

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA



SDMS DocID 2149544

UNITED STATES OF AMERICA,
Plaintiff,

v.

CDS INVESTMENT COMPANY,
ANGELO JOSEPH D'AMBROSIO,
and CORDINE SCARTOZZI,
Defendants.

CIVIL ACTION
NO. 11-5696

ORDER

AND NOW, this 17th day of January, 2012, upon consideration of the Unopposed Motion to Enter Consent Decree [Doc. No. 3] filed by the United States, it is hereby **ORDERED** that the Motion is **GRANTED**¹ and the Consent Decree attached hereto² shall be **ENTERED** as of the date of this Order.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

Hon. CYNTHIA M. RUFÉ

¹ The proposed Consent Decree was lodged with the Court on September 12, 2011 [Doc. No. 2]. Notice of the proposed Consent Decree was published in the *Federal Register*, soliciting public comment for a period of thirty days. 76 Fed. Reg. 58042 (Sept. 19, 2011). The public comment period has expired, and no comments have been received by the U.S. Department of Justice or the Court. The Court has reviewed the proposed Consent Decree and determined that it appears reasonable, fair, and consistent with the purposes that the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") is intended to serve.

² Attachments to the Consent Decree are filed at Doc. Nos. 2-1 through 2-5.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CDS INVESTMENT COMPANY;
ANGELO JOSEPH D'AMBROSIO AND
CORDINE SCARTOZZI, GENERAL PARTNERS)
AND JOINT VENTURERS OF CDS)
INVESTMENT COMPANY,)

Defendants.

Civil action No. 11-5696

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the AIW Frank/Mid-County Mustang Superfund Site ("Site"), located in West Whiteland Township, Chester County, Pennsylvania.

B. The defendants that have entered into this Consent Decree do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States

has determined that Settling Defendants are able to pay the amount specified in Section V.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns and any successors to Settling Defendant CDS Investment Company. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are

defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree, including any appendix attached hereto.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Existing Contamination" shall mean:
 1. any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the effective date of this Consent Decree;
 2. any hazardous substances, pollutants or contaminants that migrated from the Site prior to the effective date of this Consent Decree; and
 3. any hazardous substances, pollutants or contaminants presently at the

Site that migrate onto or under or from the Property after the effective date of this Consent Decree.

h. "Financial Information" shall mean the information contained in the submissions described in and referred to in the Declarations attached hereto in Appendix F.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and Settling Defendants.

l. "Plaintiff" shall mean the United States.

m. "Property" shall mean three (3) parcels of real property, comprising approximately 12.1 acres, which is located at 713, 721, and 891 Old Lincoln Highway (Route 30), West Whiteland Township, Chester County, Pennsylvania, and is owned by Settling Defendants, and which constitutes a portion of the AIW Frank/Mid-County Mustang Superfund Site. A map depicting the Property and a deed with a legal description of the Property are attached hereto as Appendix G.

n. "Response Costs" shall mean all costs, including but not limited to, direct and indirect costs and oversight costs, that EPA or DOJ on behalf of EPA has incurred and paid and will continue to incur and pay at or in connection with the Site, plus accrued Interest on such

costs.

o. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

p. "Settling Defendants" shall mean CDS Investment Company, Angelo Joseph D'Ambrosio and Cordine Scartozzi, General Partners and Joint Venturers of CDS Investment Company.

q. "Site" shall mean the AIW Frank/Mid-County Mustang Superfund Site, encompassing approximately 16 acres, located in the West Whiteland Township, Chester County, Pennsylvania, just east of the intersection of Ship Road and Business Route 30. A map of the Site is attached as Appendix A.

r. "Successor in Interest or Assign" with respect to Paragraphs 19, 20, 30, and 31 shall mean any person (i) who acquires an interest in the Property or a portion thereof (including but not limited to an ownership or leasehold interest) after entry of this Consent Decree, (ii) who prior to acquiring such interest in the Property was not a relative of any Settling Defendant, (iii) who prior to the acquisition of the Property did not have a business relationship with any Settling Defendant with respect to the Property, (iv) who agrees to be bound by Section XII of the Consent Decree, and (v) who qualifies as a bona fide prospective purchaser under Section 101(40) of CERCLA, 42 U.S.C. § 9601(40). The term "Successor in Interest or Assign" shall include the Successor in Interest's or Assign's heirs, corporate successors, or assigns, commissioners, officers, directors, employees and agents.

