

**CONSENT ORDER AND AGREEMENT FOR
SPECIAL INDUSTRIAL AREAS**

October 24, 2012

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DEPT. OF ENVIRONMENTAL PROTECTION

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

**62nd Street Industrial Park - SOUTH
6111 Butler Street
Pittsburgh, PA 15201**

**Remediation/Reuse of a
Special Industrial Area Site**

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 24th day of November, 2012, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and Urban Redevelopment Authority of Pittsburgh (hereinafter URA).

Findings

The Department has found and determined the following findings.

A. The Department is the agency with the duty and authority to implement the

62nd Street IP SOUTH

Land Recycling and Environmental Remediation Standards Act, the Act of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. §6026.101 et seq. ("Land Recycling Act"). The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, the Act of July 7, 1980, P.L. 380, No. 97 as amended, 35 P.S. §6018.101 et seq. (the "Solid Waste Management Act"); The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, No. 394, as amended, 35 P.S. §691.1 et seq. (the "Clean Streams Law"); the Air Pollution Control Act, the Act of January 8, 1960, P.L. 2119, No. 787, (1959), as amended, 35 P.S. §4001 et seq. (the "Air Pollution Control Act"); the Storage Tank and Spill Prevention Act, the Act of July 6, 1989, P.L. 169, No. 32 as amended, 35 P.S. §6021.101 et seq. (the "Storage Tank Act"); the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. §6020.101 et seq. ("HSCA"); and the rules and regulations promulgated thereunder.

B. The URA desires to undertake the reuse of a special industrial area site pursuant to the provisions of the Land Recycling Act. The URA is a redevelopment authority organized and existing under the Urban Redevelopment Law, 35 P.S. 1701 et seq. with an address of 200 Ross Street, Pittsburgh, Pa 15219.

C. This special industrial area site is called 62nd Street Industrial Park and is located at 6123 Butler Street, Pittsburgh, Pa 15201 (hereinafter "Site"). The subject property has been in use as an industrial site since the late 1800's, most recently as a metal fabricator and a rolling mill repair facility. Other than the operation of a marina on the north parcel, the mill property has been mostly unused since 1987. The entire property (parcel No. 0120-G-00155-0000-00) occupies 19.30 acres, bisected by an Allegheny

Valley Railroad (AVRR) line. The property is located along the Allegheny River at the intersection of 62nd and Butler Streets in the Lawrenceville section of the City of Pittsburgh. The property is rectangular in shape and is bordered by the Allegheny River on the north, 62nd Street on the east, Butler Street to the south, and a Sunoco tank farm on the west. The parcel addressed in this Consent Order is the more southerly parcel, consisting of 14.5 acres and identified as Lot & Block No. 120-G-155.

The URA acquired the property by the following: 1) Deed by and between Tippins International, Inc and Urban Redevelopment Authority of Pittsburgh Deed dated August 26, 2008 and recorded August 27, 2008; 2) Quitclaim Deed by and between Port Authority of Allegheny County and the Urban Redevelopment Authority of Pittsburgh, dated April 15, 2011, recorded on April 15, 2011 at Deed book Vol. 14554, p. 293; and General Warranty Deed by and between Annette Kline, married, and the Urban Redevelopment Authority of Pittsburgh, dated July 23, 2010, recorded on July 23, 2010 at Deed book Vol. 14333, p. 419.

Thirty two buildings existed on the south parcel in 2008 including many high-bay structures. These buildings covered most of the property. The facilities on the eastern half of the south parcel were historically used for melting, foundry, forging, and annealing operations, while machining occurred in the western portion. The more recent uses were for equipment storage by the Tippins Company. As part of the site preparation activities, these buildings were demolished and the asbestos containing material was mitigated by

the URA.

This Consent Order is relevant to the 14.5 acres of the property south of the Allegheny Railroad Right-of-Way. It is described as Lots 3A, 3C, 3D, and Area to be Dedicated for Roadway Purposes on Drawing E001, dated 02/29/12, "URA – TIPPINS PLAN, Subdivision/Consolidation Plan", Urban Redevelopment Authority of Pittsburgh, prepared by GAI Consultants, Inc. A metes and bounds description is included in Exhibit A.

D. This Consent Order and Agreement is the agreement required by Sections 305 and 502 of the Land Recycling Act between the Department and any person seeking a release of liability in connection with undertaking the reuse of a special industrial area site.

E. As of the date of this Consent Order and Agreement, the URA has represented that the URA, including its officers, directors, subsidiaries and affiliates, has not caused or contributed to contamination located on the Site.

