

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:	:	
	:	The Clean Streams Law, Solid
Bostik, Inc.	:	Waste Management Act and the Hazardous
11320 Watertown Plank Road	:	Sites Cleanup Act
Wauwatosa, WI 53226	:	
	:	
and	:	
	:	
Sandvik, Inc.	:	
982 Griffin Pond Road	:	
Clarks Summit, PA 18411	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("CO&A") is entered into this 13th day of APRIL 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Bostik, Inc. ("Bostik") and Sandvik, Inc. ("Sandvik"), collectively referred to as "Settlers".

FINDINGS

The Department has found and determined the following:

A. The Department is the agency of the Commonwealth with the duty and authority to administer and enforce the provisions of The Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. § 6020.101 *et seq.* ("HSCA"); the Land Recycling and Environmental Remediation Standards Act, Act 2 of May 19, 1995, P.L. 4, No. 19952, 35 P.S. § 6026.101 *et seq.* ("Land Recycling Act"); The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1 *et seq.*, ("the Clean Streams Law"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. § 6018.101 *et seq.* ("Solid Waste Management Act") and Section 1917-A of the Administrative Code of 1929, the Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"). The Department is also the agency of the Commonwealth vested with the duty and authority to implement and administer the State support program under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA").

Bostik Facility

B. Bostik, Inc. is a Delaware corporation registered to conduct business in the Commonwealth of Pennsylvania with a registered business address of 11320 Watertown Plank Road, Wauwatosa, WI 53226-3434.

C. Bostik is the owner of a Facility ("Bostik Facility") which manufactured adhesives from 1977 until it was closed in 2003. The Bostik Facility is located on five acres within the Ivy Industrial Park, 1200 Griffin Pond Road, South Abington Township, Lackawanna County, Pennsylvania, with a PIN No. 0700403001102. Located within two miles of the Bostik Facility are several hundred private homes and businesses, many of which rely on potable wells for their home water supply.

D. On April 23, 2008, the Department and Bostik entered into a Consent Order and Agreement ("Bostik CO&A") (attached hereto as Exhibit A). In the Bostik CO&A, Bostik agreed to, *inter alia*, complete a site characterization and remediation activities under the Department's guidance and assume responsibility for the quarterly volatile organic compound ("VOC") sampling of the perimeter wells and certain homes with carbon filtration treatment systems.

Sandvik Facility

E. Sandvik, Inc. is a Delaware corporation registered to do business in the Commonwealth of Pennsylvania with a registered business address in care of CT Corporation System, 1635 Market Street, Philadelphia, PA 19103.

F. Sandvik is the owner and operator of a steel products manufacturing facility located on approximately 35 acres within the Ivy Industrial Park, 982 Griffin Pond Road, Clarks Summit, Lackawanna County, Pennsylvania. Pennsylvania Extruded Tube Company ("PEXCO") owns and operates a steel tube manufacturing facility located on five acres contiguous with and adjacent to the Sandvik property. PEXCO is a joint venture between Penn Power Company, a subsidiary of Sandvik, and SMI Extruded Tube, Inc., a company not related to Sandvik (collectively the "Sandvik Facility").

G. On December 29, 2005, the Department and Sandvik entered into a CO&A (attached hereto as Exhibit B), in which Sandvik agreed to, *inter alia*, complete site characterization and sampling on their property.

H. On February 20, 2007, the Department and Sandvik fully executed an amendment to the December 29, 2005 CO&A. In this amendment, Sandvik agreed to undertake the responsibility to complete the Water Line Engineering and Design work, which has been completed; to connect any currently affected resident who is located within 300 feet of an existing water line to any existing water line (and their well properly abandoned); and to connect to any existing water line any homes, in the future, found to have detectable levels of Tetrachloroethylene ("PCE") or Trichloroethylene ("TCE") that are located within 300 feet of an existing water line and their wells properly abandoned.

Ivy Industrial Park Site

I. The Ivy Industrial Park Site ("Site") contains certain VOC's in the soils and groundwater, including, but not limited, to PCE and TCE. PCE and TCE are considered "hazardous substances" in accordance with Section 103 of HSCA, 35 P.S. § 6020.103, and Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

J. Some or all of the hazardous substances, including, but not limited to, PCE and TCE, are contained in one or more groundwater plumes which have impacted certain private water supply wells in and around the Site, known as the "Affected Area" located in Scott, South Abington, North Abington and Abington Townships, Lackawanna County, PA. *See Exhibit C.*

K. The properties with private water supply wells within the Affected Area have been preliminarily identified on the list attached as Exhibit D, which list may be amended hereafter to include other properties with private water supply wells that are later determined to be located within the Affected Area.

