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

UNITED STATES OF AMERICA Plaintiff, v. HORSEHEAD INDUSTRIES, INC., HORSEHEAD RESOURCE DEVELOPMENT COMPANY, INC., VIACOM INTERNATIONAL INC., TCI PACIFIC COMMUNICATIONS, INC. Defendants.	Civil Action No. 3: CV-98-0654 (Judge Kosik)

FILED
SCRANTON
OCT 27 2009
PER _____ DEPUTY CLERK

PLAINTIFF UNITED STATES' MOTION TO ENTER AMENDMENT TO CONSENT DECREE

On August 3, 2009, the United States of America ("United States") lodged with this Court a proposed Amendment to Consent Decree ("Amendment") agreed to by the United States and CBS Operations Inc. (f/k/a Viacom International Inc.), TCI Pacific Communications, Inc., CBS/Westinghouse of PA, Inc., HH Liquidating Corp. (f/k/a Horsehead Industries Inc.), and HRD Liquidating Corp. (f/k/a Horsehead Resource Development Company Inc.) ("Settling Defendants"). Pursuant to Paragraph 61 of the proposed Amendment, entry of the Amendment was subject to a thirty (30) day period for public notice and comment in accordance with U.S. Department of Justice policy, and a sixty (60) day period for public notice and comment in accordance with 35 P.S. § 6020.1113.

Public Notice of the Consent Decree was published in the Federal Register on August 7, 2009. *See* 74 Fed. Reg. 151 (August 7, 2009). More than sixty days have elapsed since the publication of the notice and no adverse comments on the Amendment were received. Plaintiff United States respectfully requests that the Court enter the proposed Amendment by signing page 38 of the Amendment (attached). All parties concur in this motion.[1]

Respectfully Submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 10/26/09

s/Patrick M. Casey
PATRICK M. CASEY
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[1] Pursuant to Paragraph 62 of the Amendment, Settling Defendants consent to entry of the Amendment without further notice.

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CERTIFICATE OF SERVICE

I certify that on this 26th day of October 2009, I served Plaintiff United States' Motion to Enter Amendment to Consent Decree on the following by service as indicated:

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PATRICK M. CASEY

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

UNITED STATES OF AMERICA	)	
Plaintiff,	)	Civil Action No. 3: CV-98-0654 (Judge Kosik)
v.	)	
HORSEHEAD INDUSTRIES, INC., HORSEHEAD RESOURCE DEVELOPMENT COMPANY, INC., VIACOM INTERNATIONAL INC., TCI PACIFIC COMMUNICATIONS, INC.	)	
Defendants.	)	

AMENDMENT TO CONSENT DECREE
RELATING TO NATURAL RESOURCE DAMAGES

I. INTRODUCTION

1. This is an Amendment to the Consent Decree entered by the Court on November 21, 2003 ("2003 Decree"), which addressed certain claims of the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, concerning response costs and remedial actions relating to the Palmerton Zinc Pile Superfund Site ("Site") in Palmerton, Pennsylvania. Among other things, the 2003 Decree required the Settling Defendants (as defined therein) to implement remedial actions selected by the United States Environmental Protection Agency ("EPA") for Operable Units 1, 2, and 3 at the Site.

2. The purposes of this Amendment to the 2003 Decree ("Amendment") are: (1) to substitute and/or add parties as Defendants in this action and as Settling Defendants under the 2003 Decree and this Amendment, taking into account several corporate reorganizations and other transactions and events that have occurred since entry of the 2003 Decree; and (2) to resolve, in a manner consistent with the ongoing remedial process at the Site, certain claims of the United States of America ("United States") and the Commonwealth of Pennsylvania ("Commonwealth") for Natural Resource Damages ("NRD") under Sections 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and (f), Sections 311(f)(4) and (5) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(f)(4) and (5), and Section 702(a) of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. § 6020.702(a).

3. For the purposes of this Amendment, the United States is acting on behalf of EPA and the following federal trustees of natural resources: the Secretary of the United States Department of the Interior, through the National Park Service ("NPS") (which manages certain property within the Site) and the U.S. Fish and Wildlife Service ("FWS"), and the Secretary of the United States Department of Commerce, through the Under Secretary for Oceans and

Atmosphere of the National Oceanic and Atmospheric Administration ("NOAA") (collectively "Federal Trustees"). Although the Commonwealth of Pennsylvania is not a party to this civil action, the following agencies of the Commonwealth are contractual parties to this Amendment: Pennsylvania Department of Environmental Protection ("PADEP"), Pennsylvania Game Commission ("PAGC"), Pennsylvania Fish and Boat Commission ("PAFBC"), and Pennsylvania Department of Conservation and Natural Resources ("PADCNR") (collectively "Commonwealth Trustees").

4. For the purposes of this Amendment, the Settling Defendants are CBS Operations Inc. (f/k/a Viacom International Inc.) ("CBS"), TCI Pacific Communications, Inc., ("TCI"), CBS/Westinghouse of PA, Inc. ("CBS/Westinghouse"), HH Liquidating Corp. (f/k/a Horsehead Industries Inc.), and HRD Liquidating Corp. (f/k/a Horsehead Resource Development Company Inc.). As specified in Paragraph 33 below, upon entry of this Amendment, these entities are or will become Defendants in this action and Settling Defendants under the 2003 Decree and this Amendment.

SITE HISTORY

5. The Site is located in and around the Borough of Palmerton, Carbon County, Pennsylvania, approximately 15 miles north of Allentown, Pennsylvania, in the vicinity of the Lehigh Gap. The Site is located on or north of Blue Mountain and on or south of Stoney Ridge and includes the Lehigh River valley and Aquashicola Creek valley that lies between Blue Mountain and Stoney Ridge.

6. From about 1898 until about 1981, two primary zinc smelters were operated at the Site. The two smelters were located separately on the east and west sides of the Lehigh Gap and became known as the East and West Plants. Both smelters were operated by The New Jersey

Zinc Company ("New Jersey Zinc") from about 1898 to 1967. In 1967, New Jersey Zinc was acquired by Gulf & Western Industries, Inc. ("G&W"). Primary zinc smelting operations ceased at the East and West Plants in about 1981, but secondary zinc smelting and other operations continued at the East Plant as described below.

7. The Trustees allege that (a) during smelting operations, heavy metals including lead, cadmium, zinc, and arsenic were emitted as dust and particulate matter from the smelter stacks and (b) these releases contributed to the defoliation of approximately 2,000 acres on Blue Mountain and the deposition of heavy metals within the Borough of Palmerton and the Palmerton valley. Smelter operations also resulted in the stockpiling of approximately 32,000,000 tons of residue. The main residue pile, known as the Cinder Bank, lies adjacent to the East Plant and along the base of Blue Mountain. The Cinder Bank is approximately 2½ miles long, 200 feet high, 200 feet wide at its crest, and 1,000 feet wide at the base. This equates to approximately 200 acres of surface area. The Trustees also allege that metals from the Cinder Bank migrated to the shallow groundwater aquifer and into Aquashicola Creek, which flows through the Borough of Palmerton into the Lehigh River.

