

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter Of:

Benner Township PFAS	:	Hazardous Sites Cleanup Act
Investigation Site	:	
Benner, Patton and College Townships	:	
Centre County, Pennsylvania	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 13th day of November 2024, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and The Pennsylvania State University.

The Department has found and determined the following, as set forth in Paragraphs A-JJ:

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 - 691.1001 (“Clean Streams Law”); the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.101 - 6020.1305 (“HSCA”); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101 - 6018.1003 (“Solid Waste Management Act”); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*, 42 U.S.C. §§ 9601-9675 (“CERCLA”); and administer and implement the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, *as amended*, 35 P.S. §§ 6026.101 - 6026.908 (“Land Recycling Act” or “Act 2”); and the Uniform Environmental Covenants Act, the Act of December 18, 2007, P.L. 450, No. 68, *as amended*, 27 Pa. C.S. § 6501 *et seq.* (“Uniform Environmental Covenants Act”); and 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 (“rules and regulations”) promulgated thereunder.

B. The Pennsylvania State University is a state-related institution of higher education and instrumentality of the Commonwealth of Pennsylvania established in 1855 subject to Pennsylvania's Nonprofit Corporation Laws with a business address of 201 Old Main, University Park, Pennsylvania, 16802 ("University").

C. The University, together with the Centre County Airport Authority ("Centre County AA"), owns real property on which the State College Regional Airport, f/k/a University Park Airport ("Airport") is located ("Airport Property"). Operations are split between the University and the Centre County AA, with the University conducting the Airport Operation responsibilities and the Centre County AA responsible for operation of the Airline Terminal. The Airport was built in 1950 and is a Federal Aviation Administration ("FAA") certified commercial airport under 14 CFR Part 139 serving the community. The Airport Property is comprised of approximately 1,105 acres. The Airport has an address of 2535 Fox Hill Road, State College, Pennsylvania, 16803. The Airport Property is located primarily in Benner Township, and partly in Patton and College Townships, Centre County, Pennsylvania.

D. Pursuant to federal regulations, the FAA mandated that the Airport, and all Certificated Part 139 Airports, use aqueous film-forming foam ("AFFF") for aircraft rescue and fire suppression. The AFFF required to be used by the FAA may have contained perfluoroalkyl and polyfluoroalkyl substances ("PFAS"). Historically and pursuant to FAA regulations, the AFFF required to be used could have been discharged at the Airport as part of the mandated aircraft rescue firefighting testing or training, as further described in Paragraphs K and L, below. During this time, the potential health effects and environmental effects of PFAS were not widely known.

Department Investigation

E. Perfluoroalkyl and polyfluoroalkyl substances ("PFAS") are a group of manufactured chemicals that have been used by industry and in a wide array of consumer products since the 1940s.

Perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”) are PFAS compounds which have been used in a variety of products, including in some AFFF designed to extinguish high-hazard flammable liquid-based fires. Such foams have been used in some training and emergency response events at facilities such as airports, shipyards, military bases, firefighting training facilities, facilities with helipads, chemical plants, and refineries.

F. There are many potential sources of PFAS beyond the FAA’s mandated use of AFFF. For example, products with PFAS include, but are not limited to, Teflon, Scotchgard, waterproofing compounds, stain-proofing compounds, waxes, cloth coatings, and paper and food package coatings.

G. In June of 2019, the Department began conducting a Commonwealth-wide sampling plan to test for six PFAS (PFOS, PFOA, PFNA, PFHxS, PFHpA,¹ and PFBS). The Department tested targeted sites located within a half mile of a potential source of PFAS contamination, such as military bases, airports, fire training sites, landfills, and select manufacturing facilities; and sites that were not located within a half mile of a potential source of PFAS contamination to establish a baseline. The selected manufacturing facilities included the production of apparel, chemicals, electronic and electrical equipment, fabricated metal products, paper products, plastic products, textile and leather products and upholstered furniture, all of which may have used PFAS-containing products historically. Out of 412 sites sampled, results of the Commonwealth-wide sampling event indicated that PFOA and/or PFOS were present at 133 sites, and 107 of those sites had detections of PFOA and/or PFOS above 4 parts per trillion (“ppt”), which is the current federal MCL that became effective June 25, 2024.

H. One site where the Department found that PFOA and PFOS were present in a private water supply well was a business known as “State of the Art” located on High Tech Road in Benner

¹ While maximum contaminant levels (“MCL”) have been set for the other five PFAS, as of the date of this Consent Order and Agreement, there is no federal or Pennsylvania MCL for PFHpA.

Township. Because of those sampling results, in October 2019, the Department began an investigation of PFAS in the area of the Airport Property (“Investigation”).

I. The Investigation focused on the area shown on the map in Exhibit A (“Department Investigation Area”). Exhibit A, attached hereto and incorporated herein, is the Department Investigation Area as of the date the Department signs this Consent Order and Agreement (“Department Execution Date”). Generally, the Department Investigation Area is bordered by Buffalo Run Road (also known as PA Route 550) on the North, Spring Creek, the Benner Hatchery and Big Hollow Road on the South, Rock Road and Barns Lane on the East and Bernel Road on the West in Benner Township, and partly in Patton and College Townships. The Department Investigation Area is characterized by an area of mixed commercial use (including manufacturing use and the Airport), agricultural use, two military facilities, and residential use. The Airport Property is within the Department Investigation Area.

