

PA. DEPARTMENT OF ENVIRONMENTAL PROTECTION MODEL BUYER-SELLER AGREEMENT

INTRODUCTION

Nature of Document

The following Model Buyer/Seller Agreement does not affect or replace requirements of the laws and regulations administered by the Department. This document is not an adjudication, regulation, or policy, and the Department may make modifications to this document as circumstances warrant. This model agreement outlines the issues that commonly arise in these situations; revisions or additions may be made for agreements for specific sites.

General

This Model Buyer/Seller Agreement for the Land Recycling Program updates the November 2002 model agreement. The Department's September 2000 Uniform Consent Order and Agreement has been followed when possible, but complete identity of the two agreements is not appropriate, since Buyer/Seller Agreements typically are not part of enforcement actions like most of the other Consent Orders and Agreements to which the Department is a party.

Checklist of Essential Circumstances

A Buyer/Seller Agreement should only be used in certain circumstances; it is not to be considered a generally available alternative to the Act 2 process. The following components will be considered when determining whether a Buyer/Seller Agreement is appropriate.

1. There is a contaminated property which is eligible for Act 2 remediation.
2. The Owner/Seller/Buyer/Other Party must be willing to remediate the property to an Act 2 standard and comply with the Act 2 submittal, notice and other requirements.
3. There is a Buyer that did not cause or contribute to the contamination, is serious about buying the property and thinks (usually for financial reasons) that it must complete the purchase before attainment of an Act 2 standard. However, the Buyer (or its bank) is unwilling to incur the potential liability of owning a contaminated property. As a result, the parties would like the Buyer to be covered by a covenant not to sue from the Department, until the Seller/Remediator has obtained full Act 2 protection and passed it on to the Buyer.

4. The Remediator must have the financial resources to complete the remediation.
5. Before the Agreement is signed, a Phase II environmental assessment of the property should be completed and a remedial plan prepared and submitted to the Department. The ECP staff should be given time to review the environmental assessment and remedial plan and conclude that implementation of the plan will likely result in attaining the proposed Act 2 standard at the site.
6. If the proposed cleanup will be to a Site-Specific Standard and depends in part on engineering controls (such as capping of remaining contamination) or non-use of groundwater, the Buyer must be willing to maintain those controls or do further remediation as necessary if the controls are disturbed.
7. The Seller understands and accepts the fact that the agreement will not provide the Seller with relief from liability until the agreed cleanup is completed and approved by the Department.

Comments and Instructions for Individual Paragraphs

The Section "Contamination of the Property" (Paragraphs G-K) should indicate clearly which environmental media (i.e. groundwater and/or soil) are contaminated and will be addressed.

Paragraph G: Optimally, all reports listed in this Paragraph should be provided to the Department before the parties begin negotiating the agreement. Otherwise, finalization of the agreement may be impeded because the Department will review all listed reports before signing any agreement.

Paragraph H, first sentence: The Reports are incorporated by reference but not attached, since they are often quite voluminous and hard for the lay reader to understand.

Paragraph J: Tables should be attached listing all the identified contamination so that future readers of the Agreement will not have to obtain and read lengthy environmental assessment reports in order to determine what was remediated and what remains on the site. At least a simple but accurate map should be included to aid in locating the contamination described in the Tables.

Paragraph N, last sentence: This is an important inclusion, since the uninitiated future reader or potential property owner may be completely unaware of the crucial assumptions on which the remediation standard was based.

Paragraphs 3 and 4, Seller's and Buyer's Obligations: Where the Buyer (or even some other party) conducts the remediation, these paragraphs and subparagraphs should be rearranged and rewritten as necessary to accurately describe which party is taking on which obligations.

Paragraph 3.a.: The Department will ask the Seller (or other remediator) to commit to a date for completion of the remediation and the administrative processes, but should be willing to be generous in the amount of time to which it will agree, unless the Buyer/Seller Agreement resolves an enforcement matter. In some, not all, circumstances, it will be appropriate to specify which Act 2 standard(s) will be attained. The date of attaining a standard in 3.a. and the Final Report submission date in 3.a.(3) are the same date since attainment is demonstrated in the Final Report.

Paragraph 3, various notification requirements: The Department's ECP program may ask for some or all of these paragraphs, so that they will be able to monitor the progress of the remediation.

