

Department to enforce the terms of this Consent Decree, Respondent consents to and agrees not to contest the authority or jurisdiction of the Secretary to enter into or enforce this Decree, and agrees not to contest the validity of this Decree or its terms.

III. PARTIES BOUND

4. This Consent Decree shall apply to and be binding upon DNREC and shall be binding upon the Respondent, its agents, successors, assigns, officers, directors and principals. Respondent is jointly and severally responsible for carrying out all actions required of it by this Consent Decree. The signatories to this Consent Decree certify that they are authorized to execute and legally bind the parties they represent to this Decree. No change in the ownership or corporate status of the Respondent or of the facility or Site shall alter Respondent's responsibilities under this Consent Decree.

5. The Respondent shall provide a copy of this Consent Decree to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Consent Decree to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Decree, within fourteen (14) days after the effective date of this Decree or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Decree. Notwithstanding the terms of any contract, Respondent is responsible for compliance with the Consent Decree and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Decree.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Decree, the objectives of DNREC and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a Remedial Investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility by conducting a Feasibility Study; and (c) to recover response and oversight costs incurred by DNREC with respect to prior response actions and this Consent Decree.

7. The activities conducted under this Consent Decree are subject to approval by DNREC and shall provide all appropriate necessary information for the RI, and for a remedial decision record that is consistent with HSCA and the Regulations. The activities conducted under this Consent Decree shall be conducted in compliance with HSCA and the Regulations, and all applicable DNREC guidances, policies, and procedures.

V. FINDINGS OF FACT

8. The Shuster's Auto Salvage Site is located at 601 - 603 S. Market Street in Wilmington, Delaware. It is designated as New Castle County Tax Parcels Nos. 26-057-00-001 and 26-057-00-048, and is 5.89 acres in area. The Site is zoned 26W4, Waterfront Residential/Commercial. It includes or is adjacent to tidal waters of the State of Delaware, namely the Christina River and its associated tidal freshwater wetlands (including jurisdictional wetlands of the State of Delaware). It consists primarily of uplands. Nearly the entire Site lies in the floodplain as mapped by the Federal Emergency Management Agency. Surrounding upland areas are densely developed and are primarily used for commercial and industrial purposes. Respondent formerly operated a motor vehicle salvage business (Shuster's Auto Salvage, Inc.) at the Site.

9. Sampling conducted as part of the 2001 RI or investigations referenced therein revealed contamination of soil and/or groundwater with arsenic, cadmium, chromium, copper, iron, lead, manganese, mercury, nickel, zinc, bis(2-ethylhexyl) phthalate, C19-C36 aliphatic hydrocarbons, and C11-C22 aromatic hydrocarbons at levels exceeding the DNREC Uniform Risk-Based Standards ("URS"). Further, the DNREC Division of Air and Waste Management enforcement record documents several enforcement responses to the Site for releases and improper management of pollutants.

10. The actual and/or threatened release and contaminant migration pathways may include, but are not limited to, potential release to soil and groundwater by direct deposition (spillage or disposal) and potential release to surface water (including wetlands) and sediment via overland drainage and/or groundwater discharge.

11. The release (if found) or threatened release of contaminants, as stated in paragraphs 9 and 10 herein, may pose a risk to public health, welfare or the environment.

12. The Respondent for the Site is Charles F. Shuster, Jr., trading as Shuster's Auto Salvage, Inc.

13. Pursuant to 7 Del. C. § 9105(a), Respondent is liable for the release of contaminants into the environment because, among possibly other things, Respondent owned and/or operated the facility.

14. Respondent was notified by DNREC of its liability pursuant to 7 Del. C. § 9107. Departmental notification was given by a notice of liability letter dated November 3, 1999, which was delivered by certified mail to Respondent.

