PROCEEDING UNDER SECTION 122 OF CERCLA, 42 U.S.C. § 9622,
ADMINISTRATIVE SETTLEMENT AGREEMENT FOR PERFORMANCE OF
REMOVAL RESPONSE ACTION AND
DISBURSEMENT OF SPECIAL ACCOUNT FUNDS,
METAL BANK OF AMERICA, INC. (STATE ROAD) SUPERFUND SITE

Agreement
EPA, PENNDOT, PADEP
State Route 95, Section CP2 Project
Metal Bank of America, Inc. (State Road) Site

PennDOT No. 220874
EPA No. CERC-03-2015-0016DC

AGREEMENT

This Administrative Settlement Agreement (hereinafter "AGREEMENT") is made on and entered into this 20 day of APRIL, 2015 by and between the United States Environmental Protection Agency (hereinafter "EPA"), the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "PADEP"), and the Commonwealth of Pennsylvania, Department of Transportation (hereinafter "PENNDOT").

WITNESSETH:

WHEREAS, EPA is an executive agency of the United States of America responsible for administration, implementation, and enforcement of federal laws protecting human health and the environment, including, among others, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9601 – 9675, and,

WHEREAS, PADEP is an executive agency of the Commonwealth of Pennsylvania responsible for the administration, implementation, and enforcement of the environmental statutes and regulations of the Commonwealth of Pennsylvania, including, among others, the Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101 – 6020.1305; and,

WHEREAS, PENNDOT is an executive agency of the Commonwealth of Pennsylvania responsible for the administration, implementation, and enforcement of the transportation statutes and regulations of the Commonwealth of Pennsylvania, including the highway, public transit, mass transit and aviation statutes and regulations; and,

WHEREAS, in a decision document dated September 28, 2011 (hereinafter "Action Memorandum," attached hereto as "Attachment A"), EPA selected a removal site action, in accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, and Section 300.415 of the

National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.415, for property known as the Metal Bank of America, Inc. (State Road) Superfund Site (hereinafter "Site"), located at 6801 State Road, Philadelphia, Pennsylvania; and

WHEREAS, PENNDOT is constructing improvements to State Route 95, Section CP2 (hereinafter "SR 95, CP2 Project"), which will include work on drainage systems in the vicinity of the Site; and

WHEREAS, as part of the SR 95, CP2 Project, PENNDOT is willing to perform, or have its contractors or subcontractors perform, the portion of the removal action that involves installing a liner in the combined sanitary and storm water drainage system underlying the Site (hereinafter "the Work") as described in Section V of the Action Memorandum; and

WHEREAS, the Work performed by PENNDOT, or its contractors and subcontractors, will assist EPA in implementing the removal action at the Site; and

WHEREAS, the Work performed by PENNDOT, or its contractors and subcontractors, will respond to the imminent and substantial threat to the public health or welfare or to the environment created by the release or threatened release of a hazardous substance or substances at the Site; and

WHEREAS, the parties agree that the Work performed by PENNDOT, or its contractors and subcontractors, should be performed in accordance with the NCP under the oversight of the On-Scene Coordinator or a contractor appointed for the Site by EPA under the NCP; and

WHEREAS, in exchange for performance of the Work by PENNDOT, EPA agrees to make available to PENNDOT funds from the Metal Bank of America, Inc. Site Disbursement Special Account, subject to the terms, conditions, and limitations set forth in this AGREEMENT; and,

WHEREAS, Section 2002(a) (7) of the Pennsylvania Administrative Code of 1929, as amended, 71 P.S. § 512(a)(7), requires PENNDOT to cooperate with appropriate Federal Agencies in the coordination of plans and policies for the development of transportation facilities; and,

WHEREAS, Chapter 19 of the Commonwealth Procurement Code, as amended, 62 Pa. C.S. Chapter 19, permits PENNDOT to enter into an agreement with an agency of the United States such as EPA for the cooperative use of services that must otherwise be procured competitively; and,

WHEREAS, this AGREEMENT is entered into pursuant to the authority vested in the Administrator of EPA by Section 122 of CERCLA, 42 U.S.C. § 9622, which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-C and has been further delegated to the Director of the Hazardous Site Cleanup Division of EPA Region III.

NOW, THEREFORE, EPA, DEP and PENNDOT set forth the following as the terms and conditions of their Agreement:

1. Incorporation of Recitals. The foregoing recitals are incorporated by reference as a material part of this AGREEMENT.

2. On-Scene Coordinator. EPA has designated Michael Towle, Eastern Response Branch, Region III, as its On-Scene Coordinator (hereinafter "OSC"). Except as otherwise provided in this AGREEMENT, DEP and PENNDOT shall direct all submissions electronically to EPA required by this AGREEMENT to the OSC at towle.michael@epa.gov.

3. Authority of the OSC. The OSC shall be responsible for overseeing PENNDOT's implementation of this AGREEMENT. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this AGREEMENT, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by the OSC.

