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Joe Slack

New York State Department of Environmental Conservation

Div. of Environmental Enforcement
202 Mamaroneck Avenue - Room 304
White Plains, New York 10601-5381
Tel: (914) 761-3575



Thomas C. Jorling
Commissioner

October 03, 1989

Charles S. Warren, Esq.
Berle, Kass & Case
45 Rockefeller Plaza
New York, New York 10111

CERTIFIED MAIL/RRR

Re: **Order on Consent**
Amtrak/Sunnyside Yards
Site # 2-41-006

Dear Chuck:

Enclosed please find a fully executed copy of the above Order on Consent. The Order was signed by Commissioner Jorling on September 21, 1989.

As you know, the proposed Work Plan for the RI/FS and IRM are presently under review by Department technical staff. I will advise you when that review has been completed.

It is my understanding that you will arrange for distribution of copies of the Order to Amtrak and New Jersey Transit.

Thank you for your continued courtesy and cooperation in this matter.

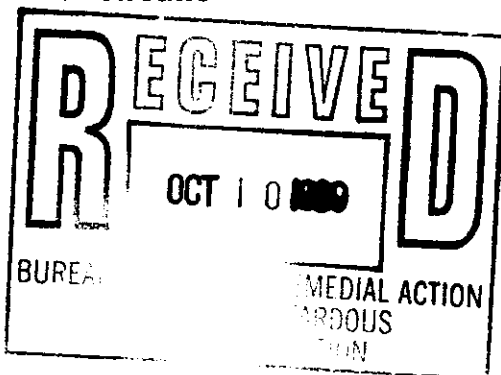
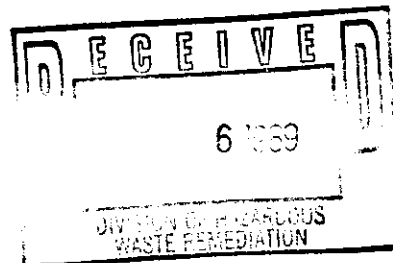
Very truly yours,

Louis A. Evans

Louis A. Evans
Assistant Counsel

LAE/jl
Enclosure

- cc: E. Sullivan
- M. O'Toole ←
- D. Markell
- C. Ash
- C. Sullivan
- J. Slack
- S. Ervolina
- R. Tramontano



STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of Interim Remedial Measures, Remedial Investigation, and Feasibility Study, for an Inactive Hazardous Waste Disposal Site, Under Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL") by

ORDER ON CONSENT
INDEX # W2-0081-87-06

NATIONAL RAILROAD PASSENGER CORP.
NEW JERSEY TRANSIT CORP.

Respondents

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. Respondent National Railroad Passenger Corp. ("Amtrak") is a corporation organized and existing under the laws of the District of Columbia, with offices in Washington, D.C.

3. Respondent New Jersey Transit Corp. ("New Jersey Transit") is a State agency of the State of New Jersey, with offices in Newark, New Jersey.

4. Respondent Amtrak owns real property in the County of Queens, City and State of New York, known as Sunnyside Yard (the "Site"). Railroad rolling stock has been maintained and operated on portions of the Site for over seventy-five (75) years. Amtrak has owned the Site since April 1, 1976. Prior to Amtrak's ownership, the Site was owned for less than one day (on April 1, 1976) by the Consolidated Rail Corporation ("Conrail"), and before that by the Pennsylvania Tunnel and Terminal Railroad Company, a subsidiary of the Pennsylvania Railroad ("PRR") and of PRR's corporate successor, the Penn Central Transportation Company ("Penn Central"). Prior to September 29, 1961, a portion of the Site was owned by the Long Island Rail Road Company.

5. Pursuant to agreements entered into in December 1982 and November 1983, Respondent New Jersey Transit contracted with Respondent Amtrak for the maintenance, storage and staging at the Site of railroad rolling stock owned and operated by New Jersey Transit. Pursuant to these agreements, Amtrak furnished all labor and facilities required for the performance of the maintenance services. From 1961 through December 31, 1982, the State of New Jersey and/or New Jersey Transit contracted during various periods with PRR, Penn Central and Conrail for the maintenance, storage, staging and operation at the Site of railroad rolling stock used in commuter service between Pennsyl-

vania Station, New York City, and points in New Jersey. Prior to 1961, neither the State of New Jersey nor New Jersey Transit had any involvement with respect to the maintenance, storage, staging, or operation of railroad rolling stock at the Site.

