

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development)
and Implementation of Interim Remedial) MODIFICATION
Measures, Remedial Investigation, and) TO AN
Feasibility Study, for an Inactive) ORDER
Hazardous Waste Disposal Site, Under) ON
Article 27, Title 13, of the) CONSENT
Environmental Conservation Law) DEC Site No. 2-41-006
of the State of New York (the "ECL") by)
)
NATIONAL RAILROAD PASSENGER CORP.) DEC Index No.
and) W2-0081-87-06
NEW JERSEY TRANSIT CORP.,)
)
Respondents)

CONSIDERING,

1. Respondents consented to the issuance of Order on Consent, Index No. W2-0081-87-06, dated September 21, 1989, by the Department of Environmental Conservation (the "Department") and to its modification on August 25, 1993 (collectively, the "Order"). A copy of the Order is attached as Appendix "A".

2. Paragraph XXVII of the Order provides for modifications to be made in writing and subscribed by the party to be bound.

UPON BEING DULY ADVISED, IT IS ORDERED THAT:

I. Paragraph VII of the Order is hereby revised to read as follows:

A. The Site is divided into the following six operable units ("OUs"):

- Operable Unit 1 (OU-1) is designated as the soils above the water table within the footprint of the proposed HSTF Service and Inspection (S&I) Building;
- Operable Unit 2 (OU-2) is designated as the soils above the water table within the footprint of the HSTF S&I Building ancillary structures (i.e., the access road and utilities route, the parking area, and the construction lay down area);

- Operable Unit 3 (OU-3) is designated as the soils and the separate-phase petroleum accumulation above the water table in Area 1 (indicated on the attached map) of the Yard;
- Operable Unit 4 (OU-4) is designated as the soils above the water table in the remainder of the Yard, excluding Area 1 (subpart A covers the tank closure, subpart B covers the remainder of OU-4);
- Operable Unit 5 (OU-5) is designated as the sewer system beneath the Yard; and
- Operable Unit 6 (OU-6) is designated as the saturated soils and the groundwater beneath the Yard (delineation of soils to be done as appropriate).

B. Upon approval of the Work Plan for an OU, Respondents shall perform the Remedial Investigation and shall submit to the Department a Remedial Investigation Report for that OU founded upon its performance of the Remedial Investigation for that OU in accordance with the approved Work Plan for that OU. Each OU's Remedial Investigation Report shall include all data generated and all other information obtained during the Remedial Investigation for that OU and shall provide all assessments and evaluations as set forth in the most current National Contingency Plan, and consistent with SARA. The Schedule of Deliverables is attached and incorporated into this Order as "Appendix B."

C. Additionally, Respondents acknowledge that dealing with the groundwater and saturated soils beneath the Yard as a separate OU after the construction of the HSTF S&I Building and ancillary structures may result in increased Site remediation costs.

II. All other provisions of the Order remain in full force and effect.

DATED: 2/4/98

JOHN P. CAHILL, COMMISSIONER
New York State Department
of Environmental Conservation

By:


Michael J. O'Toole, Jr.

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 this Order.

NATIONAL RAILROAD PASSENGER CORP.

By: Robert Noonan

SENIOR DIRECTOR -
Title: ENVIRONMENTAL CONTROL INDUSTRIAL
1791025

Date: _____

DISTRICT OF COLUMBIA)

) s.s.:

CITY OF WASHINGTON)

On this 22nd day of DECEMBER, 1997, before me personally came ROBERT NOONAN to me known, who being duly sworn, did depose and say that he/she resides in Temple Hills, MD; that he/she is the SENIOR ENVIRONMENTAL CONTROL of National Railroad Passenger Corp., the corporation described herein and which executed the foregoing instrument; and that he/she has been authorized by said corporation to sign his/her name thereto on behalf of said corporation.

