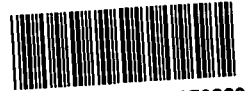


**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

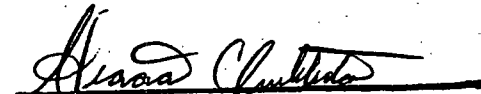


SDMS DocID 2070820

IN THE MATTER OF: :
 :
 :
Hamburg Mill Creek Site :
Hamburg, Pennsylvania :
 :
Wachovia Bank, National Association :
 :
Respondent :
 :
 :
Proceeding Under Sections 106(a) :
and 122(a) of the Comprehensive :
Environmental Response, Compensa- :
tion, and Liability Act of 1980, :
as amended, 42 U.S.C. §§ 9606(a) :
and 9622(a) :

Docket No. CERC- 03-2006-0063DC

I hereby certify that the
within is a true and correct copy
of the original Settlement Agreement
filed in this matter.


Attorney for USEPA, Region III

**ADMINISTRATIVE SETTLEMENT AND ORDER ON CONSENT
FOR REMOVAL RESPONSE ACTION**

The parties to this Administrative Settlement and Order on Consent (“Settlement Agreement”), Wachovia Bank, National Association (“Wachovia” or “Respondent”) and the United States Environmental Protection Agency (“EPA”), having agreed to the entry of this Settlement Agreement, it is therefore Ordered, that:

I. JURISDICTION AND GENERAL PROVISIONS

1.1 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Director of the Hazardous Site Cleanup Division, EPA Region III. This Settlement Agreement pertains to approximately 30-foot by 375-foot strip of property (the “Wachovia Property”) located north of State Street and south of Franklin Street, along the eastern bank of Mill Creek in Hamburg, Berks County, Pennsylvania, as shown on Attachment A, which is located on the edge of a larger tract of property owned and operated by Wachovia. The “Wachovia Property” is further described in Section III (“Findings of Fact”) below.

- 1.2 All terms and conditions of this Settlement Agreement, including any modifications hereto, are required by this Settlement Agreement. The Respondent agrees to undertake all actions required by the terms and conditions of this Settlement Agreement and to comply with all such terms and conditions.
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- 1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement. Notwithstanding the foregoing, EPA and Respondent agree that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of liability by Respondent.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Settlement Agreement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Wachovia Property by controlling access to the Wachovia Property, by securing portions of the Wachovia Property designated by EPA with fencing as needed to comply with this Settlement Agreement, by maintaining the fencing to prevent unauthorized access to the Wachovia Property, and by excavating and properly disposing of soils identified in the Extent of Contamination Study performed by Respondent in 2005, containing greater than 1,000 ppm lead and all areas of surficial soil (0-6 inches) with visible battery casings.

III. FINDINGS OF FACT

While the Respondent neither admits nor denies the following Findings of Fact contained in this Settlement Agreement, the Respondent agrees not to contest them in any action brought by EPA to enforce or interpret the terms of this Settlement Agreement.

- 3.1 The Wachovia Property is a portion of the Hamburg - Mill Creek Site (the "Site") and is further described in the property map in Attachment A. Mill Creek ("Mill Creek" or "Creek") is a stream that runs through Hamburg Borough in Berks County, Pennsylvania. Mill Creek flows from outside the northeast corner of Hamburg Borough, past the Hamburg center, through a municipal property, into the developed section of Hamburg Borough, then to the west, discharging into the Schuylkill River north of the mouth of Kaercher Creek. Battery casings have been disposed of at a number of locations along this Creek, resulting in lead contamination on the banks and in the sediments. The Creek passes through a number of commercial properties. Portions of the Creek are relatively accessible, while some areas are not easily accessible due to steep banks or channel barriers; however, the Wachovia Property is somewhat accessible. No portion of the Creek is totally inaccessible, although some of the channelized sections run underneath buildings or roads in town.