6. The Department has determined that railroad operations at the Site resulted in the disposal of hazardous wastes in certain areas of the Site, including various hydrocarbons and polychlorinated biphenyls ("PCB's").

7. The Department has further determined that operation of diesel fuel storage tanks, which occurred prior to 1984 in a portion of the Site (said portion to be hereinafter referred to as the "Diesel Fuel Storage Area") resulted in a leakage of petroleum hydrocarbons in and near the Diesel Fuel Storage Area.

8. In 1986, Respondent Amtrak retained a consultant to conduct an investigation of soil and groundwater conditions in and near the Diesel Fuel Storage Area. Said consultant installed fifteen (15) monitoring wells in and near the Diesel Fuel Storage Area. The report prepared by said consultant indicated that petroleum hydrocarbon contamination was detected in seven (7) of said monitoring wells.

9. The Site has been designated by the Department as an inactive hazardous waste disposal site as that term is defined in ECL Section 27-1301(2), with the Site code number 241006.

10. The Department has determined that the hazardous and industrial wastes, hazardous waste constituents and toxic degradation products thereof at the Site and those threatening to migrate from the Site constitute a significant threat to the environment.

11. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the Environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

12. The Department and Respondents acknowledge that the goals of this Order shall be that Respondents shall develop interim remedial measures, a remedial investigation and

feasibility study, subject to the approval of the Department, at the Site, and shall perform such programs within the time limits specified hereinafter. Such programs shall be developed and performed with the goal of eliminating any health and environmental hazards and potential hazards in connection with the Site.

13. Respondents, without admitting any liability, having waived their right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by the terms hereof.

14. NOW, having considered this matter and being duly advised, it is ORDERED THAT:

I. All investigations, work plans, reports, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination, if necessary, and impacts thereof, all as caused by the disposal of hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, "Requisite Technology" means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will effectively abate and eliminate any

significant threat to the environment posed by the disposal of hazardous wastes at the Site.

The failure of Respondents to submit or undertake a required work plan, report, field investigation, construction program plan or any supplement or revision thereof which is in accordance with Requisite Technology shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, as defined at ECL Section 27-1301(1) and 6 N.Y.C.R.R. 371.

III. Within forty-five (45) days after the effective date of this Order, Respondents shall submit to the Department all data within their possession or control regarding environmental conditions on-Site and off-Site, to the extent that such data have not heretofore been provided to the Department. At a minimum, this information shall include to the extent known by Respondents:

a. A brief history and description of the Site, including the types, quantities, physical state and location of hazardous wastes disposed of, including spills and the dates and methods of disposal and spillage of such wastes;

b. A description of the results of all previous investigations of the Site and of investigations known by Respondents to have been conducted of areas in the vicinity of the Site, including copies of all topographic and property surveys

and engineering studies of the Site and areas in the vicinity of the Site;

c. A historical inventory of all aerial photography reasonably available for the Site, including date of flight, area of coverage, scale of reprints, and present owner of photography.

IV. All submittals made by Respondents pursuant to this Order shall be subject to Departmental review and approval. Within the time limits set forth by Table No. 1 herein, the Department shall approve or disapprove each submittal in writing.

If the Department approves a submittal, Respondents shall perform the specified work or continue with Respondents' obligations under the Order in accordance with the terms of the approval and with the Department's oversight.

If the Department disapproves a submittal, the Department shall notify Respondents in writing of the reasons for such disapproval. Within the time limits set forth in Table No. 1 herein, the Respondents shall revise and resubmit the submittal, addressing each of the Department's objections. Within thirty (30) days of receipt of the revised submittal, the Department shall approve or disapprove the revised submittal in writing. If the Department approves the revised submittal, Respondents shall perform the specified work or continue with Respondents' obligations under the Order in accordance with the terms of the approval and with the Department's oversight.