8. For purposes of remedial decision-making, EPA carved out the East Plant and the West Plant to be addressed separately and divided the remainder of the Site into four operable units. In general terms (subject to the more specific definitions in Paragraph 35), Operable Unit 1 ("OU1") covers approximately 2,000 acres of Blue Mountain; Operable Unit 2 ("OU2") addresses the 2½ mile long Cinder Bank along the base of Blue Mountain; Operable Unit 3 ("OU3") consists of the valley-wide surface soil contamination, including areas in the Borough of Palmerton, the Village of Aquashicola, and portions of Lower Towamensing Township; and Operable Unit 4 ("OU4") addresses and will address Site-wide ecological risks and the alleged

impacts of the contamination on the regional surface and groundwater. OU4 will also address the need for re-vegetation or other erosion control measures at Stoney Ridge and the consolidating, capping, and re-vegetating of electric furnace materials at Stoney Ridge Materials.

9. EPA issued a Record of Decision ("ROD") for OU1 on September 4, 1987. The remedial alternative selected in this ROD provides for application of a sludge/fly ash mixture to the slopes of Blue Mountain and planting grass seed and tree seedlings in the sludge/fly ash mixture to form a vegetative cover. A Consent Decree between the United States, on behalf of EPA, and Zinc Corporation of America ("ZCA"), a division of Horsehead Industries, Inc., for implementation of the ROD for OU1 was entered by the United States District Court for the Middle District of Pennsylvania on October 18, 1988 ("1988 Decree"). ZCA completed re-vegetation of approximately 1,000 acres on Blue Mountain pursuant to the 1988 Decree. However, in 1996, a dispute arose between EPA and ZCA regarding the scope of ZCA's responsibilities under the 1988 Decree and ZCA ceased performance. EPA issued a Unilateral Administrative Order ("UAO") to Horsehead Industries, Inc., Horsehead Resource Development Company, Inc., TCI Pacific Communications, Inc., and Viacom International Inc., in December 1999 ("1999 UAO") requiring them to complete the remedial activities required by the ROD for OU1. The 1999 UAO was superseded by the 2003 Decree, and the Settling Defendants are currently performing the actions required by the 2003 Decree.

10. EPA issued a ROD for OU2 on June 29, 1988. The primary components of the remedy selected in the 1988 ROD consisted of contouring the Cinder Bank slopes; constructing surface-water diversion channels to divert runoff from Blue Mountain away from the Cinder Bank and into a treatment system, if necessary, and to divert leachate from the Cinder Bank into a treatment system; constructing an 18-inch soil and 6-inch clay or soil/bentonite cap over the

Cinder Bank to prevent infiltration and leaching of constituents into the groundwater and to prevent seeps from leaching out of the Cinder Bank; and placing a vegetative cover over the cap to stabilize Cinder Bank slopes, reduce/prevent erosion, and control surface-water flow. The June 29, 1988 ROD also provided for pre-design studies to identify the best methods for controlling or extinguishing internal fires within portions of the Cinder Bank; provided for treatability studies regarding collection and treatment of surface-water runoff from the Cinder Bank through the use of constructed wetlands and lime treatment; and required implementation of an operation and maintenance ("O&M") plan to evaluate the effectiveness of the selected remedy.

11. In January 1992, the United States and the Commonwealth of Pennsylvania filed a complaint in the United States District Court for the Middle District of Pennsylvania against Horsehead Industries, Inc. and Horsehead Resource Development Company, Inc. (collectively "Horsehead") alleging violations of the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act ("CAA"), and the CWA at Horsehead's smelting operation in Palmerton. The alleged violations of the CWA identified in the complaint related primarily to releases from outfalls associated with the Cinder Bank in excess of limits contained in National Pollutant Discharge Elimination System ("NPDES") permits issued to Horsehead for those outfalls. On November 13, 1995, the United States District Court for the Middle District of Pennsylvania approved and entered a Consent Decree among Horsehead, the Pennsylvania Department of Environmental Resources ("PADER") (now known as the Pennsylvania Department of Environmental Protection ("PADEP")), and the United States, on behalf of EPA, resolving the allegations in the complaint ("1995 Decree"). The 1995 Decree requires Horsehead to design and install pollution reduction technologies ("PRTs") at and in the vicinity of OU2 to address the

CWA violations. Horsehead has implemented the PRT Work Plan approved under the 1995 Decree.

12. Based on an evaluation of the 1995 Decree, additional studies performed by Horsehead, and the work performed under the PRT Work Plan, EPA issued an Explanation of Significant Differences for OU2 on August 27, 2002 ("OU2 ESD"). The OU2 ESD explains EPA's determination that the activities performed under the 1995 Decree and the PRT Work Plan, if successful, should achieve the primary remedial action objectives set forth in the OU2 ROD. Therefore, EPA determined that the actions performed and to be performed under the 1995 Decree and the PRT Work Plan would constitute the Remedial Action for OU2, except for O&M. Pursuant to the 1995 Decree, the OU2 O&M requirements related to PRT Work Plan implementation, are currently being performed by Horsehead Corp., which purchased the operating assets of Horsehead Industries Inc. The Settling Defendants are conducting OU2 O&M activities relating to maintaining and monitoring vegetation, assessing areas with elevated subsurface temperatures, and maintaining ancillary components (e.g., gates, warning signs, access roadway) pursuant to the 2003 Decree.

13. OU3 addresses residential soils and interior house dust that exhibit elevated concentrations of lead resulting from historical zinc processing operations. EPA issued the ROD for OU3 on October 9, 2001. The selected remedy included exterior soil remediation; post-remediation soil sampling to demonstrate cleanup with results reported to the property owner; establishment of institutional controls to notify potential buyers of a property where sampling indicates eligibility for cleanup, but where the owner(s) declined to have the cleanup performed; vacuuming and cleaning of residential interiors where interior dust samples contain over 650 ppm lead; and clearance sampling of cleaned interiors with results reported to the property

owner. The remedy selected in the ROD for OU3 has been completed by the Settling Defendants pursuant to the 2003 Decree.

14. OU4 includes a Site-wide investigation of groundwater and surface water (including a human health risk assessment of these media) and a Site-wide ecological risk assessment. OU4 also includes interim measures that are being performed for erosion control and re-vegetation of more than 100 acres of land on Stoney Ridge and the consolidating, capping, and revegetating of electric furnace materials at Stoney Ridge Materials. In accordance with a September 30, 2005 UAO issued by EPA for performance of a Remedial Investigation/Feasibility Study ("RI/FS") for OU4, the Settling Defendants submitted a draft Palmerton OU4 RI/FS Study Work Plan ("Draft RI/FS Work Plan") on November 21, 2005. The Draft RI/FS Work Plan objectives include, but are not limited to, characterizing Site-wide groundwater and surface water and assessing potential risks to human health from these media and assessing Site-wide ecological risk. The draft OU4 RI/FS Work Plan is currently under review.