- 3.2 The Site includes any contaminated sediments, contaminated soil along the Creek bank, and contaminated soil on properties contiguous to the Creek banks.
- 3.3 In October 2002, EPA conducted a removal assessment of Mill Creek. The Creek portions of this assessment were intended to determine lead concentrations in sediments and bank soils to a depth of 12 inches. In addition, surface water samples were taken at some locations.
- 3.4 All samples were analyzed by x-ray fluorescence ("XRF") technology, following the EPA Emergency Response Team standard operating procedures. Ten percent of the samples (one of every 10) were sent to an EPA Contract Laboratory Program ("CLP") laboratory for confirmation of lead results by XRF analysis.
- 3.5 For Mill Creek, 46 soil samples and 26 sediment samples were collected and analyzed for lead. For the soil samples, 11 of 46 exceeded the 400 ppm action level for lead (6 of the 11 exceeded 500 ppm). Lead was found in soil samples in concentrations up to 182,988 ppm along the eastern bank of the Creek on the Wachovia Property. For sediments, 4 of the samples exceeded 400 ppm for lead (however, only one was higher than 500 ppm) - none of these sediment samples were on the Wachovia Property. Lead-battery waste (casing fragments) was observed at the soil surface along one section of Mill Creek north of State Street, on the east bank of the Creek. Few or no battery wastes were observed in the Creek itself.
- 3.6 There are two areas of concern on Mill Creek. One encompasses the eastern bank north of State Street, where four sediment samples had lead levels ranging from 4,857 ppm up to 182,988 ppm. The other area of concern is at sample location MC-11, where a soil sample had 3,139 ppm and a sediment sample had 1,389 ppm of lead. The Wachovia Property comprises part of the eastern bank of the Creek north of State Street, an area of concern.
- 3.7 A local citizen informed EPA that this portion of the Creek at the Wachovia Property had been backfilled at some time. Historically, battery casings and battery chips have been used as backfill in Hamburg. Other sites in Hamburg where battery casings and battery chips have been found also have elevated levels of lead.
- 3.8 Potential human exposure to lead is very high. As stated in paragraph 3.1 above, portions of the Creek are relatively accessible, including the portion of the Creek adjacent to the Wachovia Property. Pregnant women, small children and senior citizens are the highest risk receptors. Lead is toxic to humans, especially children and senior citizens.
- 3.9 Migration of contaminants from the Wachovia Property and the Site, via surface runoff, is likely to occur without proper mitigative action, particularly during storm events.
- 3.10 Lead is poisonous by ingestion and toxic by the intra-peritoneal route. It is a suspected carcinogen of the lungs and kidneys. Human systemic effects by ingestion and inhalation

include: loss of appetite, anemia, malaise, insomnia, headache, irritability, muscle and joint pains, tremors, flaccid paralysis without anesthesia, hallucinations and distorted perceptions, muscle weakness, gastritis and liver changes. The major organ systems affected are the nervous system, blood system, and kidneys. Lead encephalopathy is accompanied by severe cerebral edema, increase in cerebral spinal fluid pressure, proliferation and swelling of endothelial cells in capillaries and arterioles, proliferation of glial cells, and neuronal degeneration. Experimental evidence suggests that lead can have the effect of diminishing the IQ scores of children. Lead levels in blood above 10 micrograms/deciliter have been associated with retarded neurological development in children by the Center for Disease Control.