J. As part of the Investigation, the Department sent requests for information under Section 503 of HSCA, 35 P.S. § 6020.503, regarding historical PFAS use on select properties within the Department Investigation Area (“Requests”) to the following: State of the Art, Inc., Cannon Instrument Company (“Cannon”), Centre County AA, Polymics, Ltd. (“Polymics”), University Park Airport, Army National Guard – 112 Infantry 2nd Battalion, Matreya, LLC, and the Pennsylvania Air National Guard. The response received from Polymics indicated that Polymics used PFAS-containing compounds consisting of two tetrafluoroethylenes, PFA and PTFE. The response received from Cannon indicated that Cannon (i) used a liquid PFAS, HFIP, as a solvent for polymers in its applications laboratory for approximately thirteen years, (ii) used other liquid PFAS compounds that the company claimed did not have an affinity for water, the usage of which was designated as Confidential Business Information by the company, and (iii) at times purchased

fabricated components that are comprised of solid PFAS that, according to the company, do not generate waste.

K. The University responded to one of the Requests and provided available information regarding four locations where, historically, AFFF may have been discharged to the ground surface during FAA-mandated aircraft rescue firefighting equipment testing and/or training at the Airport Property. The University indicated that the Airport's testing and/or training was conducted in strict compliance with the requirements of the FAA and related federal regulations. The Department has received no information indicating that the University had knowledge of any hazards associated with the use of AFFF at the time it may have been discharged to the ground surface at the Airport Property.

L. The University further responded that the University has not discharged AFFF to the unpaved ground surface as part of aircraft rescue firefighting equipment testing since 2006; since 2020, the University has not discharged AFFF to any ground surface and instead has used a storage container to contain discharged AFFF during testing required by the FAA; and beginning in October 2023, the Airport received its first order of fluorine-free firefighting foam ("F3") to replace AFFF at the Airport. The Airport was the first commercial airport in the Commonwealth to receive F3.

M. Pursuant to Section 501(a) of HSCA, 35 P.S. § 6020.501(a), the Department's Investigation sought to define the nature and extent of any releases or threatened releases of PFAS within the Department Investigation Area. Reports of the completed investigations are included within the administrative record, developed pursuant to Section 506 of HSCA, 35 P.S. § 6020.506 ("Administrative Record").

N. Due to the conditions identified in the completed Investigation reports, the Department determined that a response was necessary to abate the release or threat of release of

hazardous substances or contaminants, specifically PFAS, from one or more sources at the Department Investigation Area.

O. The Department selected and implemented a remedial response action (“Remedial Response”), using a HSCA prompt interim response comprised of: 1) providing bottled drinking water to residents upon identifying an impacted residential well with PFAS detected above the applicable drinking water standards; 2) subsequent installation of Point of Entry Treatment (“POET”) systems; and 3) restrictions on the use of groundwater, as documented in the HSCA Statement of Decision, which was included in the Administrative Record on October 12, 2022, pursuant to Sections 505(a) and 506(e) of HSCA, 35 P.S. §§ 6020.505(a) and 6020.506(e).

P. As of April 30, 2024, the results from the Department’s sampling events revealed that PFOS was detected above 18 parts per trillion (ppt), the Act 2 groundwater Medium Specific Concentration (“MSC”) and Pennsylvania drinking water MCL for PFOS at that time, in 31 residential wells in at least one round of sampling. PFOA was detected above 14 ppt, the Act 2 groundwater MSC and Pennsylvania drinking water MCL for PFOA at that time, in one residential well in at least one round of sampling. Additionally, as of the Department Execution Date, the Department is aware of 6 other residential wells where the results from the Department’s sampling events revealed that PFOS was detected above the federal MCL of 4 ppt that became effective June 25, 2024, in at least one round of sampling. A list of all residences referenced in this paragraph is attached and incorporated herein as Exhibit B.

Q. As part of the Remedial Response, all residences identified on Exhibit B were offered bottled drinking water and have whole-home POET systems installed.

R. As of the Department Execution Date, the Department is aware of two (2) additional residences where the results from the Department’s sampling events revealed that PFOS was detected above the federal MCL of 4 ppt that became effective June 25, 2024, in at least one round

of sampling. PFOA was detected above the federal MCL of 4 ppt that became effective June 25, 2024, in one of these residential wells in at least one round of sampling. The Department is providing bottled water and offered to install POET systems at the two residences, but no response was received to the Department's offer. The two residences are identified on the attached and incorporated Exhibit C.

S. As of the Department Execution Date, sampling by the Department of the water supply wells has also detected other PFAS compounds, including perfluorobutanesulfonic acid (PFBS), perfluorononic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS) at a number of the residential wells sampled. The concentration of PFHxS ranges from non-detect to over the federal MCL of 10 ppt that became effective June 25, 2024. The concentrations of PFBS and PFNA found in the sampling do not exceed their respective federal MCLs effective June 25, 2024.

T. As of the Department Execution Date, the Department's sampling events revealed that PFOS was detected above 4 ppt in four private water supply wells serving businesses on High Tech Road. The currently occupied businesses that use these wells either are connected to the municipal water supply or were already using or are being provided with bottled water for drinking. A list of these businesses is attached and incorporated herein as Exhibit D. The remaining businesses on High Tech Road were utilizing public water prior to the start of the Investigation.

U. As of the Department Execution Date, the Department conducted two sampling events at the Benner Spring Outfall to Spring Creek. PFOS was detected in each sample, of which one (1) had a result above 4 ppt. PFOA, PFBS, PFNA, and PFHxS were not detected.