4. Project Coordinator. PENNDOT has designated Richard Burns as the Project Coordinator who shall be responsible for administration of all actions by PENNDOT required by this AGREEMENT. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA and DEP shall direct all submissions to PENNDOT required by this AGREEMENT to the Project Coordinator at 215-941-8770.

5. PENNDOT's Contractor. PENNDOT has designated Walsh Construction Company II, LLC (hereinafter "Walsh Construction" or "primary contractor") as its primary contractor for the SR 95, CP2 Project. Walsh Construction has retained Spiniello Companies to perform subcontracting work on the Site for the SR 95, CP2 Project. PENNDOT has also retained Hill International, Inc. (hereinafter "project management contractor") to provide project management services for the SR 95, CP2 Project and has retained Skelly and Loy, Inc. (hereinafter "environmental remediation contractor") to provide environmental remediation services. The primary contractor, the project management contractor, the environmental remediation contractor and any of their subcontractors shall all abide by the terms of this AGREEMENT while working on the Site for the SR 95, CP2 Project. Any new contractor(s) or subcontractor(s) shall be prequalified for the applicable work pursuant to PENNDOT's prequalification program established by 67 Pa. Code Chapter 457. PENNDOT shall consult with the OSC prior to allowing any new contractor(s) or

subcontractor(s) to commence the Work on the Site for the SR 95, CP2 Project and shall afford the OSC a reasonable time to object to the qualifications of such new contractor(s) or subcontractor(s). The term "contractor" as used in this AGREEMENT includes the primary contractor, the project management contractor, the environmental remediation contractor and any of their subcontractors performing the Work on the Site for the SR 95, CP 2 Project.

6. DEP Contact. DEP has designated Ragesh Patel, Southeast Regional Manager-Hazardous Sites Cleanup Section as the DEP contact for issues arising under this AGREEMENT. EPA and PENNDOT shall direct all submissions to DEP required by this AGREEMENT to the DEP contact at 2 East Main Street, Norristown, PA 1940 and via email at rapatel@pa.gov.

7. Changing Designations. EPA, DEP and PENNDOT shall have the right, subject to this paragraph, to change their respective designated OSC, Contact or Project Coordinator. PENNDOT shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. EPA may disapprove of a new designated Project Coordinator. If EPA disapproves of the new designated Project Coordinator, PENNDOT shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 30 days following EPA's disapproval.

8. Draft Site Work Plan. Within 30 days of the Effective Date, PENNDOT, or its contractor, shall submit to EPA for approval, and to DEP for review and comment, a draft Site Work Plan for performing the Work to be done by PENNDOT within the Site as part of the SR 95, CP2 Project. The Site Work Plan shall include a brief description of, and an expeditious schedule for, the actions covered by this AGREEMENT.

9. Site Work Plan Approval, Implementation, and Progress Reports. EPA will approve or disapprove the draft Site Work Plan in whole or in part. If EPA disapproves the draft Work Plan, EPA will provide PENNDOT with an explanation of the reasons for the disapproval and EPA may recommend revisions to the draft Work Plan. Within 20 days of receipt of EPA's explanation of the reasons for disapproval, PENNDOT, or its contractor, shall submit a revised draft Site Work Plan to EPA and DEP. PENNDOT, or its contractor, shall implement the Site Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, the Site Work Plan, the schedule, and any subsequent modifications agreed to by the parties shall be incorporated into this AGREEMENT as an attachment. To the extent implementation of the Site Work Plan begins later than 30 days after the Effective Date, PENNDOT shall submit a monthly progress report to EPA until the Work has

been completed.

10. Commencement of Work. PENNDOT, or its contractor, shall not commence any Work at the Site except in conformance with the terms of this AGREEMENT. PENNDOT, or its contractor, shall not commence implementation of the Site Work Plan developed hereunder until receiving written EPA approval pursuant to paragraph 9. Upon receiving EPA's written approval of the Site Work Plan, PennDOT shall begin implementing the Site Work Plan.

11. Reimbursement of Covered Costs. For purposes of this AGREEMENT, "Covered Costs" shall mean costs paid by PENNDOT for the Work, including without limitation any costs incurred by PENNDOT to develop and implement the Site Work Plan, as well as any costs previously incurred by PENNDOT to investigate conditions at the Site and to determine the feasibility of the Work. All Covered Costs shall be eligible for reimbursement from the Metal Bank of America, Inc. Superfund Site Disbursement Special Account within the EPA Hazardous Substance Superfund (hereinafter "the Disbursement Special Account"), which EPA will establish within 30 days of the Effective Date, in accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3). Any Covered Costs previously incurred by PENNDOT to investigate conditions at the Site may be eligible for reimbursement from the State Road Site Account established under the 2008 Fund Transfer Agreement between the United States and the Union Trust. The following provisions shall apply to all requested disbursements from either the State Road Account or the Disbursement Special Account:

    a. Timing, Amount and Method of Disbursing Funds From the State Road Site Account or the Disbursement Special Account.