John J. [Signature]
Notary Public

SCHEDULE OF DELIVERABLES

OU	Initial Submittal RI/FS WP	Initial Submittal RI Report	Initial Submittal FS Report	ROD
1				8/13/1997
2				11/15/1997 (projected)
3	6/24/1997	120 days after DEC approval of OU3 RI/FS WP	60 days after DEC approval of OU3 RI Report	90 days after receipt of OU3 FS Report
4(A) tank	10/1/1997	Tank closure Report 90 days after new vehicle fuel area becomes operational		
4(B)	90 days after DEC approval of OU3 WP and OU4(A) WP	120 days after DEC approval of OU4(B) WP	60 days after DEC approval of OU4(B) RI Report	90 days after receipt of OU4(B) FS Report
5	90 days after DEC approval of both OU3 WP & OU4 WP	120 days after DEC approval of OU5 WP	60 days after DEC approval of OU5 RI Report	90 days after receipt of OU5 FS Report
6	90 days after DEC approval of OU5 FS Report	120 days after DEC approval of OU6 WP	60 days after DEC approval of OU6 RI Report	90 days after receipt of OU6 FS Report

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 Pennsylvania RR, Penn Central and Conrail for the maintenance, storage, staging and operation at the Site of railroad rolling stock used in commuter service between Pennsylvania 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, (hereinafter referred to as the "Diesel Fuel Storage Area"), resulted in a leakage of petroleum hydrocarbons in and near the Diesel Fuel Storage Area. A map of the Site is attached to this Order as Appendix A.

8. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 2-41-006. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

9. A. Pursuant to ECL 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."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

10. Amtrak has undertaken a project which will provide high speed train service from Washington, D.C. to Boston with three-hour service between New York City and Boston. The project includes the construction of maintenance facility in New York City at the Site. The new facility will be called the High Speed Trainset Facility (HSTF) Service and Inspection (S&I) Building. The contractors for the construction of the HSTF S&I Building are Bombardier Corporation, GEC Alstom Transportation, Inc., and STVCS Joint Venture.

11. Based upon the complexities of the Site, the Department has decided to address the Site in six Operable Units ("OUs"). Operable Unit 1 (OU-1) which is covered under this Order is designated as the soils above the water table within the footprint of the proposed HSTF S&I Building.

12. Following a period of public comment, the Department selected a final remedial alternative for OU-1 of the Site in a Record of Decision ("ROD for OU-1"). The ROD for OU-1, attached to this Order as Appendix "B", is incorporated as an enforceable part of this Order.

13. The Department and Respondents agree that the goals of this Order are for Respondents to (i) develop and implement, in accordance with the ROD for OU-1, an inactive hazardous waste disposal site remedial program ("Remedial Program") for OU-1 that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.

14. Respondents having made no admissions, but having waived its right to a hearing with regard to terms of this Order, as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

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

I. OU-1 Remedial Design Contents

A. Within such period of time after the ROD is signed that the Department shall prescribe in writing, Respondent shall submit to the Department a remedial design to implement the remedial alternative for OU-1 selected by the Department in the ROD for OU-1 (the "OU-1 Remedial Design"). The OU-1 Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the OU-1 Remedial Design was prepared in accordance with this Order.

B. The OU-1 Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. physical security and posting of the Site;
- d. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
- e. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design;

5. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

6. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

7. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

subject to OU-1 based upon the release or threatened release at the area of the Site subject to OU-1 of any hazardous substance (as that term is defined at 42 USC 9601[14]), petroleum, or petroleum product located at the area of the Site subject to OU-1, as of the effective date of this Order and that the Lender and Contractor did not themselves place, or suffer to be placed, at the area of the Site subject to OU-1. In addition to notifying Lender and Contractors in writing that it so satisfied, the Department shall simultaneously provide Lender and Contractors with a separate written letter memorializing its forbearance.

III. Progress Reports

Respondents shall submit to the parties identified in Subparagraph XII.A in the numbers specified therein copies of written quarterly progress reports, typically one to two pages in length, that:

A. describe the actions which have been taken toward achieving compliance with this Order during the previous quarter;

B. include all results of sampling and tests and all other data for OU-1 received or generated by Respondents or Respondents' contractors or agents in the previous quarter, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondents. Respondents, however, with respect to any sampling and test results and data for which privilege may be claimed, will disclose such results or data but need not disclose (a) the privileged mental impressions, conclusions, opinions or legal theories that are Respondents' attorneys' or (b) Respondents' communications to Respondents' attorneys seeking legal counsel, and Respondents' attorneys' communications with Respondents;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous quarter;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next quarter and provide other information relating to the progress in OU-1;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Respondents' obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. include any modifications to any work plans for OU-1 that Respondents have proposed to the Department or that the Department has approved; and

II. OU-1 Remedial Construction

A. Within 60 days after the Department's approval of the OU-1 Remedial Design, Respondents shall commence construction of the Department-approved OU-1 Remedial Design.