15. Respondent, in conjunction with other property owners in the vicinity, entered into a Voluntary Cleanup Program (VCP) Agreement with DNREC to conduct an RI on several parcels including the subject Site. A draft RI report was submitted in June 2001, but was not approved by DNREC. Respondent failed to complete the RI activities agreed to in the VCP Agreement. Accordingly, DNREC terminated the VCP Agreement with respect to Respondent in November

2007. Past inspections by the DNREC Division of Water Resources identified violations of 7 Del. C. Chapter 60, and the Regulations Governing the Control of Water Pollution, promulgated thereunder, including improper management of petroleum products and of storm water.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

16. The Site is a "facility" as defined in 7 Del. C. Section 9103(9).
17. Wastes and constituents thereof at the Site, sent to the Site, and/or transported to the Site identified in paragraph 9 are "hazardous substances" as defined in 7 Del. C. Section 9103(11).
18. The presence of hazardous substances at the Site, or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in 7 Del. C. Section 9103(20).
19. Respondent is a "person" as defined in 7 Del. C. Section 9103(16).
20. Respondent is a "potentially responsible party" as defined in 7 Del. C. Section 9103(18).
21. The actions required by this Consent Decree are necessary to protect the public health or welfare or the environment, and are consistent with 7 Del. C. Chapter 91, and the Regulations.

VII. DEFINITIONS

22. Unless otherwise expressly stated, the definitions provided in 7 Del. C. Chapter 91, and the Regulations shall control the meaning of terms used in this Consent Decree.

VIII. SCOPE OF CONSENT DECREE

23. The parties agree that Respondent shall perform the following actions pursuant to this Consent Decree:
 - A. Design and implement a Remedial Investigation ("RI") as described in Section IX.
 - B. Within 30 days of the execution of this Consent Decree, submit for DNREC approval a Work Plan, including a Sampling and Analysis Plan, for the RI. Upon approval of said Work Plan by DNREC, it shall be appended to and made an integral and enforceable part of this Consent Decree. In the event of any ambiguity or inconsistency between Section IX and the Work Plan, the approved Work Plan shall govern.
 - C. Reimburse DNREC's costs to include expenses incurred by DNREC prior to this Consent Decree, and also expenses incurred by DNREC during the implementation of this

Decree. These matters are set forth in more specific detail in Sections XIII through XXIV of this Consent Decree.

IX. REMEDIAL INVESTIGATION

24. Respondent shall design, propose, initiate, complete and report upon a Remedial Investigation (RI) of the Site in accordance with the requirements and time schedules set forth in the Work Plan. The purpose of the RI is to (1) identify all sources of contamination at the Site, and (2) identify the extent and magnitude of soil, subsoil, vapor phase contaminants, groundwater and surface water contamination at the Site.

X. WORK TO BE PERFORMED

25. All work performed under this Consent Decree shall be under the direction and supervision of qualified personnel. This Consent Decree is contingent on Respondent's demonstration to DNREC's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Consent Decree. During the course of the RI, Respondent shall notify DNREC in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. DNREC shall have the same right to approve changes and additions to such additional personnel as it has hereunder regarding the initial notification.

26. Respondent shall conduct activities and submit deliverables as provided by the Work Plan for the development of the RI. All such work shall be conducted in accordance with HSCA, the Regulations and all guidance, policies, and procedures of the Department, and guidances referenced in the Work Plan, as may be amended or modified by DNREC. The tasks that Respondent must perform are described more fully in the Work Plan and guidances. All work performed under this Consent Decree shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Work Plan and Sampling and Analysis Plan, as initially approved or modified by DNREC, and as may be amended or modified by DNREC from time to time. For the purposes of this Consent Decree, a day means a calendar day unless otherwise noted in the Decree.

27. DNREC reserves the right to comment on, modify, and direct changes for all deliverables. At DNREC's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all information and comments supplied by DNREC either in subsequent or resubmitted deliverables.

28. Respondent shall not proceed further with any subsequent activities or tasks until receiving DNREC approval for the following deliverables: draft Remedial Investigation Work Plan, draft Sampling and Analysis Plan, and draft Remedial Investigation report. While awaiting DNREC approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Decree.

29. For all remaining deliverables not enumerated above in paragraph 28, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting DNREC approval on the submitted deliverable. DNREC reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI.

30. In the event that Respondent amends or revises a report, plan or other submittal upon receipt of DNREC comments, if DNREC subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect DNREC's directions for changes, DNREC retains the right to seek stipulated or statutory penalties, perform its own studies, complete the RI (or any portion of the RI) under HSCA and the Regulations, and seek reimbursement from the Respondent for its costs, and/or seek any other appropriate relief.

31. In the event that DNREC takes over some of the tasks, but not the preparation of the RI report, Respondent shall incorporate and integrate information supplied by DNREC into the final RI report.

32. Neither failure of DNREC to expressly approve or disapprove of Respondent's submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by DNREC. Whether or not DNREC gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to DNREC.