- 3.11 Lead is listed as a hazardous substance at 40 C.F.R. § 302.4.
- 3.12 On March 31, 2005, Wachovia and EPA entered into an Administrative Order by Consent ("AOC"), which ordered Wachovia to conduct an extent-of-contamination ("EOC") study to characterize the nature, concentration, extent and depth of lead contamination at the Wachovia Property.
- 3.13 On or about August 18, 2005, Wachovia's contractor collected sixteen soil samples for laboratory analyses, in accordance with the EPA-approved Response Action Plan ("RAP") dated April 18, 2005, to evaluate lead concentration in the shallow subsurface soil (0-6 inches) along the eastern bank of the Mill Creek on the Wachovia Property. The general sampling area was comprised of by an approximately 30-foot wide strip along the Wachovia Property, starting from the northern tip of the property boundary and extending south along the Creek to a distance of approximately 375 feet.
- 3.14 The first sample was collected from the northern tip of the Wachovia Property. Subsequent samples were collected along the centerline of the two 15-foot wide corridors at 50-foot intervals. Sample locations between the corridors were staggered at 25-foot intervals. Sixteen soil samples were collected from the 0 to 6 inch-intervals below grade.
- 3.15 A Final Report, dated October 20, 2005, was submitted to EPA in accordance with Section XXI of the AOC, Docket No. CERC-03-2005-0138DC.
- 3.16 The concentration of lead detected in the soil samples on the Wachovia Property ranged from 156 ppm to 139,000 ppm.
- 3.17 On or about October 8, 2003, the Deputy Director for the Hazardous Site Cleanup Division, EPA Region III, determined that the release and threatened release of hazardous substances from the Site into the environment may present an imminent and substantial endangerment to the public health or welfare or to the environment and selected the response action.

IV. CONCLUSIONS OF LAW

- 4.1 The Wachovia Property is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 Lead is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed at 40 C.F.R. § 302.4.
- 4.4 A "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), has been disposed of at the Wachovia Property and is currently present there.
- 4.5 The presence of a hazardous substance at the Site and the past, present, and/or potential migration of the hazardous substance from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 Respondent is an "owner or operator of a vessel or a facility" within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- 4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

- 6.1 This Settlement Agreement shall apply to and be binding upon EPA and its agents, and upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of

the Wachovia Property, shall in any way alter Respondent's responsibilities under this Settlement Agreement.

- 6.2 In the event of any change in ownership or control of the Wachovia Property, Respondent shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Settlement Agreement to the transferee in interest of the Wachovia Property prior to any agreement for transfer.
- 6.3 In the event that Respondent files a petition under the U.S. Bankruptcy Code or if a bankruptcy court enters an order for relief in an involuntary case filed against Respondent under the U.S. Bankruptcy Code Section 303, Respondent shall notify EPA within three (3) days of such event.
- 6.4 The Respondent shall provide a copy of this Settlement Agreement to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any portion of the Work to be performed by Respondent pursuant to this Settlement Agreement. Respondent shall require in any and all contracts related to the Wachovia Property that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Settlement Agreement.
- 6.5 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Settlement Agreement has been given to the Commonwealth of Pennsylvania by EPA pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 Respondent shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within five (5) business days of the effective date of this Settlement Agreement, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all other contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response action no less than five (5) business days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform

the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel and other persons who will perform the response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within fifteen (15) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.

8.3 Respondent shall accomplish the following items:

- (a) Mobilize personnel and equipment to the Wachovia Property as necessary;
- (b) Provide site-security sufficient to preclude access to the Wachovia Property by persons not conducting or overseeing the response action required by this Settlement Agreement. At a minimum, high-visibility temporary fencing shall be used to encompass and enclose the Wachovia Property. Security shall continue through EPA's approval of the Final Report required by paragraph 8.11; however, if EPA determines that further removal action is necessary based on the validated data, then security shall continue through the completion of the further removal action;
- (c) Excavate soils identified by the August 2005 EOC study as containing greater than 1,000 ppm lead (see Attachment A) and all areas of surficial soil (0-6 inches) with visible battery casings;
- (d) Transport all hazardous substances designated for off-site disposal in accordance with U.S. Department of Transportation requirements;
- (e) Dispose off-site all materials excavated pursuant to subparagraph 8.3 (c) above at an acceptable facility in accordance with paragraph 8.12 below;
- (f) To prevent exposure to areas where lead contamination will remain below the surface, install a physical barrier to the applicable portion(s) of the Wachovia property, (i.e., filter fabric, liner, hi-visibility safety fencing, or other material approved by the OSC) and backfill with clean soil all areas excavated pursuant to (c) above;
- (g) Stabilize areas subject to erosion and flooding from the creek to prevent further exposure to and effects from lead wastes and/or contaminated sediments or soil that remain on-site, if any;
- (h) Restore excavated areas to original conditions by performing site restoration and re-vegetation;

