

**WATER STREET BATTERY SITE
SHOEMAKERSVILLE, BERKS COUNTY, PENNSYLVANIA
CERCLA SECTION 107 ABILITY TO PAY CONSENT DECREE
FOR RECOVERY OF RESPONSE COSTS**

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the Water Street Battery Site in Shoemakersville, Berks County, Pennsylvania (“the Site”).

B. The Complaint contains a count pursuant to the Pennsylvania Hazardous Sites Cleanup Act of October 18, 1988, P.L. No. 108, as amended, 35 P.S. §§ 6020.101-6020.1305 (“HSCA”), that the Defendants are liable to the Commonwealth for the Commonwealth’s costs incurred or to be incurred in connection with the Site.

C. The Defendants that have entered into this Consent Decree (“Settling Defendants”) contend that they have a limited ability to pay the Response Costs incurred and to be incurred at the Site, and have provided to EPA certain financial and insurance information (“Financial Information”) for review in support of that contention, intending that EPA rely on such information.

D. EPA has reviewed the Financial Information of Settling Defendants and, in reliance on the truth and completeness of those submissions, has determined that Settling Defendants have a limited ability to pay the United States’ Costs at the Site.

E. Settling Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

F. The Parties recognize, 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 will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 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. Settling Defendants shall not challenge 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 the Commonwealth, and upon Settling Defendants and their heirs, 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 herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or 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. §§ 9601-9675.
- b. "Commonwealth" shall mean the Commonwealth of Pennsylvania.

- c. "Commonwealth's Response Costs" shall mean the costs including, but not limited to, direct and indirect costs that the Commonwealth has paid or will pay at or in connection with the Site.
- d. "Consent Decree" shall mean this Consent Decree and appendix "A" attached hereto. In the event of conflict between this Consent Decree and the appendix, the Consent Decree shall control.
- e. "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.
- f. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- i. "Financial Information" shall mean those financial documents provided to EPA by Settling Defendants from December 2, 2003, through January 21, 2009.
- j. "HSCA" shall mean the Pennsylvania Hazardous Sites Cleanup Act of October 18, 1988, P.L. 756, No. 108, as amended, 35 P.S. §§ 6020.101-6020.1305.
- k. "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.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States, the Commonwealth of Pennsylvania and Settling Defendants.

n. "Plaintiffs" shall mean the United States and the Commonwealth of Pennsylvania.

o. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred or will incur in connection with the Site, plus accrued Interest on all such costs.

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

q. "Settling Defendants" shall mean: 1) George R. Rubright; and 2) Mary Lou Rubright.

r. "Site" shall mean the Water Street Battery Site, encompassing approximately 1.39 acres, located in Shoemakersville, Berks County, Pennsylvania, and consisting, at a minimum, of the following parcels of land, depicted on the map included in "Appendix A": (1) a residential property of approximately 0.7 acres, designated as "Property WS-01"; (2) another residential property of approximately 0.6 acres, designated as "Property WS-08"; (3) a former tow path, designated as "Property WS-11A" and "Property WS-11B," which is approximately 200 feet long and 20 feet wide, or 0.09 acres; and (4) a strip designated "Property WS-10,"

located on the same side of the street as the other properties. The "Site" includes the areal extent of contamination arising from the former deposit of battery casings and related fill material on or at the Site

s. "State" or "Commonwealth" shall mean the Commonwealth of Pennsylvania and its departments and agencies, including, without limitation, the Pennsylvania Department of Environmental Protection.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment to address their liability for the Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservations of Rights by the Plaintiffs in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Settling Defendants submitted to EPA Financial Information to support their contention of their limited ability to pay the response Costs at the Site. EPA has reviewed this information, and in reliance on the truth and completeness of that information and Settling Defendants' representations, EPA enters into this Consent Decree pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and in accordance with EPA's policy as set out in the September 30, 1997 memorandum titled "General Policy on Superfund Ability to Pay Determinations."

6. EPA's entry into this Consent Decree is made in express reliance and is dependent upon Settling Defendants' financial certifications contained in Paragraph 36 a. and b. below. If

at any time the United States determines that Settling Defendants' financial certifications were in any material respect false, inaccurate, or incomplete as to any representation, EPA reserves the right to pursue further relief from Settling Defendants including, but not limited to, reimbursement of all Response Costs incurred or to be incurred at or in connection with the Site which have not been recovered or, if EPA deems it appropriate, to institute further action based upon CERCLA or the terms of this Consent Decree and any violation thereof.

7. Should EPA pursue further relief or institute further action pursuant to paragraph 6 above, Settling Defendants waive their right to assert any statute of limitations, laches, waiver, or estoppel defenses to such petitions or such further action. This reservation shall be in addition to and not in place of any remedies EPA may have for false statements made to the United States including, but not limited to the sanctions provided by 18 U.S.C. § 1001.

