

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In the Matter of:**

<b>Erie Regional Airport Authority</b>	:	
<b>Millcreek Township</b>	:	Hazardous Sites Cleanup Act
Millcreek Dump Site	:	CERCLA
Millcreek Township	:	UECA
Erie County, Pennsylvania	:	

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 13<sup>th</sup> day of August, 2010, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), Millcreek Township (“Township”), and Erie Regional Airport Authority (“Airport Authority”). This Consent Order and Agreement amends and hereby replaces the consent orders and agreements between the Department and the Township, dated April 6, 1995, April 25, 1997, and December 14, 2000.

**Findings**

The Department has made and determined the following:

A. The Department is the agency with the duty and authority to administer and implement the Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S.A. §§6501-6517 (“Environmental Covenants Act”), and to file a claim for cost recovery pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*, 42 U.S.C. §§9601-9675 (“CERCLA”). The Department is also the agency with the duty and authority to administer and enforce the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§6020.101-6020.1305 (“HSCA”), Section 1917-A of the Administrative Code of 1929, Act of

April 9, 1929, P.L. 177, *as amended*, 71 P.S. §510-17 (“Administrative Code”), and the rules and regulations promulgated under these statutes.

B. The Township is a municipal corporation with a business address of 3608 West 26<sup>th</sup> Street, Erie, Pennsylvania 16506-2037.

C. The Airport Authority is a municipal authority with a business address of 4411 West 12<sup>th</sup> Street, Erie, PA 16505. The Airport Authority owns and operates the Erie International Airport.

D. This Consent Order and Agreement concerns the Millcreek Dump Site in Millcreek Township, Erie County, Pennsylvania (“Site”). The Site contains several parcels of property that cover approximately 124 acres. Within the Site, the Township owns five (5) parcels of property that cover approximately 110.6 acres, as more specifically described in Paragraph R, below.

E. From approximately 1970 until 1981, numerous drums and other wastes were disposed at the Site, and these wastes contained “hazardous substances” within the meaning of Section 103 of HSCA, 35 P.S. §6020.103, and Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

F. The disposal of hazardous substances at the Site constitutes a “release” and “threatened release” of hazardous substances, pursuant to Section 103 of HSCA, 35 P.S. §6020.103, and Sections 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§9601(22), 9604(a), and 9607(a).

G. As an area where hazardous substances have been and continue to be released, the Site is a “site” within the meaning of Section 103 of HSCA, 35 P.S. §6020.103, and is a “facility” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§9601(9) and 9607(a).

H. Since 1981, the Department and the United States Environmental Protection Agency (“EPA”) have conducted Response Actions at the Site to address the release and threatened release of hazardous substances at the Site. The Department and EPA have incurred and continue to incur Response Costs at the Site.

I. In 1989, EPA filed a complaint in the United States District Court for the Western District of Pennsylvania to recover the Response Costs that it had incurred at the Site. This case was entitled United States v. Riehl, et. al., Civil Action No. 89-226E (“EPA’s cost recovery case”). The Township was not named as a Defendant in the EPA’s cost recovery case. However, certain Defendants in EPA’s cost recovery case filed third-party claims against the Township. In exchange for a covenant not to sue from EPA and contribution protection in the EPA’s cost recovery case, the Township made certain payments to EPA and completed other obligations under a Consent Decree with EPA regarding the Site (“EPA Consent Decree”). The Township has informed the Department that it has complied with all of its obligations under the EPA Consent Decree.

J. In 1993, the Department also filed a complaint in the United States District Court for the Western District of Pennsylvania to recover the Response Costs that the Department had incurred at the Site. This case was entitled Commonwealth of Pennsylvania v. Riehl, et al., Civil Action No. 93-297E (“Department’s cost recovery case”). The Township was not named as a Defendant in the Department’s cost recovery case.

K. The Department has recovered some of its Response Costs for the Site, and has settled its claims against the financially-viable Defendants in the Department’s cost recovery case. These settlements are documented in the various Consent Decrees and Consent Orders and Agreements executed as part of the Department’s cost recovery case, and they are maintained as public records at the Department’s Northwest Regional Office in Meadville, PA.

L. Regarding the (four) 4 acre parcel of property that the Township first owned within the Site (“First Township Parcel”), on April 6, 1995, the Department and the Township entered into a Consent Order and Agreement (“1995 Agreement”), whereby the Township paid \$1,000 to the

Hazardous Sites Cleanup Fund, and granted the Department and EPA access to the First Township Parcel. The Township has complied with all of its obligations under the 1995 Agreement.

M. After the execution of the 1995 Agreement, the Department and EPA determined that the Site Remedy required the construction of, among other things, a cap over the wastes at the Site, and a flood retention basin. Part of the flood retention basin had to be constructed on an approximately 64.7 acre parcel of property that was formerly owned by Conrail (the “Former Conrail Parcel”).