- (i) Remove and properly dispose off-site contaminated water (e.g., equipment-related and sampling-related decontamination fluids) generated as a result of the activities set forth in the above subparagraphs 8.3 (c) through 8.3 (h) to levels in accordance with promulgated requirements and standards;
- (j) Provide site-specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for the Work to be performed at the Wachovia Property, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of the Work at the Wachovia Property and protection of public health from exposure to hazardous substances during the conduct of activities at the Wachovia Property pursuant to this Settlement Agreement. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (June, 1992). The HASP shall also include measures for fire protection appropriate to the conditions at the Wachovia Property;
- (k) Obtain a Hazardous Waste Generator Identification Number;
- (l) Provide for post-removal site control activities consistent with Section 300.415 (l) of the NCP, 40 C.F.R. § 300.415 (l); and EPA's "Policy on Management of Post Removal Site Control", (OSWER Directive 9306.2-02 (December 3, 1989)). Such activities shall include, but not be limited to, arrangements with State or local governments for performance of actions that will ensure the integrity of the Work performed at the Site pursuant to this Settlement Agreement through operation and maintenance, actions that will continuously restrict access to the Site, measures that will ensure continuous review of monitoring data. For purposes of this paragraph, "arrangements with State or local governments for the performance of actions" shall mean submitting, by agreement or otherwise, to enforceable requirements determined by the State or local government to meet the criteria set forth in this paragraph, and shall include public participation and comment as required by the State or local government and the NCP;
- (m) Ensure that present and future owners of the Wachovia Property do not use the site for residential development, recreational, school and/or day care facilities, and other uses which could potentially expose children to residual contamination in site soils, by placing restrictions on deeds, leases, contracts, and other instruments conveying an interest in or authorizing use of the Wachovia Property; and

(n) Develop and follow an expeditious schedule for implementation of the RAP.

- 8.4 Within fifteen (15) business days of the effective date of this Settlement Agreement, Respondent shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Settlement Agreement. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.
- 8.5 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.
- 8.6 Within twenty (20) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of the EPA-approved RAP and complete it in accordance with the EPA-approved RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such portion of the response action pursuant to this Settlement Agreement, Respondent shall correct or re-perform such response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.7 Beginning thirty (30) calendar days subsequent to the date of receipt of the EPA written approval of the RAP and every thirty (30) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 30-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum, the following: (1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Settlement Agreement; (2) a description of all data anticipated and activities scheduled for the next 30 calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; (3) a description of any problems encountered or anticipated; (4) any actions taken to prevent or mitigate such problems; (5) a schedule for completion of such actions;

taken to prevent or mitigate such problems; (5) a schedule for completion of such actions; (6) copies of all analytical data received during the reporting period; and (7) all modifications to the response action, RAP and schedule made in accordance with Section XIV of this Settlement Agreement during the reporting period.

- 8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Settlement Agreement, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.
- 8.9 All reports, plans, approval letters, specifications, schedules and attachments required by this Settlement Agreement are subject to EPA approval and shall be deemed incorporated into this Settlement Agreement upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted under this Settlement Agreement, the approved portion shall be deemed incorporated into and enforceable under this Settlement Agreement. In the event of conflict between this Settlement Agreement and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Settlement Agreement shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondent to accomplish the Work outlined in paragraph 8.3 above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Settlement Agreement. Determination(s) of non-compliance will be made by EPA.
- 8.10 In addition to the information and documents otherwise required by this Settlement Agreement, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control related to the Site including, but not limited to, site analytical data (including raw data); site safety data; site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Settlement Agreement; information and documents relating to Respondent's efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