Paragraph 3.e.: Recording the Agreement and Exhibits with the deed is very important no matter what standard is being achieved, since there is almost always some contamination remaining on site, and future potential buyers of the Property should have notice of it and of the fact that a remediation was done. In addition, in future years the copy of the Agreement that is attached to the deed may be the only copy that is relatively easy for interested parties to find, since copies in the Department's files may have been archived.

Paragraph 4.c.: This is included for the same reason as the requirement of recordation in 3.e. Successors need notice of any obligations they may have regarding the use of the Property.

Paragraph 4.e. and f.: The Department may request these paragraphs if it believes they are necessary in the particular case.

Paragraph 5, Covenant Not To Sue:

- Note that the Department provides a covenant not to sue only to the Buyer and to no other entity.
- Occasionally it is the Buyer that intends to perform the remediation of a site. In such cases the Department and the Buyer may enter into a modified version of this Agreement, to which the Seller is not a party or in which the Seller has only very limited obligations.
- The Department recognizes that most of the Sellers/remediators signing these agreements have sufficient financial resources to assure the Department that they will complete the remediation to which they have committed. However, in some cases the Department may ask for assurance or proof that the Seller/remediator will be able to complete the remediation, in the form of tax or other financial records. Alternatively, the Department may request the additional assurance of having the Covenant Not To Sue Buyer made contingent not just on the Buyer's complying with its obligations but also on the Seller's completing the remediation.

Optional Additional Covenant: In situations where the Department thinks it may itself conduct some additional remediation of the Property at any time in the future, the following additional covenant paragraph will be requested by the Department, and the first covenant should be called "Covenant Not To Sue Buyer":

Covenant Not To Sue the Department. Buyer hereby covenants not to sue or assert any claims, demands or causes of action in law or equity against the Commonwealth arising out of any release or threatened release of contamination, or arising out of response activities at the Property, or arising out of this Agreement. The Commonwealth expressly does not waive sovereign immunity with respect to any such claims.

Force Majeure: The Seller may request the inclusion of a Force Majeure paragraph. If it is included, optional Paragraph 12 of the Department's September 2000 Uniform Consent Order and Agreement should be used with appropriate modifications.

"Jurat" (last) Page: This should be included because the Agreement is being recorded with the deed to the Property because notarization is required by most, if not all, County recording offices. Each party needs to sign a Jurat Page.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

[Name of Seller] : Buyer-Seller Agreement
: re: [Site name and address]
:
[Name of Buyer] :

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Agreement”) is entered into this _____ day of _____, 200__, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), [Seller's name] (“Seller”) and [Buyer's name] (“Buyer”). *(Another option is to use the actual names of the parties rather than the generic “Seller” and “Buyer.” Using actual names is especially helpful with multiple Sellers or Buyers.)*

The Department has found and determined the following:

The Parties

A. The Department is the Commonwealth agency with the duty and authority to administer and implement the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, as amended, 35 P.S. §§ 6026.101 - 6026.908 (“Act 2”); and to administer and enforce the Hazardous Sites Cleanup Act, Act of October 18, 1988, as amended, 35 P.S. §§ 6020.101 - 6020.1305 (“HSCA”); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 - 9675 (“CERCLA”); the Solid Waste Management Act, Act of July 7, 1980, as amended, 35 P.S. §§ 6018.101 - 6018.1003 (“Solid Waste Management Act”); the Clean Streams Law, Act of June 22, 1937, as amended, 35 P.S. §§691.1 - 691.1001 (“Clean Streams Law”); the Storage Tank and Spill Prevention Act, Act of July 6, 1989, as amended, 35 P.S. §§6021.101 - 6021.2104 (“Storage Tank Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, as amended, 71 P.S. § 510-17 (“Administrative Code”); and the regulations promulgated thereunder.

B. [Identify seller (name, address, form of entity & type of business)], e.g., [name of seller] is a [name of state] corporation with a principal place of business located at [specific address and location]. Seller is in the business of [describe nature of business].

C. [Identify buyer (name, address, form of entity & type of business)], e.g., [Name of buyer] is a [name of state] corporation with a principal place of business located at [specific address and location]. Buyer is in the business of [describe nature of business].

The Property

D. The property, owned by the Seller, consists of a lot of _____ acres and all improvements thereon, located at [exact address], Tax Parcel Number _____ (the "Property"). [When relevant, also set forth a somewhat detailed description of what other properties are at the Property boundaries.]

OPTION: Under certain circumstances, off-property contamination will be addressed. The "Site" shall refer to the site, as defined in 25 Pa. Code §250.1.