V. As of the Department Execution Date, the Department's soil sampling at the Airport Property did not detect PFOS or PFOA at a concentration above 0.007 mg/kg (the current Act 2 residential soil to groundwater MSC for PFOS and PFOA). The University conducted a separate soil sampling event on the Airport Property at locations identified by the Department. Five of these

samples showed a concentration of PFOS above 0.007 mg/kg. No soil samples collected by the University detected PFOA above 0.007 mg/kg.

W. In February 2022 and March 2023, the Department collected soil samples within the Department Investigation Area, but off the Airport Property. Four of these samples showed a concentration of PFOS above 0.007 mg/kg and were within the zero to two-foot surface soil interval. The highest detected concentration of PFOS and PFOA in soils during these two sampling events was 0.014 mg/kg and 0.00067 mg/kg, respectively.

EPA PFAS Enforcement Discretion and Settlement Policy Under CERCLA

X. On April 19, 2024, the U.S. EPA issued a PFAS Enforcement Discretion and Settlement Policy Under CERCLA (the “Enforcement Policy”) announcing that the “EPA does not intend to pursue otherwise potentially responsible parties where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to . . . [p]ublicly owned airports” and similar parties. The Enforcement Policy acknowledges that airports “provide a public service by preparing for and suppressing fire emergencies and protecting public safety”; “do not manufacture PFAS nor use PFAS as part of an industrial process”; and “have been required by Federal Aviation Administration regulations to maintain adequate amounts of AFFF to address fire emergencies.” For these reasons, the U.S. EPA has stated that it does not intend to pursue PFAS response actions or costs under CERCLA against publicly owned airports or similar parties.

Applicable Law

Y. As of July 8, 2024, PFOA and PFOS are “hazardous substances” as that term is defined under CERCLA at 42 U.S.C. § 9601 and Section 103 of HSCA, 35 P.S. § 6020.103. The Department considers other PFAS as “contaminants” as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103, and under CERCLA at 42 U.S.C. § 9601.

Z. The presence of the hazardous substances or contaminants identified in Paragraphs P and R-W, above, in soils and groundwater in and around the Department Investigation Area, including the Airport Property, constitutes a “release” and/or “threatened release” of hazardous substances or contaminants pursuant to Section 103 of HSCA, 35 P.S. § 6020.103, and under CERCLA at 42 U.S.C. § 9601.

AA. As an area where hazardous substances or contaminants, in this instance, PFAS, have been placed, released, or continue to be released or are threatened to be released, the Department Investigation Area, contains a “site” as that term is defined under Section 103 of HSCA, 35 P.S. § 6020.103, and a “facility” as that term is defined under CERCLA at 42 U.S.C. § 9601.

BB. By publication in the *Pennsylvania Bulletin* on May 14, 2022, and publication in the *Centre Daily Times* on May 11, 2022, the Department notified the public, including owners, operators, transporters, and waste generators or other known “responsible person(s),” as that term is defined under Sections 103 and 701 of HSCA, 35 P.S. §§ 6020.103 and 6020.701, that pursuant to Section 501(a) of HSCA, 35 P.S. § 6020.501(a), the Department determined that a further response action was appropriate at the Department Investigation Area, including the Airport Property.

CC. As an owner of the Airport Property within the Department Investigation Area, the University is a “responsible person” as the term is defined in Sections 103 and 701 of HSCA, 35 P.S. §§ 6020.103 and 6020.701, and under CERCLA at 42 U.S.C. § 9607, with respect to the release or threatened release of PFAS at the Airport Property. The Department recognizes that other “responsible person(s)” may be responsible for conditions within the Department Investigation Area and continues to evaluate the liability of other potentially responsible person(s).

DD. Pursuant to Section 103 of HSCA, 35 P.S. § 6020.103, a “response” is an action taken in the event of a release or threatened release of a hazardous substance or a contaminant into the

environment to study, assess, prevent, minimize or eliminate the release in order to protect the present or future public health, safety or welfare or the environment.

EE. Pursuant to Section 501(d) of HSCA, 35 P.S. § 6020.501(d), the Department may undertake investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action, and to enforce the provision of HSCA.

FF. The Remedial Response was a “response” that was taken by the Department pursuant to Sections 501, 503, 505, and 506 of HSCA, 35 P.S. §§ 6020.501, 6020.503, 6020.505 and 6020.506.

GG. The Remedial Response was supported by the requisite HSCA notices and administrative record published for public review and comment on May 14, 2022 in the *Pennsylvania Bulletin* and on May 11, 2022 in the *Centre Daily Times* as required by Section 506 of HSCA, 35 P.S. § 6020.506.

HH. Pursuant to Section 702(a) of HSCA, 35 P.S. § 6020.702(a), a responsible person is strictly liable for the response costs and damages, set forth in Section 702(a), that result from the release or threatened release, including the costs of interim response that are reasonable in light of the information available to the Department at the time the interim response action was taken and the reasonable and necessary or appropriate costs of remedial response incurred by the Commonwealth.

Response Costs

II. The Department has expended costs of “response” to conduct the Remedial Response within the Department Investigation Area. Those costs were reasonable and necessary costs of response as those terms are used in Section 702(a)(3) of HSCA, 35 P.S. § 6020.702(a)(3).

JJ. As of the Department Execution Date, the Department has expended more than \$892,487.16 for response actions within the Department Investigation Area. A list of the response costs as of April 30, 2024 is attached and incorporated herein as Exhibit E.

