

Revised April 8, 2008

**MODEL CONSENT ORDER AND AGREEMENT FOR
SPECIAL INDUSTRIAL AREAS**

(Date)

Nature of Model Agreement

The following Special Industrial Areas Model 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 deviate from this document as circumstances warrant. This model agreement outlines the issues that commonly arise in these situations; revisions or additions may be made for actual agreements for specific sites.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

[Name] :
[Address] : **Remediation/Reuse of a
Special Industrial Area Site**

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this ____ day of _____, 20__, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and [Name of Redeveloper] (hereinafter "[Redeveloper]").

Findings

The Department has found and determined the following findings.

A. The Department is the agency with the duty and authority to implement the Land Recycling and Environmental Remediation Standards Act, the Act of May 19,

1995, P.L. 4, No. 1995-2, 35 P.S. §6026.101 et seq. ("Land Recycling Act"). The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, the Act of July 7, 1980, P.L. 380, No. 97 as amended, 35 P.S. §6018.101 et seq. (the "Solid Waste Management Act"); The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, No. 394, as amended, 35 P.S. §691.1 et seq. (the "Clean Streams Law"); the Air Pollution Control Act, the Act of January 8, 1960, P.L. 2119, No. 787, (1959), as amended, 35 P.S. §4001 et seq. (the "Air Pollution Control Act"); the Storage Tank and Spill Prevention Act, the Act of July 6, 1989, P.L. 169, No. 32 as amended, 35 P.S. §6021.101 et seq. (the "Storage Tank Act"); the Infectious and Chemotherapeutic Waste Law, the Act of July 13, 1988, P.L.525, No. 93, 35 P.S. §6019.1 et seq. (the "Infectious Waste Act"); the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. §6020.101 et seq. ("HSCA"); and the rules and regulations promulgated thereunder. [Delete statutory references which are not applicable.]

B. [Redeveloper] is a person who desires to undertake the reuse of a special industrial area site pursuant to the provisions of the Land Recycling Act. [Redeveloper] is [an individual, corporation, etc.] with an address of [].

C. This special industrial area site is called [name] and is located at [address] (hereinafter "Site"). The site [Provide brief site description including a title search, history of previous uses and the names of responsible persons for the site. If the environmental report does not include a map of the site, attach a map as Exhibit A and make appropriate cross reference changes].

D. This Consent Order and Agreement is the agreement required by Sections

305 and 502 of the Land Recycling Act between the Department and any person seeking a release of liability in connection with undertaking the reuse of a special industrial area site.

E. As of the date of this Consent Order and Agreement, [Redeveloper] has represented that [Redeveloper], including its officers, directors, subsidiaries and affiliates, has not caused or contributed to contamination located on the Site.

F. As of the date of this Consent Order and Agreement, the Site is [located in an Enterprise Zone designated as such by the Department of Community and Economic Development or its successor agency in implementing the program] [an industrial site where there is no financially viable responsible person].

G. On [date of submittal] [Redeveloper] submitted a Notice of Intent to Remediate (the "NIR") the Site to the Department.

H. On [date NIR was delivered to municipality] [Redeveloper] delivered a copy of this NIR to [name of the municipality where the Site is located].

I. On [date of newspaper publication] [Redeveloper] published a summary of the NIR in the [name of the newspaper].

J. [Municipality] [requested] [did not request] to be involved in the development of the remediation and reuse plans for the Site.

K. [Municipality] [requested] [did not request] that [Redeveloper] develop and implement a public involvement program plan which met the requirements of section 304(o) of the Land Recycling Act.

L. On [date] [Redeveloper] submitted and on [date] the Department approved the work plan required to be prepared for the Site by section 305(b) of the Land

Recycling Act.

M. On [date] [Redeveloper] submitted and on [date] the Department approved the baseline environmental report required to be prepared for the Site by section 305(b) of the Land Recycling Act. This baseline environmental report is attached hereto and incorporated by reference and deemed to be a part hereof as Exhibit A.

N. The intended purpose of the Site is [provide a description of the intended purpose. Include findings on intended use and exposure patterns, including whether it is intended that people will live there or whether the groundwater will be used on the site. If [Redeveloper] does not plan to abate all hazards on the property because they do not prevent occupation based on the intended purpose of the property, then delineate where these hazards are located on the property.] ("Intended Purpose").

O. Pursuant to section 502 of the Land Recycling Act, the cleanup liability for [Redeveloper] includes the remediation of immediate, direct or imminent threats to public health or the environment which would prevent the Site from being occupied for its Intended Purpose (hereinafter referred to as "Remedial Obligations").

P. [Redeveloper's] Remedial Obligations include the following which are more fully described in Exhibit A: [Describe these threats if there are any. Include an analysis of all potential exposure pathways.] [This paragraph may be a summary if it refers to paragraph 2 and if paragraph 2 sets forth the remedial obligations.]

Q. Pursuant to Section 502, the cleanup liability for [Redeveloper] does not include identified contamination located on the Site that is not an immediate, direct or imminent threat to public health or the environment which would prevent the Site from being occupied for its Intended Purpose.

R. Identified Contamination includes the following and is more fully described in Exhibit B [Describe other contamination]:

The parties desire to enter into an agreement pursuant to section 305 of the Land Recycling Act to outline the cleanup liability for the Site and to satisfy the requirements of sections 305 and 502 of the Land Recycling Act.

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 intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by [Redeveloper] as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to:

- a. Section 5 of the Clean Streams Law, 35 P.S. §691.5;
- b. Section 602 of the Solid Waste Management Act, 35 P.S.