15. On June 29, 2005, EPA, in consultation with PADEP, approved an Interim Measures Work Plan for OU4. The interim measures investigation included (a) evaluating soil and groundwater conditions at the east end of the Cinder Bank, including characterization of the soil conditions in an on-Site wetland, (b) characterizing soil and the groundwater aquifer in the area, and (c) testing the groundwater and geochemical system. Data obtained from the 2005 interim remedial investigation activities were used to begin preparing a remedial design for interim measures at the east end of the Cinder Bank. Additional interim measure investigation activities were conducted between November and December 2006 to refine the design. A proposal by the Settling Defendants to implement additional interim measures to expedite the

investigation and remediation of groundwater and surface water in OU4 is currently under consideration. At this time, EPA anticipates that the OU4 RI/FS will be finalized and a ROD for OU4 will be issued by 2011.

NRD ASSESSMENT

16. In assessing potential injuries to natural resources, the Trustees have focused primarily on resources on Federal and State lands in the Site, resources in or along surface waters that have received heavy metal releases at the Site, and wildlife resources (including fish and migratory birds) for which those areas provide habitat. The U.S. Government owns and NPS manages approximately 800 acres of land that was acquired to protect the Appalachian National Scenic Trail ("AT") in this area, which winds along the Blue Mountain ridge and through the associated gaps. PAGC also owns several thousand acres of State Game Lands on Blue Mountain. The Lehigh River cuts through the Palmerton valley west of the Borough of Palmerton. Aquashicola Creek drains the majority of the Site, flowing to the southwest through the Borough of Palmerton and joining the Lehigh River at the Lehigh Gap.

17. The Trustees allege the following: over the many years of smelting operations, large quantities of heavy metals were emitted from the smelter stacks and deposited over surrounding areas, including on the AT-related land managed by NPS and the State Game Lands managed by PAGC on Blue Mountain. Historically, the habitat on these Federal and State lands was characteristic of a closed canopy Appalachian forest. The injured habitat on this and other nearby land includes large areas of soil that are contaminated with metals at levels that are phytotoxic and have decreased plant cover in comparison with baseline conditions, or have no plant cover at all. Metals released at or from the Site have also contaminated surface water, sediments, and depositional areas along portions of Aquashicola Creek and the Lehigh River, as

a result of deposition from stack emissions, erosion, surface runoff, and the inflow of contaminated groundwater. Metals continue to seep into shallow groundwater from the Cinder Bank and other parts of the Site and from the East Plant, and this contaminated groundwater continues to discharge into Aquashicola Creek.

18. The Trustees entered into a Memorandum of Agreement and initiated the National Resource Damage Assessment and Restoration ("NRDAR") process in 2003, copy attached as **Exhibit A** to this Amendment. An Assessment Plan, completed in 2006, described the types of natural resource injuries and service losses allegedly associated with the Site and how they would be evaluated. Available data allegedly indicated that a wide range of natural resources and natural resource services under Federal and/or State trusteeship had been injured by the release of metals from the smelting facilities and continuing releases from the Cinder Bank and contaminated soils on Blue Mountain and Stoney Ridge. Trusteeship over these resources is often overlapping between the Commonwealth and Federal Trustees, since injured State owned lands and associated waters support resources such as migratory birds and fish for which the United States is a co-trustee, and injured Federal lands support resources such as wildlife, reptiles, and amphibians for which the State is a co-trustee.

19. The Trustees used a habitat based approach to assess alleged ecological injuries since the allegedly injured resources associated with the Site, including surface water, soil and sediment, aquatic and terrestrial biota, and upland and riparian resources are ecologically interdependent and provide interdependent services. Alleged human use service losses including recreational fishing, hiking, hunting, trapping, timber and wildlife management, and drinking water were also evaluated. In performing their assessment work, the Trustees sought to take into account the effects of the remedies selected by EPA for OUs 1, 2, and 3, including the re-

vegetation of affected Federal and State lands that has been and continues to be performed by Settling Defendants under the 2003 Decree.

20. A habitat equivalency analysis ("HEA") was used to estimate the number of acres of equivalent habitat that would need to be restored, acquired or protected, to compensate for the alleged terrestrial habitat injuries pending full restoration or recovery to baseline. Similarly, HEA was used to estimate the amount of wetlands and aquatic habitat required to compensate for alleged injuries to those resources. Restoration options for comparable habitats were also identified in proximity of the Site and evaluated in terms of scale, ecological and human use benefits, cost effectiveness, and feasibility. The Trustees estimated damages based on the anticipated costs to achieve restoration goals which were developed using potential restoration projects and approaches internally identified as preferred, although not yet finalized through the formal restoration planning and public input processes.

21. The Trustees also identified two specific habitat protection actions that are of such a high priority and/or peculiarly suited to performance by the Settling Defendants that the habitat protection actions should be required directly under this Amendment. First, the approximately 1200-acre King's Manor property was identified as a high priority restoration option due to its location adjacent to the AT (providing view-shed protection and additional hiker access), its high quality terrestrial and aquatic habitats, and the imminent threat of development. Second, the release of the WIC Mortgage on the Lehigh Gap Nature Center property, currently held by CBS, will ensure the preservation of that property and its resources for the benefit to the local community and would support public participation in the long term monitoring and restoration of injured private lands on Blue Mountain.

22. The fact that EPA has not yet selected the final remedy for OU4 inevitably results in uncertainty concerning the extent to which that remedy will abate the ongoing releases of hazardous substances being addressed in OU4 and reduce or eliminate the potential for those releases to contribute to future natural resource injuries. The Parties have negotiated in good faith to address the uncertainty regarding the remedy for OU4 in this Amendment in a manner that is equitable and in the public interest.

II. THE SETTLING DEFENDANTS

23. From approximately 1898 to 1981, New Jersey Zinc and its successor, G & W, operated primary zinc smelters at the Site. In or around 1981, Horsehead Industries, Inc. acquired the smelting operation in Palmerton from G & W. Since approximately 1981, secondary zinc refining and electric arc furnace dust processing operations have occurred at the East Plant.

24. From approximately 1981 until 1989, Horsehead Industries, Inc. owned the entire smelting operation in Palmerton. In 1985, Horsehead Resource Development Company, Inc., a subsidiary of Horsehead Industries, Inc., began operating the zinc recovery process at the Site. In approximately 1986, Horsehead Resource Development Company, Inc. assumed the environmental services, zinc recovery, and other business of Horsehead Industries, Inc. in connection with the smelting operation in Palmerton.

25. In December 1989, Horsehead Industries, Inc. transferred portions of the smelting operation and real property to Horsehead Resource Development Company, Inc.

26. On August 19, 2002, Horsehead Industries, Inc., and Horsehead Resource Development Company, Inc. filed petitions for bankruptcy in the United States Bankruptcy Court, Southern District of New York, Case Nos. 02-14024 (SMB) through 02-14027 (SMB). Following the sale of their operating businesses in December 2003, Horsehead Industries, Inc.

changed its name to HH Liquidating Corp. and Horsehead Resource Development Company changed its name to HRD Liquidating Corp.[1]

27. In 1986 G & W changed its name to Gulf & Western Inc. In 1989 Gulf & Western Inc. changed its name to Paramount Communications Inc. In 1995 Paramount Communications Inc., merged into Viacom International Inc. Subsequent to the merger, Viacom International Inc.'s parent company, Viacom Inc., sold Viacom International Inc., which subsequently had a name change to TCI Pacific Communications, Inc. TCI is a corporate successor to Paramount Communications Inc.