L. The Department has determined that the Ivy Industrial Park Site is a "Site" as defined in Section 103 of HSCA, 35 P.S. § 6020.103. The Site includes the Affected Area as depicted in Exhibit C. As provided in the definition of a "site" in Section 103 of HSCA, 35 P.S. § 6020.103, the site includes all areas where the hazardous substances or contaminants resulting from the release or which threaten release have come to be located.

M. The Department has determined that the Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

N. The Department has determined that the past and present conditions at the Site constitute a release and threatened release of hazardous substances, as defined in Section 103 of HSCA, 35 P.S. §6020.103 and Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

O. Pursuant to Section 501(a) of HSCA, 35 P.S. § 6020.501(a), the Department has determined that a response is necessary to abate the release or threat of release identified in Paragraphs I through N, above.

P. The Department has determined that Settlers are "responsible persons" in accordance with Section 701 of HSCA, 35 P.S. §6020.701, with respect to the release or threat of release referred to in Paragraphs I, J and K, above.

Q. In addition, the causation or allowance of the release constitutes unlawful conduct under section 1108 of HSCA, 35 P.S. §6020.1108, and subjects Settlers to civil penalties under Section 1104 of HSCA, 35 P.S. §6020.1104.

R. The release and threat of release of hazardous substances at the Site, as referenced in the above paragraphs, constitutes a statutory public nuisance under Section 1101 of HSCA, 35 P.S. § 6020.1101.

Characterization Activities

S. Sandvik and Bostik have conducted environmental investigations of each of their properties, as well as various other locations within the Affected Area including, but not limited to, the installation of monitoring wells and soil borings ("Characterization Activities").

T. Sandvik and Bostik have submitted Site Characterization reports to the Department.

U. The Characterization Activities have identified various concentrations of TCE, PCE, cis-1,2-Dichloroethylene ("cis-1,2-DCE") and various other contaminants in the soils and groundwater at the Site.

V. The Department, Sandvik and Bostik have sampled many private residential and business production wells at the Site.

W. Concentrations of TCE, PCE, cis-1,2-DCE, vinyl chloride and methyl ethyl ketone in the groundwater at the Site exceed the Department's standards at 25 Pa. Code Subchapter C, Appendix A, Table 1. Settlers deny that they are responsible for all exceedances described in this paragraph, and the Department has not determined that Settlers are responsible for all exceedances.

X. The Department conducted an ecological health evaluation screening in 2009 in accordance with 25 Pa. Code § 250.311 and the Pennsylvania Land Recycling Program Technical Guidance Manual. Section 5 - Ecological Risk Conclusion of the Ecological Health Evaluation Screening Report concludes that the volatile organic compounds (VOCs) detected, including TCE and PCE, in surface water compared to the Pennsylvania water quality fish and aquatic life criteria for freshwater systems do not exceed the water quality chronic or maximum concentration criteria. Therefore, aquatic organisms are not at risk from exposure to VOC's in surface water.

Water Line Engineering and Design

Y. Property owners that have had TCE or PCE detected in their water supplies at any detectable level have been offered installation of a water treatment system which removes the organics prior to any exposure points. Such water treatment systems have been installed in approximately 235 properties in the Affected Area, and Settlers monitor the quality of the treated water and maintain the water treatment systems on a regular basis.

Z. Since the fall of 2005, a Unified Command Group ("UCG"), consisting of all relevant federal, state, local officials and agencies as well as the potentially responsible parties ("PRP"), have been meeting about the Site to provide ongoing updates on the investigation and communicate regarding next steps and/or solutions. As a result of the discussions at these meetings plus input from the four public meetings, the UCG determined that the installation of a public water line to properties in the Affected Area was the best permanent solution to the groundwater problem.

AA. In May 2006, the Department initiated the engineering and design of a water line to serve the Affected Area. On February 20, 2007, the First Amendment to the Consent Order and Agreement was entered into between the Department and Sandvik. Sandvik agreed to take over and complete the water line engineering and design project.

BB. On November 30, 2007, Sandvik submitted a final design and specifications for the public water line to the Department in compliance with the First Amendment to the Consent Order and Agreement entered into between the Department and Sandvik dated February 20, 2007.

Department's Response Actions

CC. The Department has taken the following actions at the Site, which include but are not limited to: groundwater, soil, soil gas and surface water sampling and analysis; a vapor intrusion study; ecological screening; perimeter sampling; initiating the water line engineering and design, and overseeing characterization activities.

DD. The Department has incurred the following costs at the Site, which constitute the response costs as of June 30, 2010: \$ 1,746,814.54.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Settlers as follows:

1. Authority. This CO&A is an Order of the Department authorized and issued pursuant to Sections 301, 505(c), 1101, 1102 and 1108 of HSCA, 35 P.S. §§ 6020.301, 6020.505(c), 6020.1101, 6020.1102 and 6020.1108; Sections 5, 601, 610 and 611 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.601, 691.610 and 691.611; Sections 401, 601, 602 and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.401, 6018.601, 6018.602 and 6018.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings Not Challenged.

a. Settlers agree that only the findings in Paragraphs A through P and S through DD are true and correct and, in any matter or proceeding involving the Settlers and the Department, the Settlers 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 CO&A, and they shall not be admissible in any matter or proceeding except a matter or proceeding by the Department to enforce this CO&A.

