyance, the Owner shall also give written notice to EPA of the proposed conveyance, including the name(s), address(es) and telephone number(s) of the grantee(s) or transferee(s)-in-interest, a copy of the notice of the requirements of Section IV of the Consent Decree which was given to the grantee(s), and the date on which notice of the requirements of Section IV of the Consent Decree was given to the grantee(s).

C. In the event that the Owner conveys less than a fee simple absolute interest in all or a portion of Settling Defendant's Site Property, the Owner's obligations under the Consent Decree, including, but not limited to, his obligation to provide access to and restrict use of

Settling Defendant's Site Property, pursuant to Section IV, Paragraph 6.c of the Consent Decree, shall continue to be met by the Owner with respect to any such conveyance. In no event shall such a conveyance release or otherwise affect the Owner's obligation to comply with all provisions of the Consent Decree, absent the prior written consent of EPA.

D. In the event that the Owner files for bankruptcy or is placed involuntarily in bankruptcy proceedings, the Owner shall notify EPA within three (3) working days of such filing.

E. Notice requirements: The Owner is required to include in any instrument conveying any interest in any portion of the Property including, but not limited to, deeds, leases and mortgages, a Disclosure which is in substantially the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A NOTICE OF INSTITUTIONAL CONTROLS, ACCESS AND OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST AND THE TERMS, CONDITIONS AND RESTRICTIONS CONTAINED THEREIN, DATED _____, 2019. THE NOTICE OF INSTITUTIONAL CONTROLS, ACCESS AND OBLIGATIONS REGARDING SUCCESSORS-IN-INTEREST WAS RECORDED ON _____, 2019 IN THE RECORDER'S OFFICE FOR NEW CASTLE COUNTY, DELAWARE IN BOOK _____, PAGE _____.

Within thirty (30) days of the date any such instrument of conveyance is executed, Owner shall provide EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

4. Notice to Parties: Any notice, demand, request, consent, approval, or communication that either EPA or Owner desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Vincent Dell'Aversano
770 Grantham Lane
New Castle, DE 19720

To EPA:

Debra Rossi
Remedial Project Manager (3HS23)
Delaware Sand and Gravel Superfund Site
United States Environmental Protection Agency
Region III
1650 Arch Street

Philadelphia, PA 19103

RE: Delaware Sand and Gravel Superfund Site

and

Benjamin Cohan (3RC43)
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

RE: Delaware Sand and Gravel Superfund Site

IN WITNESS WHEREOF, Vincent Dell'Aversano, the Grantor herein, has executed the foregoing Declaration this _____ day of _____, 20__

VINCENT DELL' AVERSANO

STATE OF DELAWARE

:SS.

NEW CASTLE COUNTY

BE IT REMEMBERED that on this _____ day of _____ A.D. 20__, personally came before me, the Subscriber, Notary Public for the State and County aforesaid, Vincent Dell'Aversano, Declarant in the foregoing Notice of Institutional Controls, Access, and Obligations Regarding Successors-in-Interest, and he acknowledged this Declaration to be his duly authorized act and deed.

GIVEN under my Hand and Seal of office the day and year aforesaid.

