

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

JUL 1 9 2002

BY: DR

THE STATE OF NEW YORK, and ERIN M.
CROTTY as Commissioner of the NEW YORK
STATE DEPARTMENT of ENVIRONMENTAL
CONSERVATION,

Plaintiffs,

v.

CONSENT
DECREE

NIAGARA FRONTIER TRANSPORTATION
AUTHORITY; NIAGARA FRONTIER
TRANSIT METRO SYSTEM, INC.;
HONEYWELL INTERNATIONAL INC.
(F/K/A ALLIED SIGNAL, INC.); NATIONAL
FUEL GAS DISTRIBUTION CORPORATION;
GENERAL MOTORS CORPORATION;
NEW YORK STATE ELECTRIC & GAS
CORPORATION; CONSOLIDATED RAIL
CORPORATION; PENNSYLVANIA LINES LLC;
CITY OF BUFFALO; DANIEL TREDO;
999 OF BUFFALO, INC.; ESTATE OF
BERNARD ARYWITZ

02-CV-0277C(SC)

Defendants.

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Plaintiffs, the State of New York and Erin M. Crotty, as
Commissioner of the New York State Department of Environmental
Conservation (collectively, the "State"), by their attorney,
Eliot Spitzer, Attorney General of the State of New York, and
Settling Defendants hereby agree as follows:

RECITATIONS

R-1. The State filed a Complaint in this matter on April 12, 2002 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), and New York's common law of public nuisance and restitution, alleging environmental harm arising out of the disposal of hazardous substances at, and their subsequent migration and threat of migration from, a facility now known as the Bern/Universal Metals Site (the "Site") in the City of Buffalo, Erie County, New York. The Site is comprised of two separate units named the Bern Metal Unit and the Universal Iron & Metal Unit. The State's Complaint seeks judgment requiring the defendants to assess, abate, and remediate the pollution at and emanating from the Site; and to reimburse the State for certain of its past and future costs in responding to such pollution.

R-2. The Settling Defendants are:

A. Niagara Frontier Transportation Authority ("NFTA") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

B. Niagara Frontier Transit Metro System, Inc. ("NFTMS") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

C. Honeywell International Inc. (F/K/A AlliedSignal, Inc.) ("Honeywell") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

D. National Fuel Gas Distribution Corporation ("National Fuel") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

E. General Motors Corporation ("GM") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

F. New York State Electric & Gas Corporation ("NYSEG") on behalf of any and all of its affiliates and subsidiaries, successors, and alleged predecessors.

G. Consolidated Rail Corporation and Pennsylvania Lines, LLC (collectively "Conrail") on behalf of their affiliates, parents, subsidiaries, shareholders, directors, partners, agents, assigns, representatives, successors, and alleged predecessors including, but not limited to, Norfolk Southern Railway Company.

H. The City of Buffalo and its agencies and departments.

I. Daniel Tredo.

J. 999 of Buffalo, Inc.

K. Estate of Bernard Arywitz ("Arywitz").

Defendants identified in subparagraphs A-F above are hereinafter referred to as the "Cooperating Potentially Responsible Parties", or "CPRPs".

R-3. The State alleges that each of the CPRPs and the City of Buffalo disposed of and/or arranged for the disposal of hazardous substances at the Site, and/or accepted hazardous substances for transport to the Site, which were subsequently released or discharged into the environment, causing contamination of soils, surface waters, and groundwater; that Consolidated Rail Corporation is the former owner of a portion of the Bern Metal Unit ("Conrail Portion"); that Pennsylvania Lines, LLC, a wholly-owned subsidiary of Consolidated Rail Corporation, is the current owner of the Conrail Portion; that 999 of Buffalo, Inc. is the owner of the Universal Iron & Metal Unit; that Daniel Tredo is the operator of the Universal Iron & Metal Unit; and that the Estate of Bernard Arywitz is the owner of the Bern Metal Unit.

R-4. The Site is an inactive hazardous waste disposal site, as that term is defined at New York State Environmental Conservation Law ("ECL") § 27-1301(2), and has been listed in New York's Registry of Inactive Hazardous Waste Disposal Sites as Site Number 915135.

R-5. Based on a complaint from residents located adjacent to the Site, the New York State Department of Environmental

Conservation ("DEC") conducted a preliminary investigation in 1987 at the Bern Metal Unit, and found waste piles, drums, sludges and metal turnings. DEC asked the U. S. Environmental Protection Agency ("EPA") to conduct an emergency removal action and secure the Bern Metal Unit to limit access. EPA removed contaminated soils, drums and liquid wastes from the Bern Metal Unit. During EPA's removal action, DEC visited the adjacent Universal Metal property. Twenty five transformers in a deteriorated condition were located on the property. EPA removed contaminated soil from the Universal Unit.