(Following is another option for describing the Property, which is useful when the "Property" consists of many parcels of real estate)

D. The Property that is the subject of this Agreement consists of the following parcels that are more specifically described in the following documents in the _____ County Recorder of Deeds:

Tax Map Number	Transferred To Seller	Deed Book Page No.	Date

E. The Property was used for [describe all major previous uses and owners if possible, going back several decades, and including whatever activities may have caused the contamination].

F. The facilities, structures and other improvements currently located on the Property include the following: [describe].

Contamination of the Property

G. The location and horizontal and vertical extent of environmental contamination of the Property have been assessed in the following environmental investigation reports ("Reports"):

1. [Name and date of report, name and address of consultant that prepared it]

2. [Same as 1. for every report]

OPTION: Under unusual circumstances, the remediating parties have not fully characterized the Site contamination, and the following sentence can be used instead: “The location and horizontal and vertical extent of environmental contamination of the Property have not been fully assessed, but the steps required in order to do so will be specified in this Agreement.”

H. The Reports are incorporated herein by reference. They have been provided to the Department and are maintained as public documents by the Department in accordance with its standard document retention practices.

*(Following is a paragraph and chart to consider as an **OPTION** in place of Paragraphs G and H, above)*

The location and horizontal and vertical extent of the contamination at the Property [if applicable, add this phrase: and at other parcels of real estate adjacent to and/or near the Property] have been identified in the following environmental reports (collectively “the Reports”). The Reports have been reviewed by the Department, and are maintained as public documents by the Department in accordance with the Department’s standard document retention practices.

NAME OF REPORT	DATE	AUTHOR

I. The Reports contain the analytical results of soil samplings and groundwater investigation, including the installation, sampling and analysis for [name groups of compounds, e.g. metals, VOCs, PAHs, BTEX, etc.] in [number] on-site monitoring wells, the determination of the direction of groundwater flow and the sampling and analysis for [name groups of compounds] in the soil. [Summarize any other environmental investigation and assessment done. Also, if applicable, identify any monitoring wells located off the property, and identify contamination from any other contaminated area that is impacting the Property.]

J. The Reports describe all contamination currently known by the Parties to exist on the Property (“Identified Contamination”). The Identified Contamination is listed in the Tables attached hereto as Exhibit A [Tables, which may be extracted from an existing report or created for this purpose, should include the nature, levels and extent of the contamination, with its location described by reference to the Map], and the location of the Identified Contamination is

shown on a Map attached hereto as Exhibit B. Exhibits A and B are incorporated herein by reference.

K. [Describe any notable discrete areas or contaminants of concern including where they are/were by reference to the Map in Exhibit B, and what was found there at what concentrations.]

The Proposed Sale

L. Seller intends to sell the Property to Buyer, who intends to buy the Property and [describe generally as much as is known about what the Buyer is going to do with the Property, e.g. “operate offices, warehousing and light manufacturing”, “construct a truck depot and repair facility,” etc.]

M. Buyer represents to the Department that it did not cause or contribute to, and is not otherwise liable or responsible under any federal or state environmental law for the Identified Contamination of the Property. The Department is not aware of any information to the contrary that would indicate such liability or responsibility.

The Remediation Plan

N. [Indicate which party will be performing the remediation; whether and/or when a Notice of Intent to Remediate was submitted; whether and/or when a remediation plan has been or will be submitted and approved; the applicable cleanup standard(s); and whether or not the plan is based on residential or nonresidential end use. NOTE: This information may be stated in one or more lettered paragraphs.

E.g., the following language provides some of the options: Seller (or Buyer) intends to remediate the Identified Contamination. (Seller) (Buyer) submitted a Notice of Intent to Remediate under Act 2 to the Department on (date). The proposed Remediation Plan (“Plan”) is contained in the [give name of document submitted and name of consultant] submitted to the Department on (date). (The Department approved the Plan on (date).) (The Buyer and Seller anticipate that the Department will approve the Plan, with possible modifications, by (date).) The Plan proposes remediation of the Property to meet a (Site-Specific) (Statewide Health) (Background) Standard based on (nonresidential) (residential) use of the Property, as those terms are used in Act 2. The Plan is attached hereto as Exhibit C and is incorporated herein by reference. The Plan may be changed in the future, with the approval of the Department. Because the remedial standard is based on nonresidential use of the Property, any other use, or any change in the exposure patterns on which the Plan is based, may require additional remediation of contamination remaining on the Property.]