        (1) Subject to the terms, conditions, and limitations set forth in this AGREEMENT, EPA agrees to make $816,850.00, and interest earned, available for disbursement from the Disbursement Special Account to PENNDOT for reimbursement of Covered Costs. For purposes of this paragraph, "interest earned" shall mean interest earned on the Disbursement Special Account from the date any funds are transferred to it by EPA. Interest earned shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time interest accrues.
        (2) Within sixty (60) days of EPA's receipt of a Cost Summary and Certification from PENNDOT, as defined by Subparagraph 11.b,

or if EPA has requested additional information under Subparagraph 11.b or a revised Cost Summary and Certification under Subparagraph 11.c, or within sixty (60) days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Paragraph 11, EPA shall disburse the funds from the Disbursement Special Account to PENNDOT by electronic wire transfer to an account identified in writing by PENNDOT.

(3) PENNDOT shall provide EPA with a separate Cost Summary and Certification for any Covered Costs previously incurred to investigate Site conditions.

b. Cost Summary and Certification. PENNDOT shall periodically submit to EPA a Cost Summary and Certification, as defined in this Subparagraph 11.b, covering the Work performed under this AGREEMENT for which PENNDOT seeks reimbursement from the Disbursement Special Account. Each Cost Summary and Certification shall include a complete and accurate written summary and certification of the Covered Costs identified in the particular submission. Each Cost Summary and Certification shall also contain the following statement signed by PENNDOT's Project Coordinator:

"To the best of my knowledge, after thorough investigation and review of PENNDOT's documentation of costs incurred and paid for Work performed pursuant to the AGREEMENT between EPA, PADEP and PENNDOT, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

PENNDOT's Project Coordinator shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, PENNDOT shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. Recalculation of Covered Costs. If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs that are inadequately documented, costs that are not within the definition of Covered Costs, or costs submitted in a prior Cost Summary and Certification, EPA will notify PENNDOT and provide an opportunity to

cure the deficiency by submitting a revised Cost Summary and Certification. If PENNDOT fails to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate PENNDOT's costs eligible for disbursement for that submission and disburse the corrected amount to PENNDOT in accordance with the procedures in this Paragraph 11. PENNDOT may dispute EPA's recalculation under this Paragraph by providing EPA with a written statement detailing the basis for PENNDOT's dispute and requesting that EPA correct the recalculation. Resolution of any dispute under this paragraph 11.c shall be made by the Director of the Hazardous Site Cleanup Division of EPA Region III (hereinafter "the Division Director"). In no event shall PENNDOT be disbursed funds from the Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

d. Records Retention. Beginning on the Effective Date, PENNDOT shall retain for a period of five (5) years all financial and programmatic records, supporting documents, and other records related to or reasonably considered pertinent to PENNDOT's performance of the Work or to the Covered Costs. At the conclusion of this five-year retention period, PENNDOT shall contact EPA before destroying or deleting any records covered by this subparagraph 11.d. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has begun and not been resolved before the expiration of the five-year period, PENNDOT shall retain, and provide EPA with access to, the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular five-year period, whichever is later. An unalterable electronic format, acceptable to EPA, may be substituted for the original records.

12. Health and Safety Plan. PENNDOT, or its contractor, shall submit to EPA and DEP for review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this AGREEMENT. PENNDOT, or its contractor, shall implement the plan during pendency of the Work performed pursuant to this AGREEMENT.

13. Quality Assurance and Sampling. All sampling and analyses performed pursuant to this AGREEMENT shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. PENNDOT, or its contractor, shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. PENNDOT, or its contractor, shall follow, as appropriate,

"Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. PENNDOT shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

14. Off-Site Shipments. PENNDOT, or its contractor, shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, PENNDOT, or its contractor, shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. PENNDOT, or its contractor, shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. As used in this paragraph, "Waste Material" shall mean any material originating from the on-Site drainage system subject to the removal action or any material that has become contaminated by Site-related hazardous substances from within the drainage system.

15. Site Access. PENNDOT does not own or control the Site. PENNDOT, as an EPA Designee, will access the Site to implement this AGREEMENT in accordance with the provisions for Site access for EPA and EPA Designees set forth in paragraph 6 of the Settlement Agreement Respecting Environmental Objections to Debtors' Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Case No. 03-45870-399) ("the Bankruptcy Settlement"). Under the terms of the Bankruptcy Settlement, the Four Sites Union Trust, the owner of the Site, has agreed to provide EPA and EPA Designees with access to the Site at all times for the purpose of, among other things, implementing a response action at the Site.