R-6. In December 1990, DEC determined, pursuant to ECL § 27-1305(4), that the Site presented a significant threat to the public health or environment, thereby requiring remediation.

R-7. In February 1994, defendants Honeywell (then known as AlliedSignal), GM, National Fuel, and Daniel Tredo entered into an administrative consent order with DEC (the "1994 Consent Order"), committing to undertake a Remedial Investigation and Feasibility Study ("RI/FS"). The RI/FS defined the nature and extent of the contamination at the Site, and identified and evaluated potential remedial alternatives for addressing the contamination.

R-8. The Remedial Investigation established that certain on-site and off-site surface soils and on-site subsurface soils are the primary contaminated media of concern at the Site. Lead is

the predominant contaminant of concern in soil, sediment and groundwater at the Site. Lead contamination in soil was found to be high at the surface and gradually decreased with depth. The other contaminants detected in soil samples were polychlorinated biphenyls (PCBs), semi-volatile organics (SVOCs), volatile organics (VOCs), and other metals such as copper, cadmium and chromium.

R-9. In March 1996, following a period of public comment, DEC selected a Remedial Program for the Site in a Record of Decision ("ROD"). The ROD summarizes the findings of the RI/FS. The Remedial Program consists of the following: excavation of soils and sediment from certain off-site areas and consolidation on the Site; building demolition and on-site consolidation; installation of a multi-layered cap over the Site; establishment of a long-term groundwater monitoring program; and imposition of a deed restriction or similar agreement to provide precautionary measures during future construction activities at the Site. A copy of the ROD is attached hereto as Exhibit A.

R-10. In November 1997, defendants NFTA, NYSEG, GM, National Fuel and Honeywell (then known as AlliedSignal) entered into an administrative order on consent with DEC obligating them to prepare the remedial design for the implementation of the remedial program for the Site as set forth in the ROD. Those

parties subsequently prepared the design, which was approved by DEC in October 1998.

R-11. By letter dated September 7, 2001, DEC approved the Remedial Action Work Plan submitted by the CPRPs.

R-12. The State and Settling Defendants agree that the goals of this Consent Decree are for: (a) the CPRPs to implement the remedial program for the Site ("Remedial Program") and to develop the post-construction remedial operation and maintenance plan ("O & M Plan") in accordance with the ROD, the RD and the Remedial Action Workplan; (b) the City of Buffalo to implement the O & M Plan, (c) Conrail to pay for a share of the costs incurred and to be incurred by the State in relation to this Site; and (d) Tredo, 999 of Buffalo, Inc, and Arywitz to provide reasonable access to the Site to the CPRPs, the City of Buffalo and the State.

R-13. Settling Defendants, having consented to the issuance and entry of this Decree, agree to be bound by its terms and not to contest the validity of this Consent Decree or its terms.

R-14. Notwithstanding the above and the Settling Defendants' agreement to undertake the obligations specified herein, nothing in this Consent Decree constitutes an admission of fact or liability by Settling Defendants.

R-15. The State and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent

Decree has been negotiated by the parties hereto in good faith, that this settlement will avoid prolonged and complicated litigation between the parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, having considered this matter and being duly advised, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

Jurisdiction

1. This Court has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to 42 U.S.C. § 9607 and 28 U.S.C. § 1331. Venue in this district is proper pursuant to 42 U.S.C. § 9613(b). Settling Defendants consent to and shall not challenge entry of this Decree or this Court's jurisdiction to enter and enforce this Decree.

Construction of Remedial Design

2. The CPRPs shall commence implementation of the Remedial Program by August 5, 2002, and shall use their best efforts to complete construction of the Remedial Program by the end of 2002. The CPRPS shall repair or replace the fence that is currently on the Site. Additionally, in lieu of the soil/vegetated material called for in the Remedial Design, the CPRPS will install a gravel cover over a portion of the Universal Iron and Metal Unit if requested to do so by Tredo, provided that Tredo pays incremental costs, if any, associated with the gravel cover in advance to the CPRPs.

3. (a) Tredo, 999 of Buffalo, Inc. and Arywitz will provide the CPRPs, the City of Buffalo, the State and their agents and consultants full and complete access, without cost, to the Site to implement, monitor and observe the Remedial Program.

(b) Tredo is prohibited from utilizing or storing any vehicles, tires, car parts or any other debris at the Site in a manner so as to interfere with implementation, operation and maintenance of the Remedial Program. Tredo may utilize the cinder block warehouse located at the Site for storage or other uses, provided such uses do not interfere with implementation, operation and maintenance of the Remedial Program and such storage or use is not in conflict with local ordinances.