XI. MODIFICATION OF THE WORK PLAN

33. If at any time during the RI process, Respondent identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the DNREC Project Manager within twenty (20) days of identification. DNREC in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

34. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify DNREC immediately. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the DNREC Project Manager by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in HSCA and the Regulations in the event that DNREC determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, DNREC shall modify or amend the Work Plan in writing accordingly. Respondent shall perform the Work Plan as modified or amended.

35. DNREC may determine that, in addition to tasks defined in the initially approved Work Plan, other additional work may be necessary to accomplish the objectives of the RI. DNREC may require that the Respondent perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI. Respondent shall confirm its willingness to perform the additional work in writing to DNREC within seven (7) days of receipt of

the DNREC request, or Respondent shall invoke dispute resolution. Subject to DNREC resolution of any dispute, Respondent shall implement the additional tasks which DNREC determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by DNREC in a written modification to the Work Plan or written Work Plan Supplement. DNREC reserves the right to conduct the work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

XII. QUALITY ASSURANCE

36. Respondent shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Work Plan, and all DNREC guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures.

XIII. FINAL RI, REMEDIAL DECISION RECORD

37. DNREC retains the responsibility for the release to the public of the RI report. DNREC retains responsibility for the preparation and release to the public of the proposed plan of remedial action in accordance with HSCA, and the Regulations.

38. DNREC will determine the contents of the remedial decision record. Respondent must submit to DNREC documents developed during the course of the RI upon which selection of the response action may be based. Respondent shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondent must additionally submit any previous studies conducted under local, federal or other state authorities relating to selection of the response action, and all communications between Respondent and local, federal, or other state authorities concerning selection of the response action. At DNREC's discretion, Respondent may establish a community information repository at or near the Site, to house one copy of the remedial decision record.

XIV. PROGRESS REPORTS AND MEETINGS

39. Respondent shall make presentations at, and participate in, meetings at the request of DNREC during the initiation, conduct, and completion of the RI. In addition to discussion of the technical aspects of the RI, topics will include anticipated problems or new issues. Meetings will be scheduled at DNREC's discretion.

40. In addition to the deliverables set forth in this Consent Decree, Respondent shall provide to DNREC monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Decree during that month, (2) include all results of sampling and tests and all other data received by the Respondent, (3) describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for RI completion, and (4) describe all problems encountered and any anticipated

problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

41. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, during implementation of this Consent Decree, shall be submitted to DNREC in the subsequent monthly progress report as described in Section XV of this Consent Decree.

42. Respondent will verbally notify DNREC at least fifteen (15) days prior to conducting significant field events as described in the Work Plan or Sampling and Analysis Plan. At DNREC's verbal or written request, or the request of DNREC's oversight assistant, Respondent shall allow split or duplicate samples to be taken by DNREC (and its authorized representatives) of any samples collected by the Respondent in implementing this Consent Decree. All split samples of Respondent shall be analyzed by the methods identified in the Laboratory QA/QC Plan.

43. At all reasonable times, DNREC and its authorized representatives shall have the authority to enter and freely move about all property at the site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this Consent Decree; reviewing the progress of the Respondent in carrying out the terms of this Consent Decree; conducting tests as DNREC or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to DNREC by the Respondent. The Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, other writings related to work undertaken in carrying out this Consent Decree. Nothing herein shall be interpreted as limiting or affecting DNREC's right of entry or inspection authority under state law. All parties with access to the site under this paragraph shall comply with all approved Health and Safety Plans.

44. In entering into the Consent Decree, Respondent waives any objections to any data gathered, generated, or evaluated by DNREC or Respondent in the performance or oversight of the work that has been verified according to the laboratory quality assurance/quality control procedures required by the Consent Decree, or any DNREC-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the RI, Respondent shall submit to DNREC a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to DNREC within fifteen (15) days of the monthly progress report containing the data, or these objections are also waived.