16. Emergency Response and Notification of Releases. In the event of any action or occurrence during performance of the Work that causes or threatens a release of

hazardous substances from the Site and that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, PENNDOT, or its contractor, shall immediately take all appropriate action. PENNDOT, or its contractor, shall take these actions in accordance with all applicable provisions of this AGREEMENT, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. PENNDOT, or its contractor, shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (215) 814-3255 of the incident or Site conditions. In addition, in the event of such a release of a hazardous substance from the Site, PENNDOT, or its contractor, shall immediately notify the National Response Center at (800) 424-8802. PENNDOT shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

17. Termination. At any time prior to the commencement of the Work at the Site pursuant to the Site Work Plan, any of the parties to this AGREEMENT may immediately terminate this AGREEMENT upon written notice to the other parties. If any party terminates this AGREEMENT pursuant to this provision, all obligations created hereunder of each of the parties shall be null and void, and each party shall bear all costs that it has incurred pursuant to this AGREEMENT without any reimbursement from the other parties.

18. Entire Agreement and Amendment of Attachments. This Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, and the rights and obligations hereunder may not be transferred or assigned without the prior written consent of the parties hereto. Except for Attachment A (the Action Memorandum), which EPA may modify at its sole discretion in accordance with Section 104(a) of CERCA, 42 U.S.C. § 104(a), the other attachments to this AGREEMENT may only be amended upon mutual, written consent of the parties. For purposes of amending the attachments, consent of EPA may be provided by the On-Scene Coordinator, consent of PADEP may be provided by Ragesh Patel, Southeast Regional Manager-Hazardous Sites Cleanup Section, and consent of PENNDOT may be provided by the District Executive for PENNDOT Engineering District 6-0 or his designee.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered to EPA, PENNDOT, or PADEP shall be

deemed to be an original, but such counterparts shall together constitute one and the same document.

20. Effective Date. The Effective Date of this AGREEMENT shall be the date of the last signature hereto.

21. Reservation of Rights. In accordance with Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), EPA reserves its rights to take additional response actions at the Site during the performance of the Work to protect the public health or welfare or the environment.

22. Transfer of Disbursement Special Account Funds. In the event EPA completes all disbursements to PENNDOT for Covered Costs under this AGREEMENT, EPA shall transfer any funds remaining in the Disbursement Special Account to the Metal Bank of America, Inc. Superfund Site Special Account or to the Hazardous Substance Superfund.

23. Completion of Work and Final Work Report. Within 20 days of the date PENNDOT concludes it has completed implementation of the Site Work Plan, PENNDOT shall submit a Final Work Report to EPA and PADEP, subject to EPA approval described in Paragraph 9 above. The Final Work Report shall be deemed incorporated into this AGREEMENT upon approval by EPA.

24. Contribution Protection. The Parties agree that this AGREEMENT constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that PENNDOT is entitled, as of the effective date of this 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), or as may be otherwise provided by law, for "matters addressed" in this AGREEMENT. The "matters addressed" in this AGREEMENT include the Work.

25. Covenant Not to Sue By EPA. From the Effective Date, and for as long as EPA determines that the terms of this AGREEMENT, including any modifications made to it, are being, or have been, fully complied with, EPA agrees not to sue or take any administrative action against PENNDOT for the Work or for Existing Contamination. For the purposes of this AGREEMENT, "Existing Contamination" shall mean any hazardous substance, pollutant, or contaminant that is present or existing on or under the Site as of the Effective Date; any hazardous substance, pollutant, or contaminant that migrated from the Site prior to the Effective Date; and any hazardous substance, pollutant, or contaminant that is presently at the Site and migrates from the Site after

the Effective Date. Nothing in this AGREEMENT shall be construed to grant any rights to persons not a party to this AGREEMENT. Further, nothing in this AGREEMENT precludes the United States from asserting any claims, causes of action, or demands against any persons not parties to this 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) & (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that provide contribution protection to such persons.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY, REGION III

BY: _____ Date: _____

Cecil Rodrigues
Director
Hazardous Site Cleanup Division

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY _____

Title: ACTING SECRETARY

Date: 1-13-15

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____

Deputy Secretary for
Highway Administration

Date: 1/27/15

APPROVED AS TO LEGALITY
AND FORM

BY _____
for PADEP Chief Counsel Date

1/28/15 BY _____
for PENNDOT Chief Counsel Date 1/28/15

BY _____
Deputy General Counsel Date

BY _____ 3/11/15
Deputy Attorney General Date

FUNDS COMM'NT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE
UNDER SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

NON-ENCUMBERED

BY _____
for Comptroller Date

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY, REGION III

BY: Cecil Rodrigues Date: 4/20/2015

Cecil Rodrigues
Director
Hazardous Site Cleanup Division

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY _____

Title: _____

Date: _____

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____

Deputy Secretary for
Highway Administration
Date: _____

APPROVED AS TO LEGALITY
AND FORM

BY _____
for PADEP Chief Counsel Date

BY _____
for PENNDOT Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

FUNDS COMM'NT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE
UNDER SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