4. During implementation of all construction activities identified in the RD, the CPRPs shall have on-site during normal business hours a full-time representative who is qualified to supervise the work done.

5. Within 45 days after completion of the construction activities identified in the RD, the CPRPs shall submit to the State: (i) a detailed post-construction remedial operation and maintenance plan ("O & M Plan"); (ii) a final construction engineering report (including all changes made to the Remedial Design during construction); and (iii) a certification by a professional engineer that all components of the Remedial Program were constructed in accordance with the approved RD (including

any amendments or changes approved by DEC). The O & M Plan, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

6. Within 60 days of approval of the final construction engineering report and certification, the State shall notify the CPRPs that the State is satisfied that all construction activities have been completed in compliance with the approved RD and that the CPRPs' obligations under this Decree relating to implementation of the ROD, RD and RA Workplan have been satisfied.

7. The City of Buffalo shall implement the O & M Plan in accordance with the specifications set forth in the O & M plan.

8. Tredo, 999 of Buffalo Inc. and Arywitz shall fully cooperate with the City of Buffalo during implementation of the O&M Activities, and shall provide the City and its agents and consultants full and complete access to the Site.

Review of Submittals

9. (a) The State shall timely review each of the submittals made by the CPRPs and the City of Buffalo pursuant to this Decree (other than monthly progress reports pursuant to paragraph 11) to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with the ROD, RD, RA Workplan,

this Decree and generally-accepted technical and scientific principles. The State shall notify the CPRPs and/or the City of Buffalo ("CPRPs/City") in writing of its approval or disapproval of the submittal. All submittals approved by the State shall be incorporated into and become an enforceable part of this Decree, subject to the dispute resolution procedures set forth in paragraph 12 hereof.

(b) If the State disapproves a submittal based on inconsistency with the ROD or the RD or failure to satisfy the requirements set forth in the ROD and/or RD, it shall promptly so notify the CPRPs/City in writing and shall specify the reasons for its disapproval with citations to the relevant portions of the ROD and/or RD. Within 30 days or such other time period to which the parties may agree after receiving written notice that the submittal has been disapproved, the CPRPs/City shall either:

(i) make a revised submittal to the State that addresses and resolves all of the State's stated reasons for disapproving the first submittal; or

(ii) make a proposal acceptable to the State which describes the means by which the State's reasons for disapproval will be resolved and includes a schedule by which those means shall be implemented; or

(iii) notify the State that the CPRPs/City believe the original submittal was made in compliance with the terms of

this Decree and invoke the dispute resolution procedures set forth in paragraph 12, below.

(c) After receipt of the revised submittal or proposal, the State shall notify the CPRPs/City in writing of its approval or disapproval thereof. If the State disapproves the revised submittal or proposal, the CPRPs/City shall revise and submit the submittal or proposal in accordance with the State's comments within 15 business days of the State's notice unless an alternative time is agreed to by the State. In the event the CPRPs/City disagree with the State's objection, the parties shall confer together to resolve their differences. If, after conferring, there remains a dispute between the State and the CPRPs/City, the matter will be resolved in accordance with the dispute resolution procedures set forth in paragraph 12 below. If the State approves the revised submittal or proposal, it shall be incorporated into and become an enforceable part of this Decree.

(d) Within 30 days of the State's approval of any final report submitted pursuant to this Decree, the CPRPs/City shall submit to the State one copy of that report and all other approved drawings and submittals on a recordable compact disk using a standard file format such as ASCII for text files and AutoCad or other approved format for drawings and figures.

10. The State may require the CPRPs/City to modify and/or amplify and expand a submittal if the State determines, as a result of reviewing data generated by an activity required under this Decree or as a result of reviewing any other data or facts, that further work is necessary to fulfill the goals of this Decree consistent with the ROD and/or the RD. Any such requirement by the State shall be in writing and shall describe the basis for the requirement. The CPRPs/City shall either implement the requirements described by the State or shall initiate the dispute resolution procedures in accordance with paragraph 12 below.

Progress Reports

11. (a) The CPRPs shall submit to the parties identified in Exhibit B, in the numbers specified therein, copies of written progress reports on a monthly basis during construction that: (i) describe the actions that have been taken toward achieving compliance with this Decree during the previous period; (ii) include a summary of all results of sampling and analysis and all other data received or generated by the CPRPs or their contractors or agents in the previous period whether conducted pursuant to this Decree or conducted independently by the CPRPs; (iii) identify all work plans, reports, and other deliverables required by this Decree that were completed and submitted during the previous period; (iv) describe all actions, including, but

not limited to, data collection and implementation of work plans, that are scheduled for the next period and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the CPRPs' obligations under this Decree, and a description of efforts made to mitigate those delays or anticipated delays; and (vi) include any modification to any work plans that the CPRPs have proposed to the State or that have been approved by the State. The CPRPs shall submit these progress reports to the State by the fifteenth day of each month beginning the first full month following entry of this Decree.