s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

4. Total Reimbursement Amount to be Paid by Settling Defendants to the EPA and the Pennsylvania Department of Environmental Protection ("PADEP"). Settling Defendants shall reimburse EPA and PADEP a total amount of \$830,000.00 [Eight Hundred Thirty Thousand Dollars]. Settling Defendants and PADEP have or will enter into a settlement agreement, separate from this Consent Decree, which settlement will contain a provision for the payment to PADEP of the aforementioned amount, less the amount to be paid to EPA pursuant to Paragraph 5 and all other terms of the agreement between Settling Defendants and PADEP.

5. Payment of Response Costs to EPA. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay the portion of the total reimbursement amount due to be paid to EPA. Settling Defendants shall pay to the EPA Hazardous Substance Superfund the principal sum of \$622,500.00 [Six Hundred Twenty-Two Thousand Five Hundred Dollars].

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2011V00349, EPA Region III Spill Number 03-25, DOJ Case Number 90-11-3-1604/1, and case civil action number. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to:

Robert Hasson (3RC41)
Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Lydia Guy (3RC00)
Docket Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Barbara Borden (3PM30)
Regional Financial Management Officer
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the AIW Frank/Mid-County Mustang Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or shall be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. JUDGMENT AND REIMBURSEMENT FROM INSURANCE PROCEEDS

9. Stipulation of Judgment. In addition to the amount Settling Defendants have agreed to reimburse EPA, pursuant to Paragraphs 4 and 5, based upon their ability to pay, Settling Defendants agree and stipulate that EPA has unreimbursed response costs in the amount of \$12,018,352.29 [\$12,640,852.29 total unreimbursed response costs minus \$622,500.00 payment under the Consent Decree]. Settling Defendants further agree and stipulate that a Judgment in the amount of EPA's unreimbursed response costs (\$12,018,352.29) shall be entered against Settling Defendants, jointly and severally, in favor of the United States. Said Judgment shall be satisfied solely through recovery of insurance proceeds (i) from the insurance policies

identified pursuant to Sub-Paragraph 11.h, and (ii) from any other relevant insurance policies that may be identified or discovered after entry of this Consent Decree. Upon approval and entry of this Consent Decree, it shall constitute the final judgment for resolution of the United States' claims against Settling Defendants, and no other form of judgment shall be required under the terms of this Consent Decree.

10. Provided that Settling Defendants continue to comply with this Consent Decree, the United States further agrees it shall not record the Judgment. Further, the United States' Judgment shall not be collected from or demanded, levied or executed against sums allocated to Settling Defendants from insurance recoveries, as provided in Paragraph 11.

11. Settling Defendants shall use reasonable efforts, including, but not limited to, litigation as provided under Sub-Paragraph 11.d.(i), to procure insurance proceeds from the policies identified under this Consent Decree. As part of Settling Defendants' attempt to recover insurance proceeds, Settling Defendants shall:

a. No later than ten (10) days after Settling Defendants' execution of this Consent Decree, to the extent Settling Defendants have not already done so, Settling Defendants shall provide notice of this Consent Decree and the United States' response cost claim under CERCLA to any insurance company that has issued a policy under Paragraph 11.h. In addition to such notice, and to the extent Settling Defendants have not already done so, submit, within ten (10) days after entry of this Consent Decree, a written claim for each insurance policy to the appropriate insurance company to determine whether the policies provide for payment of the United States' Judgment under either environmental or general liability provisions. Provide any further information requested by any insurance company in response to the claim, and pursue

resolution of each claim as promptly as possible. Provide EPA with copies of all written communications with respect to insurance claims and provide all documents that evidence, refer, or relate to claims made by or on behalf of Settling Defendants under any insurance policy, including any responses from the insurer with respect to any claims;

b. Provide EPA, within ten (10) days after receiving notice of any reimbursement amount payable to Settling Defendants under any policy, written notice of such expected reimbursement, including copies of any correspondence or written information received from any insurance company regarding any reimbursement that will be paid to Settling Defendants. The reimbursement of money shall include any money received with respect to any insurance policy, including, but not limited to, whether the policies are sold, bargained, settled, or cancelled.