8. Payment of Response Costs to EPA. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to EPA \$484,000.00.

9. Payment by Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the Site name, EPA Region III and Site/Spill ID Number A3Y5, the docket number for this action to be assigned by the Clerk of the Court, and DOJ Case Number 90-11-3-08686. Any payments received by the Department of Justice after 4:00 pm (Eastern Time) will be credited on the next business day.

10. Payment of Commonwealth Response Costs. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the Commonwealth \$1,000.00. All payments to the Commonwealth shall be by certified check or cashier's check or checks made payable to the

“Commonwealth of Pennsylvania” and forwarded to:

Environmental Cleanup Program Manager
Southcentral Regional Office
Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

11. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the Site name, EPA Region III and Site/Spill ID Number A3Y5, DOJ Case Number 90-11-3-08686, and the civil action number assigned to this case by the Court and to:

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

and

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

12. Of the total amount to be paid pursuant to Paragraph 8 of the Consent Decree, Two Hundred Thousand Dollars (\$200,000.00) shall be deposited in the Water Street Battery Site Special Account within the EPA Hazardous Substance Superfund 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. Of the total amount to be paid pursuant to Paragraph 8 of the Consent Decree, Two Hundred Eighty-Four Thousand Dollars (\$284,000.00) shall be deposited in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

13. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 8 by the required due date, Interest shall accrue on the unpaid balance through the date of payment. If Settling Defendants fail to make any payment under Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. Stipulated Penalties.

a. If any amounts due under Paragraph 8 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$500.00 for every day that such payment is late.

b. If any amounts due under Paragraph 10 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to the Commonwealth, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$500.00 for every day that such payment is late.

c. If Settling Defendants do not comply with Sections XII (Access to Information) and XIII (Retention of Records) of this Consent Decree, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$500.00 per violation per day of such noncompliance.

d. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the Commonwealth. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter

accompanying the check, shall reference the name and address of the parties making payment, the Site name, the EPA Region and Site Spill ID Number A3Y5, DOJ Case Number 90-11-3-08686, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

United States Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

A copy of the transmittal letter shall be sent to the parties listed in Section XIV, and Paragraphs 10 and 11. Such notice shall reference the EPA Region and Site/Spill ID Number A3Y5, DOJ Case Number 90-11-3-08686.

e. All payments to the Commonwealth under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “Commonwealth of Pennsylvania.” The check, or a letter accompanying the check, shall reference the name and address of the parties making payment, the Site name, the EPA Region and Site Spill ID Number A3Y5, DOJ Case Number 90-11-3-08686, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Environmental Cleanup Program Manager
Southcentral Regional Office
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the Commonwealth has notified Settling Defendants 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, and shall continue to accrue through the date of payment.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

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

17. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

18. 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 or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

19. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 21 (General Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of

CERCLA, 42 U.S.C. §§ 9606, 9607(a), with regard to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI, Paragraph 8 (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 29 shall be null and void. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

20. Covenant Not to Sue by the Commonwealth. Except as specifically provided in Section 22 (General Reservations of Rights by the Commonwealth), the Commonwealth covenants not to sue or to take administrative action against Settling Defendants to recover the Commonwealth's Response Costs. This covenant not to sue shall take effect upon receipt by the Commonwealth of all payments required by Section VI, Paragraph 10 (Payment of Commonwealth Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent

Decree and this covenant not to sue and the contribution protection in Paragraph 29 shall be null and void. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY PLAINTIFFS

21. General Reservations of Rights by United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 19. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants 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; and
- d. 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.

22. General Reservations of Rights by the Commonwealth. The Commonwealth's covenants not to sue in Paragraph 20 shall not apply to the following claims against Settling Defendants for:

- a. failure to meet the requirements of this Consent Decree;
- b. past, present, or future releases or threatened releases of hazardous substances or contaminants outside the Site;

- c. past, present, or future violations of Federal or State criminal law;
- d. natural resource damages.

With regard to all matters expressly addressed by this Consent Decree, the Commonwealth specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth against persons not parties to this Consent Decree.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

23. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth, or their contractors or employees, with respect to the Site, Response Costs 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 the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Commonwealth 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;

- 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; or

- d. any claim against the Commonwealth pursuant to the Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101-6020.1305, relating to the Site.

24. 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).

25. Settling Defendants agree not to assert any claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against a Settling Defendant.

26. The waivers in Paragraph 25 shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Sections 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Except as provided in Paragraphs 24-25 above, 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 24-25 above, the Parties expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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)-(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).