- 8.11 Within twenty (20) business days of the date Respondent concludes it has completed implementation of the RAP and the items identified in paragraph 8.3, Respondent shall submit a written Final Report to EPA, subject to EPA approval described in paragraph 8.9 above. The written report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, and shall be certified by Respondent in accordance with the terms of Section XXII of this Settlement Agreement. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies. Within ten (10) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondent shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondent shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.
- 8.12 Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Settlement Agreement including, without limitation, Section XXIII of this Settlement Agreement and all applicable Federal, State and local laws and regulations, as required by the NCP. Any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility required by this Settlement Agreement shall be performed in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility for treatment, storage, or disposal required by this Settlement Agreement shall be performed in accordance with 40 C.F.R. § 300.440.
- 8.13 Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6.
- 8.14 Respondent shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Settlement Agreement which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at or from the Wachovia Property, or which may create a danger to public health, welfare or the environment.
- 8.15 In the event that EPA believes that response action or other activities at the Site by the Respondent are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its

unreviewable discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than ten (10) calendar days after the effective date of this Settlement Agreement. Designation of a Project Coordinator shall not relieve Respondent of its obligation to comply with the requirements of the Settlement Agreement. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work on behalf of EPA and the Respondent, respectively. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Settlement Agreement, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.
- 9.2 The Project Coordinator for EPA is:
- Eduardo Rovira, Jr.
On-Scene Coordinator
U.S. Environmental Protection Agency
Eastern Response Branch (3HS31)
1650 Arch Street
Philadelphia, Pennsylvania 19103
(215) 814-3436
- 9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is

given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Settlement Agreement:
- a. "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised November 1984));
 - b. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and
 - c. "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).
- 10.2 The Respondent shall consult with EPA in planning for, and prior to, all sampling analysis required by the approved RAP. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

- 11.1 As of the effective date of this Settlement Agreement, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Settlement Agreement.
- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than twenty (20) business days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall

reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.

- 11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- 11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Settlement Agreement in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondent.
- 11.5 The Respondent may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Settlement Agreement including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; site safety data; site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing the Work required by this Settlement Agreement.
- 11.7 Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- 12.1 Except as provided elsewhere in this Settlement Agreement, if the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Settlement Agreement, including billings for oversight costs, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) calendar days of receipt of such notification or action.
- 12.2 EPA and the Respondent shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondent. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section XII.
- 12.3 In order to prevail in any dispute regarding oversight costs, Respondent must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.
- 12.4 Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondent does not prevail upon resolution of any dispute involving any contested costs other than oversight costs, Respondent shall submit to EPA, within fourteen (14) calendar days of receipt of such resolution, all such costs determined to be owed to EPA, including any accrued interest, as specified in paragraph 13.1 below. Payment of oversight costs, including interest, following resolution of a dispute shall be governed by Paragraph 21.3 of this Settlement Agreement.
- 12.5 Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 13.1 For each day, or portion thereof, that Respondent fails to comply with any requirement of this Settlement Agreement at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Settlement Agreement and to: EPA Region III Hearing Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103.

- 13.2 Stipulated penalties shall accrue in the amount of \$500.00 per calendar day per violation. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondent's failure to comply with the requirements of this Settlement Agreement.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- 14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondent becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Settlement Agreement and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall ensure that its Project Coordinator provides Respondent with immediate notification of any project delays. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent Respondent intends to claim that any delay or anticipated delay described by Respondent in accordance with paragraph 14.1 was or will be caused by circumstances beyond its control, Respondent shall, within fourteen (14) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondent fully demonstrates that the delay was caused by circumstances beyond its control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondent took and is taking all reasonable measures to avoid and minimize delay. The Respondent shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondent pursuant to paragraph 22.1(b) of this Settlement Agreement.
- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondent and (2) that could not and cannot be overcome by due

diligence on the Respondent's part, shall not be deemed to be a violation of Respondent's obligation(s) under this Settlement Agreement, and shall not subject Respondent to stipulated penalties under this Settlement Agreement for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Settlement Agreement or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2 above.