c. Pay the United States, in satisfaction of the judgment amount, 65% of the total recovery amount under each policy which is resolved without litigation, and, along with such payment as to each policy, provide EPA copies of all correspondence and/or other documents from the insurance company related to reimbursement under any insurance policy;

d. For any claim that is denied under any insurance policy identified in Sub-Paragraph 11.h or under any relevant insurance policy identified subsequent to the entry of this Consent Decree, within ten (10) days of receipt of any such denial, provide EPA with copies of (a) each applicable policy and claim submitted by Settling Defendants, and (b) all correspondence provided by the insurance company in response to the claim. EPA shall have a reasonable opportunity to review all information provided under this Sub-paragraph. With respect to each policy for which Settling Defendants' claim has been denied and EPA, with the

assistance of its insurance contractor, determines that the policy is likely to provide for reimbursement, if pursued, the following shall apply:

(i) For any policy which in EPA's sole judgment has a potential reimbursement amount of \$1,000,000 or more, Settling Defendants shall initiate litigation in the appropriate court in an attempt to recover under the policy, unless Settling Defendants elect to irrevocably assign such policy to EPA pursuant to the Assignment of Insurance Proceeds. In the event of an assignment pursuant to the provisions of this Consent Decree, Settling Defendants will have no obligation to initiate or pursue litigation for that insurance claim. With respect to each insurance policy for which litigation is necessary for recovery and such litigation is pursued by Settling Defendants, Settling Defendants shall pay the United States 60% of the total amount recovered with respect to each policy, and the remainder of the recovery shall be retained by Settling Defendants to cover all costs incurred by Settling Defendants in pursuing the litigation, including, but not limited to, all attorneys' fees and litigation. In the event that EPA pursues litigation or settlement negotiations to recover on a claim, Settling Defendants shall not be entitled to any portion of the recovery.

(ii) For any policy where in EPA's sole judgment the potential reimbursement amount under the policy, if paid, is less than \$1,000,000, Settling Defendants shall irrevocably assign to EPA all rights to the proceeds from any insurance claim for which Settling Defendants receive a denial of coverage or reimbursement under the policy. In the event of an assignment pursuant to the provisions of this Consent Decree, Settling Defendants will have no obligation to initiate or pursue litigation for that insurance claim. In the event that EPA pursues litigation or settlement negotiations to recover on a claim, Settling Defendants shall not

be entitled to any portion of the recovery.

e. Any such assignment under this Paragraph 11 shall be in the form of the "Assignment of Insurance Proceeds" attached hereto as Appendix H and shall be fully executed by each Settling Defendant;

f. Any payment due under this Paragraph shall be identified as "payment of insurance proceeds" and shall be made in accordance with the procedures and notice requirements set forth in Paragraphs 6 and 7 of Section V.

g. For purposes of this Consent Decree, "Insurance Proceeds" shall include any money recovered by or on behalf of the Settling Defendants in connection with the Site under any insurance policies issued to any Settling Defendant insuring the Property. Insurance proceeds shall include any money received by Settling Defendants or to which Settling Defendants may be entitled to recover with respect to any insurance policy related to the Property, including, but not limited to, whether the policies are sold, bargained, settled, or cancelled.

h. On Appendix B Settling Defendants have identified known insurance policies issued to CDS Investment Company insuring the Property. Appendix B also includes a certification signed by Settling Defendants attesting (1) that Settling Defendants have made a reasonable, good faith search for all insurance policies issued to CDS Investment Company insuring the Property from July, 1970, until the present; and (2) that the policies listed in Appendix B are the result of such reasonable, good faith search. Nothing herein is intended to exclude any other insurance policies issued to CDS Investment Company insuring the Property that may be discovered through investigating applicable policies.

j. Notwithstanding any provision of this Consent Decree, EPA retains all of its information-gathering authorities under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), Section 3007 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927, and any other applicable statutes. Settling Defendants agree to cooperate with all efforts by EPA to identify other relevant insurance policies through insurance archaeology and other investigatory and information-gathering efforts.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

12. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 5 (Payment of Response Costs to EPA) or Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1995, as provided by Section 107 of CERCLA, 42 U.S.C. § 9607.

13. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 12, \$2000 per violation per day that such payment is late.

b. If Settling Defendants fail to comply with the requirements of Paragraph 11, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$500 per violation per day of such noncompliance through the tenth day, in addition to the Interest required by Paragraph 12. For noncompliance with Paragraph 11 that

continues for more than 10 days, the following shall apply.

(I) Day 11 through 20 -- Settling Defendants shall pay \$550 per violation per day of each act of noncompliance.

(ii) Day 21 through 30 -- Settling Defendants shall pay \$800 per violation per day of each act of noncompliance.

(iii) Day 31 or later -- Settling Defendants shall pay \$1200 per violation per day of each act of noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the AIW Frank/Mid-County Mustang Site name, the EPA Region III Site Spill Number 03-25, DOJ Case Number 90-11-3-1604/1, and the case civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

United States Environmental Protection Agency
Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

d. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to each person identified in Paragraph 38.

e. Stipulated Penalties shall accrue as provided in this Paragraph regardless of

whether EPA has notified Settling Defendants of the violation(s) or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or, in the event of an act of noncompliance, the day a violation occurs and shall continue to accrue through the date of payment the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

16. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

18. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or pursuant to Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, with regard to Existing Contamination at the Site and the Property. The United States also agrees not to exercise its federal lien rights under Section 107(l) of CERCLA, 42 U.S.C. 9607(l), against Settling Defendants with regard to response costs incurred with respect to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 5 (Payment of Response Costs to EPA) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is based upon the veracity of the Financial Information submitted to the United States by Settling Defendants and is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. Further, this covenant is conditioned upon Settling Defendants' compliance with Paragraph 11 regarding the determination of insurance and payment of insurance proceeds, as required. This covenant not to sue extends only to Settling Defendants and does not extend to any other person, except as stated below.

19. The United States covenants not to sue or take any other civil or administrative action (including but not limited to imposing or enforcing any liens on the Property pursuant to Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607 (l) or 9607(r), against a Successor in Interest or Assign for any and all civil liability for injunctive relief or reimbursement of Response Costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), and Section 7003

of RCRA, 42 U.S.C. § 6973, with respect to Existing Contamination, and to release any lien that it may have on the Property under Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) or 9607(r), as a result of response actions conducted at the Property to address Existing Contamination, unless EPA determines that such Successor in Interest or Assign does not satisfy the terms for qualifying as a Bona Fide Prospective Purchaser set forth at Section 101(40) of CERCLA, 42 U.S.C. 9601(40). In addition, this covenant not to sue under Paragraph 19 is conditioned upon Settling Defendants' compliance with the requirements of Section XII and applies only to a Successor in Interest or Assign that agrees to be bound by Section XII of this Consent Decree.

IX. RESERVATIONS OF RIGHTS BY UNITED STATES

20. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Successors in Interest and Assigns with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraphs 18 and 19.

Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability arising from past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

e. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for failure of Settling Defendants to comply with Administrative Orders for Access on Consent, EPA Docket Nos. III-99-014-DC and III-99-015-DC.

21. The parties recognize that the payments required by this Consent Decree are a compromise resulting from an assessment of each Settling Defendant's financial condition based upon information each Settling Defendant has provided to EPA and DOJ and identified in the Declarations attached hereto as Appendix F. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to re-institute or reopen this action, or to commence a new action seeking relief other than that provided in this Consent Decree, if the Financial Information provided by any Settling Defendant, or the financial certification made by any Settling Defendant in Paragraph 37 and attested to in the Declarations attached hereto as Appendix F, is false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

22. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, any state constitution, the Tucker Act,