28. 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 Defendants are entitled, as of the “date of entry/Effective Date,” to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2), or as may be otherwise provided by law, for “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, the Commonwealth or any other person; provided, however, that if the United States exercises rights under the reservations in Paragraph 21 (General Reservations of Rights by United

States), other than in Paragraph 21.a (claims for failure to meet a requirement of the settlement), or 21.b. (criminal liability), the “matters addressed” in this Consent Decree will not longer include those response costs or response actions that are within the scope of the exercised reservation; and further provided that if the Commonwealth exercises rights under the reservations in Paragraph 22 (General Reservations of Rights by the Commonwealth), other than in Paragraph 22.a (claims for failure to meet a requirement of the Consent Decree), or 22.c. (criminal liability), the “matters addressed” in this Consent Decree will not longer include those response costs or response actions that are within the scope of the exercised reservation.

29. Settling Defendants shall, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, notify EPA and DOJ and the Commonwealth in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ and the Commonwealth in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ and the Commonwealth 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.

30. In any subsequent administrative or judicial proceeding initiated by the United States or a State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the

Commonwealth 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 Covenant Not to Sue by Plaintiffs set forth in Section VIII.

XII. ACCESS TO INFORMATION

31. Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all records, reports, or information (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 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 related to the Site.

32. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiffs under this Consent Decree 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). Records 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 and the Commonwealth, 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.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants

assert such a privilege in lieu of providing records, they shall provide Plaintiffs with the following:

1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

34. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the ten-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA, DOJ and the Commonwealth at least 90 days prior to the destruction of any such records, and, upon request by EPA, DOJ or the

Commonwealth, Settling Defendants shall deliver any such records to EPA or the Commonwealth. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

36. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially

sets forth its 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.

XIV. 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Commonwealth, and Settling Defendants, respectively.

As to the United States/DOJ:

Chief, 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
Re: DOJ No. 90-11-3-08686

As to EPA:

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)
Office of the Regional Comptroller
US. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Joseph Arena (3HS31)
On-Scene Coordinator
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to the Commonwealth:

Martin Siegel
Assistant Counsel
Office of Chief Counsel
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Third Floor
Harrisburg, PA 17110-8200

As to Settling Defendants:

George Rubright and Mary Lou Rubright
c/o Rubright Construction, Inc.
64 East Bellevue Avenue
Shoemakersville, PA 19555

R. Timothy Weston, Esquire
K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

39. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent

Decree. The following appendix is attached to and incorporated into this Consent Decree:

“Appendix A,” a general map of the Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. 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. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XVIII. SIGNATORIES/SERVICE

42. Each undersigned representative of Settling Defendants, of the Chief/Deputy Chief of the Environment Enforcement Section of the United States Department of Justice, and of the Commonwealth 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.

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

44. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants

hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

45. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment among the United States, the State and the 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 _____, 2009 .

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. George R. Rubright, et al., Civil Action No. _____ relating to the Water Street Battery Site, Shoemakersville, Berks County, Pennsylvania.

FOR THE UNITED STATES OF AMERICA:

**U.S. Department of Justice
Environment and Natural Resources Division**

DATE

6/12/09

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section

ELLIOT M. ROCKLER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

**U.S. Attorney's Office
Eastern District of Pennsylvania**

MICHAEL L. LEVY
United States Attorney

DATE

By:

Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street
Suite 1250
Philadelphia PA 19106-4476

U.S. Environmental Protection Agency:

5/14/09
DATE

WILLIAM C. EARLY
Acting Regional Administrator
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

4/28/09
DATE

JUDITH KATZ
Acting Regional Counsel
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

4/28/09
DATE

CYNTHIA T. WEISS
Senior Assistant Regional Counsel
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. George R. Rubright, *et al.* relating to the Water Street Battery Site in Shoemakersville, Berks County, Pennsylvania.

FOR THE COMMONWEALTH OF
PENNSYLVANIA:

4/30/09
DATE

JOHN KRÜEGER /
Environmental Cleanup Manager
Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110-8200

4/30/09
DATE

MARTIN R. SIEGEL
Assistant Counsel
Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110-8200

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. George R. Rubright, *et al.* relating to the Water Street Battery Site in Shoemakersville, Berks County, Pennsylvania.