3. Remedial Action.

Compliance with Prior Agreements

a. Nothing herein shall relieve Bostik of its obligations to comply with the April 23, 2008 CO&A and any amendments thereto.

b. Nothing herein shall relieve Sandvik of its obligations to comply with the December 29, 2005 CO&A and any amendments thereto.

New Water Source

c. Within 60 days of the Effective date of this CO&A, Settlers shall submit to the Department a work plan for the installation of a new water source at and around the Site ("Water Supply Plan") that will meet the design and specifications agreed to by the Settlers and the Pennsylvania American Water Company ("PAWC"). Such design and specifications shall hereafter be referred to as the "performance standards." The Water Supply Plan shall provide for a public water source and distribution system and connection of private well users within the Affected Area in accordance with the performance standards as well as any federal, state and local legal requirements.

d. Settlers shall contact in writing, either directly or through the owner's counsel, the current owner of each property currently being served by a private well that is located within the Affected Area. Settlers shall request that each such property owner enter into an agreement permitting Settlers and their contractors and consultants to enter onto the property for the purpose of 1) abandoning, decommissioning and/or disconnecting the existing groundwater production well on the property; 2) installing meters and piping from the property to the existing water distribution main located in the street adjacent to each of the properties and connecting the piping from the property to the water distribution main pipe; and 3) connecting the meter to the water distribution system. Settlers shall assist the property owner in applying to PAWC for the provision of potable water. Settlers shall obtain from each property owner who agrees to be connected to the new water source an executed environmental covenant and access agreement in the form approved by the Department, and, as necessary, an easement or right-of-way to install the water main on their property, as well as an application for water service as required by the PAWC.

e. For all property owners within the Affected Area who enter into an agreement with Settlers and complete the documents referred to in paragraph (d), the Settlers shall perform those activities described in paragraph (d), above. Nothing herein, however, shall limit Settlers from requesting and DEP approving a decision not to extend the public water line to one or more properties with private wells within the Affected Area after DEP considers the levels of detected constituents, if any, in such wells, the distance of the extension, and any other factors relevant to DEP.

f. Settlers shall determine who is connected to public water in the Affected Area and still using a well and attempt to gain access to properly decommission the well.

g. Settlers shall provide appropriate erosion and sediment controls during soil disturbance activities and until vegetation cover or pavement is established.

h. Settlers shall restore excavated areas to as close to its pre-excavation condition as possible by performing site restoration and revegetation. Paving restoration will be performed in accordance with Pennsylvania Department of Transportation and local specifications.

Non-Participation

i. Settlers shall in good faith put forth their reasonable commercial efforts to enter into an agreement with every property owner within the Affected Area. Should Settlers be unsuccessful in reaching an agreement with all the property owners, Settlers shall provide to the Department a map(s) and list(s) of the property owners who refused to be connected to the new water source or, following reasonable commercial efforts, did not respond to Settlers' offer to be connected. The list shall include, but not be limited to, comprehensive property ownership, location and contact information; a description of Settlers efforts to obtain an agreement, and the reason(s) provided to Settlers why the property owner refused.

j. The Department shall notify Settlers when the Department has reasonably determined, that despite Settlers's reasonable commercial efforts, access to a particular property will not be obtained. Upon that notification, Settlers shall have no obligation hereunder to provide public water to any property where the owner of such property has not executed an agreement.

Deed Notices

k. In addition to the requirements in Paragraphs d, e, and f, Settlers shall require, as part of the connection to the new water source, the recording of the environmental covenant with the Recorder of Deeds of Lackawanna County referred to in Paragraph d. on each property within the Affected Area, developed or undeveloped, that is connected to the new water source.

Cessation of Monitoring and Maintenance

l. Settlers shall be under no further obligation under this CO&A or the April 23, 2008 Bostik CO&A, or otherwise to monitor and maintain a water treatment system, monitor the quality of the water in a private well, or provide bottled water: (1) at any property that has been connected to the new water source pursuant to an agreement between the property owner and Settlers; (2) at any property where the then-current owner has not agreed with Settlers to be connected to the new water source, but at which the new water source has been installed along a boundary of the property and is available for connection, and (3) with respect to those who do not respond to the offer to connect, in which case Settlers shall provide notice to those persons informing them that Settlers will cease monitoring and maintaining their system after 90 days from such notice.