(b) The City of Buffalo shall submit to the parties identified in Exhibit B, in the numbers specified therein, copies of written progress reports on an annual basis that: (i) include a summary of all results of sampling and analysis, an engineering evaluation of these results, and all other data received or generated by the City or its contractors or agents in the previous period whether conducted pursuant to this Decree or conducted independently by the City; (ii) identify all work plans, reports, and other deliverables required by this Decree that were completed and submitted during the previous period; and (iii) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled

for the next period and provide other information relating to the progress at the Site. The CPRPs shall submit these progress reports to the State by the fifteenth day of each January, commencing after the State approves the final construction engineering report and certification submitted by the CPRPs pursuant to paragraph 6 herein.

Dispute Resolution

12. Any dispute that arises between the State and the Settling Defendants with respect to any action, plan, schedule or modification of the work to be undertaken pursuant to this Decree, or any notice of disapproval by the State under this Decree, or any other dispute relating to the conduct of the work shall, in the first instance, be the subject of informal negotiations between the State and the Settling Defendants. The State and the Settling Defendants shall consult together in good faith and exercise their best efforts to resolve any differences or dispute without resort to the procedures described below. During the period of any dispute, including during informal negotiations, all obligations hereunder not necessarily dependent on the disputed issue (or obligations that, though originally disputed, have been resolved through informal negotiations) shall be performed. The performance of all disputed issues, and matters necessarily dependent thereon, shall be deferred during the pendency of efforts at dispute resolution, or during

subsequent proceedings thereon. At the termination of unsuccessful informal negotiations, either party to the dispute may file with the Court a petition that shall describe the nature of the dispute (along with any supporting documents) and include a proposal for its resolution. The opposing party or parties shall have an opportunity to respond to the petition. The Court may hold an evidentiary hearing to aid in resolving the dispute. Where the dispute centers on an issue of technical judgment regarding the implementation or scope of the Remedial Program, the Settling Defendants have the burden of going forward and establishing the basis for their objections to the course or position asserted by the State. The Court will take into appropriate consideration and accord due deference to the expertise and professional judgment of the State's technical staff, but shall not be bound by the State's position. The determination rendered by the Court shall bind the State and the Settling Defendants.

Stipulated Penalties

13. (a) The CPRPs shall be liable to the State for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree unless excused under paragraph 38 (Force Majeure). "Compliance" by the CPRPs shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved

under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, the ROD, RD, RA Workplan, and any other plans or other documents approved by the State pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

(b) All penalties begin to accrue on the first day the CPRPs are in violation of the terms of this Consent Decree and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the DEC assessing the penalties. If such payment is not received within 15 days after the CPRPs receive such notification from DEC, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, NYSDEC, 625 Broadway, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter the CPRPs' obligation to complete performance under the terms of this Consent Decree. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
<u>First through 15th day</u>	<u>\$ 500</u>
<u>16th through 30th day</u>	<u>\$ 1000</u>
<u>31st day and thereafter</u>	<u>\$ 1500</u>

Public Notice/Deed Restrictions

14. Within 30 days after entry of this Decree, 999 of Buffalo, Inc, Tredo and Arywitz will: (1) file of a copy of this Decree with the Erie County Clerk to provide public notice of this Decree; (2) execute and record deed restrictions to run, touch and concern the land, as required by the Remedial Program and with the State's prior approval of the language thereof, and (3) provide to the State a copy of such instrument as certified by the Erie County Clerk. If necessary, the State shall ensure filing of this Decree and/or executing and recording of deed restrictions consistent with its authority pursuant to the New York Environmental Conservation Law or any other applicable federal or state law.

15. Approval by the State of the Remedial Program and the work conducted pursuant thereto shall be deemed to be a finding by the State that all such approved plans, reports, designs and work are consistent with the substantive provisions of all applicable state regulations and the NCP and that no further

State authorizations or permits are required for work performed pursuant to this Decree.