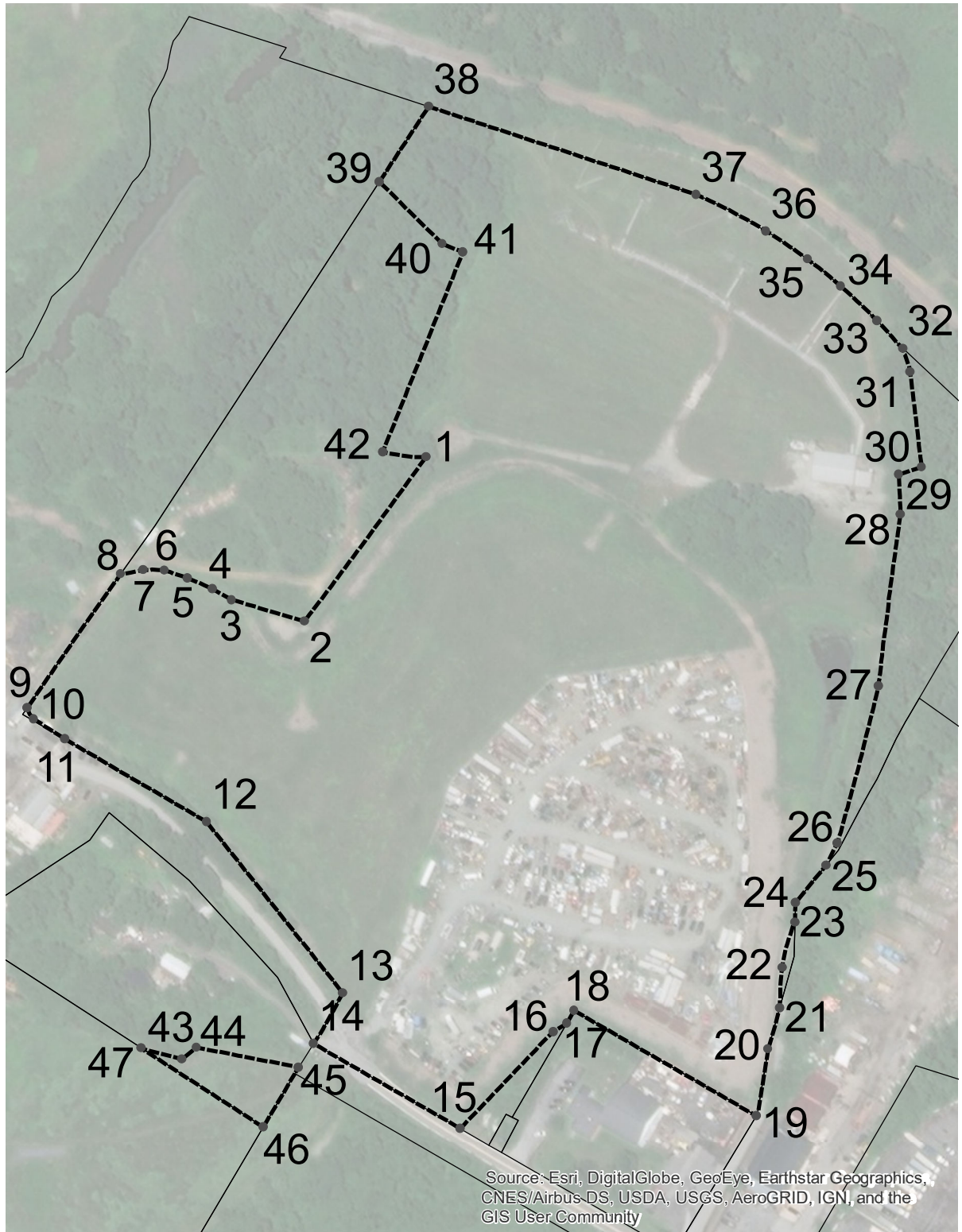
Notary Public

My Commission Expires

Appendix A

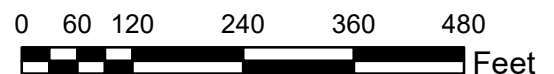
Geographic Coordinates of Settling Defendant's Site Property

Coordinate Table (WGS 1927)		
Label	Longitude	Latitude
1	-75.603331	39.653143
2	-75.603919	39.652526
3	-75.604273	39.652606
4	-75.604365	39.652647
5	-75.604486	39.652687
6	-75.604598	39.652714
7	-75.604699	39.652716
8	-75.604810	39.652701
9	-75.605262	39.652199
10	-75.605228	39.652157
11	-75.605078	39.652083
12	-75.604391	39.651774
13	-75.603729	39.651133
14	-75.603606	39.650853
15	-75.603158	39.650626
16	-75.602708	39.650989
17	-75.602643	39.651022
18	-75.602608	39.651069
19	-75.601724	39.650675
20	-75.601667	39.650926
21	-75.601612	39.651082
22	-75.601601	39.651232
23	-75.601539	39.651402
24	-75.601537	39.651476
25	-75.601389	39.651615
26	-75.601336	39.651699
27	-75.601136	39.652287
28	-75.601032	39.652931
29	-75.601040	39.653081
30	-75.600930	39.653109
31	-75.600986	39.653464
32	-75.601023	39.653552
33	-75.601147	39.653656
34	-75.601323	39.653785
35	-75.601485	39.653886
36	-75.601686	39.653991
37	-75.602023	39.654128
38	-75.603322	39.654455
39	-75.603556	39.654170
40	-75.603254	39.653940
41	-75.603155	39.653911
42	-75.603542	39.653160
43	-75.604509	39.650884
44	-75.604438	39.650928
45	-75.603960	39.650857
46	-75.604114	39.650630
47	-75.604705	39.650925