45. If the Site, or any off-site area that is to be used for access or is otherwise within the scope of the RI, is owned in whole or in part by parties other than those bound by this Consent Decree, Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within thirty (30) days of DNREC's approval of such workplans that specify

access requirements. Such agreements shall provide access for DNREC, its contractors and oversight officials, and the Respondent or its authorized representatives, and such agreements shall specify that Respondent is not DNREC's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to DNREC prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify DNREC of its failure to obtain access. DNREC may obtain access for the Respondent, perform those tasks or activities with DNREC contractors, or terminate the Consent Decree in the event that Respondent cannot obtain access agreements. In the event that DNREC performs those tasks or activities with DNREC contractors and does not terminate the Consent Decree, Respondent shall perform all other activities not requiring access to that Site, and shall reimburse DNREC for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by DNREC into its reports and deliverables. Furthermore, the Respondent agrees to indemnify the State of Delaware, its agencies, departments, agents, and employees, with respect to any claims as specified in Section XXV of this Consent Decree. Respondent also shall reimburse DNREC for all costs and attorney fees incurred by DNREC to obtain access for the Respondent pursuant to paragraph 69.

XVI. DESIGNATED PROJECT MANAGERS

46. Documents, including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Decree, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent and DNREC designate in writing:

(a) Documents to be submitted to DNREC (one unbound, three bound, and one electronic Portable Document Format ("PDF") electronic copies) shall be provided of each deliverable identified in paragraph 28 herein) should be sent to:

Gregory M. DeCowsky, Project Manager
DNREC Site Investigation & Restoration Branch
391 Lukens Drive
New Castle, DE 19720-2774

(b) Documents to be submitted to the Respondent should be sent to:

Mr. Charles F. Shuster, Jr.
Shuster's Auto Salvage, Inc.
999 S. Market Street
Wilmington, Delaware 19801

Mr. William Smith, PG
Environmental Alliance
660 Yorklin Road
Hockessin, Delaware 19707

47. On or before the effective date of this Consent Decree, DNREC and the Respondent shall each designate their own Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Consent Decree. To the maximum extent possible, communications between the Respondent and DNREC shall be directed to the Project Manager by mail or e-mail, with copies to such other persons as DNREC and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Decree.

48. DNREC and the Respondent each have the right to change their respective Project Manager. The other party must be notified in writing at least ten (10) days prior to the change.

49. The DNREC Project Manager shall have the authority to (1) take samples or direct that samples be taken; (2) direct that work stop on any work required by this Consent Decree; (3) observe, take photographs, make video recordings, and make such other reports on the progress of the work as the Project Manager deems appropriate; (4) review records, files and documents relevant to this Decree; (5) make or authorize minor field modifications in the RI or in techniques, procedures or design utilized in carrying out this Consent Decree which are necessary to the completion of the RI; or (6) take any necessary response action when s/he determines conditions at the Site present an imminent danger to public health and welfare or the environment. Any field modifications shall be approved orally by both Project Managers. Within seventy-two (72) hours following the modification, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore, and shall provide or mail a copy of the memorandum to the other Project Manager, or other designees.

50. DNREC's and Respondent's Project Managers shall either be on the Site or available on call by telephone during all hours of work at the Site. The absence of any Project Manager from the Site shall not be cause for stoppage of work.

XVII. DISPUTE RESOLUTION

51. If a dispute arises as to any part of this Consent Decree, including any final modification or disapproval of Submittals, the procedures of this Section shall apply. In addition, during the pendency of any dispute, Respondent shall continue to implement those portions of the RI not in dispute which can be reasonably implemented pending final resolution of the issue(s) in dispute.

- A. Respondent shall, within twenty-one (21) days of the date a dispute arises, provide the DNREC Project Manager with a written statement setting forth the dispute and the information Respondent is relying upon to support its position, and stating whether Respondent will suspend work on any portions of the RI during the dispute.
- B. If the dispute cannot be settled through negotiations with the DNREC Project Manager within ten (10) days, Respondent may submit the written statement under Paragraph A to the Director of Air and Waste Management ("Director").

- C. Following receipt of Respondent's statement under Paragraph A, the Director shall issue an order with respect to the issue(s) in dispute.
- D. If DNREC decides to perform any of Respondent's suspended work, DNREC may seek to recover any reasonable and necessary expenses incurred by DNREC.
- E. This Section specifically replaces, and is in lieu of, any other appeal rights that Respondent may have been entitled to under 7 Del. C. Chapter 91 with respect to disputes arising out of the implementation of this Consent Decree, and Respondent hereby waives any and all such rights.

XVIII. FAILURE TO MAKE TIMELY SUBMITTALS

52. For each day or portion thereof that Respondent fails to make a Submittal to DNREC in accordance with the time schedules contained in the Exhibits to this Decree or any other time schedule approved or modified by DNREC, Respondent shall be obligated to pay into the Hazardous Substance Cleanup Fund the sum of one thousand dollars (1,000.00).