N. On April 25, 1997, the Department and the Township entered into a second Consent Order and Agreement (“1997 Agreement”), whereby the Township subsequently acquired the Former Conrail Parcel, and granted permanent easements on that Parcel for the construction of the flood retention basin necessary to complete the Site Remedy. The Township has complied with all of its obligations under the 1997 Agreement.

O. On April 30, 1997, EPA issued the first Explanation of Significance Difference for the Site Remedy, and on May 10, 1999, EPA issued the second Explanation of Significance Difference for the Site Remedy. The first Explanation of Significance Difference modified the Site Remedy to require that approximately 50 acres of the wastes and other contamination at the Site be covered with one foot of clean soil. In addition, an orange “marker mat” was placed on top of the wastes and other contamination before placement of the soil cover. The second Explanation of Significance Difference again modified the Site Remedy to: require the construction of seven acres of wetlands; increase the Site area from 84.5 acres to 124.3 acres to include the area in and around the flood retention basin; and require construction of a 9-hole public golf course on top of the soil cover and related golf club house and golf teaching facilities at the Township Parcels within the Site.

In accordance with the two Explanation of Significance Differences, the Site Remedy was completed in 2001.

P. Ralph Riehl, Joseph and Evelyn Halmi, and James, Ronald, and Gilbert Sitter also owned parcels of property within the Site and were among the Defendants named in the Department's cost recovery case. At various times in the 1990s, the Department settled its claims against these Defendants under Consent Decrees that were approved by the United States District Court for the Western District of Pennsylvania. To ensure the proper operation and maintenance of the Site Remedy for the public benefit, these Defendants subsequently donated their parcels to the Township as described below.

Q. On December 14, 2000, the Department and the Township entered into a third Consent Order and Agreement ("2000 Agreement"), whereby the Township obtained ownership of three more parcels within the Site upon donation from Mr. Riehl, the Halmis, and the Sitters. In accordance with the 2000 Agreement and the Township's agreements with EPA, the Township has constructed, operated, and maintained a public golf course at the Site. To date, the Township has complied with all of its obligations under the 2000 Agreement.

R. As of the date of this Consent Order and Agreement, the Township owns the following parcels of property (collectively the "Township Parcels") within the surface boundaries of the Site:

<u>Parcel</u>	<u>Approximate Size</u>	<u>Description–Erie Co. Recorder of Deeds</u>
First Township Parcel	4.477 acres	(33) 047-171-057.01, Erie Co. R. B. 392, P. 758
Former Riehl Parcel	42.501 acres	(33) 035-171-030, Erie Co. R. B. 744, P. 2364
Former Halmi Parcel	10.485 acres	(33) 035-171-014, Erie Co. R. B. 744, P. 2369
Former Sitter Parcel	9.67 acres	(33) 046-171-013, Erie Co. R. B. 745, P. 528
Former Conrail Parcel	64.738 acres	(33) 045-164-033.02, Erie Co. R.B. 541, P. 393

A map showing the approximate surface boundaries of the Township Parcels, is attached as Exhibit A and incorporated herein.

S. Several years ago, the Airport Authority informed the Department, EPA, and Township that it proposed to extend Runway 6-24 at the Erie International Airport. This proposal requires modifications to the Site Remedy to allow for the extension of Runway 6-24.

T. The Airport Authority has submitted the following documents to the Department, EPA, and Township: Superfund Impact Report; Health and Safety Plan; Site Inspection and Maintenance Plan; and Waste Management Plan. These four documents submitted by the Airport Authority identify the actions that the Airport Authority shall take to construct the permanent facilities at the Site related to the extension of Runway 6-24, and relocate a portion of Powell Avenue onto the Site.

U. As of the date of this Consent Order and Agreement, the Department has approved the four documents identified in Paragraph T, above. These Department-approved documents shall hereinafter be collectively referred to as the “Runway 6-24 Extension Plan,” are incorporated herein and enforceable hereunder, and are maintained as public records at the Department’s Northwest Regional Office in Meadville, PA.

V. On April 20, 2010, the Department approved the Airport Authority's plan for operating and maintaining the permanent runway-related facilities at the Site as constructed in accordance with the Runway 6-24 Extension Plan ("Airport Authority Inspection and Maintenance Plan"). The Department-approved Airport Authority Inspection and Maintenance Plan is incorporated herein and enforceable hereunder, and is maintained as a public record at the Department's Northwest Regional Office in Meadville, PA.