4. Reporting Requirements.

a. Settlers shall submit to the Department an original and two (2) copies of written bi-monthly progress reports that: (1) describe the actions which have been undertaken toward achieving compliance with this CO&A during the previous two months; (2) include a summary of all results of sampling and tests and all other data, (excluding any results required by the December 29, 2005 CO&A and its February 20, 2007 amendment and the April 23, 2008 CO&A, and any amendments thereto), received or generated by Settlers or their contractors or agents in the previous two months; (3) identify all submittals required by this CO&A which were

completed during the previous two months; (4) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next ten (10) weeks, and provide other information relating to the progress of design and construction, including, but not limited to, critical path diagrams and Gantt charts; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the work required under this CO&A, and a description of efforts made to mitigate those delays or anticipated delays; and (6) include any modifications to the work plans or other schedules that Settlers propose to the Department. Settlers shall submit the progress reports to the Department by the twentieth day after every two months following the effective date of this CO&A, until the Department has determined, pursuant to Paragraphs 3 and 8, that the remedial action is complete.

b. Settlers shall notify the Department of any change in the schedule described in the latest bi-monthly progress report for the performance of any activity, as soon as possible, but no later than seven (7) days prior to the scheduled date of performance of the activity, unless unforeseen events do not allow for seven days of notice, in which case, Settlers shall give notice within 48 hours of such event, excluding weekends and holidays.

c. Any modifications of approved work plans or schedules proposed by Settlers pursuant to Paragraph 4a and 4b hereof, shall be subject to Department review and approval pursuant to Paragraph 5, hereof.

d. Progress reports required by the December 29, 2005 CO&A and its February 20, 2007 amendment and the April 23, 2008 CO&A, shall hereafter also be submitted on a bi-monthly basis notwithstanding any other frequency identified in such CO&As.

5. Submittal Approvals.

a. After review of any submittal which is required to be approved by the Department pursuant to this CO&A, the Department shall, in writing, (1) approve the submittal in whole or in part; (2) approve the submittal upon specified conditions; (3) disapprove the submittal in whole or in part, and modify the submittal to correct deficiencies; (4) disapprove the submittal in whole or in part, and direct Settlers to modify the submittal; or (5) any combination of the above. The Department reserves the right to take over the response action if Settlers fail to resubmit an acceptable submittal.

b. In the event of submittal approval by the Department pursuant to the preceding paragraph, Settlers shall undertake the action required by the submittal, as approved by the Department.

c. If the Department conditionally approves or modifies the submittal pursuant to Paragraph 5a, Settlers shall undertake the action as conditioned or modified by the Department. Settlers shall proceed, at the direction of the Department, to undertake any activity required by any approved portion of a submittal.

d. If the Department disapproves an initial or subsequent submittal and requires resubmissions, Settlers shall within fourteen (14) calendar days either correct the deficiencies and resubmit the plan, report, or other item for approval. Settlers shall proceed, at the direction of the Department, to undertake any activity required by any approved portion of a submittal, notwithstanding the receipt of a notice of disapproval of other portions pursuant to this paragraph.

6. Assurance of Performance. Settlers shall submit to the Department financial security that assures the installation of the public water line and connection of the property owners as provided in Paragraph 3 in one of the following forms:

a. A surety bond that is issued in accordance with the terms and conditions established in 25 Pa. Code § 264a.155. Procedures established in 25 Pa. Code § 264a.158 shall govern the replacement of the surety bond, including replacement in the case of bankruptcy; or

b. A collateral bond, in one or more irrevocable letters of credit issued in accordance with the terms and conditions established in 25 Pa. Code §§ 264a.156 and 264a.157. Procedures established in 25 Pa. Code § 264a.158 shall govern replacement of bonds, including replacement in the case of bankruptcy; or

c. A trust fund or escrow fund executed by Settlers for the purpose of establishing monies for payments of persons necessary to complete performance of the work in a timely manner and fulfill other obligations as required under this CO&A. The trust fund shall be established so the Department will collect all monies in the event that a default of this CO&A occurs as determined pursuant to Paragraph 3, below. The trustee shall be an entity with authority to act as a trustee and whose operations are regulated and examined by federal or state agencies; or

d. By demonstrating that the Settlor meets the financial test and/or parent guarantee requirements in accordance with the terms and conditions established in 40 CFR § 264.143(f).

e. The financial assurance shall initially cover 100% of the estimated cost of one or more third-parties installing the water line and connecting the property owners. Such assurance shall be demonstrated within 60 days of a firm contract(s) for such work. As funds are expended for such work, the financial assurance may be lowered in a proportional amount. Settlers together are obligated to maintain the financial assurance, however, the Settlers may agree between themselves what portion of the total required amount each will demonstrate, notify the Department of such agreement, and each Settlor may demonstrate such portion in whatever form (6.a. – 6.d.) it chooses. Settlers shall keep in effect financial security until the Department certifies that the remedial response action has been completed as provided in Paragraphs 3. The Department and Settlers acknowledge that although the referenced regulations in paragraphs 6.a. – 6.d. relate to closure costs, to the extent applicable, such referenced regulations shall be followed, or as necessary, modified to cover the water line costs under this CO&A.