BY _____
for Comptroller Date

ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 28 2011

SUBJECT: Request for Funding for a Removal Action at the Metal Bank of America State Road Site Philadelphia, Philadelphia County, Pennsylvania

FROM: Michael Towle, On-Scene Coordinator
Eastern Response Branch (3HS31)

TO: Dennis P. Carney, Associate Director
Office of Preparedness and Response (3HS30)

I. PURPOSE

The purpose of this Action Memorandum is to request funding for a Removal Action at the Metal Bank of America State Road Site (Site). This Action Memorandum also documents approval for a time-critical Removal Action to mitigate the release and threatened release of hazardous substances at the Site. The Site is located at 6801 State Road in the City of Philadelphia, Philadelphia County, Pennsylvania.

In response to the presence of polychlorinated biphenyls (PCBs) contamination at the Site, a removal site evaluation was conducted by the On-Scene Coordinator (OSC) which included sampling activities completed in April 2011. The removal site evaluation was conducted in accordance with Section 300.410 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.410, and identified a threat to public health or welfare or the environment posed by hazardous substances at the Site.

To mitigate the identified threat, CERCLA funding is necessary to conduct a Removal Action pursuant to Section 300.415 of the NCP, 40 C.F.R. § 300.415, to prevent the release and/or substantial threat of release of hazardous substances from the Site and to protect public health, welfare, and/or the environment. A Removal Action Project Ceiling of $816,850, of which $741,850, are from the Regional Removal Allowance, is necessary to mitigate the threats as identified in this Action Memorandum. There are no nationally significant or precedent-setting issues associated with the response.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Background Information

The Site, among other things, was the location of entities involved in the business of recovering and recycling scrap metals. The dismantling of used electrical transformers was a significant component of the scrap-metals operations at the Site. As part of former operations at the Site, various scrap metals, including used transformers and capacitors, were stored upon soils subsequently found to be oil-stained and contaminated by PCBs. In response, capacitors in the area of concern were removed by owner/operators of the Site and the oil-stained soils were then covered by asphalt between 1986 and 1988. This asphalt cover was later repaired and expanded after an EPA Site Inspection in 1988. Additional repair work was completed sometime in 2010. The owners of the Site have submitted information to the Pennsylvania Department of Environmental Protection's (PADEP) Land Recycling (a/k/a Act 2) Program and have initiated investigation of the Site. By 2003 the owners declared bankruptcy without addressing elevated PCBs contamination.

2. Physical Location/Site Characteristics

The Site is located at 6801 State Road in the City of Philadelphia, Pennsylvania. The approximate geographic coordinates are N 40.02033 and W 75.03895. The area of concern is approximately 6 acres in size and is bound by industrial properties and roadways on all sides. A fence surrounds the area of concern which is property upon which scrap materials were staged at one time and which is now completely covered by asphalt. The asphalt is believed to be between 2 and 3 inches thick. The Site is situated in an industrialized area of the City of Philadelphia along the Delaware River.

The Site surface is sloped such that water from precipitation events is able to pool within certain areas upon the asphalt cover. Two manholes have also been identified within the area of the asphalt cover. These manholes provide access to a drainage system, operated by the Philadelphia Water Department, which courses through the Site and through which both sanitary and storm flows migrate. During low periods, the flow would move to the City of Philadelphia's treatment works. During high flow periods, the flow could overflow, as designed, through a combined sewer overflow (CSO) into the Delaware River.

The depth to groundwater at the Site is about 10 feet below ground surface. The drainage system discussed above is constructed, at points, below the surface of groundwater (i.e., below the water table).

3. Removal Site Evaluation

In 2008, sampling activities conducted by EPA at the Site confirmed the presence of

PCBs and other organic compounds in the soils beneath the asphalt. PCBs were detected in soils throughout the Site. Other organic compounds including numerous chlorinated benzene compounds (e.g., trichlorobenzene), 2-butanone, and methylene chloride were detected in more limited volumes of soils at the Site. These other organic compounds were primarily detected in the soils also contaminated by PCBs.

The highest concentration of PCBs (320 mg/kg) was detected in the soils between approximately 2 and 10 feet below the ground surface at a location where elevated concentrations of several chlorinated benzene compounds (e.g., trichlorobenzene (500 mg/kg)) were also detected. Commonly, certain electrical transformer fluids containing PCBs also contained chlorinated benzene compounds such as trichlorobenzene to reduce the viscosity of the PCBs. The organic solvent 2-butanone (a/k/a methyl ethyl ketone) was also detected at concentrations up to 29 mg/kg in these same soils.