F. As of the date of this Consent Order and Agreement, the Site is located in an Enterprise Zone designated as such by the Department of Community and Economic Development or its successor agency in implementing the program

G. On June 7, 2010 the URA submitted a Notice of Intent to Remediate (the "NIR") the Site to the Department.

H. On June 4, 2010 the URA delivered a copy of this NIR to The City of Pittsburgh.

I. On June 9, 2010 the URA published a summary of the NIR in the Pittsburgh Post Gazette.

J. The City of Pittsburgh did not request to be involved in the development of the remediation and reuse plans for the Site.

K. The City of Pittsburgh did not request that the URA develop and implement a public involvement program plan which met the requirements of section 304(o) of the Land Recycling Act.

L. On September 22, 2010 the URA submitted and on October 8, 2010 the Department approved the work plan required to be prepared for the Site by section 305(b) of the Land Recycling Act.

M. On February 10, September 29 and November 30, 2011 the URA submitted and on December 27, 2011 the Department approved the baseline environmental report required to be prepared for the Site by section 305(b) of the Land Recycling Act. The baseline environmental report and Department approval letter are attached hereto and incorporated by reference and deemed to be a part hereof as Exhibit B.

N. The intended purpose of the Site is for commercial and industrial warehouse operations. Groundwater use will be prohibited by Deed Restriction. Public water is readily available within Butler Street adjacent to the site. Thus there will be no human exposure to groundwater at the site. The proposed remediation measures will be the use of environmental covenants that include groundwater use prohibition.

O. Pursuant to section 502 of the Land Recycling Act, the cleanup liability for

the URA includes the remediation of immediate, direct or imminent threats to public health or the environment which would prevent the Site from being occupied for its Intended Purpose (hereinafter referred to as "Remedial Obligations").

P. The URA's Remedial Obligations include the following which are more fully described in Exhibit C: Groundwater use will be prohibited by Deed Restriction.

Q. Pursuant to Section 502, the cleanup liability for the URA does not include identified contamination located on the Site that is not an immediate, direct or imminent threat to public health or the environment which would prevent the Site from being occupied for its Intended Purpose.

R. Identified Contamination is described in Exhibit B

The parties desire to enter into an agreement pursuant to section 305 of the Land Recycling Act to outline the cleanup liability for the Site and to satisfy the requirements of sections 305 and 502 of the Land Recycling Act.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by the URA as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to:
 - a. Section 5 of the Clean Streams Law, 35 P.S. §691.5;
 - b. Section 602 of the Solid Waste Management Act, 35 P.S.

§6018.602;

- c. Section 4 of the Air Pollution Control Act, 35 P.S. §4004;
- d. Section 1309 of the Storage Tank Act, 35 P.S. §6021.1309;
- e.
- f. Sections 305 and 502 of the Land Recycling Act, 35 P.S.

§§6026.305 and 6026.502;

and Section 1917-A of the Administrative Code, supra

2. *Cleanup Liability of the URA.*

- a. The URA shall remediate all immediate, direct or imminent threats to public health or the environment presently located on the Site which would prevent the Site from being occupied for its Intended Purpose. The URA's Remedial Obligations are enumerated in paragraph P of the findings and are summarized in Exhibit C :

Groundwater use will be prohibited by Deed Restriction.

b. The URA shall not be responsible for the remediation of Identified Contamination described in paragraph R of the findings and more fully described in Exhibit B so long as the Identified Contamination does not prevent the occupation of the property for its Intended Purpose.

c. Nothing in this agreement relieves the URA from any cleanup liability that compromises the intended use of the property, including 1) contamination caused by the URA on the Site on or after the date of this Consent Order and Agreement; or 2) contamination presently located on the Site the nature, concentration and location of

which is not identified in Exhibit B.

d. If the URA complies with the terms and conditions of this Consent Order and Agreement, the URA shall have the liability protection established by Section 502(a) of the Land Recycling Act.

e. the URA shall provide the Department with prior written notice of any change in the Intended Purpose of the Site from that described in paragraph N of the findings. The URA has a continuing obligation to remediate all immediate, direct or imminent threats to public health or the environment located on the site that would prevent the site from being occupied for its Intended Purpose. If the URA changes the Intended Purpose of the property from that set forth in paragraph N, then the URA must remediate any contamination described in paragraph R which would prevent the occupation of the property for its new Intended Purpose

f. The liability protection provided by this Consent Order and Agreement is subject to the reopeners set forth in Section 505 of the Land Recycling Act.

3. *Notice of Commencement of Remediation.* The URA shall notify the Department in writing within 10 working days of the recordation of the groundwater use prohibition.

4. *Site Access.* The URA grants to the Department the right to enter onto the Site to observe, inspect and verify the remediation activities described in paragraph 2 and Exhibit A and to further investigate contamination at the site. In the event the Department elects to conduct remediation of Identified Contamination, the URA further grants to the Department the right to enter onto the Site to conduct remediation upon

reasonable notice and provided the Department does not unreasonably disrupt the URA's use of the property.