28. Viacom International Services Inc. was incorporated in 1995 and then changed its name to Viacom International Inc. Viacom International Inc. has succeeded to certain liabilities of Paramount Communications Inc., and Gulf & Western Industries, Inc. In 2006, Viacom International Inc., changed its name to CBS Operations Inc. CBS has an indemnification obligation to TCI covering the liabilities alleged in this Amendment, including without limitation, liability for natural resource damages of New Jersey Zinc and its successor, G & W, at the Site. CBS also has an indemnification obligation ("February 14, 2002 Viacom Settlement Agreement") to Horsehead Industries, Inc., covering Horsehead Industries, Inc.'s alleged liability for natural resource damages at the Site.

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[1] Certain personal property (e.g. equipment and plants) and real property owned by Horsehead Industries, Inc. and Horsehead Resource Development Company at the Site were sold during the bankruptcy to Horsehead Corp., [*(f/k/a Horsehead Acquisition Corp.)*], a wholly owned subsidiary of Horsehead Holdings Inc. Pursuant to the December 12, 2003 Bankruptcy Court Order (p. 10 and Exhibit "A" of the Bankruptcy Court's Order) and the 2003 Decree (p. 9), Horsehead Corp., assumed the obligations of Horsehead Industries, Inc., and Horsehead Resource Development Company regarding this Court's 1995 Consent Decree (Civil Action No. 1: CV-92-0008) and the 2003 Decree. This Court's 1995 Consent Decree required Horsehead Industries, Inc., to perform work at OU2 and was made part of the 2003 Consent Decree's remedial requirements for OU2 at the Site.

29. In or about 2006, CBS/Westinghouse acquired approximately 1,000 acres on Blue Mountain (the "Blue Mountain Property") at the Site and is the current owner of the Blue Mountain Property, a portion of the Site.

III. AGREEMENT AND ORDER

30. The Parties believe and the Court finds that this Amendment has been negotiated by the Parties in good faith, is fair, reasonable, and in the public interest, will expedite restoration, replacement, or acquisition of the equivalent of the Natural Resources and services that the Federal and Commonwealth Trustees assert have been injured, destroyed, or lost, and will avoid prolonged, difficult, expensive and complicated litigation. By entry into this Amendment, neither Settling Defendants nor their parent corporations, shareholders, subsidiaries, predecessors, affiliates, officers, directors or employees, admit any fact or liability arising out of the transactions or occurrences alleged above or for matters addressed herein or for any findings of fact or conclusions of law contained herein.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

IV. JURISDICTION AND VENUE

31. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367 and 2201 and 42 U.S.C. § 9613(b), and 35 P.S. § 6020.1103(d). This Court also has personal jurisdiction over the Settling Defendants. The Settling Defendants shall not challenge the terms of this Amendment or this Court's jurisdiction to enter and enforce this Amendment.

32. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 113(b) of CERCLA, 42 U.S.C. § 9613(b).

V. SUBSTITUTION AND ADDITION OF PARTIES

33. The United States' Complaint in this case, filed April 17, 1998, shall be deemed amended to include or reflect name changes in the following entities as Defendants in addition to TCI Pacific Communications, Inc.:

a. HH Liquidating Corp., formerly known as Defendant Horsehead Industries, Inc.,

b. HRD Liquidating Corp., formerly known as Defendant Horsehead Resource Development Company, Inc.,

c. CBS Operations Inc., formerly known as Viacom International Inc., and

d. CBS/Westinghouse of PA, Inc., a current owner of a portion of the Site since approximately 2005.

VI. PARTIES BOUND

34. This Amendment shall inure to the benefit of and be binding upon the United States and Commonwealth Trustees and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of Settling Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendants' responsibilities under this Amendment. Nothing in this Amendment shall release or nullify any liability under the 1995 Decree and the 2003 Decree.

VII. DEFINITIONS

35. Unless expressly provided herein or in the 2003 Decree, terms used in this Amendment which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, and terms which are defined in the CWA or in regulations promulgated under CWA shall have the meaning assigned

to them in CWA or in such regulations. Whenever terms listed below are used in this Amendment or the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Amendment" shall mean this Amendment to the November 21, 2003 Consent Decree in this matter and all exhibits attached hereto, which are incorporated by reference.

b. "CBS" shall mean CBS Operations Inc. (f/k/a Viacom International Inc.).

c. "Commonwealth Trustees" shall mean the Pennsylvania Department of Environmental Protection, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, and the Pennsylvania Department of Conservation and Natural Resources.

d. "Costs of Assessment" or "Assessment Costs" shall mean the costs incurred or to be incurred by the Trustees in assessing the natural resources injured, destroyed or lost at or in connection with the Site and in identifying and planning for restoration actions to compensate for such injuries and losses. Such costs include administrative costs and other costs or expenses, direct and indirect, including but not limited to, Trustee attorneys' costs incurred to support the assessment and restoration planning process.

e. "East Plant" shall mean the real property where current operations of Horsehead Corp. and the former historic smelter operations of New Jersey Zinc and its successors are/were located south of the Aquashicola Creek at the base of Blue Mountain and comprising approximately 100 acres as legally described in **Exhibit B** to this Amendment.

f. "Effective Date of Amendment" shall mean the date upon which this Amendment is entered by the Court, except as otherwise provided herein.

g. "Federal Trustees" shall mean the Secretaries of the United States Department of the Interior and the United States Department of Commerce, acting through their delegates in the U.S. Fish and Wildlife Service, National Park Service, and National Oceanic and Atmospheric Administration.

h. "Kings Manor Property" shall mean the real property as more fully described in **Exhibit C** to this Amendment.

i. "Natural Resources" shall mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the Commonwealth of Pennsylvania or a political subdivision. The term includes resources protected by Section 27 of Article I of the Constitution of Pennsylvania.

j. "Natural Resource Damages" shall mean damages recoverable under Section 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9607(f), Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321(f)(4) and (5), the Park System Resource Protection Act, 16 U.S.C. § 19jj, and Section 702(a) of HSCA, 35 P.S. § 6020.702(a) by the Trustees on behalf of the public for injury to, destruction of, or loss of Natural Resources and the services they provide, including Assessment Costs, costs of actions to restore, replace, or acquire the equivalent of such Natural Resources, and interim losses to the public resulting from such injury, destruction, or loss of Natural Resources.

k. "Operable Unit 1" or "OU1" shall have the same meaning as set forth in Paragraph 4 of the 2003 CD.

l. "Operable Unit 2" or "OU2" shall have the same meaning as set forth in Paragraph 4 of the 2003 CD.

m. "Operable Unit 3" or "OU3" shall have the same meaning as set forth in Paragraph 4 of the 2003 CD.

n. "Operable Unit 4" or "OU4" shall mean the EPA-approved remedial action that addresses the Site-wide ecological risks and the impacts of the contamination on the regional surface water and groundwater.

o. "Operable Unit 4 Interim Measures" or "OU4 Interim Measures" shall mean those actions approved by EPA to address Site related contamination on Stoney Ridge, Stoney Ridge Materials, shallow groundwater, and surface water at the East Plant and the east end of the Cinder Bank, as well as any other interim measures that may be required by EPA to protect human health and the environment prior to issuance of the OU4 ROD.