[O., etc. Add any other paragraphs as needed for other material facts applicable to the characterization, assessment, cleanup and transfer of the Property.]

Posted October 2006

After full and complete negotiation of all matters set forth in this Agreement, and upon mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED TO by Seller and Buyer as follows:

1. Authority. This Agreement is an Order of the Department authorized and issued pursuant to the environmental laws of the Commonwealth listed in Paragraph A, particularly Sections 5, 316, 402 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402 and 691.610; [Sections 4 and 602 of the Solid Waste Act, 35 P.S. §§ 6018.4 and 6018.602; Sections 107 and 1309 of the Storage Tank Act, 35 P.S. §§ 6021.107 and 6021.1309;] and 71 P.S. § 510-17.

2. Findings.

a. Seller and Buyer agree that the findings in Paragraphs A through __ are true and correct and, in any matter or proceeding involving either or both of them and the Department, Seller and/or Buyer shall not challenge the accuracy or validity of these findings.

b. The Parties do not authorize any other person to use the findings in this Agreement in any matter or proceeding.

3. Seller's Obligations. Seller shall

a. Attain and demonstrate compliance with the (Site-Specific) (Statewide Health) (Background) Standard in accordance with the Department-approved Plan and Act 2, by (schedule or date)[a generous estimate of the likely date of completion of the remediation, unless the Agreement resolves an enforcement matter]; and

- (1) (Submit a Notice of Intent to Remediate (“NIR”) and send the municipal and public notices of the NIR pursuant to Act 2 no later than (date)).
- (2) [Here, insert any intermediate deadlines, such as dates for submission of remedial investigation report, risk assessment report and cleanup plan if desired when remediating to a Site-Specific Standard.]
- (3) Upon completion of remediation in accordance with the Plan and Act 2, submit the Final Report to the Department, and send the municipal and public notices of the final report, by (date – same as date in 3.a.).

OPTION: When the remediation is being performed using the Corrective Action Process regulations under the Storage Tank Act, pursuant to section 904(c) of Act 2, the subparagraphs in 3.a. should be for the major steps in those regulations, as appropriate.

b. Notify the Department by telephone and in writing at least _____ working days before beginning the remediation described in the Plan.

OPTION: c. Notify the Department by telephone and in writing at least _____ working days before taking any of the following major steps in the Plan: [Insert steps the Department would like to know about in advance, then renumber the following subparagraphs.]

d. [If the planned remediation is based upon non-residential exposure assumptions, e.g. the non-residential Statewide Health Standard] Include restrictions in its deed to Buyer (1) limiting the use of the Property to commercial or industrial activity, excluding schools, nursing homes and other residential-style facilities and recreational areas [the following only if appropriate:] and (2) requiring the maintenance of any engineering controls on the Property, as covenants running with the land.

e. Within __ days after the Effective Date, record this Agreement and its Exhibits with the deed to the Property, in the Recorder of Deeds Office for _____ County and index the Agreement with the deed, listing it under Seller as Grantor and Buyer as Grantee; and simultaneously notify the Department in writing that it has completed this obligation and inform the Department of the Deed Book and Page where the Property deed and Agreement have been filed.

4. Buyer's Obligations. Buyer, or any successor to the Buyer, shall

a. [If the planned remediation is based upon non-residential exposure assumptions, e.g. the non-residential Statewide Health Standard] Use the Property only for commercial or industrial activity, excluding schools, nursing homes and other residential-style facilities and recreational areas.

b. [If appropriate:] Maintain any engineering controls on the Property.

c. [If meeting a Site-Specific Standard, or a Background Standard] Avoid disturbing subsurface strata and soils, except as may be necessary to install adequate foundation bearing support features. If such disturbance is proposed as part of Buyer's development of the Property, Buyer shall, no less than __ days before beginning the disturbance, submit to the Department a Work Plan for management and disposal of disturbed subsurface strata and soils consistent with Pennsylvania environmental statutes and regulations. Thereafter, Buyer shall properly manage and dispose all subsurface strata and soils consistent with the Work Plan as

approved by the Department.

d. The agreements by Buyer in Paragraphs 4.a., 4.b. and 4.c. are covenants running with the land and Buyer shall include these covenants in all deeds, leases and other instruments of conveyance of the Property.

e. Promptly notify the Department if there is any proposal to change the exposure patterns on which the remediation standard was based, as summarized in Paragraph N above, and take steps to assure that an Act 2 standard continues to be met.

f. Notify the Department when the Property has been purchased by the Buyer and provide to the Department, within ten (10) days of the transfer of title, a copy of the instrument used to transfer title, containing the covenants described in Paragraphs 3.d, 4.a., 4.b. and 4.c.