Site Access

16. (a) Any duly designated employee, consultant, contractor, or agent of the State shall have access to all Site and/or adjacent property at all times necessary to observe and monitor the progress of the remediation of the Site. The State shall have the right to obtain split samples or, at its option, duplicate samples of all materials or substances sampled by the CPRPs/City in the course of the performance of their obligations hereunder. The CPRPs/City shall have the right to obtain split samples or, at their option, duplicate samples of all materials or substances sampled by the State in the course of its observations and monitoring activities hereunder. During construction of the Remedial Design, the CPRPs shall provide the State with suitable office space at or in the vicinity of the Site, including access to a telephone.

(b) If necessary, the State shall obtain access or property rights for the CPRPs and/or the City of Buffalo pursuant to the New York Environmental Conservation Law or any other applicable federal or state law.

(c) Nothing herein limits or otherwise affects any right of entry to the Site by any duly designated employee,

consultant, contractor, or agent of the State pursuant to applicable laws, regulations, or permits.

(d) Subject to the provisions of paragraph 41 below, the CPRPs shall allow the State to attend, and shall, to the extent practicable, provide the State and Tredo at least five days advance notice of any of the following: on-site job and progress meetings; substantial completion meeting and inspection; and final inspection and meeting.

(e) Tredo shall be allowed to observe and monitor the progress of the remediation of the Site, provided that he complies with all requirements set forth in the Health and Safety Plan prepared by the CPRPs and attached as Appendix A to the Remedial Design.

Project Coordinators

17. The State, the CPRPs and the City of Buffalo hereby designate a Project Coordinator as indicated in Exhibit B. The parties may, at any time, change their designation of Project Coordinator upon notice in writing to the other parties. All communications between or among the parties concerning the work to be performed hereunder shall be between or among Project Coordinators.

Conrail's Obligation Under this Decree

18. Within thirty (30) days of entry of this Decree, Conrail shall pay to the State the sum of eighty-five thousand dollars (\$85,000) as partial reimbursement for response costs incurred and to be incurred by the State of New York. Such payment shall be made by check payable to the New York State Department of Environmental Conservation and shall be sent to David A. Munro, Assistant Attorney General, Department of Law, The Capitol, Albany, New York 12224. Conrail will also provide the CPRPs/City access to its property without charge as necessary for the CPRPs/City to implement the Remedial Program, subject to the execution of a reasonable right-of-entry agreement. Fulfillment of the payment and access obligations set forth in this paragraph shall completely discharge Conrail from all further obligations under this Decree. Notwithstanding anything herein to the contrary, Conrail shall have no liability hereunder for the failure of any of the other Settling Defendants to fulfill their obligations pursuant to this Decree.

Reservation of Claims/Rights

19. Nothing contained in this Decree shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the State's rights with regard to the following:

(a) except as provided in paragraph 18, the State's right to enforce this Decree against Settling Defendants, and/or

Settling Defendants' successors and assigns in the event a Settling Defendant fails to satisfy any of the terms of this Decree;

(b) the State's right to bring any action or proceeding against Settling Defendants, and/or Settling Defendants' directors, officers, employees, servants, agents, successors, and assigns with respect to claims for damages for injuries to the State's natural resources as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site;

(c) the State's right to bring an action against the CPRPs in the event that the State determines that the remedy is no longer protective of human health or the environment due solely to a failure of design or construction of the remedy. The State shall have the burden of going forward and establishing the basis for its claim.

(d) the State's right to bring any criminal action against Settling Defendants, and/or Settling Defendants' directors, officers, employees, servants, agents, successors, and assigns;

(e) the State's right to gather information and enter and inspect the Site, including the Conrail Portion; provided that the State shall provide reasonable advance notice to Conrail

and will comply with all reasonable safety-related restrictions required by Conrail.

(f) the State's right to bring any action or proceeding against anyone other than Settling Defendants.

20. Similarly, nothing contained in this Decree shall be construed as barring, diminishing, adjudicating or in any way affecting any of Settling Defendants' rights to take issue with or contest the State's entitlement to any of the foregoing relief.

21. Nothing contained in this Decree shall be construed to prohibit the State from exercising any summary abatement powers pursuant to statute or the common law.

22. Settling Defendants reserve all rights that they may have to assert any claim against their insurers or any party not a party to this action for matters arising from this action, including, without limitation, claims for breach of contract, contribution, tortious conduct and indemnity.

23. Except as provided by paragraph 37 below, nothing herein shall be construed as barring, diminishing, expanding, adjudicating or in any way affecting any legal or equitable rights or claims that any entity not a party to this Decree may have against Settling Defendants, or creating any presumptions of law or findings of fact that shall inure to, or be for the benefit of, any non-party.

Enforcement of Decree

24. If any party to this Decree considers that any other party has failed to comply with any term or condition of this Decree, the party alleging non-compliance may seek appropriate relief from this Court, including the payment of penalties for contempt of Court.