W. In accordance with the EPA Consent Decree, the Township has been and continues to inspect and maintain certain items constructed as part of the Site Remedy, these including the golf course, driving range, and flood retention basin. On August 2, 2010, the Department approved the Township's "Amended Site Maintenance and Inspection Plan" for the reconfigured golf course and reconfigured driving range that will be constructed by the Township, and for the portion of Powell Avenue that will be relocated and constructed on the Township Parcels by the Airport Authority in accordance with the Runway 6-24 Extension Plan and this Consent Order and Agreement.

X. In accordance with the Environmental Covenants Act, the Parties reviewed and provided comments on drafts of the Environmental Covenant for the Township Parcels. On August 3, 2010, the Department sent to the Township its approved language for the Final Environmental Covenant for the Township Parcels. Upon signing this Consent Order and Agreement, the Township will submit to the Department the executed, Final Environmental Covenant for the Township Parcels.

Y. This Consent Order and Agreement addresses the Airport Authority's and the Township's obligations to the Department for the Site under the laws and regulations identified in Paragraph A, above. The Department has provided EPA with copies of drafts of this Consent Order and Agreement, and the Department will provide EPA with a copy of this final Consent Order and

Agreement as executed by the Parties. However, this Consent Order and Agreement does *not* address the Airport Authority's and the Township's obligations to EPA for the Site, and the Airport Authority and the Township are each responsible for obtaining any permits, agreements, and/or other approvals from EPA, as necessary, to comply with their respective obligations at the Site under this Consent Order and Agreement.

Z. The Airport Authority and the Township desire to resolve the foregoing matters without litigation and in accordance with the obligations under this Consent Order and Agreement.

### **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 the Airport Authority and the Township as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 1102 of HSCA, 35 P.S. §6020.1102, and Section 1917-A of the Administrative Code, 71 P.S. §510-17. The failure of the Airport Authority and/or the Township to comply with any applicable term or condition of this Consent Order and Agreement shall subject the Airport Authority and/or the Township, as applicable, to all of the penalties and remedies provided by those statutes for failing to comply with an order of the Department.

### **Findings**

2. The Airport Authority and the Township agree that the Findings in Paragraphs A through Z are true and correct and, in any matter or proceeding involving the Airport Authority and/or the Township and the Department, the Airport Authority and/or the Township shall not

challenge the accuracy or validity of these Findings. The Parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

### Definitions

3. Unless otherwise expressly defined below, the terms used in this Consent Order and Agreement shall have the meaning assigned to them in HSCA or in the regulations promulgated under HSCA. Whenever terms listed below are used in this Consent Order and Agreement, the following definitions shall apply:

a. “Airport Authority” shall mean the Erie Regional Airport Authority.

b. “Commonwealth government” shall mean the government of the Commonwealth of Pennsylvania, including the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and agencies of the Commonwealth of Pennsylvania and their officers and employees, but the term does not include the Airport Authority, the Township, or any other political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision, municipal or other local authority.

b. “Consent Order and Agreement” shall mean this Consent Order and Agreement, including the attached Exhibits A and B.

c. “Department” shall mean the Commonwealth of Pennsylvania, Department of Environmental Protection.

d. “Department’s cost recovery case” shall mean the case that the Department filed in 1993 in the United States District Court for the Western District of Pennsylvania to recover the Response Costs that the Department had incurred at the Site. This case was entitled

Commonwealth of Pennsylvania v. Riehl, et al., and docketed at Civil Action No. 93-297E. Neither the Airport Authority nor the Township were Defendants in the Department's cost recovery case.

e. "EPA" shall mean the United States Environmental Protection Agency.

f. "Parties" shall mean the Department, the Airport Authority, and the Township.

g. "Response Actions" at the Site shall mean all of the actions at the Site by the Department and EPA, and by any person or entity that has and/or will conduct actions at the Site in accordance with prior, written approvals approved of the EPA and Department.

h. "Response Costs" shall mean all past, present, and future direct and indirect costs that the Department has incurred and will incur at the Site, including, but not limited to: Department employee costs; contractor costs; sampling costs; laboratory costs; costs that the Department has incurred and will incur in the future for the operation and maintenance of the groundwater treatment and collection system at the Site; oversight costs incurred to monitor the actions of the Airport Authority and the Township at the Site; indirect costs; and accrued interest.

i. "Site" shall mean the Millcreek Dump Site located in Millcreek Township, Erie County, Pennsylvania, which covers approximately 124 acres, including the Township Parcels, and any groundwater contaminated with Site hazardous substances, as provided for in the definition of "site" under Section 103 of HSCA, 35 P.S. §6020.103, and "facility" under Section 101(9) of CERCLA, 42 U.S.C. §9601(9). The Township Parcels are more specifically described in Paragraph R, above. The approximate surface boundaries of the Township Parcels are shown on the map attached as Exhibit A and incorporated herein.

j. "Township" shall mean the Township of Millcreek in Erie County, Pennsylvania.