If the Department disapproves the revised submittal, Respondents shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

Table No. 1

Submittals

<u>Submittal</u>	<u>Consent Order Paragraph</u>	<u>Days after Receipt for Department Review</u>	<u>Days to Prepare and submit Revision</u>
Interim Remedial Measures	V	30	60
Work Plan	VI	30	60
Report	VII	60	60
Feasibility Study	VIII	60	60

V. Within 60 days after the effective date of this Order, Respondents shall submit to the Department a proposal for Interim Remedial Measures. The purpose of the Interim Remedial Measures is to implement immediate, temporary action to control the flow of petroleum hydrocarbons from the Diesel Fuel Storage Area; to collect, treat and dispose of contaminated soil and/or groundwater as may be necessary in connection with controlling such flow of petroleum hydrocarbons; to evaluate the effectiveness of such action in containing petroleum hydrocarbons on-Site; to monitor the impacts and effectiveness of the interim remedial measures. The Interim Remedial Measures will be terminated when it is determined by Respondents that such measures

are no longer effective, needed or appropriate. The Department shall review and approve the proposal for Interim Remedial Measures in accordance with Table No. 1 of Paragraph IV. Respondent shall undertake implementation of the Interim Remedial Measures in accordance with the schedule established in the approved proposal for Interim Remedial Measures, if any.

VI. Within 60 days after the effective date of this Order, Respondents shall submit to the Department a proposed written scope of work (the "Work Plan") to investigate the field environmental conditions on-Site and off-Site (the "Remedial Investigation"). Such Work Plan shall address all elements of a Remedial Investigation as set forth in the most current National Contingency Plan, the Superfund Amendments and Reauthorization Act ("SARA") of 1986 and the appropriate USEPA guidance documents.

VII. Upon approval of the Work Plan, Respondents shall perform the Remedial Investigation and shall submit to the Department a Remedial Investigation Report (the "Report") founded upon its performance of the Remedial Investigation in accordance with the approved Work Plan. The Report shall include all data generated and all other information obtained during the Remedial Investigation and shall provide all assessments and evaluations as set forth in the most current National Contingency Plan, and consistent with SARA.

VIII. As part of the remedial investigation, Respondents shall provide a timetable to submit to the Department a draft feasibility study (the "Feasibility Study") evaluating on-Site and off-Site remedial options to abate and eliminate the significant threat to the environment or public health. When the timetable is accepted by the Department, Respondents shall submit the Feasibility Study within such timetable.

Following submittal of the approved Report and the Feasibility study, the Department will announce the availability of both the approved Report and the Feasibility Study to the public for review and comment. Department policy and guidance in effect, if any, at the time the public comment period is initiated shall be followed, except to the extent that such policy and guidance is superseded by SARA or other applicable federal law. Following the public comment period (which may involve both written and oral comments), the Department will determine if the submitted documents should be modified or accepted as submitted and the Department will so notify Respondents in writing. Within 60 days of receipt of the Department's determination, Respondents shall modify either or both documents and shall submit the modified documents to the Department for approval.

The Feasibility Study shall be prepared consistent with SARA and the appropriate USEPA guidance documents.

IX. The Department shall have the right to obtain "split samples" for the purpose of comparative analysis of all substances and materials sampled by Respondent pursuant to this Order.

X. Respondents shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least ten (10) days in advance of such activities.

XI. Respondents shall take all reasonable steps to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Remedial Investigation and all of Respondents' other obligations pursuant to this Order. The Department will provide all reasonable assistance in this effort.

XII. Respondents shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondents, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondents' compliance with the terms of this Order. Each such officer, employee, consultant, contractor or agent of the Department must comply with all applicable safety rules and

will not interfere with Respondents' ongoing activities at the Site or in complying with this Order.

XIII. Respondents shall retain a third-party professional consultant, contractor and/or technically acceptable laboratory to perform the technical, engineering and analytical obligations required by this Order.

XIV. Respondents shall not suffer any penalty under any of the terms of this Order, or be subject to any proceeding or actions for any remedy or relief, if they, or any of them, cannot comply with any requirements hereof because of an act of God, war, riot, or other condition, including but not limited to the act of a third party, as to which negligence or willful misconduct on the part of any of the Respondents was not a proximate cause, provided however, that Respondents shall immediately notify the Department in writing when any of them obtains knowledge of any such condition and request an extension or modification of the terms of this Order.