- 14.4 Failure of the Respondent to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Settlement Agreement has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Settlement Agreement.

XV. RESERVATION OF RIGHTS

- 15.1 The covenant not to sue set forth in Section XXVIII below does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - b. liability for costs other than oversight costs recoverable under Section XXI of this Settlement Agreement;
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.
- 15.2 Except as expressly provided in this Settlement Agreement, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 15.3 As provided by this Settlement Agreement, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Settlement Agreement, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondent correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondent perform response actions in addition to those required by this Settlement Agreement. Further, EPA reserved the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondent, and Respondent declines, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Settlement Agreement, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.
- 15.4 EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the United States related to this Settlement Agreement which are not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.
- 15.5 This Settlement Agreement concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Settlement Agreement. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties in connection with the performance of any response actions not addressed by this Settlement Agreement.
- 15.6 Nothing in this Settlement Agreement shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- 16.1 Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Settlement Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Wachovia Property.

XVII. OTHER LAWS

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 18.1 The effective date of this Settlement Agreement shall be the date on which it is signed by EPA.
- 18.2 This Settlement Agreement may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement are, upon approval by EPA, incorporated into this Settlement Agreement. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement Agreement and will subject the Respondent to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.
- 18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondent or the requirements of this Settlement Agreement will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Settlement Agreement, and to comply with the requirements of this Settlement Agreement unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- 20.1 Respondent agrees to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out the work required by this Settlement Agreement.

XXI. REIMBURSEMENT OF OVERSIGHT COSTS

- 21.1 EPA shall submit to Respondent periodic and/or a final accounting(s) of oversight costs incurred by the U.S. Government with respect to this Settlement Agreement. Oversight costs shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with EPA's oversight of the Work.
- 21.2 Respondent shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Settlement Agreement.
- 21.3 In the event the Respondent disputes, pursuant to Section XII of this Settlement Agreement, payment of any costs identified in the accounting provided pursuant to Paragraph 21.1, the Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested costs. The Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondent shall initiate the Dispute Resolution procedures in Section XII of this

Settlement Agreement. If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Section XIII of this Settlement Agreement. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Section XIII of this Settlement Agreement; Respondent shall be disbursed any balance of the escrow account.

XXII. CERTIFICATION OF COMPLIANCE

- 22.1 a. Unless otherwise required by the terms of this Settlement Agreement, any notice, report, certification, data presentation or other document submitted by Respondent under or pursuant to this Settlement Agreement which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Settlement Agreement shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- b. The written Final Report required by paragraph 8.11 of this Settlement Agreement, any written notification described in paragraph 12.1 of this Settlement Agreement and any "Notice of Force Majeure" described in paragraph 14.2 of this Settlement Agreement shall be certified by the Respondent or a responsible official of Respondent.
- 22.2 The certification required by paragraph 22.1 of this Settlement Agreement shall be in the following form:

Except as provided below, I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

As to [the/those] portion(s) of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission]

and all attachments were prepared at my direction and with my review, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate and complete, to the best of my knowledge, information and belief.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name (print): _____
Title: _____

- 22.3 Submission of documents pursuant to this Settlement Agreement which are found by EPA to contain false information shall constitute a failure to comply with this Settlement Agreement and shall subject Respondent to, among other things, stipulated penalties whether or not a responsible official of Respondent has certified the document.

XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES

- 23.1 Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.
- 23.2 The notification required by paragraph 23.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

- 23.3 The identity of the receiving facility and state will be determined by Respondent. Respondent shall provide all relevant information, including information required by paragraph 23.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

XXIV. RECORD RETENTION

- 24.1 Until 10 years after Respondent's receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
- 24.2 At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

XXV. POST REMOVAL SITE CONTROL

- 25.1 Respondent agrees to maintain the integrity of the response action pursuant to the arrangement proposed in paragraph 8.3 (1), and approved by EPA pursuant to paragraph 8.9, above.