f. In the event that the Department determines that either Settlor has failed to fulfill its obligations as required under this CO&A, the Department may declare a default of this

CO&A and proceed to forfeit or to draw down in whole or in part the Settlor's surety bond, letter of credit, or trust fund, according to the terms specified therein and any applicable statutes. However, before such collection can be made, the Department shall notify Settlers in writing of the obligation which it has failed to perform, and shall provide the Settlor a reasonable time, not to exceed thirty (30) days, to fulfill or bring current with the approved schedule such obligation.

7. Certificate of Completion.

a. Notwithstanding the requirements of any other prior agreement, when Settlers conclude that the remedial actions, as described in Paragraph 3.c. through 3.k., have been fully performed, Settlers shall, within thirty (30) days thereof submit a written report to the Department which requests a certification of completion of the remedial action. The report shall be signed by an authorized officer, director of environmental affairs, or the facility manager of each Settlor and shall demonstrate that the remedial action has been completed in full satisfaction of this CO&A. The written report shall specifically address all requirements of Paragraph 3.c. through 3.k., explain how the Project meets the performance standards, and include a complete set of as built drawings depicting the location of all installed piping, lateral hookups, etc.

b. If, after review of the written report submitted by Settlers pursuant to the preceding Paragraph 7.a., the Department determines that the remedial action has not been completed in accordance with this CO&A, or that the performance standards have not been attained, the Department will notify Settlers in writing of the activities that must be undertaken to complete the remedial action and achieve the performance standards and will include in that notice a schedule for performance of those activities, or require Settlers to submit a schedule to the Department for review and approval. Settlers shall perform all of the activities described in the Department's notice.

c. If, after review of the written report submitted by Settlers pursuant to Paragraph 7.a., the Department determines that the remedial action has been fully performed in accordance with this CO&A, and that the performance standards have been attained, the Department will provide to Settlers a written certification of remedial action completion, for the purposes of this CO&A.

8. Payment by Settlers.

a. Within thirty (30) days of the date of this CO&A, Sandvik and Bostik each shall pay to the Department \$ 873,407.27 for costs incurred as of June 30, 2010 by the Department to perform the site investigation/response activities identified in Paragraph DD of the Findings above. Payment shall be made by corporate check or the like, payable to the "Commonwealth of Pennsylvania", and shall be sent to:

Environmental Cleanup Program Manager
PA Department of Environmental Protection
2 Public Square
Wilkes-Barre, PA 18701-1915

b. Settlers shall reimburse the Department for future oversight costs, as specified in the following paragraph, incurred in connection with the remedial response actions and operation and maintenance undertaken by Settlers under the December 29, 2005 CO&A and February 20, 2007 amendment, the April 23, 2008 CO&A and any amendments thereto and this CO&A. The Department shall submit statements to Settlers of its oversight costs for each fiscal year (July 1 through June 30) with the first statement to be submitted on or about August 1, 2011. The annual statement will be accompanied by the Department's standard documentation of such costs. Unless contested by Settlers, Settlers shall submit payment of the amount specified within sixty (60) days of receipt of the annual statement by corporate check, payable to the "Commonwealth of Pennsylvania", and shall be sent to:

Environmental Cleanup Program Manager
PA Department of Environmental Protection
2 Public Square
Wilkes-Barre, PA 18701-1915

c. For the purposes of this CO&A, future oversight costs referenced in the preceding paragraph shall be defined as follows:

- (1) The necessary and reasonable costs for analyses of samples which have been taken to monitor the performance and determine the compliance of the remedial response actions implemented by Settlers under this CO&A, either by the Department's own laboratory or by a contract laboratory.
- (2) The necessary and reasonable costs for a contractor or consultant hired by the Department to provide technical oversight relating to all activities associated with the December 29, 2005 CO&A and its February 20, 2007 amendment and the April 23, 2008 CO&A and any amendments thereto. Such costs shall specifically exclude contractor or consultant costs incurred pursuant to review of the installation of the waterline under this CO&A. All future oversight costs for the December 29, 2005 CO&A and its February 20, 2007 amendment and any amendments thereto shall be invoiced solely to the Sandvik Facility, and the Sandvik Facility shall be solely responsible for their payment. All future oversight costs for the April 23, 2008 CO&A and any amendments thereto shall be invoiced solely to Bostik, and Bostik shall be solely responsible for their payment. If the oversight costs are not divisible, they shall be invoiced to both the Sandvik Facility and Bostik, and they will be jointly and severally responsible for their payment.
- (3) The necessary and reasonable costs for the Department's personnel to implement and oversee Settlers implementation of the terms of this CO&A. The costs will include base salaries and fringe benefits for personnel as calculated by the Commonwealth's cost accounting system.
- (4) The Department's necessary and reasonable travel costs to oversee Settlers performance of activities under this CO&A.