p. "Operable Unit 4 Releases" or "OU4 Releases" shall mean the releases of hazardous substances to groundwater or surface water at the Site that are being addressed, or will be addressed in the OU4 remedial decision making process.

q. "Parties to Amendment" shall mean the United States, the Commonwealth Trustees, and the Settling Defendants.

r. "Rock Slide Area" shall mean United States National Park Service and/or PAGC land on the westerly facing slope of Lehigh Gap, Carbon County Pennsylvania, where rock fall poses a potential hazard to the Appalachian National Scenic Trail, PA Route 248, and pedestrian and vehicular users, generally identified in **Exhibit D.**

s. "Settling Defendants" shall mean CBS Operations Inc. (f/k/a Viacom International Inc.), TCI Pacific Communications, Inc. , CBS/Westinghouse of PA, Inc., HH Liquidating Corp. (f/k/a/ Horsehead Industries, Inc.), and HRD Liquidating Corp. (f/k/a/ Horsehead Resource Development Company, Inc.).

t. "Site" shall have the same meaning as set forth in Paragraph 4 of the 2003 CD.

u. "Trustees" shall mean the Federal and Commonwealth Trustees.

v. "West Plant" shall mean the real property where former smelter operations of New Jersey Zinc and its successors were located south of Munch Chuck Road and north of Route 248 and the Lehigh River comprising approximately 120 acres as legally described in **Exhibit E** to this Amendment.

w. "WIC Mortgage" shall mean the Mortgage and Security Agreement ("Mortgage") made May 8, 2003, between Wildlife Information Center, Inc., a Pennsylvania corporation with offices at P.O. Box 198, 8856 Pa Route 873, Slatington, PA, 18080 ("Mortgagor") and Viacom International Inc., a Delaware corporation with offices at 15115 Broadway, New York, NY, 10036 ("Mortgagee"), copy attached as **Exhibit F** to this Amendment.

VIII. CONVEYANCE OF PROPERTY AND SATISFACTION OF MORTGAGE OBLIGATIONS

Conveyance of Kings Manor Property

36. Within ninety (90) days of entry of the Amendment, the Settling Defendants shall, at their sole expense, cause fee title to the Kings Manor Property (with no reservations as to oil, gas, minerals, timber, water, wind or other easements, except as approved by PAGC) to be conveyed to PAGC and titled to "Commonwealth of Pennsylvania, solely for the use of the Pennsylvania Game Commission." Said title shall be good and marketable and shall be insured by a reputable title insurance company doing business within the Commonwealth, as evidenced by the Commitment to Insure Title issued by First American Title Insurance company dated October 9, 2008 ("Title Commitment"), a copy of which is attached as **Exhibit C** to this

Amendment, and the Title Commitment may be updated and delivered no less than thirty (30) days prior to settlement to the PAGC. The PAGC hereby accepts the state of title of the Kings Manor Property as set forth in the Title Commitment, subject to such pre-settlement update. The Kings Manor Property conveyed, shall be used for the conservation of natural resources, and shall be owned and managed by the PAGC for the protection and propagation of game and wildlife and public recreation under its rules and regulations in perpetuity in accordance with the conditions set forth in **Exhibit G** to this Amendment.

37. Settling Defendants shall pay for a final title insurance policy for the benefit of the PAGC in at least the amount of $8,720,000. Settling Defendants shall be solely responsible for the costs of transfer including any and all real estate taxes, transfer or stamp taxes, recording fees or any other obligations to state or local governments such as a subdivision. Settling Defendants shall deliver to FWS and NOAA copies of all reports and other documents delivered to PAGC and all documents recorded in connection with the closing.

38. Within ninety (90) days of entry of the Amendment, Settling Defendants shall remove all garbage, refuse piles, and oil/fuel storage tanks from the Kings Manor Property and shall provide certification to PAGC that this cleanup work has been completed. It is understood and agreed that the Settling Defendants, at their sole cost and expense, shall cause the removal of the buildings and reclamation of the property as listed in **Exhibit H** to this Amendment (consisting of a two page description of the buildings and reclamation requirements and a location map).

Forgiveness and Release of Wildlife Information Center Mortgage

39. Within thirty (30) days of entry of the Amendment, CBS shall forgive all outstanding obligations of and shall release the WIC Mortgage, more specifically identified in

Exhibit F to this Amendment. Within sixty (60) days of entry of the Amendment, CBS shall provide the Trustees with a certification that all outstanding mortgage obligations relating to the WIC Mortgage have been forgiven including all recording obligations. This property is restricted solely to the uses permitted by the Growing Greener Act, 27 Pa.C.S. §§ 6101-13 as set forth in the Deed attached as **Exhibit I** to this Amendment.

IX. PAYMENTS

Reimbursement of Past Assessment Costs

40. Within thirty (30) days of entry of the Amendment, Settling Defendants shall pay $2,500,000 to reimburse the Trustees for Assessment Costs as follows:

a. Settling Defendants shall pay $147,291.93 to PADEP as reimbursement of the PADEP's Costs of Assessment. Payment to PADEP shall be by means of a check made payable to the Commonwealth of Pennsylvania, c/o Kenneth Beard, Division of Remediation Services, Pennsylvania Department of Environmental Protection, P.O. Box 8471, RCSOB 14th Floor, Harrisburg, PA 17105-8471.

b. Settling Defendants shall pay $83,303.82 to the PAFBC as reimbursement of PAFBC's Costs of Assessment. Payment to PAFBC shall be by means of a check made payable to the "Commonwealth of Pennsylvania, Pennsylvania Fish and Boat Commission," c/o Heather Smiles, Division of Environmental Services, Pennsylvania Fish and Boat Commission, 450 Robinson Lane, Bellefonte, PA 16823.

c. Settling Defendants shall pay $931.25 to the PADCNR as reimbursement of PADCNR's Costs of Assessment. Payment to PADCNR shall be by means of a check made payable to the "Commonwealth of Pennsylvania, Department of Conservation and Natural Resources," c/o Virginia Davison, Assistant Counsel, Department of Conservation and Natural Resources, 400 Market Street, Harrisburg, PA 17105-8767.

d. Settling Defendants shall pay $1,844,513.63, to the United States as reimbursement of DOI's Costs of Assessment. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-271/2 and the United States Attorney's Office file number in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Amendment. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall simultaneously send copies of the EFT transmittal notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington D.C. 20044, Attn: DOJ No. 90-11-2-271/2. Notice of the EFT also shall be sent to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, DC 20240

e. Settling Defendants shall pay $423,959.37 to the United States as reimbursement of NOAA's Costs of Assessment. Payment shall be made by EFT to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-271/2 and the United States Attorney's Office file number, in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Amendment. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall simultaneously send copies of the EFT transmittal notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, Attn: DOJ No. 90-11-2-271/2. Notice of the EFT shall also be sent to:

Branden Blum
Office of the General Counsel
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910