Notice Requirements

25. The original or copy of any communication required by this Decree between or among any of the parties shall be sent to the list of designated representatives of the parties appended hereto as Exhibit B.

26. The CPRPs and the City of Buffalo shall notify the State at least ten (10) working days in advance of the commencement of field activities to be conducted pursuant to this Decree.

Exhibits Incorporated

27. Exhibits annexed hereto are an integral part of this Decree and are hereby incorporated by reference as though they were set forth herein.

The Court's Continued Jurisdiction

28. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Decree, to resolve disputes arising hereunder as may be necessary or appropriate for

the construction or enforcement of this Decree, and to decide any remaining claims set forth in the State's complaint herein.

Release of Liability and Covenant Not to Sue

29. Nothing in this Decree shall be deemed to release Settling Defendants from liability for hazardous substance conditions at the Site or the State's response costs except as provided in this section.

30. Subject to paragraph 19, upon payment by Conrail pursuant to paragraph 18 of this Decree, Conrail shall be released from liability for all claims, demands, remedies, or actions whatsoever arising out of, or relating to, the past release of hazardous substances, chemicals or chemical wastes at or from the Site. Nothing in this Consent Decree extends to any claims the CPRPs may have against Conrail, now or in the future, for damages or response costs suffered or incurred, or to be suffered or incurred, other than in connection with the actual implementation of the Remedial Program by the CPRPs pursuant to this Consent Decree. The CPRPs expressly reserve any and all claims they have or will have in the future against Conrail relating to the Site, except for claims for costs incurred by the CPRPs in connection with implementation of the Remedial Program pursuant to this Consent Decree.

31. Subject to paragraph 19, upon the State's approval, pursuant to paragraph 6 of this Decree, of the CPRPs'

certification made in accordance with paragraph 5, the CPRPs shall be released from liability for all claims, demands, remedies or actions whatsoever, arising out of or relating to the past disposal of hazardous substances or chemicals or chemical wastes at the Site.

32. Subject to paragraph 19, upon the State's determination that the City of Buffalo has implemented the O & M Plan in accordance with the specifications set forth in the O & M Plan, the City of Buffalo shall be released from liability for all claims, demands, remedies or actions whatsoever, arising out of or relating to the past disposal of hazardous substances or chemicals or chemical wastes at the Site.

33. Subject to paragraph 19:

(a) upon the State's determination that Arywitz has met his obligations pursuant to paragraphs 3, 8, 14 and 16, pertaining to Public Notice, Deed Restrictions and Site Access, Arywitz shall be released from liability by all signatories to this Consent Decree for all claims, demands, remedies or actions whatsoever, arising out of or relating to the past disposal of hazardous substances or chemicals or chemical wastes at the Site.

(b) Upon the State's determination that 999 of Buffalo, Inc., and Tredo have met their obligations pursuant to paragraphs 3, 8, 14 and 16, pertaining to Public Notice, Deed Restrictions and Site Access, 999 of Buffalo, Inc., and Tredo shall be

released from liability by the State for all claims, demands, remedies or actions whatsoever, arising out of or relating to the past disposal of hazardous substances or chemicals or chemical wastes at the Site, provided that 999 of Buffalo, Inc. and Tredo do not engage in any activities at the Site that result in the release of hazardous substances at or from the Site.

(c) The CPRPs expressly reserve any and all claims they have or will have in the future against 999 of Buffalo, Inc. and/or Tredo relating to the Site.

34. In consideration of, and contingent upon, Settling Defendants' compliance with the provisions of this Decree, and subject to paragraph 19, the State covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under federal or state law (other than the enforcement of this Decree), against Settling Defendants arising out of or relating to releases of hazardous substances at the Site.

35. Nothing in this Decree shall in any way constitute or be construed as a release of claims by the State against any person not a party to this Decree.

36. Settling Defendants hereby release, discharge, covenant not to sue and agree not to assert any claims or causes of action against the State pursuant to CERCLA or under any other federal, state or local statute, regulation or ordinance, or common law, arising out of or relating to environmental conditions at the

Site as a result of the release or threatened release of hazardous substances or constituents at or from the Site or areas in the vicinity of the Site, except with respect to any claims or causes of action the CPRPs may assert concerning the New York State Department of Transportation's alleged arrangement for treatment or disposal of hazardous substances at the Site. This covenant not to sue extends only to the State, and does not extend to any other person or entity.