(5) The Department's overhead costs, including supplies, contractual services and operational expenses charged for this Site according to the Commonwealth's cost accounting system.

(6) The necessary and reasonable costs of fixed assets specifically purchased for and used solely in connection with the Department's oversight of Settlor's implementation of the terms of this CO&A.

d. Settlor's may contest the Department's annual statement pursuant to Paragraph 8.b. if Settlor's determine that the Department has made an accounting error; if Settlor's allege that a cost item represents a cost that is not within the scope of Paragraphs 8.c.; or if Settlor's determine that the Department's documentation within the annual statement is insufficient to allow Settlor's to assess the nature and purpose of the expenditures.

e. Nothing in Paragraph 8 shall in any way affect any liability of Settlor's with respect to response costs incurred by the Department for future releases from the Site not identified and addressed by the remedy for this Site in the Department's files. In addition, nothing in Paragraph 9 shall affect Settlor's liability for costs incurred by the Department due to Settlor's non-compliance with this CO&A.

f. Notice of contesting payments shall be filed with the Department pursuant to Paragraph 21 of this CO&A. Within forty-five (45) days of the resolution of the dispute, Settlor's shall pay any sums to be due, with accrued interest of 6% annually calculated from the original date payment was due.

9. Failure To Make Payment. If Settlor's do not make the payment according to Paragraph 8, interest shall be paid by Settlor's to the Department on the unpaid balance calculated according to Section 702(b) of HSCA, 35 P.S. § 6020.702(b).

10. Stipulated Civil Penalties.

a. In the event Settlor's fails to comply in a timely manner with any term or provision of this CO&A, Settlor's shall be in violation of this CO&A and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$1,000.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania", and sent to the Environmental Cleanup Program Manager, PA Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915.

c. Any payment under this paragraph shall neither waive Settlor's duty to meet its obligations under this CO&A, nor preclude the Department from commencing an action to compel Settlor's compliance with the terms and conditions of this CO&A. The payment resolves

only Settlers liability for civil penalties arising from the violations of this CO&A for which the payment is made.

d. Except for violations of Paragraphs 3, 4, 5.c., 7.b. and 8.b., stipulated civil penalties shall be due automatically and without notice. No stipulated civil penalty will be owed for a violation that is corrected within fifteen (15) days.

11. Department's Covenant Not To Sue. Subject to the reservations of rights provided in Paragraphs 12, and Settlers full compliance with this CO&A, the Department covenants not to sue or to take administrative action against Settlers, PEXCO or Penn Power Company pursuant to HSCA, 35 P.S. §§ 6020.101 *et seq.*, CERCLA, 42 U.S.C.A. §§ 9601-9675, or any other environmental state or federal statutory or common law, for response costs, or response actions, and for injunctive relief arising from remediation of the release or threatened release of hazardous substances and contaminants at the Site, as identified in the Department's files. Except with respect to future liability, these covenants not to sue shall become effective upon execution of this CO&A by all parties, notification from the Department in accordance with Paragraph 25 below and receipt of the payments required in Paragraph 8. With respect to future liability, these covenants not to sue shall become effective upon the Department's determination that the requirements of the CO&A have been completed.

12. Reservation of Rights.

a. Notwithstanding any other provision of this CO&A, the covenants not to sue in Paragraph 11, above shall be voidable by the Department, and the Department reserves the right to sue Settlers for additional response costs relating to the Site, or to issue an administrative order requiring Settlers to perform additional work relating to the Site, if Settlers, its officers, directors, employees, contractors, or agents, falsify information, reports, or data, or make false representations or statements in a record, report or document submitted under this CO&A and such actions resulted in avoiding the need for further clean-up at the Site.

b. The Department's covenants not to sue set forth in Paragraph 11, above also shall not apply to the following claims by the Department against Settlers for:

- i. failure to meet the requirements of this CO&A;
- ii. past, present or future releases or threatened releases of hazardous substances outside the boundaries of the Affected Area;
- iii. past, present or future violations of state or federal criminal law; and
- iv. damages for injury to, destruction of, or loss of "natural resources" as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103.

c. Settlers reserve all rights, claims and defenses not specifically waived in this CO&A.