OPTIONS g. and h. to be used if Department believes either or both are necessary:

g. Prepare, submit to the Department and implement a Health and Safety Plan for protecting construction workers and all persons employed and/or present at the Site from any contaminants that could be encountered in the course of on-site pre-construction and construction activities. [Specify here, if desired, the regulations to which the plan should conform.]

h. If Seller fails to complete the remediation by the date specified in Paragraph 3.a., Buyer, within ___ days after the date specified, shall submit to the Department a report evaluating the exposure risks created by the unfinished remediation and whether such risks are unacceptable to Buyer's employees and the public. If the Department determines that such risks are unacceptable, Buyer shall cease its activities at the Property until the exposure risks have been decreased to acceptable levels. However, nothing in this subparagraph shall prevent the Department from seeking to enforce the deadline for remediation specified in Paragraph 3.a. above.

5. [Use Option 1 or Option 2 as appropriate:]

OPTION 1: Covenant Not To Sue. Provided Buyer complies with the obligations in Paragraphs 4, 7, 8 and 9, and subject to the limitations set forth in Paragraphs 6 and 13, the Department hereby covenants not to sue or take administrative action against Buyer under the environmental laws of the Commonwealth listed in Paragraph A above because of Buyer's ownership interest in the Property, for remediation of the identified contamination. This covenant not to sue is null and void if the Department determines that the Buyer, its agents, employees or representatives caused or contributed to the identified contamination or submitted false information to the Department. When the Department approves the Final Report, the liability protection conferred on Seller by Section 501 of Act 2 shall pass automatically to Buyer pursuant to Section 501 (a)(3), and this Covenant Not to Sue shall become null and void.

OPTION 2: Covenant Not to Sue. Provided that Seller complies with its obligations set forth in Paragraphs 3, 7 and 8, and provided Buyer complies with the obligations in Paragraphs 4, 7, 8 and 9, and subject to the limitations set forth in Paragraphs 6 and 13, the Department hereby covenants not to sue or take administrative action against Buyer under the environmental laws of the Commonwealth listed in Paragraph A above because of Buyer's ownership interest in the Property, for remediation of the identified contamination. This covenant not to sue is null and void if the Department determines that the Buyer, its agents, employees or representatives caused or contributed to the identified contamination or submitted false information to the Department. When the Department approves the Final Report, the liability protection conferred on Seller by Section 501 of Act 2 shall pass automatically to Buyer pursuant to Section 501(a)(3), and this Covenant Not to Sue shall become null and void.

OPTION for use if desired: Stipulated Civil Penalties paragraph (optional paragraph 5) from the Department's September 2000 Uniform Consent Order and Agreement may be used, with subparagraph b. modified as needed.

6. **Reservation of Rights.** With respect to any contamination on the Property not part of the Identified Contamination, or any contamination caused or contributed to by Buyer after Buyer assumes ownership of the Property, the Department expressly reserves the right to require Buyer to remediate, to the extent required by law.

7. **Non-Interference.** Neither Seller nor Buyer shall interfere with the performance of the remedial obligations under this Agreement.

8. **Non-Exacerbation.** Neither Seller nor Buyer shall, by act or omission, exacerbate any contamination of the Property.

9. **Access.** Buyer shall allow Seller, the Department and their representatives reasonable access to the Property during and after implementation of the Plan for purposes of remediation and of monitoring the progress and results thereof, including any institutional and engineering controls. The Seller and the Department will use their best efforts to minimize interference with Buyer's use of the Property. However, nothing in this Agreement shall limit the Department's statutory rights regarding access to the Property for any purpose, including but not limited to remediation of any remaining contamination.

10. Transferability.

a. Before this Agreement terminates pursuant to Paragraph 24 below, this Agreement shall be transferable by Buyer to any subsequent owner of the Property ("Transferee") who did not cause or contribute to and is not otherwise liable for contamination of the Property, provided that the Transferee before or at the closing for the Property agrees in writing with the Department that the Transferee will be subject to the Buyer's Obligations in this Agreement. Buyer, or anyone who intends to transfer title to the Property, shall provide a copy of this Agreement to the Transferee at least (____ days before) (____ days after) the contemplated transfer and shall simultaneously inform the Department of such intent pursuant to Paragraph 16 below.

b. In the event of such transfer in accordance with the terms of this Agreement, the Transferee shall be entitled to the benefits of the covenant not to sue provided in Paragraph 5.

c. The Seller's (or other Remediator's) duties and obligations under the Agreement shall not be modified, diminished, terminated or otherwise altered by the Buyer's transfer of any legal or equitable interest in the Property, or any part thereof.