XXVI. DEFINITIONS

- 26.1 "Business days" as used in this Settlement Agreement shall mean every day of the week except Saturdays, Sundays and federal holidays.

- 26.2 "Calendar days" as used in this Settlement Agreement shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- 26.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.
- 26.4 "Work" as used herein shall mean all requirements of this Settlement Agreement, including any modifications hereto.
- 26.5 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

XXVII. NOTICE OF COMPLETION

- 27.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Settlement Agreement, that all response action specified in Section VIII of this Settlement Agreement has been fully performed, and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Settlement Agreement, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States Government"), XX ("Indemnification and Hold Harmless"), XXIV ("Record Retention") and XXV ("Post Removal Site Control"), EPA will provide a notice of completion to the Respondent.

XXVIII. COVENANT NOT TO SUE BY EPA

- 28.1 From the effective date of this Settlement Agreement and for as long as EPA determines that the terms of this Settlement Agreement, including any modifications made hereto, are being fully complied with, and except for any proceeding to enforce its terms or collect any applicable costs or penalties, EPA agrees not to sue or take any administrative action against the Respondent for the Work required by this Settlement Agreement, including for reimbursement of costs incurred in connection with this Settlement Agreement.
- 28.2 Nothing in this Settlement Agreement shall be construed to limit the rights EPA has reserved under Section XV of this Settlement Agreement.
- 28.3 Nothing in this Settlement Agreement shall be construed to grant any rights to persons not a party to this Settlement Agreement. Further, nothing in this Settlement Agreement precludes the United States or the Respondent from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXIX. COVENANT NOT TO SUE BY RESPONDENT

- 29.1 Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, oversight costs paid under this Settlement Agreement, or this Settlement Agreement including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; 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.

Except as provided in Paragraph 29.3 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15.1 (b),(c), and (e) – (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

- 29.2 Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
- 29.3 Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment of hazardous substances at the Site, if
- a. any materials contributed by such person to the Site constituting Municipal Solid Waste ("MSW") or Municipal Sewage Sludge ("MSS") did not exceed 0.2% of the total volume of waste at the Site; and
 - b. any materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

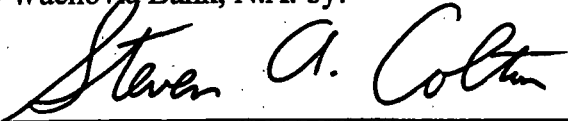
- c. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXX. CONTRIBUTION

- 30.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that the Respondent is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement is the Work and payment of costs under Section XXI of this Settlement Agreement.
- 30.2 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the effective date of this Settlement Agreement, resolved its liability to the United States for the Work and payment of costs under Section XXI of this Settlement Agreement.
- 30.3 Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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) of CERCLA, 42 U.S.C. § 9613(f)(2).

FOR RESPONDENT

Wachovia Bank, N.A. by:



[Signature]

Please Type the Following:

Name: Steven A. Colton

Title: Vice President, Environmental Manager, Corporate Real Estate

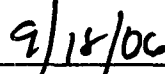
Address: Wachovia Bank, PA4118 - One South Broad Street, Philadelphia, Pennsylvania 19107

FOR EPA:

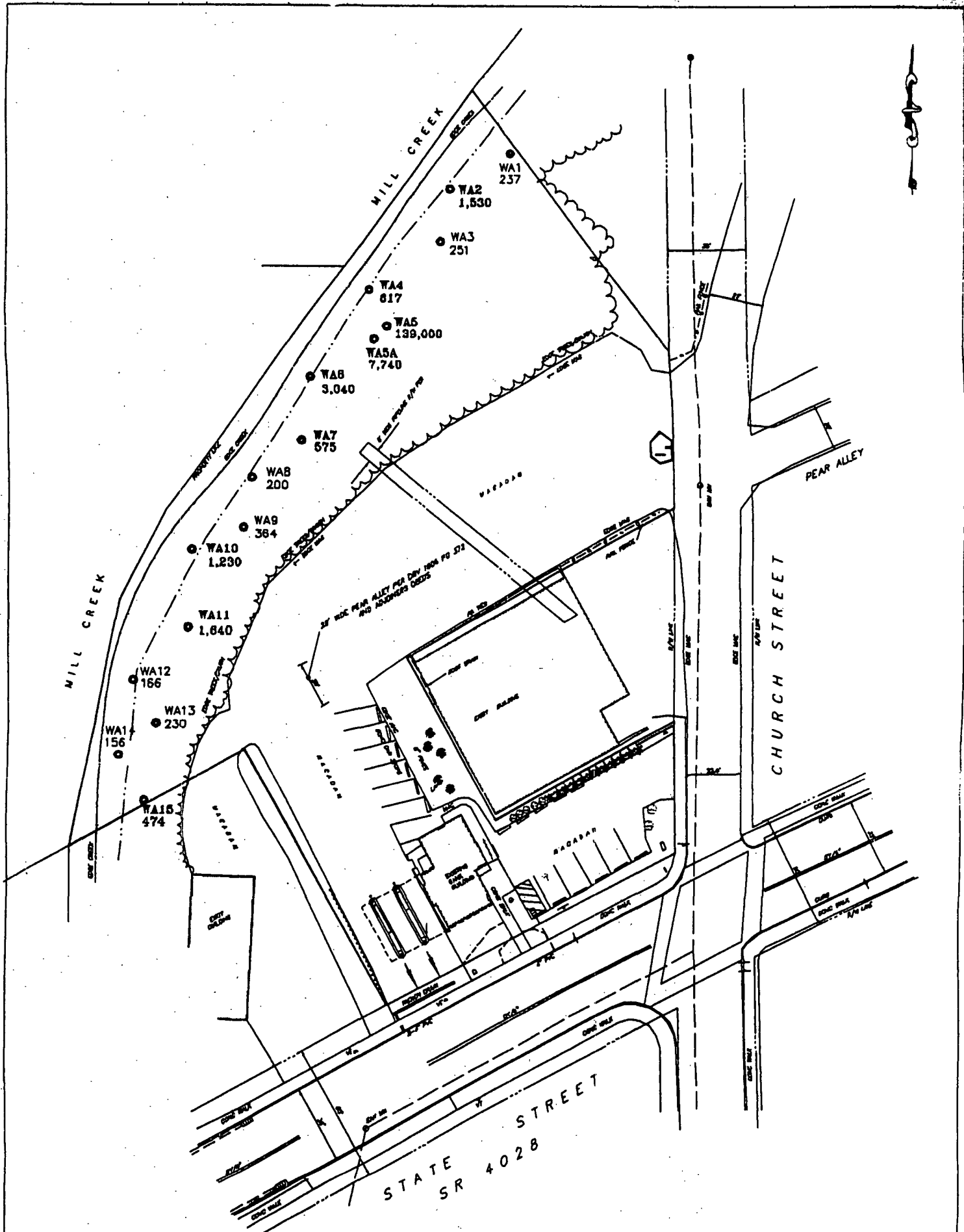


ABRAHAM FERDAS

**Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency
Region III**

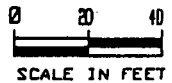


Date



LEGEND

- SAMPLE LOCATION WITH LEAD RESULTS IN MG/KG
 - WA10 1,230
- 1) ALL SAMPLES WERE COLLECTED 0-0.5 FEET BELOW GRADE



ATTACHMENT A

PRESTIGE Environmental, Inc. 27 PROGRESS STREET COLETON, PA 15005 TEL: (724) 737-5700 FAX: (724) 737-5680 1-800-520-7030	SOIL SAMPLE LOCATIONS		Project No.
	WACHOVIA BANK PROPERTY 555 STATE STREET HAMBURG, PENNSYLVANIA		Date: 1-20-02 Drawn by: S. M. 02/01 Date: 2/15/02 Page: 2