13. Contribution Protection. Subject to the Department's Reservation of Rights in Paragraph 12, Settlor are persons that have resolved their liability to the Department for the Site and are eligible for protection from claims for contribution regarding matters addressed in this voluntary settlement, 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). This contribution protection is intended to be as broad as permissible under CERCLA and HSCA, and the "matters addressed" in this settlement encompass all of the response actions and responses costs of this CO&A. This contribution protection shall take effect upon execution of this CO&A by the Parties, extends only to Settlor, and shall continue for each Settlor unless the Department determines that a particular Settlor has not completed its work under this CO&A. Nothing herein shall prevent a Settlor from waiving in favor of the other Settlor its contribution protection hereunder.

14. Waiver of Other Claims by Settlor.

a. Settlor shall not assert any claims or defenses that they may have against the Commonwealth government regarding the application of Sections 708, 709 and 1301 of HSCA, 35 P.S. §§ 6020.708, 6020.709 and 6020.1301, for matters arising from the release and threatened release of hazardous substances at the Site, arising out of the response actions at the Site, or arising out of this CO&A.

b. Settlor shall not assert any claims for reimbursement, contribution, and/or indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from the release and threatened release of hazardous substances at the Site, arising out of the Response actions at the Site, or arising out of this CO&A.

15. Acknowledgment of No Obligation. Settlor acknowledges that the Department has no obligation to defend it in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of hazardous substances at the Site, arising out of the response actions at the Site, or arising out of this CO&A.

16. Liability of Operator. Settlor shall inform all persons necessary for the implementation of this CO&A of the terms and conditions of this CO&A. Settlor shall be jointly and severally liable for any violation of this CO&A, including those caused by, contributed to, or allowed by the directors, officers, agents, managers, servants, and privies of the Settlor and any persons, contractors, and consultants acting under or for Settlor. Except as provided in Paragraph 21, Settlor remain liable for any violation of this CO&A caused by, contributed to, or allowed by their successors and assigns. Notwithstanding, if one Settlor has complied with its obligations hereunder and the other Settlor has not, the Department will not pursue the complying Settlor or impose stipulated penalties on such Settlor until it has exhausted its remedies to compel compliance by the non-compliant Settlor.

17. Existing Obligations Unaffected. Nothing set forth in this CO&A is intended, nor shall be construed, to relieve or limit Settlor obligation to comply with any existing or subsequent statute, regulation, permit, or order. In addition, nothing set forth in this CO&A is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

18. Retention of Records. For three (3) years after termination of this CO&A, Settlers shall retain all records and documents, including all cost documentation, in their possession or in the possession of their divisions, employees, agents, contractors, accountants, and attorneys, which in any way relate to the work performed at the Site pursuant to this CO&A, despite any document retention policy to the contrary. At the end of this three year period, Settlers or the agent(s) of Settlers having custody of such documents, shall notify the Department at least sixty (60) days prior to the destruction of any such documents. Upon request by the Department, Settlers shall make available to the Department such records or copies of such records.

19. Additional Remedies.

a. In the event Settlers fails to comply with any provision of this CO&A, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this CO&A.

b. The remedies provided by this Paragraph and Paragraph 10 are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

c. The Department will not pursue any remedy for a violation of Paragraphs 3 and 4 if the violation is corrected within fifteen (15) days of notice from the Department.

20. Transfer of Facilities.

a. The duties and obligations under this CO&A shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Settlers Facilities or any part thereof.

b. If a Settlor intends to transfer any legal or equitable interest in the Settlor's Facility which is affected by this CO&A, such Settlor shall serve a copy of this CO&A upon the prospective transferee of the legal and equitable interest, and, at least thirty (30) days prior to the contemplated transfer, or as soon before the transfer as practical, inform the Northeast Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate the Settlor's duties and obligations under this CO&A upon transfer of the Settlor's Facility. Settlers waive any right that they may have to challenge the Department's decision in this regard.

21. Correspondence with Department. All correspondence with the Department concerning this CO&A shall be addressed to:

Environmental Cleanup Program Manager
PA Department of Environmental Protection
2 Public Square
Wilkes-Barre, PA 18701-1915
Phone: 570-826-2511
Fax: 570-820-4907

22. Correspondence with Settlers. All correspondence with Settlers concerning this CO&A shall be addressed to:

Kenneth M. Kastner, Esquire
Counsel for Bostik, Inc.
c/o Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Phone: 202-637-5653
Fax: 202-637-5910
E-mail: kmkastner@hhlaw.com

AND

John J. McAleese, III, Esquire
Counsel for Sandvik, Inc.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Phone: (215) 963-5094
Fax: (215) 963-5001
E-mail: jmcaleese@morganlewis.com

Settlers shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this CO&A, including its enforcement, may be made by mailing a copy by first class mail to the above address.