53. Respondent shall not be liable for payment under this Section if it has submitted to DNREC a timely request for an extension of schedules under Section XIX of this Decree, and the request has been granted.

54. Upon determination by DNREC that Respondent has failed to make a Submittal, written notice of the failure specifying the provision of the Decree which has not been complied with shall be given to Respondent. Respondent shall pay the required sum within thirty (30) days of making the Submittal which was the subject of the notice or within thirty (30) days of DNREC's notice, whichever is sooner. Respondent retains the right to dispute under Section XVIII the factual basis for the DNREC's determination that a Submittal has not been made in a timely fashion. However, Respondent waives any rights it may have to challenge the contractual validity of the requirement that it make payments under this Section.

55. Payments required by this Section shall accrue from the date on which the Submittal was to have been made. Payments required by this Section shall cease to accrue when Respondent delivers the required Submittal to DNREC.

56. Nothing in this Section shall be construed as prohibiting or in any way limiting the ability of DNREC to seek civil penalties available under HSCA, or any other law for any noncompliance with this Decree except for noncompliance with the schedules for making Submittals required by this Decree.

XIX. EXTENSIONS OF SCHEDULES

57. An extension shall be granted if Respondent's request for extension is submitted in a timely fashion and good cause exists for granting the extension. A request shall be deemed to be

timely if it is made orally within 48 hours of the time the reason(s) giving rise to the request was known, or should have been know, to the Respondent or its contractor or consultant, and followed up in writing within five (5) business days of such time; provided, however, that if the expiration of the 48 hour period should fall on a weekend or holiday, the oral submittal shall be by the morning of the next business day. The request shall specify the reasons why the extension is needed. Within five (5) business days of receipt of Respondent's timely written request for an extension, DNREC shall make a decision to grant or deny such request. Any delay by DNREC beyond this time period shall be good cause for an extension for the length of such delay. Extensions shall only be granted for such period of time as DNREC determines is reasonable under the circumstances. A requested extension shall not be effective until approved by DNREC.

58. DNREC may extend the time schedules contained in this Decree for a period not to exceed ninety (90) days except that if an extension is needed as a result of (1) delays in the issuance of a necessary permit which was timely applied for, or (2) judicial review of the issuance, non-issuance or re-issuance of a necessary permit, DNREC may extend the time schedules for a longer period. Extensions of greater than ninety (90) days requested for reasons other than the two specified above may be granted under this Decree, but only if approved by DNREC pursuant to Section XXX of this Decree.

59. The burden shall be on Respondent to demonstrate to the satisfaction of DNREC that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension.

60. Good cause for granting an extension includes, but is not limited to, the following:

- A. Circumstances beyond the reasonable control of Respondent, including delays caused by DNREC;
- B. Stoppage of work under Sections XVI or XXI, if the work stoppage was not the result of any noncompliance by Respondent with this Decree, including the Exhibits hereto;
- C. Review resulting from the good faith invocation by Respondent of Section XVII of this Decree, which review results in delays in implementation of this Decree that make it impossible for Respondent to meet the required schedules; or,
- D. Delays which are directly attributable to any changes in permit terms or conditions or refusal to issue a permit needed to implement the requirements of this Decree, as contemplated under Section XX of this Decree, if Respondent filed a timely and complete application for the necessary permit.

XX. PERMITS

61. The implementation of this Consent Decree may require the issuance of governmental permits, authorizations, or orders (hereinafter referred to as "permit") by DNREC,

other state agencies, or other governmental bodies. This Consent Decree is based upon the expectation that the terms and conditions of any necessary permits will be issued consistent with the response actions required by this Decree.

62. Respondent shall notify DNREC of all non-DNREC permits which are needed to implement the requirements of this Consent Decree as soon as Respondent becomes aware of the need for the permit. Respondent shall provide DNREC with a copy of all such permit applications at the time the application is submitted to the governmental body issuing the permit.

63. If a permit is not issued, or is issued or is renewed in a manner which is materially inconsistent with the requirements of the approved RI, Respondent shall notify DNREC of its intention to propose modifications to the RI. Notification by Respondent of its intention to propose modifications shall be submitted to DNREC within seven (7) calendar days of receipt by Respondent (1) of notification that (a) a permit will not be issued or (b) a permit has been issued or reissued; and (2) of notification that a judicial action with respect to issuance of a permit has been filed. Within thirty (30) days after the date it submits its notice of intention, Respondent shall submit to DNREC its proposed modifications to the RI with an explanation of its reasons in support thereof; however, if Respondent decides to contest the denial of a permit, or if a judicial action concerning the permit has been filed, modifications shall be submitted within fifteen (15) days of Respondent's receipt of notification that a final judicial determination has been entered.