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 desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by the University as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to the environmental laws of the Commonwealth listed in Paragraph A, above, particularly Sections 1301 and 1102 of HSCA, 35 P.S. §§ 6020.1102 and 6020.1301, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. In any matter or proceeding between the University and the Department only, the University shall not challenge or deny the Department's assertion of the truth, accuracy, or validity of Paragraphs A through JJ, above.

b. The Parties do not authorize any other persons, including, but not limited to, any other citizen, business, corporation, or entity, to use the Findings in this Consent Order and Agreement in any matter or proceeding.

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

a. "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 its officers and employees. However, the term does not include any political subdivision, municipal or quasi-municipal development corporation, any other municipal or 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 through E.

c. "Effective Date" shall mean the date that the Department notifies the University in writing that this Consent Order and Agreement is final and effective in its present form in accordance with Paragraph 32, below.

d. "Parties" shall mean the Department and the University.

e. "Airport Property" shall mean the approximately 1,105 acres of land on which the Airport is located, of which approximately 1,032 acres are owned by the University and approximately 73 acres are owned by the Centre County AA.

f. "Airport Site" shall mean the area where PFOS, PFOA, PFBS, PFHxS and/or PFNA discharged at or from the Airport Property (if any) have been deposited, released, disposed of, placed or otherwise come to be located, as provided for in the definition of "site" under Section 103 of HSCA, 35 P.S. § 6020.103 and "facility" under CERCLA at 42 U.S.C. § 9601, and as will be initially determined in the Remedial Investigation Report and as may be amended by the Cleanup Plan or Final Report.

g. "Past Response Actions" shall mean all Response Actions taken at the Department Investigation Area by the Department as of the Department Execution Date.

h. "Response Actions" shall mean all actions taken and/or to be taken at the Department Investigation Area by the Department, to study, assess, prevent, minimize or eliminate the release or threatened release of hazardous substances or contaminants as identified at the

Department Investigation Area that are known to the Department in order to protect the present and future public health, safety or welfare or the environment. Response Actions include but are not limited to the actions defined as a “response” pursuant to Section 103 of HSCA, 35 P.S. § 6020.103.

i. “Response Costs” shall mean all direct and indirect costs that the Department, its contractors, and other responsible persons under the direction of the Department, have incurred and will incur relating to Response Actions and Remedial Response at the Department Investigation Area. Response Costs include, but are not limited to: Department employee costs, Department attorneys’ fees, contractor costs, sampling costs, laboratory costs, oversight costs and accrued interest, and Department costs of “response” as defined in Section 103 of HSCA, 35 P.S. § 6020.103.

j. “Past Response Costs” shall mean those Response Costs incurred from Past Response Actions.

k. “Potential Future Response Costs” shall mean any cost to complete further Response Actions within the Department Investigation Area after the Department Execution Date.

l. “Department Investigation Area” shall mean the area where the Department’s Investigation was conducted as shown on the map attached as Exhibit A. Generally, the Department Investigation Area is bordered by Buffalo Run Road (also known as PA Route 550) on the North, Spring Creek, the Benner Hatchery and Big Hollow Road on the South, Rock Road and Barns Lane on the East and Bernel Road on the West in Benner Township, and partly in Patton and College Townships, Centre County and includes all surface and subsurface areas where hazardous substances or contaminants have been located, as provided for in the definitions of “site” under Section 103 of HSCA, 35 P.S. § 6020.103 and “facility” under CERCLA at 42 U.S.C. § 9601. Exhibit A is the Department Investigation Area as of the Department Execution Date.

4. **Remedial Actions.** The University shall perform the following remedial actions at the Airport Site:

a. Within 30 days after the Effective Date, the University shall submit to the Department a Notice of Intent to Remediate proposing to remediate any releases of PFOS, PFOA, PFBS, PFNA and PFHxS at or from the Airport Property under the Land Recycling Act. The Notice of Intent to Remediate may be updated in the future subject to findings developed during the investigation and/or remediation.

b. Within 30 days after the Effective Date, the University shall submit for Department review a proposed schedule for the submission of a Remedial Investigation Work Plan and a Remedial Investigation Report meeting the procedural and substantive requirements of the Land Recycling Act and this Consent Order and Agreement.

c. The University shall submit for Department review and approval a Remedial Investigation Work Plan that proposes all the work necessary to address the characterization of the soil, surface water and groundwater contamination caused by any release of PFOS, PFOA, PFBS, PFNA and PFHxS at the Airport Property and includes a schedule for implementation of the characterization activities specified in the Remedial Investigation Work Plan.

d. In accordance with the schedule in the Department-approved Remedial Investigation Work Plan, the University shall submit to the Department for review and approval a Remedial Investigation Report for review by the Department that meets the procedural and substantive requirements of the Land Recycling Act and includes the results of the work performed in accordance with the Remedial Investigation Work Plan, along with relevant maps, sample results and any recommendations for additional investigation at the Airport Site of any release of PFOS, PFOA, PFBS, PFNA and PFHxS at or from the Airport Property. The Remedial Investigation Report shall include a schedule for implementation of any additional characterization investigation

activities, and the submission of a Cleanup Plan and Risk Assessment, if required under the Land Recycling Act, or a Final Report, if a Cleanup Plan and Risk Assessment are not required.

e. In accordance with the schedule in the Department-approved Remedial Investigation Report, the University shall submit to the Department for review and approval a Cleanup Plan and Risk Assessment, if required, that meets the procedural and substantive requirements of the Land Recycling Act and includes proposed remedial measures, if needed, to address the identified soil, groundwater, and surface water contamination at the Airport Site in order to meet the selected Land Recycling Act cleanup standards. The Cleanup Plan and Risk Assessment shall include a schedule for completing the proposed remedial measures and submitting a Final Report that meets the procedural and substantive requirements of the Land Recycling Act.