### **Permits**

4. As necessary to comply with their respective obligations under this Consent Order and Agreement, the Airport Authority and the Township shall obtain all permits and/or written approvals from applicable Federal and local agencies, and shall obtain all State permits, or written approvals from the Department in lieu of permits in accordance with Section 504(g) of HSCA, 35 P.S. §6020.504(g). This Consent Order and Agreement is not a permit and shall not be construed to stand in lieu of a permit.

### **Project and Alternate Project Managers**

5. a. As of the date of this Consent Order and Agreement, the Project Managers and Alternate Project Managers for each of the Parties are as follows, and the Department has approved the Project Managers and Alternate Project Managers for the Airport Authority and the Township:

#### *Department*

Ms. Kammy Halterman, Project Manager  
Mr. Gary Mechtly, Alternate Project Manager  
Environmental Cleanup  
Department of Environmental Resources  
230 Chestnut Street  
Meadville, PA 16335-3481  
Phone No. 814-332-6191  
Fax No. 814-332-6121

#### *Airport Authority*

Mr. Mark Petranchuk, Project Manager  
C&S Companies  
499 Col. Eileen Collins Blvd.  
Syracuse, NY 13212  
Phone No. 315-455-2000  
Fax No. 315-455-9667

Mr. Tyrone Clark, Alternate Project Manager  
MGC Erie  
2529 E. 32<sup>nd</sup> Street  
Erie, PA 16510  
Phone No. 814-899-8381  
Fax No. 814-899-8381

*Township*

Mr. Richard L. Morris, Project Manager  
Ms. Anne M. Stokol, Alternate Project Manager  
Millcreek Township Engineering Department  
3608 West 26<sup>th</sup> Street  
Erie, PA 16506  
Phone No. 814-833-6906  
Fax No. 814-835-4919

b. All correspondence with and notice to the Department, the Airport Authority, and the Township concerning this Consent Order and Agreement shall be made by hand delivery or first class mail to the respective Project Managers.

c. Service by the Department of any Notice of Breach of this Consent Order and Agreement or of any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by hand delivery or first class mail to the Project Manager for the Airport Authority and/or the Township, as applicable.

d. The Airport Authority and the Township shall notify the Department's Project Manager, in writing, at least five (5) business days before changing their respective Project Manager and/or Alternate Project Manager. The notice shall identify the name, address, and phone number of the proposed new Project Manager and/or Alternate Project Manager, and shall provide a summary of their qualifications. The Airport Authority's Project and Alternate Project Manager and the Township's Project and Alternate Project Manager shall be subject to the Department's approval,

and shall be qualified to directly supervise the Airport Authority's or the Township's work at the Site, as applicable.

**Department's Authority To Order Airport Authority To Cease Work At The Site**

6. The Airport Authority shall cease its work at the Site upon oral and/or written order of the Department. Within (five) 5 business days of the date of any oral order of the Department, the Department will issue such order to the Airport Authority, in writing ("Department's Cease Order"), with the specific details of its failure to comply with the requirements of this Consent Order and Agreement, including failure to comply with the requirements of the Department-approved Runway 6-24 Extension Plan and/or any other documents approved by the Department hereunder. The Department's Cease Order will also identify the additional work and the schedule for the additional work that the Airport Authority shall perform to come into compliance with this Consent Order and Agreement. The Department's Cease Order shall be incorporated herein and enforceable hereunder.

**Obligations Of The Airport Authority**

7. a. ***Implement Runway 6-24 Extension Plan.*** Upon execution of this Consent Order and Agreement, the Airport Authority shall implement the Department-approved Runway 6-24 Extension Plan, and shall take any and all other actions necessary, including submitting all required documents for Department review and approval, to timely comply with all of its obligations under this Consent Order and Agreement.

b. The Airport Authority shall perform all work and other actions at the Site under the direct supervision of the Airport Authority's Project Manager or Alternate Project Manager and in accordance with this Consent Order and Agreement.

c. ***Prior Written Approval For All Actions At The Site.*** The Airport Authority shall take no actions at the Site that are inconsistent with or that disturb the Response Actions at the

Site, except as approved by the Department, in writing, and in accordance with this Consent Order and Agreement.

d. ***Runway 6-24 Extension Plan Reporting Requirements.*** While construction activities are occurring at the Site and if requested by the Department, the Airport Authority shall submit to the Department's Project Manager a written report each week of the Airport Authority's progress the previous week in implementing the Runway 6-24 Extension Plan at the Site.

e. ***Proposed Revisions To Runway 6-24 Extension Plan.*** The Airport Authority shall submit to the Department's Project Manager, in writing, any proposed revisions to the Runway 6-24 Extension Plan. The Airport Authority shall not implement any revisions to the Runway 6-24 Extension Plan except upon express, prior written approval by the Department.