Additional Payments for Natural Resource Damages

41. In addition to the above property conveyance, WIC Mortgage forgiveness, payment of Assessment Costs, and the other requirements of this Amendment, Settling Defendants shall pay an additional $9,875,000 for NRD for the joint benefit and use of the Federal and Commonwealth Trustees, as follows:

a. Within thirty (30) days of entry of the Amendment, the Settling Defendants shall pay $5,431,250 for deposit into a Site-specific sub-account within the Natural Resource Damage Assessment Recovery ("NRDAR") Fund, to be managed by DOI for the joint benefit and use of the Trustees as described in Paragraph 41c. The payment to the NRDAR Fund under this Paragraph shall be made by EFT to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-271/2 and the United States Attorney's Office file number in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Decree. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that payment has been made in accordance with Section XXIII of this Amendment (NOTICES) and to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, DC 20240

The notice shall reference Account Number 12X5 198 (NRDAR), shall state that the payment is for Natural Resource Damages with respect to the Palmerton Zinc Pile Superfund Site in Pennsylvania, and shall state that the payment is damages for injury to Natural Resources under the Federal and Commonwealth trusteeship. The payment shall also include the DOJ Case Number 90-11-2-271/2.

b. On or before January 15, 2010, Settling Defendants shall pay $4,443,750 plus Interest (as defined in Paragraph 4 of the 2003 CD) from the date of entry of this Amendment into a Site-specific sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees as described in Paragraph 41c. The payment to the NRDAR Fund under this Paragraph shall be made by EFT to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-271/2 and the United States Attorney's Office file number in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Decree. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that payment has been made in accordance with Section XXIII of this Amendment (NOTICES) and to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, DC 20240

The notice shall reference Account Number 12X5 198 (NRDAR), shall state that the payment is for Natural Resource Damages with respect to the Palmerton Zinc Pile Superfund Site in Pennsylvania, and shall state that the payment is damages for injury to Natural Resources under

the Federal and Commonwealth trusteeship. The payment shall also include the DOJ Case Number 90-11-2-271/2.

c. The jurisdiction, trusteeships, and restoration goals of the Trustees over the injured natural resources overlap. Accordingly, the monies paid pursuant to Paragraphs 41a and b shall be held by the DOI in its NRDAR Trust Fund on behalf of the Federal and Commonwealth Trustees jointly, and said monies shall only be used to restore, replace or acquire the equivalent of the natural resources injured as a result of releases of hazardous substances at the Site, including restoration planning, oversight, monitoring, and other allowable expenditures to address the injuries to Natural Resources. Expenditures of these funds shall be made in accordance with the terms and conditions of a 2003 Memorandum of Agreement (or amendments to that agreement) among the Trustees and attached as **Exhibit A** to this Amendment. Restoration projects to be implemented by the Trustees may be selected, at the Trustees' discretion, after public review and comment from among restoration categories that were identified after evaluating natural resource injuries and service losses and are understood to include the categories identified in **Exhibit J** to this Amendment.

d. In the event that any payment by the Settling Defendants under Paragraphs 41a and/or b is not received when due, Interest shall accrue on the unpaid balance through the date of payment.

e. In addition to the Interest required to be paid under the preceding Subparagraph, if any amounts to be paid under Paragraphs 41a and/or b are not paid by the required date, the Settling Defendants shall pay a stipulated penalty of $1000 per day that such payment is late.

X. COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES AND RESERVATION OF RIGHTS BY THE UNITED STATES AND COMMONWEALTH TRUSTEES

42. Subject to the reservations of rights in Paragraphs 45, 47, and 48 and the conditions set forth in Paragraph 43 below:

a. The United States and the Commonwealth Trustees covenant not to sue or to take administrative action against the Settling Defendants for Natural Resource Damages (1) resulting from releases of hazardous substances at or from OU1, OU2, or OU3, (2) resulting from airborne releases of hazardous substances from the East Plant or the West Plant prior to the date of lodging of this Amendment, or (3) relating to natural resource injuries that occurred within the East Plant and West Plant properties prior to the date of lodging of this Amendment.

b. In accordance with (1) and (2) below, the United States and the Commonwealth Trustees covenant not to sue or to initiate administrative action against Settling Defendants for Natural Resource Damages resulting from OU4 Releases, as defined in Paragraph 35 of this Amendment, that have occurred prior to the date two years after EPA's selection in a Record of Decision of the remedial action for OU4 Releases (the "Cutoff Date").

(1) The United States and the Commonwealth covenant not to sue or to initiate administrative action against Settling Defendants for Natural Resource Damages resulting from OU4 Releases, as defined in Paragraph 35 of this Amendment, that have occurred after the Cutoff Date to the extent, and only to the extent, that, (i) prior to the Cutoff Date, one or more of the Settling Defendants has agreed in an enforceable consent decree (based on EPA's then current Model RD/RA Consent Decree) to implement EPA's selected remedial action for OU4 in accordance with the OU4 Record of Decision(s) ("OU4 Consent Decree"), including any amendments thereto; (ii) one or more of the Settling Defendants has implemented, maintained and operated the OU-4 Interim Measures which are approved for implementation by EPA,

including but not limited to, measures required by EPA which are designed to address the transport of metals from the Cinder Bank to Aquashicola Creek; and (iii) such Settling Defendant(s) are in material compliance with the OU4 Consent Decree unless any non-compliance does not impede or delay complete performance of the remedial action.

(2) However, if no Settling Defendant has entered into an OU4 Consent Decree prior to the Cutoff Date, this covenant not to sue in this Subparagraph b, shall be null and void as to any Natural Resource Damages that occur after the date of lodging of this Amendment as a result of OU4 Releases.

c. These covenants not to sue extend only to the Settling Defendants and their respective directors, officers, employees, agents, and shareholders to the extent they may be liable based on those capacities and their respective successors and assigns to the extent their liability is derived from the Settling Defendants and do not extend to any other person.

43. As set forth in this Paragraph, these covenants not to sue are conditioned on compliance with the terms of this Amendment and on continued compliance with the requirements of the 2005 UAO and the 2003 Decree. If non-compliance with the 2005 UAO or the 2003 Decree occurs, these covenants not to sue shall be null and void only with respect to releases that occur after the date of lodging of this Amendment and only with respect to any OU or OUs where the non-compliance impedes or delays complete performance of the remedial action including any Operation and Maintenance required under the 2003 Decree.

44. Subparagraph 119d of the 2003 Decree and any reservation of claims for Natural Resource Damages in Subparagraph 119e of the 2003 Decree are hereby superseded. However, this Amendment shall have no effect on other covenants and reservations of rights in the 2003 Decree.

45. Notwithstanding any other provision of this Amendment, the United States and the Commonwealth Trustees reserve the right to institute proceedings, including administrative actions, against the Settling Defendants in this action or in a new action seeking recovery of additional Natural Resource Damages based on (1) conditions resulting from the release of hazardous substances at or from the Site that were unknown to the Trustees as of the date of lodging of this Amendment that contribute to the injury to, destruction of, or loss of Natural Resources ("Unknown Conditions"); or (2) new information received by the Trustees after the date of lodging of this Amendment which indicates there is injury to, destruction of, or loss of Natural Resources of a type unknown to the Trustees as of the date of lodging of this Amendment ("New Information"). The following examples, but not limited to these examples, shall be considered to be Unknown Conditions or New Information within the meaning of Paragraph 45: (1) a major collapse of material from the Cinder Bank resulting in the release of hazardous substances into the Aquashicola Creek or the Lehigh River; (2) a catastrophic failure of any dam in the Lehigh River downstream of Aquashicola Creek resulting in a release of hazardous substances that had been buried in or intermingled with soils and/or sediments; (3) non-de minimis injuries resulting from the implementation of remedial actions at OU4; and (4) injuries resulting from the implementation of additional remedial measures at OU1, OU2, or OU3 where EPA determines that unknown conditions require further remedial action pursuant to the 2003 Decree and/or any amendments to the 2003 Decree.