The detection of PCBs, chlorinated benzenes, and 2-butanone in the same soils at depths extending to the water table (at approximately 10 feet) indicates that organic compounds in the soil may be facilitating the transport of PCBs into deeper soils and soils within the area ground water. It is plausible that electrical transformer fluids composed of PCBs and trichlorobenzene, each of which are denser than water, could migrate downwards through the soil as a non-aqueous phase liquid (NAPL) if released at the Site. The presence of solvents such as 2-butanone or methylene chloride could also further facilitate the transport of PCBs by increasing the solubility of the relatively insoluble PCBs within groundwater. PCBs were found in the soils at depths below the groundwater table. Additionally, PCBs have been found within the waters migrating through the drainage system at the Site. The above information indicates that the PCBs have migrated from the surface where they were likely released and are migrating uncontrolled in the environment. Additionally, PCBs were detected at concentrations of approximately 190 mg/kg in shallow soil immediately beneath the asphalt cover.

On November 2, 2010, the OSC and Remedial Project Manager investigated the Site. The asphalt cover was observed to have been recently repaired (as evidenced by tarry coatings over the vegetation growing within cracks in the asphalt surface). Areas of previously ponded or pooled water were evident by the appearance of rings (similar to bathtub rings) or marks left at the water line of pooled water areas. The OSC has observed ponded or pooled water at the Site. The OSC verified that the asphalt had been cracked or repaired in areas of ponded or pooled water.

On February 11, 2011, the OSC met at the Site with representatives of the Philadelphia Water Department (PWD) which operates and maintains a drainage system beneath the surface of the Site through which both sanitary and storm flows in the area of the Site migrate. Available maps indicate that the drainage system underlies the Site, exists in the area within which PCBs are located, exists at a depth which is below the water table, and is constructed of brick. The Site location with the highest PCB, chlorinated benzene, and 2-butanone concentrations in the soil is located alongside the drainage system. The PWD suggested to the OSC that a brick sewer drainage system such as that underlying the Site normally accepts storm

flows and infiltration of underground water such as groundwater. The drainage system would normally accept all flows in the industrial area destined for treatment or discharge to the Delaware River. Normally flow is directed to treatment works operated by the City of Philadelphia. During high flow conditions such as storm events, the excess flow is directed, by design, to the Delaware River.

On April 27, 2011, water and sediment within the drainage system were collected and sent for laboratory analysis. Water was collected from locations upstream, within (beneath the surface of), and downstream of the Site. Sediment was also collected if it was present. The analytical results indicate that PCBs are likely entering the drainage system from the Site; PCBs in the flow within the drainage system were detected at a concentration of 0.005 ug/L upstream of the Site and at a higher concentration of 6.69 ug/L downstream of the Site. Sediment concentrations of approximately 6.4 mg/kg were detected in sediment within the drainage system at a location within the Site.

The Site is completely fenced and the fence is presently intact.

4. Quantities and Types of Substances Present

The OSC continues to conduct a removal site evaluation and investigate the Site. The available results of sampling activities indicate the presence of PCBs at the Site which are entering the groundwater and drainage system beneath the surface of the Site. Numerous organic compounds, primarily chlorinated benzene compounds, are also present in the soil. Based on available information from investigations of the Site, the OSC estimates approximately 25,000 cubic yards of soil at the Site are contaminated by PCBs. The levels of PCBs in these contaminated soils exceeds 25 mg/kg, which is EPA's acceptable level for an industrial setting, such as the Site, that is characterized by a low potential for contact with the soil. Of the total volume of contaminated soils at the Site, approximately 2500 cubic yards may contain levels of PCBs higher than 100 mg/kg, a concentration at which appropriate caps and covers would be required under EPA's PCB Regulations to protect the environment against further migration of PCBs.

5. National Priorities List Status

The Site is not presently on the National Priorities List (NPL) and has not been proposed to the NPL. The OSC will forward appropriate information to the site assessment program for follow up as needed.

B. Other Actions to Date

Other actions at the Site have included the removal of capacitors, several buildings, and large amounts of scrap metal by previous owners and/or operators of the Site. The Site was also covered by asphalt and fenced, but neither removal of PCBs contaminated soil nor the potential for the PCBs to migrate into drainage systems were addressed.

C. State and Local Authorities' Roles

The Pennsylvania Department of Environmental Protection (PADEP, or the "Department") and the City of Philadelphia are not involved in current response actions at the Site.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Section 300.415 of the NCP, 40 C.F.R. § 302.415, lists the factors to be considered in determining the appropriateness of a Removal Action. Specifically, paragraphs (b) (2) (i), (iv), (v), and (vii) of Section 300.415 apply as follows to the conditions as they exist at the Metal Bank of America State Road Site.