Contribution Protection

37. Upon entry of this Decree, and subject to paragraphs 19, 30 and 33 (c), it shall be deemed that Settling Defendants have resolved their liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2). Upon satisfying the material obligations set forth in this Decree, Settling Defendants shall not be liable for any claim for contribution, indemnity or restitution, or otherwise, however characterized or denominated, regarding "matters addressed" in this Consent Decree. The "matters addressed" in this Decree are all response actions taken to implement the Remedial Program for the Site and all response costs incurred and to be incurred by the State at or in connection with the Site.

Force Majeure

38. (a) "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the reasonable control of the CPRPs and/or the City of Buffalo, of any entity controlled by the CPRPs/City, or of the CPRPs'/City's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the CPRPs'/City's best efforts to fulfill the obligation. The requirement that the CPRPs/City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include the CPRPs/City's economic inability to comply with any of the obligations of this Consent Decree.

(b) If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the CPRPs/City shall notify DEC's Project Coordinator. Within 5 days thereafter the CPRPs/City shall deliver in writing to DEC an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to

prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the CPRPs'/City's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the CPRPs/City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The CPRPs/City shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the CPRPs/City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The CPRPs/City shall be deemed to know of any circumstance of which the CPRPs/City, any entity controlled by the CPRPs/City, or the CPRPs'/City's contractors knew or should have known.

(c) If DEC agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by DEC for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If DEC does not agree that

the delay or anticipated delay has been or will be caused by a force majeure event, DEC will notify the CPRPs/City in writing of its decision. If DEC agrees that the delay is attributable to a force majeure event, DEC will notify the CPRPs/City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

(d) If the CPRPs/City elect to invoke the dispute resolution procedures set forth in paragraph 12, they shall do so no later than 15 days after receipt of DEC's notice under the preceding paragraph. In any such proceeding, the CPRPs/City shall have the burden of demonstrating that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the CPRPs/City otherwise complied with the requirements of this paragraph. If the CPRPs/City carry this burden, the delay at issue shall be deemed not to be a violation by the CPRPs/City of the affected obligation of this Consent Decree identified to DEC and the Court.

Miscellaneous

39. The CPRPs and City of Buffalo shall make reasonably diligent attempts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or other authorizations

necessary to perform their obligations under this Decree. No permits, approvals or authorizations, other than those required pursuant to this Decree, are required from the State.

40. The CPRPs/City shall retain professional consultants, contractors, laboratories, quality assurance/quality control of personnel, and data validators acceptable to the State to perform the technical, engineering, and analytical obligations required by this Decree. The experience, capabilities, and qualifications of the firms or individuals selected by the CPRPs/City shall be submitted to the State, and the State's approval of these firms or individuals shall be obtained before the start of any activities for which the CPRPs/City and such firms or individuals will be responsible. Responsibility for the performance of the professionals retained by the CPRPs/City shall rest solely with the CPRPs/City.

41. All of the consultants' field logs and notes, raw data and chemical analyses related to the Site, shall be available to the State and the CPRPs/City. However, the State specifically recognizes that the CPRPs/City are entitled to meet privately with their consultants or other individuals responsible for performing the Remedial Program, on-site or off-site, to review all preliminary and/or draft reports, or for any other purpose to the extent such private meeting is not inconsistent with any other provision of this Decree. Nothing herein, including the

agreement in this paragraph pertaining to access to raw data, field notes, logs, and chemical analyses generated during the Remedial Program is intended nor shall be understood to waive any privileges that may exist for communications between a consultant acting through an attorney to a party and that party, nor is intended, nor shall be understood, to waive any rights or privileges under the Federal Rules of Civil Procedure or the Federal Rules of Evidence. The parties shall give prompt notice to each other of any requests for disclosure of any product generated by the consultant during implementation of the Remedial Program. No signatory to this Decree shall unreasonably interfere with the consultant's completion of the Remedial Program.

42. The CPRPs and the City of Buffalo shall provide a copy of this Decree to their respective Project Coordinators and to each person representing the CPRPs/City with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Decree upon performance in conformity with the terms of this Decree. The CPRPs/City or their contractors shall provide written notice of this Decree to all subcontractors hired to perform any portion of the work required by this Decree. The CPRPs/City shall nonetheless be responsible for ensuring that the CPRPs'/City's contractors and

subcontractors perform the work in satisfaction of the requirements of this Decree.

43. All references to "professional engineer" in this Decree are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

44. All references to "days" in this Decree are to calendar days unless otherwise specified.

45. This Decree shall apply to and be binding upon, and inure to the benefit of, all parties to this Decree, their officers, directors, agents, servants, employees, affiliates, parents, subsidiaries, shareholders, partners, representatives, successors, and assigns.

46. None of the Settling Defendants' obligations under this Decree shall be deemed to constitute any type of fine or penalty.