XV. Respondents shall reimburse the Department for its expenses which are enumerated herein in two parts as follows:

A. Following the effective date of this Order, and within 60 days of receipt of an itemized bill, Respondents shall pay to the Department a sum not to exceed \$5,000 which represents reimbursement of the Department for expenses including but not limited to: direct labor, overhead, analytical costs and contractor costs incurred heretofore by the Department in inves-

tigating the conditions at the Site and in preparing this Order. Such payments shall be to the Hazardous Waste Remedial Fund.

B. Following the Department's approval of the Report, and within 60 days of receipt of an itemized bill, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the Department's expenses including, but not limited to, direct labor, overhead, analytical costs and contractor costs incurred by the State of New York for reviewing the Report and overseeing the Remedial Investigation. Such payment shall be to the Hazardous Waste Remedial Fund.

Each of the Respondents shall have the right to review the Department's books and records with respect to such bill and the Department agrees to make such books and records, except for privileged employee records, available to the Respondents upon request.

XVI. Subject to the provisions of Paragraph XIV, the failure of Respondents, other than a de minimus failure, to comply with any term of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.

XVII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department

may have against anyone other than Respondents, their agents, successors and assigns; (2) the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondents, their agents, successors and assigns in the event that Respondents shall fail to satisfy any of the terms hereof; (3) the Department's right to bring any action at law or in equity against Respondents, their agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site; (4) any action or proceeding to which the Department may be entitled in connection with, relating to, or arising out of disposal of hazardous wastes at the Site; and (5) any right the United State Environmental Protection Agency may have pursuant to CERCLA, RCRA, or any other federal statute or regulation.

XVIII. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XIX. This Order constitutes an agreed settlement and compromise between the Respondents and the Department and neither this Order nor any part hereof is intended nor shall it be construed to constitute an: (1) admission as to any fact; (b) admission of liability for any claim or evidence of liability;

(c) admission of any violation of law or regulation or evidence of any violation of any law or regulation. The Respondents' agreement to perform certain activities described in this Order shall not constitute an admission that said activities are necessary, required by any law or regulation, or that the Respondents are under any duty at common law to perform such activities.

XX. The Respondents expressly reserve any and all claims, rights and defenses they have to the claims of each and every party and potential party to this action and all claims, rights and defenses they have to any other claim asserted in any other proceeding, including all claims for indemnity, contribution, set-off or claim over against each and every present and future party to this action, all claims and defenses to any claim filed by any other person, any claim that may exist arising out of the election by the Department to perform some or all of the work under this Order and any claim for set-off, contribution, indemnity or claim over against any appropriate person and this Order is not intended nor shall it be construed as a waiver of any such claims or defenses. Nothing in this paragraph shall be deemed to limit the Respondents' obligation to comply with this Order.

XXI. Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and

costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the terms of this Order by Respondents, their directors, officers, employees, servants, agents, successors or assigns.

XXII. If Respondents desire that any terms of this Order be changed, Respondents shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XXIII. In the event that Respondent Amtrak proposes to convey the whole or any part of its ownership interest in the Site, Respondent Amtrak shall, not less than thirty (30) days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent Amtrak shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXIV. A. All communication required by this Order to be made between the Department and Respondents shall be made in writing and transmitted by United States Postal Service Return Receipt requested, or hand delivered to the address listed below.

B. Communication to be made from Respondents to the Department shall be made as follows:

1. Two copies to: The Division of Hazardous Waste Remediation
Room 220, 50 Wolf Road

Albany, New York 12233-4010
Attn: Michael J. O'Toole P.E., Director

2. Two copies to: The Division of Environmental Enforcement
202 Mamaroneck Avenue Room 304
White Plains, New York 10601-5381
3. Two copies to: The Dept. of Env. Conservation, Region II
47-40 21st Street
Long Island City, New York 11101
Attn: Regional Director
4. Two copies to: New York State Dept. of Health
Bureau of Env. Exposure Investigation
2 University Place
Albany, New York 12203
Attn: Ronald Tramontano, P.E.