A. 300.415 (b)(2)(i) -- "Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants"

Polychlorinated biphenyls (PCBs) are hazardous substances and are located at the Site. The analytical results of samples collected from the Site indicate that PCBs have migrated into the deeper soils including soils below the water table (i.e., soils saturated by area groundwater) and are likely entering the drainage system beneath the surface of the Site. These PCBs are able to migrate from the Site through the drainage system and may also be migrating in the groundwater. PCBs that enter into the underground drainage system move to the City of Philadelphia treatment works, but may move into the Delaware River, as designed, during high flow periods. The Delaware River contains fish that are removed from the River for consumption purposes as observed by the OSC and as documented by others. PCBs can bioaccumulate in exposed organisms and currently result in elevated levels of PCBs in Delaware River fish tissue. Due to the potential for increased consumption of PCBs in fish tissue by humans, advisories against consumption of fish extracted from the Delaware River have been posted by the Commonwealth of Pennsylvania. PCBs now present in the environment of the Delaware River have entered the food chain; humans (fishermen) are a part of the Delaware River food chain through consumption of fish. PCBs, which are a probable human carcinogen, tend to accumulate in the fatty tissue of exposed organisms. Animals and the food chain are potentially exposed to PCBs thereby posing a threat to human populations. The Delaware River Basin Commission has established Water Quality Standards to protect human health and environment; these standards include limitations for PCBs in the water. Additional exposure to PCBs contamination could occur to persons normally responsible for the maintenance of the combined sanitary and storm water drainage system which courses through the Site.

B. 300.415 (b)(2)(iv) -- "High levels of hazardous substances or pollutants or contaminants in soils, largely at or near the surface, that may migrate"

Analytical information indicates that PCBs contamination has been identified within the surface soils throughout the Site. Although currently covered by asphalt, available information indicates that the PCBs are migrating. In fact, the analytical data indicate that PCBs have migrated into deeper soils which lie within the groundwater system and into the drainage system beneath the Site. It is unclear if the asphalt cover is suitable for mitigating the further migration of PCBs; the asphalt cover is cracked and sloped such that water is able to pool and likely infiltrate through the asphalt. PCBs contamination remaining at the Site is able to migrate to the aquatic environment through established drainage pathways (storm and sanitary sewer systems) or through the groundwater system.

C. 300.415 (b)(2)(v) -- "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released"

Precipitation events could result in fluctuation of the groundwater table. This fluctuation would allow for the contaminated soils to periodically saturate and allow for migration of PCBs from the soil into the groundwater and then further with the flow of the groundwater. The contaminated groundwater could enter the drainage system through flaws (e.g., cracks) in the structure. Storm water flows at the Site may also allow for infiltration of precipitation through the asphalt cap and underlying contaminated soils. The migrating water allows contaminants to enter the combined sanitary and storm water drainage system running through the Site through cracks or seams and thus allows for migration of PCBs with the flow of the storm water. Finally, storm flows which exceed (overflow) the capacity of the drainage system are discharged directly to the Delaware nearby the Site. This overflow may contain PCBs which have leaked into the drainage system from the Site in infiltrating waters or which have otherwise settled within the sediments within the drainage system.

D. 300.415(b)(2)(vii) – "The availability of other appropriate federal or state response mechanisms to respond to the release."

The OSC has coordinated with the Commonwealth of Pennsylvania and confirms that the Commonwealth presently has no plans for response actions at the Site.

IV. ENDANGERMENT DETERMINATION

Actual and threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

This Removal Action will primarily address the PCB contamination known to be migrating from the Site via the drainage system running through the Site and will include activities intended to reduce the potential for infiltration of PCBs into the drainage system. This Removal Action will not address the source of the PCB contamination; i.e., soils contaminated with PCBs and other hazardous substances. Instead, this action is intended to minimize further off-Site migration of PCBs and to characterize the Site further. This Removal Action also includes additional activities related to minimizing the migration of PCB contamination from the Site such as: replacing and/or sealing the existent asphalt cover to reduce infiltration of water through the cover and further migration of PCBs from the Site. Until all PCB-contaminated soils that could allow for migration of PCBs from the Site are excavated and removed, maintenance of the existent asphalt cap, continued monitoring of groundwater, and property-use restrictions will be required to assure the protectiveness of the response action.

Proposed Action Description

1. Mobilize personnel and equipment to the Site to implement response actions. Activities may include preparing to conduct removal actions by improving safety considerations and access to contaminated areas;

2. Continue removal site evaluation, including investigation, sampling, analysis, and characterization of PCB contamination consistent with 40 CFR Part 761;

3. Install a liner within that portion of the combined sanitary and storm water drainage system underlying the Site and within the PCBs-contaminated soils to minimize infiltration of PCBs contamination into the drainage system. Installation activities shall include evaluation of the integrity of the drainage system to aid in selection of specific liner, preparation of the drainage system for liner installation, and pumping the flow within the drainage system to allow for liner installation. Additional liner shall be installed as necessary to assure integrity of the liner discussed above.