§6018.602;

- c. Section 4 of the Air Pollution Control Act, 35 P.S. §4004;
- d. Section 1309 of the Storage Tank Act, 35 P.S. §6021.1309;
- e. Section 5 of the Infectious Waste Act, 35 P.S. §6019.5;
- f. Sections 305 and 502 of the Land Recycling Act, 35 P.S. §§6026.305 and 6026.502;

and Section 1917-A of the Administrative Code, supra. [Delete statutory references which are not applicable.]

2. *Cleanup Liability of [Redeveloper].*

a. [Redeveloper] shall remediate all immediate, direct or imminent threats to public health or the environment presently located on the Site which would prevent the Site from being occupied for its Intended Purpose. [Redeveloper's] Remedial Obligations are enumerated in paragraph P of the findings and are more fully described in Exhibit A. [Redeveloper] shall fulfill its Remedial Obligations by taking the following remediation measures: [Describe actions to be taken by [Redeveloper] based on the baseline environmental report. Include clean up obligations given the Intended Purpose, the exposure assumptions used and a schedule for completing remediation. If these measures are too detailed to set out verbatim provide a summary with specific paragraph and page references to the baseline environmental report.]

b. [Redeveloper] shall not be responsible for the remediation of Identified Contamination described in paragraph R of the findings and more fully described in Exhibit B so long as the Identified Contamination does not prevent the occupation of the property for its Intended Purpose.

c. Nothing in this agreement relieves [Redeveloper] from any cleanup

liability for 1) contamination caused by [Redeveloper] on the Site on or after the date of this Consent Order and Agreement; or 2) contamination presently located on the Site the nature, concentration and location of which is not identified in Exhibit B.

d. If [Redeveloper] complies with the terms and conditions of this Consent Order and Agreement, [Redeveloper] shall have the liability protection established by Section 502(a) of the Land Recycling Act.

e. [Redeveloper] shall provide the Department with prior written notice of any change in the Intended Purpose of the Site from that described in paragraph N of the findings. [Redeveloper] has a continuing obligation to remediate all immediate, direct or imminent threats to public health or the environment located on the site that would prevent the site from being occupied for its Intended Purpose. If the [Redeveloper] changes the Intended Purpose of the property from that set forth in paragraph N, then [Redeveloper] must remediate any contamination described in paragraph R which would prevent the occupation of the property for its new Intended Purpose. [Another suggestion is to add a scope or term section which limits the applicability or life of the CO&A to the duration of the stated Intended Purpose.]

f. The liability protection provided by this Consent Order and Agreement is subject to the reopeners set forth in Section 505 of the Land Recycling Act.

3. *Notice of Commencement of Remediation.* [Redeveloper] shall notify the Department in writing [] working days prior to commencing the remediation measures enumerated in paragraph 2 and more fully described in Exhibit A.

4. *Site Access.* [Redeveloper] grants to the Department the right to enter onto the Site to observe, inspect and verify the remediation activities described in

paragraph 2 and Exhibit A and to further investigate contamination at the site. In the event the Department elects to conduct remediation of Identified Contamination, [Redeveloper] further grants to the Department the right to enter onto the Site to conduct remediation upon reasonable notice and provided the Department does not unreasonably disrupt [Redeveloper's] use of the property.

5. *Notice of Completion of Remediation.* [Redeveloper] shall notify the Department in writing when it has completed the remediation activities enumerated in paragraph 2 and more fully described in Exhibit A.

6. *[]Day Verification Period.* The Department shall have [] days after the receipt of the [Redeveloper]'s notice of completion of remediation to verify that the remediation activities enumerated in paragraph 2 and more fully described in Exhibit A have been successfully completed by [Redeveloper].

7. *Transfer of Site.* [Redeveloper] shall provide the Department with prior written notice of any transfer of ownership of the Site including the identity of the purchaser and the purchaser's Intended Purpose for the Site. Prior to transfer, [Redeveloper] shall give the purchaser a copy of this Consent Order and Agreement including a copy of Exhibits A and B. [Redeveloper] shall satisfy the applicable deed acknowledgement requirements of the Solid Waste Management Act and the Hazardous Sites Cleanup Act.

8. *Correspondence with Department.* All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Title
Street Address

City, State ZIPCODE

9. *Correspondence with [Redeveloper].* All correspondence with [Redeveloper] concerning this Consent Order and Agreement shall be addressed to:

Title
Street Address
City, State ZIPCODE

[Redeveloper] agrees to notify the Department whenever there is a change in the contact person's name, title or address.

10. *Entire Agreement.* This Consent Order and 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.

11. *Modifications.* No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

12. *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 Consent Order and Agreement.

13. *Titles.* A title used at the beginning of any paragraph of this Consent Order and Agreement is provided solely for the purpose of identification and shall not be used to interpret that paragraph.

[If [Redeveloper] is a municipality include the following paragraph.]

14. *Resolution.* Attached hereto as Exhibit C is a resolution of the [Board of Supervisors] of [Municipality] authorizing its signatories below to enter into this Consent

Order and Agreement on its behalf.

[Optional]

15. *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 Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of [Redeveloper] certify under penalty of law, as provided by 18 Pa.C.S. §4904, that they are authorized to execute this Consent Order and Agreement on behalf of [Redeveloper]; that [Redeveloper] consents to the entry of this Consent Order and Agreement as an ORDER of the Department; and that [Redeveloper] hereby knowingly waives its rights to appeal this Consent Order and Agreement, which rights may be available under Section 4 of the Environmental Hearing Board Act, the 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; or any other provision of law.

FOR THE
[Redeveloper]:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Name
President or Vice President

Name
Title

Name
Secretary or Treasurer

Name
Assistant Counsel

Attorney for [Redeveloper]