f. ***Certification Of Completion Of Runway 6-24 Extension Plan.***

i. When the Airport Authority determines that the Runway 6-24 Extension Plan is complete, the Airport Authority may schedule a pre-certification inspection with the Department's Project Manager;

ii. Within 30 days after such inspection, the Airport Authority may submit a written report to the Department's Project Manager requesting that the Department certify that the Runway 6-24 Extension Plan is complete. The report shall demonstrate that the Airport Authority's work has been completed in accordance with this Consent Order and Agreement, and shall contain as-built drawings for the Runway 6-24 Extension Plan that are signed and stamped by a professional engineer; and

iii. If, after review of the report, the Department determines that the Airport Authority has not completed the Runway 6-24 Extension Plan in accordance with this Consent Order and Agreement, the Department shall notify the Airport Authority, in writing, of the tasks necessary to complete the Runway 6-24 Extension Plan. Within 10 business days of such notification, the

Airport Authority shall submit to the Department's Project Manager a proposed schedule for completing those tasks. The Airport Authority shall perform all of the remaining tasks necessary to complete the Runway 6-24 Extension Plan in accordance with the Department-approved schedule and this Consent Order and Agreement; or

iv. If, after review of the report, the Department determines that the Airport Authority has completed the Runway 6-24 Extension Plan in accordance with this Consent Order and Agreement, the Department will certify to the Airport Authority and the Township that the Runway 6-24 Extension Plan is completed at the Site.

g. ***Operation And Maintenance Of Some Of Runway 6-24 Extension Plan.***

Upon receipt of the Department's written certification that the Runway 6-24 Extension Plan was completed at the Site in accordance with this Consent Order and Agreement, the Airport Authority shall implement the Airport Authority Inspection and Maintenance Plan that was approved by the Department on April 20, 2010, for the runway-related facilities at the Site.

h. ***Proposed Revisions To Airport Authority Operation And Maintenance Plan.***

The Airport Authority shall submit to the Department's Project Manager, in writing, any proposed revisions to the Airport Authority Inspection and Maintenance Plan. The Airport Authority shall not implement any revisions to the Airport Authority Inspection and Maintenance Plan except upon express, prior written approval by the Department.

i. ***Operation and Maintenance Reporting Requirements.*** On April 1 and October 1 of each year, the Airport Authority shall submit to the Department's Project Manager a written report that describes all of the operation and maintenance work that it did on the runway-related facilities at the Site during the previous six (6) months in accordance with the Airport Authority Inspection and Maintenance Plan.

### Obligations Of The Township

8. a. ***Final Environmental Covenant For Township Parcels.*** Upon execution of this Consent Order and Agreement, the Township shall submit to the Department the approved Final Environmental Covenant for the Township Parcels that is signed by the Township, complies with the Environmental Covenants Act, and refers to and incorporates the Township's obligations under this Consent Order and Agreement.

b. ***Waste Management and Health and Safety Plans.*** At least 60 days before starting any activities relating to the reconfiguration of the golf course and reconfiguration of the driving range at the Site, the Township shall submit to the Department's Project Manager a Waste Management Plan and Health and Safety Plan for any wastes that the Township may encounter during these activities at the Site. The Department will review each Plan and will approve each Plan, in writing, that is consistent with the EPA Consent Decree, the Department-approved Amended Site Inspection and Maintenance Plan, and this Consent Order and Agreement. If a Plan, or any portion of a Plan, is disapproved by the Department, the Township shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department. The Department will approve or disapprove the revised Plan in writing. Upon approval by the Department, each Plan shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such.

c. The Township shall perform all activities relating to the reconfiguration of the golf course and reconfiguration of the driving range at the Site under the direct supervision of the Township's Project Manager or Alternate Project Manager, and in accordance with the Department-approved Waste Management Plan and Health and Safety Plan, the Department-approved Amended Site Inspection and Maintenance Plan, and this Consent Order and Agreement.

d. ***Township Parcels For Public Recreation And Public Benefit.*** The Township shall operate and maintain the Township Parcels for public recreation and public benefit in perpetuity, in accordance with this Consent Order and Agreement and the Final Environmental Covenant for the Township Parcels.

e. ***Restrictions On Use Of Groundwater.*** The groundwater at the Township Parcels shall not be used for any purpose, except that groundwater treated at the on-Site treatment plant may be used to water the golf course and driving range, as previously approved by the Department. The Township shall not install any groundwater wells at the Township Parcels, and shall not operate or maintain the Township Parcels in any way that would adversely affect or interfere with the proper functioning of the existing groundwater treatment plant and/or associated groundwater wells at the Site.