f. In accordance with the schedule in the Department-approved Cleanup Plan and Risk Assessment, or, if a Cleanup Plan and Risk Assessment are not required, the schedule in the Department-approved Remedial Investigation Report, the University shall submit to the Department for review and approval a Final Report that meets the procedural and substantive requirements of the Land Recycling Act and, at a minimum, demonstrates how the selected Land Recycling Act cleanup standards were attained for the Airport Site for PFOS, PFOA, PFBS, PFNA, and PFHxS in the media of concern identified in the Notice of Intent to Remediate, as it may be revised.

g. Any additional plans and/or reports that may be necessary to implement a remedy and/or continue the investigation shall be submitted for the Department's review.

h. POET Systems. Within 30 days after the Effective Date or after receipt of a signed access agreement from the property owner of the residences identified on Exhibit B, whichever comes last, the University shall begin the semi-annual sampling and maintenance of the

POET systems at the residential properties identified on Exhibit B and continue until one of the following first occurs:

- i. such properties are provided with public water;
- ii. POET systems are approved by the Department as the final remedy to provide safe drinking water to such properties in accordance with HSCA or the Land Recycling Act;
- iii. the Department approves another party becoming legally obligated to perform such sampling and maintenance;
- iv. the private drinking water well is determined to be outside the boundaries of the Airport Site, as defined pursuant to Paragraph 3(f); or
- v. eight consecutive Quarterly samples of raw water, or a lesser number of events approved by the Department, confirm that the concentrations of PFOS, PFOA, PFBS, PFNA, and PFHxS are below the applicable MCLs.

i. Beginning on the Effective Date and continuing until such time as the Airport Site is defined (pursuant to subparagraph 3.f. above), within 24 hours of receipt and validation of sampling results, the University shall notify the Department of additional residences and/or businesses with private drinking water wells within the Department Investigation Area (as defined in Exhibit A) at concentrations exceeding the applicable MCL for PFOS, PFOA, PFBS, PFNA, or PFHxS. Until such time as the Airport Site is defined (pursuant to subparagraph 3.f. above), within 14 days of receipt and validation of such sampling results, the University shall offer to provide bottled water to those additional residences and/or businesses within the Department Investigation Area (as defined in Exhibit A) and, if the residence or business accepts the offer, the University shall continue providing bottled water until the University is able to install a POET system for the residence or business pursuant to subparagraph 4.j., below. In addition, beginning on the Effective Date, the University shall provide bottled water to the residences identified on Exhibit C and shall continue providing bottled water until the University is able to install a POET system for the residence or business pursuant to subparagraph 4.j., below. In the event any residence refuses the

installation of a POET or does not respond to reasonable requests to install a POET, upon approval by the Department, the University's obligation to provide bottled water pursuant to this subparagraph 4.i. shall cease. Once the Airport Site is defined (pursuant to 3(f) above), the University's obligations pursuant to this Paragraph 4.i. shall apply only to residences or businesses with private drinking water wells within the then-currently defined Airport Site.

j. Within 60 days after the Effective Date and receiving a signed access agreement from the property owner of the residences identified on Exhibit C, or within 60 days after identifying any additional residence(s) within the Department Investigation Area (as defined in Exhibit A) pursuant to Subparagraph 4.i. above and receiving a signed access agreement from such property owner, the University shall install a POET system at the additional residence(s) and continue semi-annual sampling and maintenance of the POET system until one of the following first occurs:

- i. such properties are provided with public water;
- ii. POET systems are approved by the Department as the final remedy to provide safe drinking water to such properties in accordance with HSCA or the Land Recycling Act;
- iii. the Department approves another party becoming legally obligated to perform such sampling and maintenance;
- iv. the private drinking water well is determined to be outside the boundaries of the Airport Site, as defined pursuant to Paragraph 3(f);
or
- v. eight consecutive Quarterly samples of raw water, or a lesser number of events approved by the Department, confirm that the concentrations of PFOS, PFOA, PFBS, PFNA and PFHxS are below the applicable MCLs.

The University's agreement pursuant to subparagraphs 4.h., i. and j. shall not be construed as an admission that any PFAS impacts at the residential properties within the Department Investigation Area or otherwise identified on Exhibits B or C are or were caused by the release of PFOS, PFOA,

PFBS, PFNA, or PFHxS at or from the Airport Property or that such residences are within the boundaries of the Airport Site.

5. ***Submission of Documents.*** Regarding any document that the University is required to submit to the Department for approval pursuant to this Consent Order and Agreement, the Department will review the document and will approve or notify the University of substantive deficiencies in the document, or portion thereof in writing. If the Department notifies the University of substantive deficiencies, the University shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department, with the schedule taking into account the nature and extent of the comments and corrective actions. The University agrees that no document submitted pursuant to this Consent Order and Agreement shall be "deemed approved" as may be provided by the Land Recycling Act. Upon approval by the Department, the document shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such, provided that reasonable extensions of schedules or amendments may be agreed to by mutual consent of the Parties if requested prior to the expiration of a deadline.

6. ***Reimbursement of Response Costs.*** Within 60 days after the Effective Date, the University consents to the payment of the Department's Past Response Costs in the amount of \$564,767.29. The payment shall be made by wire transfer or corporate check or the like payable to the "Commonwealth of Pennsylvania, Hazardous Sites Cleanup Fund" and shall be sent to:

Environmental Program Manager
Environmental Cleanup and Brownfields Program
Department of Environmental Protection
203 W. 3rd Street, Suite 101
Williamsport, PA 17701

Nothing in this Paragraph shall in any way affect any liability of the University with respect to response costs incurred by the Department for future releases from the Airport Property not identified and addressed by the Remedial Response which is included in the Administrative Record.