46. For the purposes of Paragraph 45, conditions known to the Trustees on the date of lodging of this Amendment, and information received for purposes of NRD, shall include all sampling data and other data or information in the possession or control of the Trustees as of the date of lodging of this Amendment; any evaluation by Trustees of such data or information as of

the date of lodging of this Amendment; information provided by Settling Defendants to the Trustees, or to Settling Defendants by the Trustees, prior to the date of lodging; and all analyses, diagrams, maps, reports, and surveys performed regarding the NRD Assessment Area and/or Site by or on behalf of the Trustees by independent consultants prior to the date of lodging. For purposes of Paragraph 45, any data or information in the possession or control of any one of the Trustees and any data or information developed or obtained by the United States or Commonwealth Trustees in connection with response activities for the Site as of the date of the lodging of this Amendment shall be deemed to be received by the Trustees as of the date of lodging of this Amendment. Finally, each of the following shall not be considered to be Unknown Conditions or New Information within the meaning of Paragraph 45: (1) an increase solely in the Trustees' assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources or in the resulting Natural Resource Damage; (2) injury to, destruction of, or loss of Natural Resources at the Site arising from the re-exposure, re-suspension, or migration by natural causes of hazardous substances known to be present in the sediments at the Site; or (3) any Natural Resource Damages from any airborne emissions release of any hazardous substance from the zinc smelting operations at or from the East Plant or West Plant (including related metals processing activities, secondary zinc refining, and electric arc furnace dust processing), where such airborne emissions originally occurred prior to the date of lodging of this Amendment.

47. Furthermore, this Amendment is without prejudice to the rights of the United States and the Commonwealth Trustees against Settling Defendants with respect to all matters other than those expressly specified in Paragraph 42 above, including, but not limited to, the following:

a. claims based on a failure of Settling Defendants to meet a requirement of this Amendment, the 2003 Decree, or the 2005 UAO;

b. claims for any and all criminal liability;

c. claims for liability arising from any future disposal of hazardous substances at OU1, OU2, OU3, OU4, or at the East and/or West Plant after lodging of this Amendment;

d. claims for liability for response actions or response costs at the Site;

e. claims for liability arising from any release or threat of release of hazardous substances at any site or location other than at OU1, OU2, OU3, OU4, or East and West Plants , including, but not limited to, any hazardous substance taken from the Site and disposed of at another site or location; and

f. claims for any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section X.

48. Notwithstanding any other provision of this Amendment, there is expressly excepted and reserved to the United States and the Commonwealth Trustees all rights, claims, defenses, and causes of action whatsoever associated with the Rock Slide Area (including but not limited to all rights, claims, defenses, and causes of action whatsoever for damages, costs, or injuries caused by slope failure, rocks sliding, or issues of slope instability in the Rock Slide Area) other than any rights, claims, defenses, and causes of action for Natural Resource Damages. No covenant not to sue or release of rights shall be deemed to have been granted as to the excepted and reserved claims set forth in this Paragraph.

XI. COVENANTS BY SETTLING DEFENDANTS FOR NATURAL RESOURCE DAMAGES

49. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States and Commonwealth Trustees for any NRD claims addressed in, or arising from or relating to, the Amendment pursuant to any Federal, State, or common law, including but not limited to the following:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of State or Federal law.

b. any claims arising out of activities related to restoration projects, including without limitation, claims based on the Trustees' selection of restoration projects, implementation and oversight of restoration projects, and/or approval of the plans for such activities.

c. any claims for Natural Resource Damages covered by or within the scope of the United States' and Commonwealth Trustees' covenants not to sue in Paragraph 42a and b.

d. any claims for Natural Resource Damages resulting from releases of hazardous substances at or from OU1, OU2, OU3, OU4, or at the East and/or West Plant.

50. The Settling Defendants reserve, and this Amendment is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place

where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671, nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

51. Notwithstanding any other provision of this Amendment, there is expressly excepted and reserved to Settling Defendants all rights, claims, defenses and causes of action whatsoever associated with the Rock Slide Area (including but not limited to all rights, claims, defenses, and causes of action whatsoever for damages, costs, or injuries caused by slope failure, rocks sliding, or issues of slope instability in the Rock Slide Area) other than any rights, claims, defenses and causes of action for Natural Resource Damages. No covenant not to sue or release of rights shall be deemed to have been granted as to the excepted and reserved claims set forth in this Paragraph.

52. Settling Defendants hereby covenant not to oppose entry of this Amendment by this Court or to challenge any provision of this Amendment unless the United States notifies Settling Defendants in writing that it no longer supports entry of the Amendment.

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

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

54. Nothing in this Amendment shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Amendment. Each Party to this

Amendment expressly reserves any and all rights, defenses, claims, demands, and causes of action which each Party may have with respect to the release of hazardous substances against any person not a Party hereto.

55. In any subsequent administrative or judicial proceeding initiated by the United States and/or Commonwealth Trustees under Paragraphs 45 and 47 above, Settling Defendants shall not assert, and may not maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon the contention that the claims raised by the United States and/or Commonwealth Trustees in the subsequent proceeding were or should have been brought in the instant case.

56. The United States, Commonwealth Trustees, and Settling Defendants agree, and by entering this Amendment this Court finds, that Settling Defendants are entitled, as of the date of entry of this Amendment, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the matters addressed in this Amendment, which are the claims for Natural Resource Damages subject to the covenants not to sue in Paragraph 42 of this Amendment.

XIII. CERTIFICATION

57. Each undersigned representative of a Party to this Amendment certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind such Party to this document.

XIV. VOIDABILITY

58. If for any reason the Court should decline to approve entry of this Amendment in the form presented, or if the United States and/or Commonwealth Trustees withdraw their consent pursuant to Paragraph 61, this Amendment and the settlement embodied herein shall be

voidable by written notice to Settling Defendants and the terms hereof may not be used as evidence in any litigation.

XV. COMPLIANCE WITH OTHER LAWS

59. This Amendment shall not be construed in any way to relieve Settling Defendants or any other person or entity from the obligation to comply with any Federal, State, or local law.

XVI. RETENTION OF JURISDICTION

60. This Court retains jurisdiction over both the subject matter of this Amendment and the Parties for the duration of the performance of the terms and provisions of this Amendment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Amendment, or to effectuate or enforce compliance with its terms.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

61. The Parties agree and acknowledge that final approval by the United States and/or Commonwealth Trustees and entry of this Amendment is subject to a thirty (30) day period for public notice and comment in accordance with U.S. Department of Justice policy, and a sixty (60) day period for public notice and comment in accordance with 35 P.S. § 6020.1113. The United States and Commonwealth Trustees reserve the right to withdraw or withhold their consent if comments regarding the Amendment disclose facts or considerations that indicate that the Amendment is inappropriate, improper, or inadequate.