f. ***Prior Written Approval For All Actions At The Site.*** Except upon express, prior written approval by the Department in accordance with this Consent Order and Agreement and/or in accordance with the procedures approved and identified by the EPA in the document entitled “Guidelines for Future Site Work Through the Site Marker Mat,” the Township shall take no actions at the Township Parcels or anywhere else at the Site that would adversely affect or interfere with the cap on the wastes at the Site, and/or would be inconsistent with or otherwise disturb the Response Actions at the Site.

g. ***Access.***

i. The Township shall grant the Department and its designated agents, including contractors, access to and entry upon the Township Parcels to: perform, maintain, and/or monitor Response Actions at the Site; and to monitor the Airport Authority’s and the Township’s compliance with their respective obligations under this Consent Order and Agreement.

Nothing in this Consent Order and Agreement is intended to limit in any way the right of access or entry that the Department may otherwise have by operation of any law; and

ii. The Township shall grant the Airport Authority, and the Airport Authority's Project Manager, Alternate Project Manager, and/or other designated agents, including contractors, access to and entry upon the Township Parcels to perform and maintain the Airport Authority's obligations under this Consent Order and Agreement.

h. ***Amended Site Inspection And Maintenance Plan.*** Upon receipt of the Department's certification that the Runway 6-24 Extension Plan was completed at the Site, the Township shall implement the Department-approved Amended Site Inspection and Maintenance Plan. The Township shall not implement any revisions to the Amended Site Inspection and Maintenance Plan except upon express, prior written approval by the Department.

j. ***Inspection and Maintenance Recordkeeping Requirements.*** The Township shall maintain a written record of all of the inspections and maintenance work that it did at the Township Parcels during the previous year in accordance with the Department-approved Amended Site Inspection and Maintenance Plan. The Township shall make these records available for review by the Department upon request of the Department's Project or Alternate Project Manager.

#### **Transfer of Township Parcels**

9. a. Other than transfers between the Township and the Airport Authority approved by the Department under the Runway 6-24 Extension Plan, the Township shall not transfer any legal or equitable interest in the Township Parcels, or any parts thereof, except upon prior, written approval of the Department and in accordance with Paragraph 9.d., below.

b. Except in accordance with Paragraph 9.d., below, the Airport Authority's and the Township's duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Township Parcels or any parts thereof.

c. If the Township intends to transfer any legal or equitable interest in the Township Parcels, or any parts thereof, the Township shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Department's Project Manager and the Airport Authority's Project Manager of such intent.

d. The Department, in its sole discretion, may agree to a transfer of the Township Parcels, or any parts thereof, and/or agree to modify or terminate the Township's obligations under this Consent Order and Agreement upon such transfer only if: the Department determines that the Transferee has the knowledge, skills, abilities, and financial resources to operate and maintain the Township Parcels for the public benefit in perpetuity in accordance with this Consent Order and Agreement and the Final Environmental Covenant for the Township Parcels; and the Transferee enters into a consent order and agreement with the Department concerning the Township's obligations under this Consent Order and Agreement. The Airport Authority and Township hereby agree to waive any rights that they may have to challenge the Department's decisions in this regard.

**Covenant Not To Sue By The Airport Authority And The Township**

10. The Airport Authority and the Township hereby covenant not to sue and agree not to assert any claims, demands, appeals, or causes of action, in law or equity, against the Commonwealth government arising from or out of: the release and threatened of release of

hazardous substances at the Site; the Response Actions at the Site; the Department's cost recovery case; or this Consent Order and Agreement. This covenant not to sue extends only to the Commonwealth government and does not extend to any other person.

**The Airport Authority's And The Township's Waiver Of Claims Under HSCA**

11. The Airport Authority and the Township hereby agree not to assert any claims they may have under Sections 708, 709, or 1301 of HSCA, 35 P.S. §§6020.708, 6020.709, and 6020.1301, for matters arising from or out of: the release and threatened of release of hazardous substances at the Site; the Response Actions at the Site; the Department's cost recovery case; or this Consent Order and Agreement.

**The Airport Authority's And The Township's Waiver Of Claim For Reimbursement**

12. The Airport Authority and the Township hereby agree not to assert any claims for reimbursement, contribution, and/indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from or out of: the release and threatened of release of hazardous substances at the Site; the Response Actions at the Site; the Department's cost recovery case; or this Consent Order and Agreement.

**The Department's Covenants Not To Sue**

13. Subject to the reservation of rights provided in Paragraphs 14 through 17, below, and in consideration of the Airport Authority and the Township performing their respective obligations under this Consent Order and Agreement for the public benefit, the Department hereby covenants not to sue or to take administrative action against the Airport Authority and/or the Township, pursuant to Sections 701, 702, and 1102 of HSCA, 35 P.S. §§6020.701, 6020.702, and 6020.1102, Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), or any other federal or state statutory or common law, for Response Costs and injunctive relief arising from or out of: the release

and threatened of release of hazardous substances at the Site; the Response Actions at the Site; the Department's cost recovery case; or this Consent Order and Agreement. These covenants not to sue extend only to the Airport Authority and the Township and do not extend to any other person.