In addition, nothing in this Paragraph shall affect the University's liability for costs incurred by the Department due to the University's non-compliance with this Consent Order and Agreement.

7. *Additional Remedies.*

a. If the University fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this Paragraph are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

8. *The University's Covenant Not to Sue.* The University covenants not to sue and shall not assert any claims, demands, appeals, or causes of action, in law or in equity, against the Commonwealth Government to the extent arising out of the release and threatened release of PFOS, PFOA, PFBS, PFNA, and PFHxS at or from the Airport Property, the Department's Response Actions at the Department Investigation Area as of the Department Execution Date, or arising out of this Consent Order and Agreement. This covenant not to sue extends only to the Commonwealth Government and does not extend to any other person.

9. *Waiver of Other Claims by the University.*

a. The University shall not assert any claims that it may have against the Commonwealth Government regarding the application of Sections 708, 709 and 1301 of HSCA, 35 P.S. §§ 6020.708, 6020.709 and 6020.1301, for matters: (i) arising from the release and threatened release of PFOS, PFOA, PFBS, PFNA, and PFHxS at or from the Airport Property; (ii) arising out of the Department's Response Actions at the Department Investigation Area as of the Department Execution Date; or (iii) arising out of this Consent Order and Agreement.

b. Except as allowed herein, the University shall not assert any claims for reimbursement, and/or indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from the release and threatened release of PFOS, PFOA, PFBS, PFNA, and PFHxS at the Airport Property or arising out of this Consent Order and Agreement.

c. Nothing in this Consent Order and Agreement shall prevent the University from seeking reimbursement or recovery of the Past Response Costs paid under Paragraph 6, above, or future response costs expended by the University in complying with this Consent Order and Agreement, should the Commonwealth recover those same response costs from manufacturers of AFFF and/or PFOS, PFOA, PFBS, PFNA, or PFHxS.

10. ***Department's Covenants Not to Sue.*** Subject to the reservation of rights provided in Paragraph 11 below, the Department covenants not to sue or to take administrative action against the University for:

a. any Past Response Costs at the Department Investigation Area. This covenant not to sue shall take effect upon execution of this Consent Order and Agreement by the Parties, extend only to the University, and shall terminate upon its failure to meet the requirements of Paragraph 6 of this Consent Order and Agreement; and

b. Response Costs, Response Actions, natural resource damages, civil penalty assessments, or injunctive relief arising from the release and threatened release of identified hazardous substances or contaminants that have been and will be the subject of Response Actions at the Airport Site. This covenant not to sue shall take effect upon execution of this Consent Order and Agreement by the Parties, extend only to the University, and shall terminate upon its failure to meet the requirements Paragraphs 4, 6, 8, 15, or 16 of this Consent Order and Agreement.

11. ***Department's Reservation of Rights Against the University.***

a. The information currently known to the Department includes only the information set forth to date in the public record for the Department Investigation Area and this Consent Order and Agreement.

b. Notwithstanding any other provision of this Consent Order and Agreement, the Department reserves the right to sue the University or to issue an administrative order requiring the University to perform Response Actions at the Department Investigation Area and/or reimburse the Department for Response Costs at the Department Investigation Area, if:

- i. The Department learns that any information provided by the University or representations provided by the University contained in Paragraphs A through JJ are, in any material respect, incomplete, false or inaccurate; or
- ii. The University fails to meet the requirements of this Consent Order and Agreement, including, but not limited to, Paragraphs 4, 15, and 16.

c. The Department's covenant not to sue in Paragraph 10 shall not apply to the following claims by the Department against the University for:

- i. Failure to meet the requirements of this Consent Order and Agreement;
- ii. Past, present, or future releases or threatened releases of hazardous substances or contaminants outside the boundaries of the Department Investigation Area; and
- iii. Past, present or future violations of federal or state criminal law.

12. ***Existing Obligations Unaffected.*** Nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to relieve or limit the obligations of the University to comply with any existing or subsequent statute, regulation, permit, or order. In addition, nothing set forth in this Consent Order and Agreement is intended, nor shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

13. **Contribution Protection.** Subject to the Department's Reservation of Rights in Paragraphs 11.a.-11.c., above, the University is an entity that has fully resolved its liability to the Department for the Airport Site and Past Response Costs for the Department Investigation Area and is eligible for protection from claims for contribution regarding matters addressed in this settlement, 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 HSCA and the "matters addressed" in this settlement encompass all the Response Actions and Response Costs at the Airport Site and all Past Response Costs at the Department Investigation Area. This contribution protection shall take effect upon execution of this Consent Order and Agreement by the Parties, extends only to the University and shall terminate upon the University's failure to meet the requirements of Paragraphs 4, 6, 8, 15, or 16 of this Consent Order and Agreement. The University reserves all rights to seek contribution from other responsible parties for any Past Response Costs paid pursuant to Paragraph 6 or any other cost incurred by the University pursuant to this Consent Order and Agreement.

14. **Acknowledgement of No Obligation.** The University acknowledges that the Department has no obligation to defend it in any suit, demand, or claim for contribution for any matters arising from the release and threatened releases of hazardous substances or contaminants at the Department Investigation Area and/or Airport Site, arising out of the Response Actions at the Department Investigation Area and/or Airport Site, or arising out of this Consent Order and Agreement.