5. *Notice of Completion of Remediation.* The URA shall notify the Department in writing when it has completed the remediation activities enumerated in paragraph 2 and more fully described in Exhibit C.

6. *Thirty Day Verification Period.* The Department shall have 30 days after the receipt of the URA's notice of completion of remediation to verify that the remediation activities enumerated in paragraph 2 and more fully described in Exhibit A have been successfully completed by the URA.

7. *Transfer of Site.* the URA shall provide the Department with prior written notice of any transfer of ownership of the Site including the identity of the purchaser and the purchaser's Intended Purpose for the Site. Prior to transfer, the URA shall give the purchaser a copy of this Consent Order and Agreement including a copy of Exhibits A and B. The URA shall satisfy the applicable deed acknowledgement requirements of the Solid Waste Management Act and the Hazardous Sites Cleanup Act.

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

David E Eberle
Program Manager
400 Waterfront Drive
Pittsburgh PA 15222

9. *Correspondence with the URA.* All correspondence with the URA concerning this Consent Order and Agreement shall be addressed to:

Martin Kaminski, Director
Engineering & Construction
Urban Redevelopment Authority of Pittsburgh
11th Floor
200 Ross Street
Pittsburgh, Pa 15219

COPY: General Counsel, URA

The URA agrees to notify the Department whenever there is a change in the contact person's name, title or address.

10. *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 extent of any provisions herein in any litigation or any other proceeding.

11. *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 hereto.

12. *Attorney Fees.* The parties agree to bear their respective attorney 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.

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

14. *Resolution.* Attached hereto as Exhibit D is a resolution of the Board of Directors of the URA authorizing its signatories below to enter into this Consent Order


and Agreement on its behalf.

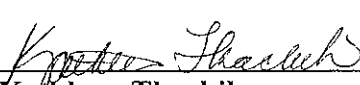
15. *Execution of Agreement.* This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be valid and effective.

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 URA 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 URA; that the URA consents to the entry of this Consent Order and Agreement as an ORDER of the Department; and that the URA hereby knowingly waives its rights to appeal 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, No. 1988-94, 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.

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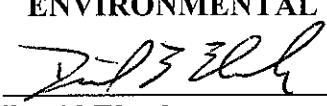
URA :


Robert Rubinstein
Acting Executive Director


Kathleen Tkachik
Assistant Secretary


Attorney for URA

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**


David Eberle
Program Manager

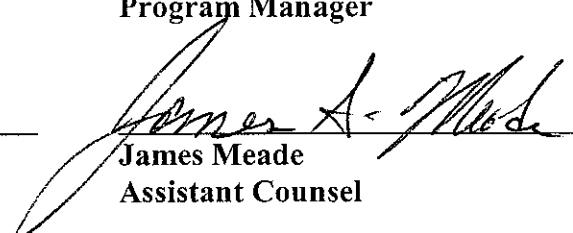

James Meade
Assistant Counsel

EXHIBIT A
Description of Lots 3a & 3d
62nd Street Industrial Park - South
10th Ward, City Of Pittsburgh

All that certain lot, tract or parcel of land situate in the City Of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, and being herein more particularly bounded and described as follows:

BEGINNING at a point, said point being located at an iron pin set at the southwest corner of property at the intersection of said property as shown on Drawing E001, dated 02/29/12, "URA – TIPPINS PLAN Subdivision/Consolidation Plan", Urban Redevelopment Authority of Pittsburgh, prepared by GAI Consultants, Inc; and land described as Lot 2 Atlantic Richfield Plan No. 1; and Butler Street (aka PA State route 2122), and running thence:

- (1) North 36°-13'-12" west along the westerly boundary of the property a distance of 492.36 feet; thence
- (2) Along a chord of a circle 432.91 feet, bearing North 68°-17'-03" east having a radius of 5610.00 feet, thence
- (3) North 70°-29'-43" west along the southern boundary of the Allegheny Valley Railroad Company right of way a distance of 1,021.86 feet; thence
- (4) Along a chord of a circle 195.05 feet, bearing north 72°-11'-02" east, having a radius of 3310.00 feet; thence
- (5) South 36°-13'-00" east along the westerly boundary of 62nd Street a distance of 158.95 feet; thence
- (6) Along a chord of a circle 67.50 feet, bearing south 13°-55'-30" east, having a radius of 175.00 feet; thence
- (7) South 13°-55'-30" east along the westerly boundary of 62nd Street a distance of 39.50 feet; thence
- (8) Along a chord of a circle 54.61 feet, bearing South 19°-39'-40" west having a radius of 300.00 feet, thence
- (9) South 71°-01'-59" west a distance of 353.38 feet; thence
- (10) South 46°-36'-27" east a distance of 83.04 feet; thence
- (11) South 65°-00'-48" west a distance of 1124.23 feet to the place of beginning.

Containing 14.5 acres more or less.