OPTION for use where hazardous substances and/or hazardous wastes remain on the property after remediation to a Site-Specific Standard:

11. Deed Acknowledgment. Seller or Buyer, as appropriate, shall include in any deed for the property an acknowledgment of hazardous substances and/or hazardous wastes on the property in accordance with Section 405 of the Solid Waste Management Act, 35 P.S. § 6018.405, and Section 512 of HSCA, 35 P.S. § 6020.512.

12. Effect of Agreement on Other Parties. Nothing in this Agreement is intended, nor shall be construed, to diminish or modify in any way the obligations with respect to the Property of any person or entity, other than the Parties to this Agreement, to the extent set forth in this Agreement.

13. Remedies.

a. In the event Seller or Buyer fails to comply with any provision of this Agreement, 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 Agreement.

b. The remedies provided by this paragraph 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.

OPTION for use where hazardous substances are present on the site before remediation:

14. Hazardous Sites Cleanup Act. Seller and Buyer agree that failure to comply with the provisions of Paragraph(s) 3 and 4 of this Agreement constitutes a failure to comply with an “enforcement action” as provided in Section 1301 of HSCA, 35 P.S. § 6020.1301.

15. Liability of Parties. The Seller and Buyer shall inform all persons necessary for the implementation of this Agreement of the terms and conditions of this Agreement. The Seller shall be liable for violations of Paragraphs 3, 7 and 8 [and 11, if used] above including those violations caused by, contributed to or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for the Seller. The Buyer shall be liable for violations of Paragraphs 4, 7, 8 and 9 [and 11, if used] above including those violations caused by, contributed to, or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for the Buyer.

16. Correspondence With Department. All correspondence with the Department concerning this Agreement shall be addressed to:

Environmental Cleanup Program Manager
Department of Environmental Protection
[Regional Office address]

17. Correspondence With Seller and Buyer. All correspondence with Seller concerning this Agreement shall be addressed to:

[Name or title, and address]

All correspondence with Buyer concerning this Agreement shall be addressed to:

[Name or title, and address]

Seller and Buyer 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 Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above addresses.

18. Provisions Not Severable. The provisions of this Agreement are not severable. If any provision or part hereof is declared invalid or unenforceable, or is set aside for any other reason, then the entire Agreement shall be void and of no force and effect between the Parties.

19. Entire Agreement. This Agreement 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.

20. Modifications. No changes, additions, modifications or amendments of this Agreement shall be effective unless they are set out in writing and signed by the Parties.

21. Attorney Fees. The Parties agree to 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 Agreement.

22. Execution of Agreement. This Agreement may be executed in counterparts.

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

24. Termination. This Agreement shall terminate 40 days from approval of the Final Report submitted pursuant to Paragraph 3.a.(3) above.

25. Effective Date. This Agreement shall be effective upon execution, except, however, this Agreement shall be null and void if the Buyer does not buy the Property within ____ days of execution of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of the Seller and the Buyer certify under penalty of law, as provided by 18 Pa. C.S. Section 4904, that they are authorized to execute this Consent Order and Agreement on behalf of the Seller and the Buyer, respectively; that the Seller and the Buyer consent to the entry of this Consent Order and Agreement as a final Order of the Department; and that the Seller and the Buyer hereby knowingly waive any rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the 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 thereof; or any other provision of law. (Optional: Signature by attorneys for Seller and Buyer certifies only that this Consent Order and Agreement has been signed after consulting with counsel.)

FOR THE SELLER:

Name:
Title:

Name:
Title:

FOR THE BUYER:

Name:
Title:

Name:
Title:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

(Name)
Environmental Program Manager
Environmental Cleanup Program

(Name)
(Regional Counsel)
(Assistant Counsel)

JURAT Page

COMMONWEALTH OF PENNSYLVANIA :
 :
COUNTY OF (_____) :

On this _____ day of _____, 200__, before me, a Notary Public, the undersigned officer personally appeared, (Name), who acknowledged (him)(her)self to be the (Title) of (Company Name), a (corporation)(partnership), and that (s)he as such (Title), being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing the name of the (corporation) (partnership) by (him)(her)self as (Title).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public