28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site. Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), this covenant not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Defendants agree not to assert any CERCLA claims or causes of action and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person in which the person's liability to Settling Defendants is with respect to the Site and the matters addressed in this Consent Decree. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall

not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 24, the Parties expressly reserve any and all rights, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

26. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken and all Response Costs incurred and to be incurred with respect to Existing Contamination at the Site and Property, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

27. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days

of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XII. SITE ACCESS/INSTITUTIONAL CONTROLS

29. Settling Defendants have previously consented to provide EPA with access to the Waterline and Water Treatment Parcels of the Site, pursuant to Administrative Orders for Access on Consent ("Consent Orders"), EPA Docket Nos. III-99-014-DC and III-99-015-DC, for the purpose of implementing the remedial action selected in EPA's Record of Decision ("ROD") for the Site. Nothing in this Consent Decree shall abrogate Settling Defendants' ongoing obligations under these Consent Orders, including, but not limited to, the requirement that Settling Defendants provide EPA with at least thirty (30) days prior written notice of any change in ownership or control of the Waterline and/or Water Treatment Parcels, and the requirement that Settling Defendants provide copies of the Consent Orders to any transferee(s) in interest, prior to any transfer(s) of the Waterline and Water Treatment Parcels. In the event that EPA terminates Consent Order No. III-99-014-DC ("Waterline AOC"), pursuant to Paragraph 15.1 of the

Waterline AOC, Settling Defendants agree not to interfere with the operation, or alter or disturb the integrity of any structures or devices built, installed, or otherwise placed by EPA and/or its Representatives on the Waterline Parcel, related to the installation of the public waterline and water service connections, including, but not limited to, any water service connections serving the Water Treatment Parcel; nor shall Settling Defendants permit others to do so. Copies of the Consent Orders are attached hereto as Appendices C and D. If access is required to implement response activities at any other part of the Site property that is owned or controlled by any of the Settling Defendants, such Settling Defendants shall provide access at all reasonable times to the United States and its representatives, including EPA and its contractors, for the purpose of conducting any response activity at the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIII (Access to Information).

30. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including

enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations. Furthermore, pursuant to the ROD, the implementation of institutional controls is required at the Site to prevent the consumption of contaminated groundwater and the creation of any hydraulically adverse influence on the operation of the groundwater extraction system.

Currently, these institutional controls are being implemented by Chester County Board of Health Regulation 501.12.5.1, which places restrictions on the construction of and use of new wells at the Site. In the event that Chester County Board of Health Regulation 501.12.5.1 is rescinded prior to the completion of the remediation of the groundwater at the Site, which is currently in its operation and maintenance phase, Settling Defendants, their heirs, successors, and/or assigns shall submit to EPA for approval a declaration of land use restriction that implements the institutional controls required by the ROD. Upon EPA's approval, Settling Defendants, their heirs, or any Successor in Interest or Assign shall file the declaration of land use restriction with the Recorder of Deeds, Chester County, Pennsylvania, and shall comply with all the relevant terms of land use restriction contained in the declaration. A copy of the ROD is attached hereto as Appendix E.

31. Any transfer of ownership or any other interest in the Property by any Settling Defendant to a Successor in Interest or Assign shall be made subject to such Successor in Interest or Assign agreeing to be bound by all requirements of this Section XII (Site Access/Institutional Controls). A copy of this Consent Decree shall be provided to any Successor in Interest or Assign. The Successor in Interest's or Assign's agreement to be bound by the requirements of this Section XII shall be specifically stated in any document that transfers or conveys the Property or any portion thereof to the Successor in Interest or Assign. Upon the sale, transfer or conveyance of the Property or any portion thereof, Settling Defendants shall provide EPA written notice of the

transaction no later than thirty (30) days after completion of the transaction and a copy of the transaction document that reflects the agreement of the Successor or Assign to be bound by the requirements of Section XII of the Consent Decree. The required notice shall be provided to EPA pursuant to Paragraph 38.

XIII. ACCESS TO INFORMATION

32. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, insurance coverage information and documents, or other documents or information related to the Site.

33. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.