**Department's Reservation Of Rights**

14. The covenants not to sue by the Department set forth in Paragraph 13, above, shall not apply to the claims by the Department against the Airport Authority and/or the Township, as applicable, for: failure to comply with their respective requirements under this Consent Order and Agreement; past, present, or future releases of hazardous substances outside the boundaries of the Site; and past, present, or future violations of state or federal criminal law.

15. If the Airport Authority and/or the Township fail to comply with their respective requirements under this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy against the Airport Authority and/or the Township, as applicable, that is available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement against the applicable violator(s).

16. With regard to all matters not expressly addressed in this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil and criminal actions, for any past, present, or future violations of any statute, regulation, permit or order, or for any pollution or potential pollution to the air, land or waters of the Commonwealth of Pennsylvania.

17. The remedies provided by Paragraphs 14-16, above, are cumulative and the exercise of one does not preclude the exercise of any other.

**Liability Of The Airport Authority And The Township**

18. a. The Airport Authority shall be liable for any violations of its obligations under this Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, directors, agents, employees, contractors, Project Manager, Alternate Project Manager, successors, and assigns.

b. The Township shall be liable for any violations of its obligations under this Consent Order and Agreement, including those caused by, contributed to, or allowed by its Supervisors, agents, employees, contractors, Project Manager, Alternate Project Manager, successors, and assigns.

**Decisions Under Consent Order and Agreement**

19. Except for decisions under Paragraph 9.d., above, any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa.C.S. §101. Any objection which the Airport Authority and/or the Township may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

**Effect on Third Parties**

20. Nothing in this Consent Order and Agreement shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department, the Airport Authority, and/or the Township have against any person that is not a party to this Consent Order and Agreement. The Parties expressly reserve the right to sue or continue to sue any person that is not a party to this Consent Order and Agreement. Moreover, nothing in this Consent Order and Agreement shall be

construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order and Agreement.

### **Contribution Protection**

21. The Airport Authority and the Township shall not be liable for claims for contribution regarding any matters arising from the Response Actions or Response Costs at the Site, as provided by Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2). This contribution protection is intended to be as broad as permissible under Section 705(c)(2) of HSCA, 35 P.S. §6020.705(c)(2), and the “matters addressed” in this settlement encompass all matters arising from or out of: the release and threatened of release of hazardous substances at the Site; the Response Actions at the Site; the Department’s cost recovery case; or this Consent Order and Agreement. This contribution protection shall take effect upon execution of this Consent Order and Agreement by the Parties, extends only to the Airport Authority and the Township, and shall become permanent upon the Airport Authority's and the Township’s satisfaction of their respective requirements under this Consent Order and Agreement.

### **Acknowledgment Of No Obligation**

22. The Airport Authority and the Township acknowledge that the Department has no obligation to defend the Airport Authority and/or the Township in any suit, demand, or claim for contribution for any matters arising from or out of: the release and threatened of release of hazardous substances at the Site; the Response Actions at the Site; the Department’s cost recovery case; or this Consent Order and Agreement.

### **Exhibits**

23. The following Exhibits are attached to and incorporated into this Consent Order and Agreement:

Exhibit A is a map of the approximate surface boundaries of the Township Parcels within the Site.

Exhibit B are the resolutions of the Airport Authority Board of Directors and of the Township Board of Supervisors authorizing their signatories below to enter into this Consent Order and Agreement on their behalf.

Although not attached as Exhibits, the Department-approved Runway 6-24 Extension Plan, Airport Authority Inspection and Maintenance Plan, and the Township's Amended Site Inspection and Maintenance Plan are incorporated in full herein and enforceable hereunder, and are maintained as public records at the Department's Northwest Regional Office in Meadville, PA.

### **Opportunity for Public Comment**

24. Pursuant to Section 1113 of HSCA, 35 P.S. §6020.1113, the Department will publish a notice of this Consent Order and Agreement in the *Pennsylvania Bulletin* and the *Erie Weekender*, containing a summary of the terms of this Consent Order and Agreement, and that it replaces the consent orders and agreements between the Department and the Township, dated April 6, 1995, April 25, 1997, and December 14, 2000. The Department will receive and consider comments from the public relating to this Consent Order and Agreement for 60 days from the publication of the notice of the settlement. The Department reserves the right to withdraw its consent in this Consent Order and Agreement, if the public comments disclose facts or considerations that indicate that this Consent Order and Agreement is inappropriate, improper, or not in the public interest.