62. Settling Defendants consent to the entry of this Amendment without further notice.

XVIII. MODIFICATIONS

63. This Amendment may not be modified without the written consent of the Parties and approval of the Court, except that non-material modifications or technical corrections may be made with the written consent of the Parties. Any such non-material modifications shall be filed with Court.

XIX. TERMINATION

64. Any Party may apply to the Court to terminate this Amendment after Settling Defendants have fulfilled all of their obligations under this Amendment and the 2003 Decree, provided, however, the following provisions shall survive termination and shall remain in full force and effect: Sections X (Covenants by the United States and the Commonwealth Trustees), XI (Covenants by Settling Defendants), and XII (Effect of Settlement/Contribution Protection).

XX. EFFECTIVE DATE

65. This Amendment shall be effective upon the date of its entry by the Court.

XXI. SIGNATORIES/SERVICE

66. Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Amendment. 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 rules of this Court, including, but not limited to, service of a summons.

67. This Amendment may be executed in counterparts and, as executed, shall constitute one agreement binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

XXII. ATTACHMENTS

68. The following Exhibits are attached to and incorporated into this Amendment:

Exhibit A: Memorandum of Agreement ("MOA") among Trustees

Exhibit B: East Plant Legal Description/map

Exhibit C: Legal description of Kings Manor property/map

Exhibit D: Rock Slide Area Location Maps

Exhibit E: West Plant Legal Description/map

Exhibit F: Wildlife Information Center mortgage

Exhibit G: Conditions of Conveyance of Kings Manor Property

Exhibit H: Kings Manor Property Building Removal

Exhibit I: Wildlife Information Center Deed

Exhibit J: Categories of Natural Resource Restoration

XXIII. NOTICES

69. Whenever notice under this Amendment is sent to a Party, such notice shall be sent as follows, except that a Party may change its contact information by written notice to the other Parties:

For the United States:

For EES

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Washington D.C. 20044
Attn: DOJ No. 90-11-2-271/2

For FWS

Marvin E. Moriarty
Regional Director
U.S. Fish and Wildlife Service, Region 5
300 Westgate Center Drive
Hadley, MA 01035-9589

For NOAA

Branden Blum
Office of the General Counsel
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910

For the Commonwealth of Pennsylvania:

For PADEP

DEP Environmental Cleanup Program Manager
Wilkes-Barre Regional Office
2 Public Square
Wilkes-Barre, PA 18711-0790

For PAGC

Director, Bureau of Wildlife Habitat Management
Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110

For PAFBC

Laurie E. Shepler
Chief Counsel
Pennsylvania Fish and Boat Commission
1601 Elmerton Avenue
Harrisburg, PA 17110

For PADCNR

Virginia Davison
Assistant Counsel
Pennsylvania Department of Conservation and Natural Resources
400 Market Street
Harrisburg, PA17105-8767

For Settling Defendants:

For CBS, CBS/Westinghouse of PA, Inc., and TCI:

Jeffrey B. Groy
CBS Corporation
299 South Main Street, Suite 1800
Salt Lake City, UT 84111

With a copy to:
Eric J. Sobczak
CBS Corporation
20 Stanwix Street, 10th Floor
Pittsburgh, PA 15222

For HH, HRD

Joshua J. Angel
Eric Schmidt Jr.
Herrick, Feinstein LLP
2 Park Avenue
New York, NY 10016

XXIV. FINAL JUDGMENT

70. Upon approval and entry of this Amendment by the Court, this Amendment shall constitute a final judgment between the Trustees and the Settling Defendants on the claims for Natural Resource Damages addressed in this Amendment. The Court finds that there is no reason for delay and therefore, enters this judgment as a final judgment under Fed.R.Civ.P. 54 and 58.

SO ORDERED THIS 27th DAY OF Oct, 2009.

Honorable Edwin M. Kosik
United States District Judge

FOR THE TRUSTEE UNITED STATES:

Date: 7-27-09

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

Date: 7-27-09

PATRICK M. CASEY
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FL07310448

MARTIN C. CARLSON
United States Attorney for the Middle
District of Pennsylvania

Date: 7-29-09

By: Pat Casey for (DBS)
BRIAN D. SIMPSON
Assistant United States Attorney
Office of the United States Attorney
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FOR THE TRUSTEE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Pennsylvania Department of Environmental Protection

Date: 7/10/09

KENNETH R. REISINGER
Acting Deputy Secretary for Waste, Air, and Radiation Management

Approved as to legality and form

Authorized Agency Attorney - PADEP

FOR THE TRUSTEE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES:

Pennsylvania Department of Conservation and Natural Resources

Date: 7/15/09

JOHN QUIGLEY
Secretary (Acting)

Approved as to legality and form

Authorized Agency Attorney - PADCNR

FOR THE TRUSTEE COMMONWEALTH OF PENNSYLVANIA FISH AND BOAT COMMISSION:

Date: 7/16/09

Pennsylvania Fish and Boat Commission

DOUGLAS J. AUSTEN
Executive Director

Approved as to legality and form

Authorized Agency Attorney - PAFBC

FOR THE TRUSTEE COMMONWEALTH OF PENNSYLVANIA GAME COMMISION:

Pennsylvania Game Commission

Date: 7/15/09

CARL ROE
Executive Director

Approved as to legality and form

Authorized Agency Attorney - PAGC

FOR THE SETTLING DEFENDANT CBS Operations Inc. (f/k/a Viacom, International Services Inc.):

Date: June 30, 2009

ERIC J. SOBCZAK
Assistant Secretary
CBS Operations Inc.
National City Center
20 Stanwix Street, Tenth Floor
Pittsburg, PA 15222
Tel (412) 642-5633

Authorized agent to accept service for CBS Operations Inc.:

Jeffrey B. Groy
CBS Operations Inc.
299 South Main Street, Suite 1800
Salt Lake City, UT 84111
Tel (801) 359-3191

With copy to:

Eric J. Sobczak
CBS Operations Inc.
National City Center
20 Stanwix Street, Tenth Floor
Pittsburg, PA 15222
Tel (412) 642-5633

FOR THE SETTLING DEFENDANT TCI Pacific Communications, Inc. (f/k/a Viacom International Inc.):

Date: 7/9/09

Thomas R. Nathan

Thomas R. Nathan
Senior Vice President Law and Regulatory Affairs
Deputy General Counsel
Comcast Cable Communications, LLC
One Comcast Center
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103
Tel (215) 286-7556

Authorized agent to accept service for TCI Pacific Communications Inc.:

CT Corporation
1515 Market Street
Philadelphia, PA 19012

FOR THE SETTLING DEFENDANT CBS/Westinghouse of PA, Inc.:

Date: June 30, 2009

ERIC J. SOBCZAK
Vice President/Assistant Secretary
CBS/Westinghouse of PA, Inc.
National City Center
20 Stanwix Street, Tenth Floor
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