C. Communication to be made from the Department
to Respondents shall be made as follows:

1. One copy to: Charles S. Warren, Esq.
Berle, Kass & Case
45 Rockefeller Plaza
New York, New York 10111
2. One copy to: Jared I. Roberts, Esq.
Amtrak Law Department
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
3. One copy to: Mr. Robert Noonan, Senior Director,
Environmental Control
National Railroad Passenger Corp.
400 North Capitol Street, N.W.
Washington, D.C. 20001
4. One copy to: Mechanical Superintendent
Sunnyside Yard
39-29 Honeywell Street
Long Island City, NY 11101
5. One copy to: Kenneth Worton, Esq.
Deputy Attorney General
New Jersey Transit Corp.
Division of Law
McCarter Highway and Market Street

P.O. Box 10009
Newark, New Jersey 07101

6. One copy to: Deputy General Manager for
Engineering, Facilities & Security
New Jersey Rail Operations
1160 Raymond Boulevard
Newark, NJ 07102

D. The Department and Respondents respectively reserve the right to designate other or different individuals and/or addresses on notice to the other.

XXV. Respondents agree to instruct their employees, officers, and agents involved in the performance of this Order to cooperate in carrying out the obligations of the Respondents under this Order. Each Respondent agrees that its officers, employees, and agents involved in the performance of this order shall take all necessary steps to accomplish the performance of this Order by the Respondents.

XXVI. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

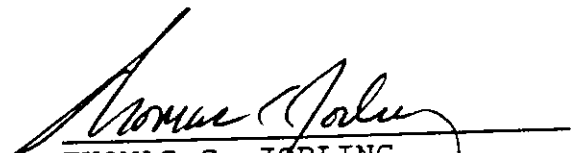
XXVII. The terms hereof shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondents shall

be construed as relieving Respondents of their obligations to obtain such formal approvals as may be required by this Order.

XXVIII. Respondent and Department agree that public participation in connection with the Order shall be in accordance with the Department's Citizen Participation Plan for inactive hazardous waste disposal sites.

XXIX. This Order shall become effective upon the date of notification of the Respondents in writing of the Signature of the Order by the Commissioner.

DATED: *Albany*, New York
Sept. 21, 1989

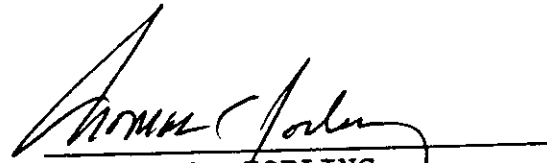

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

983:001

so modified and shall become effective upon signature by all parties.

In the event that Respondents and the Department are unable to agree on modifications required by the Department in response to public comments, this Order may be withdrawn by the Department. In such an event, the Department explicitly reserves all rights to take any action and pursue any remedy to which it may be entitled by law. Respondents explicitly reserve all rights to contest such actions.

DATED: *Albany*, New York
Sept. 21, 1989


THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

983:001

CONSENT BY RESPONDENT

NATIONAL RAILROAD PASSENGER CORP.

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this order.

By: Robert T. Noonan
Robert T. Noonan

Title: Senior Director
Environmental Control

Date: April 11, 1989

DISTRICT OF COLUMBIA)
) s.s.:
CITY OF WASHINGTON)

On this 11th day of April, 1989, before me personally came Robert T. Noonan, to me known, who being duly sworn, did depose and say that he resides in Oxon Hill, Maryland; that he is the Senior Director-Environmental Control of the National Railroad Passenger Corporation, the corporation described in and which executed the foregoing instrument, and that he has been authorized by said corporation to sign his name thereto on behalf of said corporation.

Beverly J. Vinton
Notary Public

My commission expires June 30, 1991.

CONSENT BY RESPONDENT

NEW JERSEY TRANSIT CORP.

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

By: Roger E Nutt

Title: Acting Executive Director

Date: 4-14-89

STATE OF NEW JERSEY)
) s.s.:
COUNTY OF ESSEX)

On this 14th day of April, 1989, before me personally came Roger Nutt, to me known, who being duly sworn, did depose and say that he/she resides in 422 Scotch Road, Pennington, N.J. 08534; that he/she is the Acting Executive Director of the New Jersey Transit Corporation ~~entity~~ described in and which executed the foregoing instrument; that he/she knew the seal of said entity; that the seal affixed to said instrument was its seal; that it was so affixed by the order of the Board of Directors, and that he/she signed his/her name thereto by like order.

[Signature]
Notary Public
Notary Public, State of New Jersey
My Commission Expires June 16, 1991