23. Severability. The paragraphs of this CO&A shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

24. Opportunity for Public Comment.

a. Pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, the Department shall publish a notice containing a summary of the terms of this CO&A in the *Pennsylvania Bulletin* and in a newspaper of general circulation in the area of the Site, and the Department shall receive and consider comments relating to this CO&A for a period of sixty (60) days from publication of this notice. This notice shall also be sent to the persons named in Paragraph 22, above. The Department

reserves the right to withdraw its consent to this CO&A, if the comments disclose facts or considerations which indicate that this CO&A is inappropriate, improper, or not in the public interest.

b. This CO&A shall be final upon the date the Department files a response to any significant comments received during the public comment period, as described in Paragraph 24(a), above or notifies Settlers that no comments were received. If the Department notifies Settlers that it is withdrawing its consent to this CO&A in response to public comment received pursuant to Paragraph 24(a), above, the terms of the CO&A shall be void and of no effect and shall not be used as evidence in any litigation or other proceeding.

25. Effective Date. This CO&A shall become effective upon notification from the Department that the public comment period has expired and no significant comments were received.

26. Entire Agreement. This CO&A shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

27. Attorney's Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this CO&A.

28. Modifications. No changes, additions, modifications, or amendments of this CO&A shall be effective unless they are set out in writing and signed by the parties hereto.

29. Titles. A title used at the beginning of any paragraph of this CO&A may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

30. Hazardous Sites Cleanup Act. Settlers agree that failure to comply with the provisions of Paragraph 3 of this CO&A constitutes a failure to comply with an "enforcement action" as provided in Section 1301 of the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, 35 P.S. § 6020.1301.

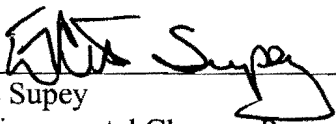
31. Decisions Under Consent Order and Agreement. Except for decisions under Paragraphs 5.c. and 7.b., any decision which the Department makes under the provisions of this CO&A, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101, and any objection which Settlers may have to the decision will be preserved until the Department enforces this CO&A.

32. Termination. Except for Paragraph 8.b., Settlers' obligations under this CO&A shall terminate upon written certification of remedial action completion under Paragraph 7.c. Settlers' obligation under Paragraph 8.b. to reimburse the Department for future oversight costs shall terminate upon payment of the Department's final statement for such costs.

33. Execution of Agreement: This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

IN WITNESS WHEREOF, the Parties hereto have caused this CO&A to be executed by their duly authorized representatives. The undersigned representatives of Settlers certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CO&A on behalf of Settlers; that Settlers consents to the entry of this CO&A and the foregoing Findings as a final ORDER of the Department; and that Settlers hereby knowingly waives its right to appeal this CO&A and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; Sections 508 and 1102 of HSCA, 35 P.S. §§ 6020.508 and 1102; or any other provisions of law. Signature by Settlers' attorneys certifies only that the agreement has been signed after consulting with counsel.

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Eric Supey
Environmental Cleanup Program Manager



Michael Ferrence
Assistant Counsel

FOR THE SETTLORS:

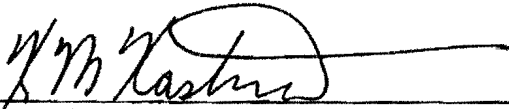
Attached Signature Pages Nos. 1 and 2.

**SIGNATURE PAGE NUMBER 1
CONSENT ORDER AND AGREEMENT
IVY INDUSTRIAL PARK SITE**

On behalf of Bostik, Inc., a Delaware Corporation registered to do business in the Commonwealth of Pennsylvania with a registered business address of 11320 Watertown Plank Road, Wauwatosa, WI 53226-3434:



Name *Kenneth C. Rader Jr.*
Title *VP & CFO*



Kenneth M. Kastner, Esq.
Attorney for Bostik, Inc.

**SIGNATURE PAGE NUMBER 2
CONSENT ORDER AND AGREEMENT
IVY INDUSTRIAL PARK SITE**

On behalf of Sandvik, Inc., a Delaware Corporation registered to do business in the Commonwealth of Pennsylvania with a registered business address in care of CT Corporation System, 1635 Market Street, Philadelphia, PA 19103:



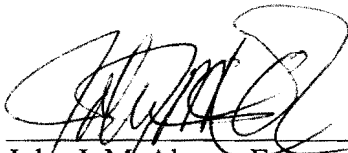
Name: Peter L. Frosini
Title: Vice President

John J. McAleese, Esq.
Attorney for Sandvik, Inc.

**SIGNATURE PAGE NUMBER 2
CONSENT ORDER AND AGREEMENT
IVY INDUSTRIAL PARK SITE**

On behalf of Sandvik, Inc., a Delaware Corporation registered to do business in the Commonwealth of Pennsylvania with a registered business address in care of CT Corporation System, 1635 Market Street, Philadelphia, PA 19103:

Name
Title



John J. McAleese, Esq.
Attorney for Sandvik, Inc.