64. DNREC shall review and approve, disapprove, or modify Respondent's proposed modifications to the RI in accordance with Section XI of this Consent Decree.

65. During any judicial review of any permit needed to implement this Consent Decree, or during review of any of Respondent's proposed modifications as provided in paragraph 64 above, Respondent shall continue to implement those portions of the RI which can be reasonably implemented pending final resolution of the judicial proceedings.

XXI. CREATION OF DANGER

66. If DNREC determines that activities undertaken in implementing or in noncompliance with this Consent Decree, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, DNREC may order Respondent to stop further implementation of this Consent Decree for the period of time needed to abate the danger, or may petition a court of appropriate jurisdiction for such an order. Respondent shall comply with the order upon receipt.

XXII. REIMBURSEMENT OF PAST COSTS

67. Within thirty (30) days of the effective date of this Consent Decree, Respondent shall pay into the Hazardous Substance Cleanup Fund of the Treasury of the State of Delaware, by check payable to DNREC, \$ 8,136.55 as reimbursement of DNREC's expenditures incurred in connection with the investigation and other response actions concerning the Site incurred through

December 31, 2008 prior to, the effective date of this Consent Decree, as well as current and future costs of performing the RI.

XXIII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

68. Following the effective date of this Consent Decree, DNREC shall submit to Respondent on a periodic basis an accounting of all response costs including oversight costs incurred by DNREC after December 31, 2008 with respect to this RI. Response costs may include, but are not limited to, costs incurred by DNREC in overseeing Respondent's implementation of the requirements of this Consent Decree, and activities performed by DNREC as part of the RI and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of DNREC personnel, and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Decree, review and approval or disapproval of reports, costs of performing the baseline risk assessment, and costs of redoing any of Respondent's tasks. Within sixty (60) days of its receipt of DNREC's reimbursement statement, Respondent shall make the requested payment into the Hazardous Substance Cleanup Fund of the Treasury of the State of Delaware by check payable to DNREC.

69. Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusions of costs outside the scope of this Consent Decree. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing a DNREC accounting error or the inclusion of costs outside the scope of this Consent Decree.

XXIV. RESERVATION OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

70. DNREC reserves the right to bring an action against the Respondent under 7 Del. C. Section 9109 for recovery of all response costs, including oversight costs, incurred by DNREC at the Site that are not reimbursed by the Respondent, any costs incurred in the event that DNREC performs the RI or any part thereof, and any future costs incurred by DNREC in connection with response activities conducted under HSCA at this Site.

71. DNREC reserves the right to bring an action against Respondent to enforce and collect response, oversight and other reimbursement costs incurred pursuant to this Consent Decree, to collect stipulated penalties assessed pursuant to Section XVIII of this Consent Decree, and to seek penalties pursuant to 7 Del. C. Section 9109.

72. Except as expressly provided in this Consent Decree, each party reserves all rights and defenses it may have. Nothing in this Consent Decree shall affect DNREC's removal authority or DNREC's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, and/or statutory penalties.

73. Following satisfaction of the requirements of this Consent Decree, Respondent shall have resolved its liability to DNREC for the work performed by Respondent pursuant to this Consent Decree. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Decree regarding removals, other operable units, remedial design/remedial action of this operable unit, or other activities arising pursuant to HSCA.

XXV. OTHER CLAIMS

74. Nothing herein is intended to bar or release any claims, causes of action, or demands in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Consent Decree for any liability they may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances at, to, or from the Site.

75. DNREC shall not be held as a party to any contract entered into by Respondent to implement the requirements of this Consent Decree.

XXVI. OTHER APPLICABLE LAWS

76. All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. If there is a conflict in the application of federal, state or local laws or regulations, the most stringent of the conflicting provisions shall apply.

XXVII. RECORDS PRESERVATION

77. All records and documents in DNREC's and Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Consent Decree and for a minimum of ten (10) years after commencement of construction of any remedial action. The Respondent shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten (10) year period, the Respondent shall notify DNREC at least (90) days before the documents are scheduled to be destroyed. If DNREC requests that the documents be saved, the Respondent shall, at no cost to DNREC, give DNREC the documents or copies of the documents.