15. **Non-Interference.** The University shall not conduct any activity that would be inconsistent with, or disturb, the Response Actions at the Department Investigation Area.

16. **Non-Exacerbation.** The University shall not, by act or omission, cause any further contamination and/or otherwise exacerbate any PFAS contamination of the Airport Site or the release of PFAS at the Airport Site. Migration or runoff of PFAS discharged at or from the Airport

Site prior to the Effective Date of this Consent Order and Agreement shall not be considered a breach of this Paragraph 16.

17. *Effect on Third Parties.*

a. 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 Parties 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.

b. 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.

18. *Hazardous Sites Cleanup Act.* The University agrees that failure to comply with the provisions of Paragraph 4, above, constitutes a failure to comply with an "enforcement action" as provided in Section 1301 of HSCA, 35 P.S. § 6020.1301.

19. *Liability of Parties.*

a. The University shall be liable, in its own capacity, for all obligations under this Consent Order and Agreement.

b. The University shall inform all persons necessary for the implementation of this Consent Order and Agreement of the terms and conditions of this Consent Order and Agreement.

c. The University shall be liable, in its own capacity, for violations of Paragraphs 15 and 16, above, including those violations caused by, contributed to, or allowed by its directors, officers, agents, managers, and servants, and any persons, contractors, or consultants acting under or for the University.

20. ***Decisions Under Consent Order.*** The University waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A,; or any other provision of law. The Department agrees that any objection that the University may have to any such decision may be raised in any Court where the Parties may enforce this Consent Order and Agreement.

21. ***Transfer of Site.***

a. The 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 Airport Property or any part thereof.

b. If the University intends to transfer any legal or equitable interest in the Airport Property which is affected by this Consent Order and Agreement, the University shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer. The University shall inform the Northcentral Regional Office of the Department of the intended transfer at least thirty (30) days prior to the contemplated transfer.

c. The Department in its sole discretion may agree to modify or terminate the University's duties and obligations under this Consent Order and Agreement upon transfer of the Airport Property.

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

Environmental Program Manager
Environmental Cleanup and Brownfields Program
Department of Environmental Protection
203 W. 3rd Street, Suite 101
Williamsport, PA 17701

23. **Correspondence with and Notice to the University.** All correspondence with and notice to the University concerning this Consent Order and Agreement shall be addressed to:

David W. Dulabon, Associate General Counsel
The Pennsylvania State University
Office of General Counsel
227 West Beaver Avenue, Suite 507
State College, PA 16801-4842
dwdulabon@psu.edu

In addition, the University agrees that service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to either of the above addresses. The University shall notify the Department whenever the names or addresses of its contact person changes.

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

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

- | | |
|-----------|---|
| Exhibit A | A map showing the approximate surface boundaries of the Department Investigation Area known to the Department as of the date of this Consent Order and Agreement. |
| Exhibit B | A list of residences that have received POET systems, as described in Paragraphs P and Q. |
| Exhibit C | A list of residences receiving bottled water, as described in Paragraph R. |

Exhibit D A list of businesses that have PFAS above at least one MCL in their water supply well(s), as described in Paragraph T.

Exhibit E Past Response Costs as of April 30, 2024.

26. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

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

28. **Attorneys' Fees.** The Parties agree to bear their respective attorneys' fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

29. **Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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

31. **Opportunity for Public Comment.** Pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, the Department shall publish a notice in the *Pennsylvania Bulletin* and *Centre Daily Times* containing a summary of the terms of this Consent Order and Agreement. This notice shall also be sent to other responsible persons. The Department shall receive and consider comments relating to this Consent Order and Agreement for 60 days from publication of this notice. The Department reserves the right to withdraw its consent to this Consent Order and Agreement if the

comments disclose facts or considerations that indicate that this Consent Order and Agreement is inappropriate, improper, or not in the public interest.

32. ***Effective Date.*** This Consent Order and Agreement shall be effective upon the date that the Department notifies the University in writing, that this Consent Order and Agreement is final and effective, in accordance with the following:

a. If no comments are received pursuant to Paragraph 31, above, this Consent Order and Agreement shall be effective upon written notice of expiration of the 60-day comment period set forth in Sections 1113 of HSCA, 35 P.S. § 6020.1113; or

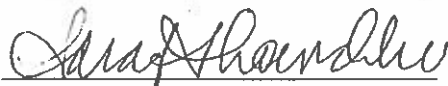
b. If comments are received pursuant to Paragraph 31, above, and an appeal of this Consent Order and Agreement pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, is not filed, this Consent Order and Agreement shall be effective upon written notice of expiration of 30 days after the date the Department has filed its response to any significant written comments received pursuant to the preceding paragraph; or

c. If an appeal of this Consent Order and Agreement is filed pursuant to Sections 1113 of HSCA, 35 P.S. § 6020.1113, this Consent Order and Agreement shall be effective upon written notice of the final resolution of the appeal.

33. ***Agreement Void.*** If the Department notifies the University that it is withdrawing its consent to this Consent Order and Agreement in response to public comments received pursuant to Paragraph 31, above, or this Consent Order and Agreement is otherwise declared invalid on appeal to the Environmental Hearing Board or any court of competent jurisdiction, the terms of this Consent Order and Agreement shall be void, shall have no force or effect, and shall not be used in evidence in any matter or proceeding, or for any other purpose.