FOR DEFENDANT GEORGE R. RUBRIGHT

4-23-09
DATE

George R. Rubright
64 East Bellevue Avenue
Shoemakersville, PA 19555

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

R. Timothy Weston, Esquire
K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

FOR DEFENDANT MARY LOU RUBRIGHT

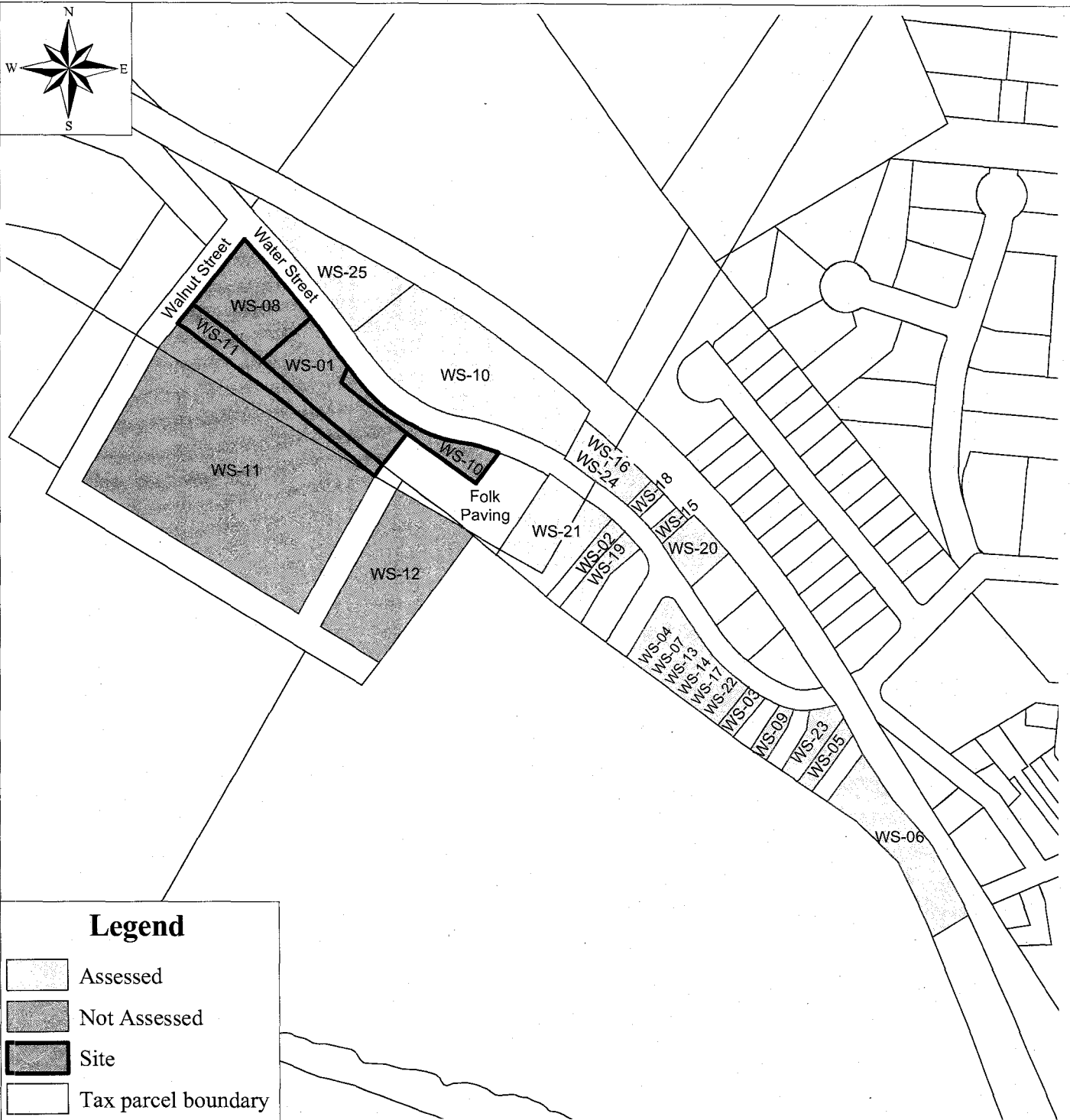
Date: 4-23-09

Mary Lou Rubright
3900 Estero Boulevard
Fort Myers, FL 33931





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

R. Timothy Weston, Esquire
K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507

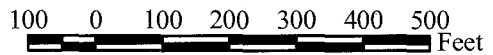
APPENDIX "A"
Site Map



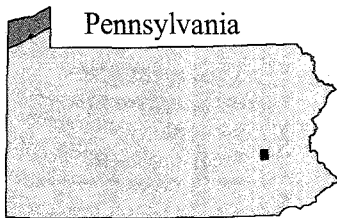
Legend

-  Assessed
-  Not Assessed
-  Site
-  Tax parcel boundary

Source: Modified from Berks County Tax Parcel Maps, Berks County Tax Map Office, March 2002



Approximate Site Location = ■



Water Street Battery Site
Shoemakersville, Berks County, Pennsylvania

Figure 2
Site Layout Map

TDD No. SE3-03-06-003
EPA Contract No. 68-S3-00-02

 Tetra Tech EM Inc.