47. If any Settling Defendant desires that any provision of this Decree be changed, such defendant shall make timely written application, signed by an authorized individual of the defendant, to the State setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Environmental Protection Bureau, Office of the Attorney General, New York State Department of Law, The Capitol, Albany, NY 12224, Attn.: David A. Munro, Assistant Attorney General.

48. The effective date of this Consent Decree shall be the date it is entered by the Clerk of the Court.

THE UNDERSIGNED PARTIES enter into this Consent Decree:

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Plaintiffs

Dated: 7/2/02

By: David A. Munro
DAVID A. MUNRO
Assistant Attorney General
(518) 474-8481

SO ORDERED THIS 19th DAY OF July, 2002
John T. Curtin

United States District Judge

Niagara Frontier
Transportation Authority

Dated: 7/1/02

By: David Gregory
David Gregory
General Counsel

Niagara Frontier Transit Metro
System, Inc.

Dated: 7/1/02

By: David Gregory
David Gregory
General Counsel

Honeywell International, Inc.
f/k/a AlliedSignal, Inc.

Dated: 6/27/02

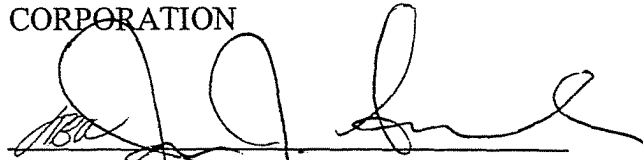
By: Robert J. Ford

Name Robert J. Ford
Title Director-Remediation &
Evaluation Services

The Undersigned Party enters into this Consent Decree in the matter of The State of New York v. NFTA et al., 02-CV-0277 C(SC) W.D.N.Y.

NATIONAL FUEL GAS DISTRIBUTION
CORPORATION

Date: May 6, 2002



Name: James J. Loesch
Title: General Manager, Risk Management
Address: 10 Lafayette Square
Buffalo, NY 14203

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert E. Glanville
Title: Phillips, Lytle, Hitchcock, Blaine & Huber LLP
Address: 3400 HSBC Center
Buffalo, New York 14203

GENERAL MOTORS CORPORATION

Dated: June 19, 02

By Michelle J. Fisher
its attorney

New York State
Electric & Gas Corporation

Dated: 7/1/02 R&M

By: Dennis R. Ugento

CONSOLIDATED RAIL CORPORATION

By: Justin M. Brady

Title: VP-Law + General Counsel

Date: 5/30/02

PENNSYLVANIA LINES LLC

By: Thely

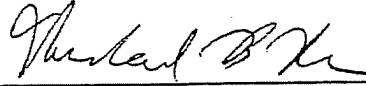
Title: President

Date: 5/20/02

The City of Buffalo

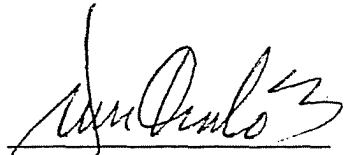
Dated: 7/1/02

By:



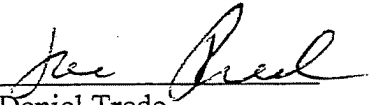
Michael B. Risan
Corporation Counsel

Dated: 7/1/02

A handwritten signature in black ink, appearing to read "Daniel Tredo", written over a horizontal line.

999 of Buffalo, Inc.
By Daniel Tredo, President

Dated: 7/1/02


Daniel Tredo

Gerald Arywitz, individually, and as the Executor of the Estate of Bernard Arywitz, has read the attached Consent Decree and agrees to all of the terms and conditions contained therein.

Gerald Arywitz
Gerald Arywitz

STATE OF NEW YORK
COUNTY OF ERIE

On the 14th day of May, in the year 2002, before me, the undersigned, personally appeared Gerald Arywitz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

Maria C. Windhorst
Notary Public

MARIA C. WINDHORST
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/10/2002

EXHIBITS

- A. Record of Decision ("ROD"), dated March 1996.
- B. List of Project Coordinators and Designated Representatives.

EXHIBIT B- LIST OF PROJECT COORDINATORS

New York State

Martin L. Doster, P.E.
Regional Hazardous Waste Remediation Engineer
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
(716) 851-7220
(716) 851-7226 (fax)

Cooperating Potentially Responsible Parties

Blasland, Bouck & Lee
155 Corporate Woods, Suite 150
Rochester, New York 14623
(585) 292-6740
(585) 292-6715 (fax)

City of Buffalo

Dennis Sutton
Environmental Manager
Office of Strategic Planning
920 City Hall
Buffalo, New York 14202
(716) 851-6587
(716) 854-0172