XXVIII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

78. (a) Prior to commencement of any work under this Consent Decree, Respondent shall secure, and shall maintain in force for the duration of all activities being performed on the Site by Respondent, or by Respondent's consultants or contractors, as required by this Consent Decree, Comprehensive General Liability ("CGL") and automobile insurance with limits of \$ 1 million , combined single limit. The CGL insurance shall include Contractual Liability Insurance in the amount of \$ 1 million per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) If during the course of performance of the work required by this Consent Decree, DNREC, in its sole discretion, determines that Respondent shall obtain pollution liability in an amount to be determined by DNREC, Respondent agrees to obtain such insurance at Respondent's cost as soon as practicable. In the event DNREC requires Respondent to obtain pollution liability insurance, Respondent shall maintain said insurance during the period any work is being conducted on the Site under this Consent Decree, unless the insurance policy is a claims made policy, in which case Respondent shall maintain said insurance for two (2) years after the completion of all activities required by this Consent Decree. Respondent shall also secure, and maintain in force for the duration of all work conducted under this Consent Decree, and, if said insurance is on a claims made basis, for two (2) years after the completion of all activities required by this Consent Decree the following:

i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.

ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of the Consent Decree, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Decree.

(d) If Respondent demonstrates by evidence satisfactory to DNREC that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Consent Decree, and annually thereafter on the anniversary of the effective date of this Consent Decree, Respondent shall provide to DNREC certificates of such insurance and a copy of each insurance policy.

79. At least seven (7) days prior to commencing any work under this Consent Decree, Respondent shall certify to DNREC that the required insurance has been obtained by Respondent, and/or its contractor or subcontractor.

80. The Respondent agrees to indemnify and hold the State of Delaware, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Decree. The State of Delaware, or any agency or authorized representative thereof, shall

not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Decree.

XXIX. ENFORCEABILITY

81. The terms of this Consent Decree shall be legally enforceable by any party in a court of appropriate jurisdiction.

XXX. AMENDMENT OF CONSENT DECREE

82. This Consent Decree may be amended by mutual agreement of DNREC and Respondent. Amendments shall be in writing and shall be effective when signed by DNREC. DNREC Project Managers do not have the authority to sign amendments to the Consent Decree.

83. No informal advice, guidance, suggestions, or comments by DNREC regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Decree. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Decree are, upon approval by DNREC, incorporated into this Decree.

XXXI. SUCCESSORS

84. This Consent Decree shall be binding upon Respondent, its successors and assigns, and upon DNREC, its successors and assigns.

XXXII. TERMINATION

85. The provisions of this Consent Decree shall be deemed satisfied and terminated upon receipt by Respondent of written notice from the DNREC Secretary that Respondent has demonstrated, to the satisfaction of DNREC, that all the terms of this Consent Decree have been completed. Upon satisfactory completion of the terms of this Consent Decree, DNREC shall file with the Superior Court a Stipulation of Dismissal of this action incorporating any Certificate of Completion issued by DNREC.

XXXIII. EFFECTIVE DATE

86. This Consent Decree is effective on the date that it is entered by the Superior Court.

XXXIV. COUNTERPARTS

87. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**** SIGNATURE PAGE FOLLOWS ****

DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL

BY: _____ DATE: _____
David S. Small, Acting Secretary

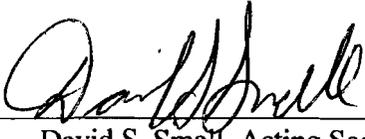
Approved as to Form:

BY: *Robert S. Kuehl* # 2091
for Robert S. Kuehl, Deputy Attorney General

SHUSTER'S AUTO SALVAGE, INC.

BY: *Charles Shuster, Jr.* DATE: 4-15-09
Charles Shuster, Jr.
Respondent, pro se

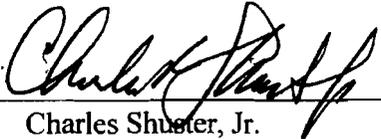
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL

BY:  DATE: 4/16/09
David S. Small, Acting Secretary

Approved as to Form:

BY: _____
Robert S. Kuehl, Deputy Attorney General

SHUSTER'S AUTO SALVAGE, INC.

BY:  DATE: 4-15-09
Charles Shuster, Jr.
Respondent, pro se

