

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

[Name] : [Subject]  
[Address] :

**CONSENT ASSESSMENT OF CIVIL PENALTY**

This Consent Assessment of Civil Penalty ("CACP") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2000, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and [Name of Operator] ("Operator").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce [the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 ("SWMA") or cite other specific statute(s)]; and the rules and regulations promulgated thereunder.

B. [Identify operator; i.e. name, business, address. Is there a corporation, partnership and/or individuals?]

C. [State a link between the operator and the site; e.g. owner, operator, transporter, generator and the nature of the operator's activities at the site which have resulted in a violation].

D. On \_\_\_\_ [date(s)], [state the facts that show the violation(s) - what happened where].

E. [Quote or summarize the statute(s) and regulation(s) violated].

F. [Summarize how activities in Paragraph D violated statute(s) and regulation(s) referenced in Paragraph E].

G. The violations described in the preceding paragraph constitute unlawful conduct under [cite specific statutory provision] and subjects [Operator] to a claim for civil penalties under [cite specific statutory provision].

After full and complete negotiations of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by [Operator] as follows:

1. Assessment. In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under [cite specific statutory provision], the Department hereby assesses a civil penalty of \$\_\_\_\_\_, which [Operator] hereby agrees to pay.

2. Civil Penalty Settlement. [Operator] consents to the assessment of the civil penalty assessed in Paragraph 1, which shall be paid in full [upon signing this CACP/pursuant to the following schedule: \_\_\_\_\_]. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraph F, above, for the date(s) set forth in Paragraph D, above. The payment shall be by corporate check or the like, made payable to [identify specific fund] and sent to [identify where the check should be sent].

3. Findings.

a. [Operator] agrees that the findings in Paragraphs A through \_\_\_ are true and correct and, in any matter or proceeding involving [Operator] and the Department, [Operator] shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.

[To be used when there is a payment schedule]

4. Remedies. In the event [Operator] fails to make any payment required by this CACP, all remaining payments shall be immediately due and payable. In that event, the Department may pursue any remedy available for failure to pay a civil penalty, including an action for breach of contract or the filing of this CACP as a lien in any county in this Commonwealth.

5. Reservation of Rights. The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. [Operator] reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of [Operator] certify, under penalty of law, as provided by 18 Pa. C. S. § 4904, that they are authorized to execute this CACP on behalf of [Operator], that [Operator] consents to the entry of this CACP as an ASSESSMENT of the Department; that [Operator] hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that [Operator] knowingly waives its right to appeal this

CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. (Signature by [Operator]'s attorney certifies only that the agreement has been signed after consulting with counsel.)

FOR [FULL NAME OF OPERATOR]:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Attorney for [Operator]]

\_\_\_\_\_  
Name  
Assistant Counsel

**COMMENT:** If the Operator is a corporation, this document must be signed by both (1) the President or Vice President *and* (2) the Secretary or Treasurer, unless a resolution from the Board of Directors is attached that authorizes the signatory to sign on behalf of the corporation.