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of the University 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 University, that the University consents to the entry of this Consent Order and Agreement as a final Order of the Department, and that the University hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under: Sections 508 and 1102 of HSCA, 35 P.S. §§ 6020.508 and 6020.1102; Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A thereof; or any other provision of law. Signature by the attorney for the University certifies only that the agreement has been signed after consulting with counsel.

FOR THE UNIVERSITY:



Dr. Sara F. Thorndike
Senior Vice President for Finance
& Business/Treasurer
The Pennsylvania State University



Lindsay A. Brown
Duane Morris LLP
Attorney for the University

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Randy Farmerie
Environmental Program Manager
Environmental Cleanup and Brownfields



Nicole M. Ippolito
Regional Counsel

EXHIBIT A



Legend

-  Investigation Area
- Parcel Data**
-  Above MCLs - POET System installed on well
-  Above MCLs - Transitioned to munic. water supply
-  Above MCLs - Using alternative water supply
-  Below MCLs
-  Served by public water supply
-  Above MCLs - POET System Install Pending
-  Third Party Sample
-  Below MCLs



Exhibit B

Residences with groundwater treatment via POETS

Address	Tax ID Number	Installed
1883 Millson Circle	37-004-,023-,0000-	Yes
1882 Millson Circle	37-004-,024-,0000-	Yes
1877 Millson Circle	37-004-,022-,0000-	Yes
1876 Millson Circle	37-004-,025-,0000-	Yes
1864 Walnut Grove Drive	37-004-,042F,0000-	Yes
1859 Walnut Grove Drive	37-004-,042V,0000-	Yes
1858 Walnut Grove Drive	37-004-,042L,0000-	Yes
1853 Walnut Grove Drive	37-004-,042Q,0000-	Yes
1852 Walnut Grove Drive	37-004-,042R,0000-	Yes
1846 Walnut Grove Drive	37-004-,042N,0000-	Yes
1841 Walnut Grove Drive	37-004-,042H,0000-	Yes
1840 Walnut Grove Drive	37-004-,004-,0000-	Yes
1835 Walnut Grove Drive	37-004-,042P,0000-	Yes
1834 Walnut Grove Drive	37-004-,042J,0000-	Yes
1829 Walnut Grove Drive	37-004-,046-,0000-	Yes
1828 Walnut Grove Drive	37-004-,042G,0000-	Yes
1822 Walnut Grove Drive	37-004-,042W,0000-	Yes
1811 Walnut Grove Drive	37-004-,048-,0000-	Yes
1810 Walnut Grove Drive	37-004-,042C,0000-	Yes
1443 Majestic View Drive	37-004-,042Y,0000-	Yes
1442 Majestic View Drive	37-004-,042K,0000-	Yes
1437 Majestic View Drive	37-004-,049-,0000-	Yes
1436 Majestic View Drive	37-004-,015-,0000-	Yes
1431 Majestic View Drive	37-004-,042X,0000-	Yes
1430 Majestic View Drive	37-004-,047-,0000-	Yes
1425 Majestic View Drive	37-004-,042U,0000-	Yes
1424 Majestic View Drive	37-004-,042S,0000-	Yes
1419 Majestic View Drive	37-004-,027-,0000-	Yes
1418 Majestic View Drive	37-004-,045-,0000-	Yes
1413 Majestic View Drive	37-004-,028-,0000-	Yes
1412 Majestic View Drive	37-004-,042Z,0000-	Yes
786 Big Hollow Road	19-001-,005A,0000-	Yes
754 Big Hollow Road	19-001-,005-,0000-	Yes
338 Big Hollow Road	19-001-,001B,0000-	Yes
288 Big Hollow Road	19-001-,001A,0000-	Yes
194 Big Hollow Road	37-004-,042B,0000-	Yes
1250 Rock Road	12-005-,003B,0000-	Yes

Exhibit C

Residences Receiving Bottled Water

Address	Tax ID Number	POET Offered
182 Big Hollow Road	37-004-,042-,0000-	No response to offer to date
587 Rock Road	37-004-,042-,0000-	No response to offer to date

Exhibit D

Commercial properties with identified groundwater impacts and status of water supply

Address	Tax ID Number	Current water supply status
2470 Fox Hill Road	12-004-,035B,0000-	Transitioned to public water
2178 High Tech Road	12-004-,034B,0000-	Transitioned to public water
2190 High Tech Road	12-004-,035E,0000-	DEP supplies bottled water for drinking purposes
2197 High Tech Road	12-004-,035C,0000-	Utilizing bottled water for drinking purposes

Exhibit E

Past Response Costs

November 1, 2019 through April 30, 2023

Pa Department of Environmental Protection personnel charges: \$ 234,462.01

Pa Department of Environmental Protection Bureau of Laboratories' charges for analysis:
\$ 5,703.80

Pa Department of Environmental Protection payments to contractors: \$ 335,695.29

Subtotal: \$ 575,861.10

May 1, 2023 through October 31, 2023

Pa Department of Environmental Protection personnel charges: \$ 40,504.77

Pa Department of Environmental Protection Bureau of Laboratories' charges for analysis: \$ 0.00

Pa Department of Environmental Protection payments to contractors: \$ 128,983.18

Subtotal: \$ 169,487.95

November 1, 2023 through April 30, 2024

Pa Department of Environmental Protection personnel charges: \$ 47,049.29

Pa Department of Environmental Protection Bureau of Laboratories' charges for analysis: \$ 0.00

Pa Department of Environmental Protection payments to contractors: \$ 100,088.82

Subtotal: \$ 147,138.11

TOTAL: \$ 892,487.16