4. Implement erosion and sedimentation controls as well as storm water management controls necessary to minimize the migration of storm water into any area subject to response activity which exposes PCBs contaminated soil; these actions are intended to minimize the migration of potentially PCB-contaminated storm water from the Site. Actions may include pumping and temporary containment of potentially PCB-contaminated storm water.

5. Treat, consistent with standards at 40 CFR § 761.79(b), on-Site waters which are accumulated during on-Site activities described in Items #3 and #4. Discharge the treated water to local sewage treatment plant. Or, if this arrangement is not feasible (e.g., due to volume or content of the on-Site wates or capacity of the treatment plant), dispose off-site the hazardous substances identified in item #4, and other wastes associated with the Removal Action, in accordance with Section 121(d)(3) of CERCLA and 40 C.F.R 300.440 and 40

C.F.R. § 761.61. Activities may include sampling, bulking, consolidating, drumming, pumping, or otherwise handling the hazardous wastes, hazardous substances, liquids, and wastes to ensure that they are properly transported.

6. Seal or replace and grade, as needed, asphalt cover over all areas of the Site containing PCBs contamination in the soil to minimize the potential for infiltration of surface water through the cover.

7. For as long as PCB-contaminated soils remain at the Site, provide notification to future owners of the Site of the presence and concentrations of the PCBs remaining at the Site and the need to maintain a cover over PCBs remaining at the Site consistent with the requirements of 40 C.F.R. § 761.61(a)(8).

8. For as long as PCB-contaminated soils remain at the Site, implement Post-Removal Site Controls through which the cover and fence are routinely inspected and which provide for repairs such that infiltration through the cover is minimized and the fence continues to serve to minimize entrance upon the Site.

B. Contribution to Remedial Performance

The Metal Bank of America State Road Site is not at this time proposed for inclusion on the CERCLA National Priorities List (NPL). The Removal Action is consistent with accepted removal practices and is expected to abate the threats that meet the NCP removal criteria.

C. Applicable or Relevant and Appropriate Requirements (ARARs)

The Removal Action will attain ARARs to the extent practicable given the exigencies of the situation.

On July 4, 2011, the OSC requested ARARs from PADEP for response actions similar to those contemplated herein. The OSC will continue to work with the Department for identification of ARARs.

To the extent that these and other regulations pertain to the scope of this action, EPA will comply with additional identified requirements to the extent practicable given the exigencies of the situation.

D. Estimated Costs

The proposed distribution of funding is as follows:

Extramural Costs	This Action	Total
Regional Allowance Costs: (ERRS contractors and subcontractors)	$741,850	$741,850
Other Extramural Costs Not Funded from the Regional Allowance: START Contractor	$ 75,000	$ 75,000
TOTAL REMOVAL ACTION PROJECT CEILING	$816,850	$816,850

VII. EXPECTED CHANGE IN SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If no action is taken or the action is delayed, the threat of additional or potential release of hazardous substances from the Metal Bank of America State Road Site into the environment, including the aquatic environment, is inevitable.

VIII. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues pertaining to the Metal Bank of America State Road Site.

IX. ENFORCEMENT

The EPA Region III Office of Enforcement has been provided with all background information available regarding this Removal Action to pursue enforcement actions pertaining to the Metal Bank of America State Road Site (See attached Confidential Enforcement Addendum).

The total EPA costs for this removal action based upon full-cost accounting practices that will be eligible for cost recovery are estimated to be $1,507,262.[1]

Direct Extramural Costs	$ 816,850
Direct Intramural Costs	$ 85,000
Total, Direct Costs	$ 901,850

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[1]Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

Indirect Costs (67.13 % x Direct Costs)	$ 605,412
Estimated EPA Costs for a Removal Action	$ 1,507,262

X. RECOMMENDATION

This Action Memorandum decision document represents the recommended Removal Action for the Metal Bank of America State Road Site in Philadelphia, Pennsylvania, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. Conditions at the Site meet the NCP Section 300.415(b)(2) factors for a removal and I recommend your approval of the Removal Action. The total project ceiling will be $816,850. Of this, an estimated $741,850, comes from the Regional Removal Allowance.

Action by the Approving Official:

This Action Memorandum represents the selected Removal Action for continuing the Removal Action at the Metal Bank of America State Road Site, in Philadelphia, Pennsylvania, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. 9613(k) and EPA delegation No. 14-22, I hereby establish the documents identified in Attachment B hereto as the Administrative Record supporting the issuance of the Action Memorandum.

I have reviewed the above-stated facts and based upon those facts and the information compiled in the documents described above, I hereby determine that the release or threatened release of hazardous substances at and/or from the Site presents or may present an imminent and substantial endangerment to the public health or welfare or to the environment. I concur with the Removal Action as outlined in the Action Memorandum.

APPROVED: Dennis P. Carney **DATE:** 9/28/11

Dennis P. Carney, Associate Director
Office of Preparedness and Response
EPA Region 3

Attachments:
A. Enforcement Confidential Memo
B. Administrative Record documents