2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants

assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following:

- 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

34. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

35. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site, the liability of any person under CERCLA with respect to the Site, and related in any way to insurance coverage on any part of the Site owned by any Settling Defendant or any Settling Defendant's efforts to determine the existence of insurance coverage, regardless of any corporate retention policy to the contrary.

36. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation, and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

37. Each Settling Defendant hereby certifies individually that, to the best of its/his knowledge and belief, after thorough inquiry, it/he has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it/him regarding the Site;
- b. fully complied with any and all EPA requests for information pursuant

to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or requested as part of any settlement discussions between the United States and Settling Defendants; and

c. submitted to EPA financial information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

XV. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Reference Number 90-11-3-1604/1

As to EPA:

Robert Hasson (3RC41)
Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street

Philadelphia, PA 19103

Charlie Root (3HS21)
Remedial Project Manager
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Lydia Guy (3RC00)
Docket Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Barbara Borden (3PM30)
Regional Financial Management Officer
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 10103

As to Settling Defendants:

CDS Investment Company
1536 Greenlawn Road
Paoli, PA 19301, and

Angelo Joseph D'Ambrosio
1536 Greenlawn Road
Paoli, PA 19301

Cordine Scartozzi
412 Lancaster Avenue
Berwyn, PA 19312

Robert D. Fox, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue
Suite 500
Bala Cynwd, PA 19004

XVI. RETENTION OF JURISDICTION

39. This Court shall retain jurisdiction over this matter for the purpose of interpreting and

enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDIX

40. This Consent Decree and any appendix constitute the final, complete and exclusive agreement and understanding among the Defendants with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a Map of the Site. "Appendix B" contains a list identifying the known insurance policies issued to CDS Investment Company insuring the Property and a certification by Settling Defendants as described in Paragraph 11.h of this Consent Decree. "Appendix C" is Administrative Order for Access on Consent, EPA Docket No. III-99-014-DC. "Appendix D" is Administrative Order for Access on Consent, EPA Docket No. III-99-015-DC. "Appendix E" is the 1995 Record of Decision. "Appendix F" contains the Declarations concerning Settling Defendants' Financial Information. "Appendix G" contains a map of the Property and a deed providing a legal description of the Property. "Appendix H" is an "ASSIGNMENT" Form related to insurance.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

41. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. In accordance with Section 7003 of RCRA, 42 U.S.C. § 6973(d), an opportunity for a public meeting shall be provided during or around the time provided for public comment. The United States reserves the right to withdraw or withhold its consent if

the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

42. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

43. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

44. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

45. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

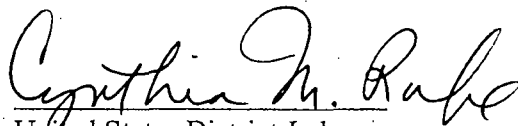
XX. EFFECTIVE DATE

46. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXI. FINAL JUDGMENT

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 17th DAY OF Jan., 2011.

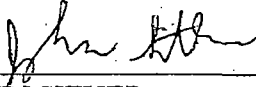

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. CDS Investment Company, et al., relating to the AIW Frank/Mid-County Mustang Superfund Site.

FOR THE UNITED STATES OF AMERICA:

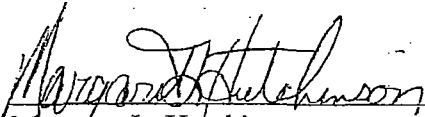


ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530




JOHN SITHER
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

ZANE D. MEMEGER
United States Attorney
Eastern District of Pennsylvania

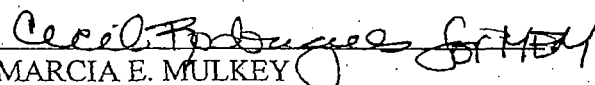


Margaret L. Hutchinson
Chief, Civil Division
Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street
Philadelphia, PA 17106-1754
Tele. No. 215/861-8282

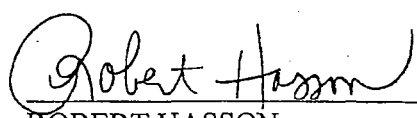
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:


SHAWN M. GARVIN

Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029


MARCIA E. MULKEY

Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029


ROBERT HASSON

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029