Legend

- Settling Defendant's Site Property
- Parcel Boundaries



DELAWARE SAND & GRAVEL
NEW CASTLE HUNDRED
NEW CASTLE COUNTY, DELAWARE
APPENDIX B

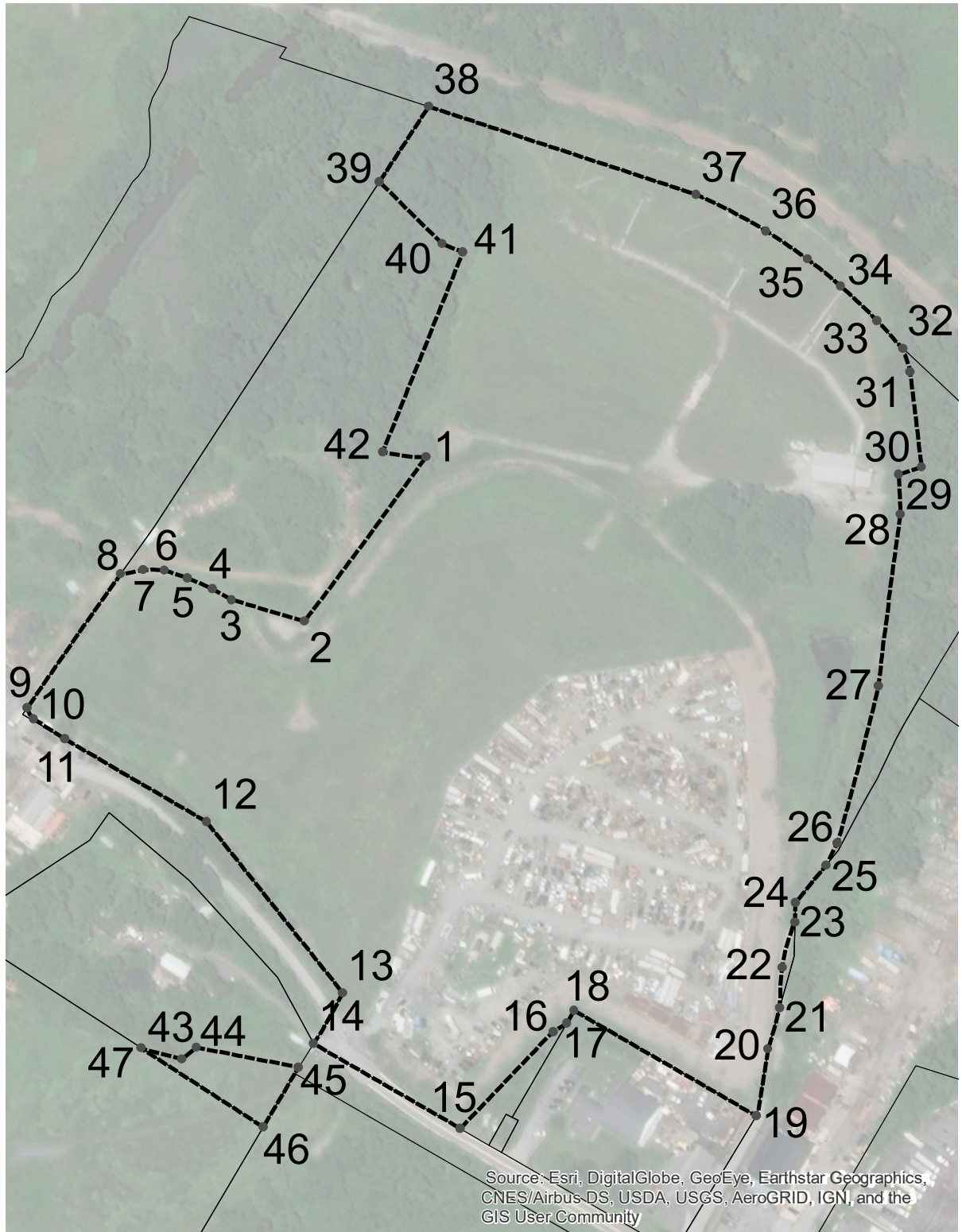
-  Fence Line
-  Building
-  Surface Barrier Area
-  Slurry Wall
-  Settling Defendant's Site Property



APPENDIX C

Geographic Coordinates of Settling Defendant's Site Property

Coordinate Table (WGS 1927)		
Label	Longitude	Latitude
1	-75.603331	39.653143
2	-75.603919	39.652526
3	-75.604273	39.652606
4	-75.604365	39.652647
5	-75.604486	39.652687
6	-75.604598	39.652714
7	-75.604699	39.652716
8	-75.604810	39.652701
9	-75.605262	39.652199
10	-75.605228	39.652157
11	-75.605078	39.652083
12	-75.604391	39.651774
13	-75.603729	39.651133
14	-75.603606	39.650853
15	-75.603158	39.650626
16	-75.602708	39.650989
17	-75.602643	39.651022
18	-75.602608	39.651069
19	-75.601724	39.650675
20	-75.601667	39.650926
21	-75.601612	39.651082
22	-75.601601	39.651232
23	-75.601539	39.651402
24	-75.601537	39.651476
25	-75.601389	39.651615
26	-75.601336	39.651699
27	-75.601136	39.652287
28	-75.601032	39.652931
29	-75.601040	39.653081
30	-75.600930	39.653109
31	-75.600986	39.653464
32	-75.601023	39.653552
33	-75.601147	39.653656
34	-75.601323	39.653785
35	-75.601485	39.653886
36	-75.601686	39.653991
37	-75.602023	39.654128
38	-75.603322	39.654455
39	-75.603556	39.654170
40	-75.603254	39.653940
41	-75.603155	39.653911
42	-75.603542	39.653160
43	-75.604509	39.650884
44	-75.604438	39.650928
45	-75.603960	39.650857
46	-75.604114	39.650630
47	-75.604705	39.650925



Legend

- Settling Defendant's Site Property
- Parcel Boundaries