### **Effective Date**

25. This Consent Order and Agreement shall be effective upon the date that the Department notifies the Airport Authority and the Township that it has filed a response to any significant written comments that it received pursuant from the public, or that no such comments were received. However, if the Department notifies the Airport Authority and the Township that it is withdrawing its consent to this Consent Order and Agreement in response to the public comments, then the terms of this Consent Order and Agreement shall be void, shall have no force or effect, shall not be used as evidence in any litigation or any other proceeding, and the Airport Authority and the Township shall execute a new consent order and agreement with the Department concerning the Site.

### **Titles**

26. A title used in this Consent Order and Agreement is provided solely for the purpose of identification and shall not be used to interpret that Paragraph.

### **Severability**

27. The Paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

### **Entire Agreement**

28. 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.

### **Modifications**

29. 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 all of the Parties.

### **Attorneys' Fees**

30. The Parties agree to bear their respective attorneys' fees, expenses and other costs in this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

### **Past Agreements With The Township**

31. Upon execution by the Parties, this Consent Order and Agreement shall replace the consent orders and agreements between the Department and the Township, dated April 6, 1995, April 25, 1997, and December 14, 2000. This Consent Order and Agreement is not intended to reopen and/or expose the Department or the Township to any claims, demands, appeals, or causes of action, in law or equity, for which they had granted to each other covenants not to sue under these prior consent orders and agreements.

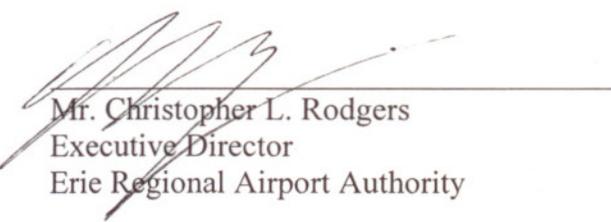
### **Resolutions**

32. Attached as Exhibit B are the resolutions of the Airport Authority's Board of Directors and of the Township's Board of Supervisors authorizing their signatories below to enter into this Consent Order and Agreement on their behalf.

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of the Airport Authority and the Township 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 the Airport Authority and

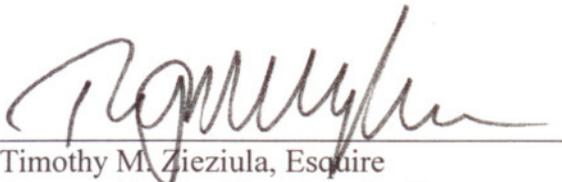
the Township; that the Airport Authority and the Township consent to the entry of this Consent Order and Agreement and the foregoing Findings as an ORDER of the Department; and that the Airport Authority and the Township hereby knowingly waive their rights to appeal this Consent Order and Agreement and the foregoing Findings, 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; Sections 508 and 1102 of HSCA, 35 P.S. §§6020.508 and 6020.1102; or any other provision of law. Signatures by the attorneys for the Airport Authority and the Township certify only that this Consent Order and Agreement has been signed after consulting with counsel.

**FOR THE AIRPORT AUTHORITY:**



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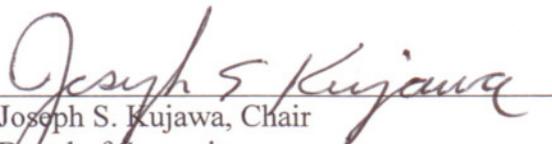
Mr. Christopher L. Rodgers  
Executive Director  
Erie Regional Airport Authority



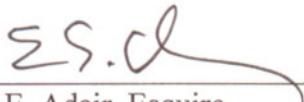
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Timothy M. Zieziula, Esquire  
Attorney for the Airport Authority

**FOR MILLCREEK TOWNSHIP:**

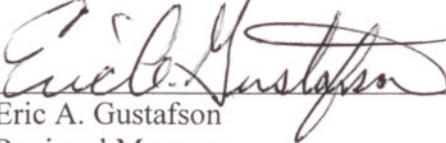


Joseph S. Kujawa, Chair  
Board of Supervisors  
Millcreek Township



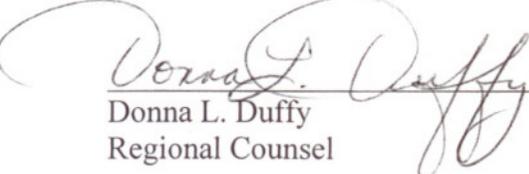
Evan E. Adair, Esquire  
Attorney for Millcreek Township

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



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Eric A. Gustafson  
Regional Manager  
Environmental Cleanup  
Northwest Region



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Donna L. Duffy  
Regional Counsel

DoDuffy\Millcreek Site Airport Extension\Final CO&A .doc