B. Respondents shall implement the OU-1 Remedial Design in accordance with the Department-approved OU-1 Remedial Design.

C. During implementation of all construction activities identified in the OU-1 Remedial Design, Respondents shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 60 days after completion of the construction activities identified in the Department-approved OU-1 Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the OU-1 Remedial Design during construction); and a certification that the OU-1 Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved OU-1 Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondents in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design for OU-1.

F. If, based on new information, the Department concludes that any element of the Department-approved OU-1 Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondents shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the OU-1 Remedial Program otherwise protects human health and the environment.

G. Once the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design for OU-1, the Department shall forebear from bringing any action, proceeding, or suit against any lender in connection with the HSTF S&I Building ("Lender") and Bombardier Corporation, GEC Alstom Transportation, Inc., and STVCS Joint Venture, the contractors building the HSTF S&I Building ("Contractors") and their successors, and assigns that are not a party responsible under law for the remediation of hazardous substances disposed of at the area of the Site subject to OU-1 as of date of this Order for the further investigation and remediation of the area of the Site

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous quarter and those to be undertaken in the quarter.

Respondents also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondents make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal, except for the submittals discussed in Subparagraph I.B.7. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within 10 days of receiving written notice of the Department's disapproval and if Respondents so request, the Department will meet with Respondents to discuss the disapproval. Within 60 days after such meeting or if no meeting is requested within 60 days after receiving written notice that Respondents' submittal has been disapproved, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval and shall specify the reasons for any disapproval. If the Department disapproves the revised submittal, Respondents shall be in violation of this Order, and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondents shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary to accomplish the goals of this Order. Any such direction by the Department shall be in writing, and shall state with particularity the basis and reasons that such modification, amplification and or expansion is necessary.

V. Compliance

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondents shall not suffer any penalty under this Order or be subject to any proceeding or action for any remedy or relief if they cannot comply with any requirement of this Order because of an act of God, war, riot, or because of any condition or event beyond the control of Respondents or their agent or agents carrying out Respondents' obligations under this Order including, but not limited to, judicial intervention or intervening action or order of a competent governmental entity or court. Respondents shall, within five business days of when they obtain knowledge of any such condition, notify the Department in writing and request an appropriate extension or modification of this Order. Respondents shall include in such notice the measures taken and to be taken by Respondents to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five business-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph V.A.

C. Increased costs or expenses of any work to be performed under this Order, the financial inability of Respondent to perform such work, the failure of Respondent to make complete and timely application for any required approval or permit, and nonattainment of the goals, standards and requirements of this Order so not constitute conditions or events warranting the relief set forth in Subparagraph V.B.

VI. Entry upon Site

Respondents hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondents by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondents' compliance with this Order. Such duly designated state employee, consultant or agent shall observe all applicable health and safety precautions and requirements, including those set out in the health and safety plan for the Site and the Federal Railroad Administration required railway worker training program. During Remedial Construction, Respondents shall provide the Department with suitable office space, if available, at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings.

VII. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by

the State of New York for work related to OU-1 to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
N.Y.S.D.E.C.
50 Wolf Road
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Indemnification

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 this Order by Respondents and/or any of Respondents' directors, officers, partners, employees, servants, agents, successors, and assigns.

X. Public Notice

If Respondents propose to convey the whole or any part of Respondents' ownership interest in the area of the Site covered by OU-1, Respondents shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance

and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XI. Institutional Controls and Deed Restriction

A. Within 30 days filing with the Office of the New York City Registrar of the subdivision map creating a separate parcel for the area of the Site subject to OU-1, Respondents shall file a restrictive covenant with the Office of the New York City Registrar to run with the land that shall prohibit the land from being used for residential purposes (except for the development of air rights in compliance with Railroad Law §51-a.1) without the express written approval of the New York State Departments of Environmental Conservation and Health.

B. Respondents shall maintain appropriate security measures to control access to the area of the Site subject to OU-1.

XII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. (a) Communication from Respondents shall be sent to the Department's attorney:

Rosalie K. Rusinko, Esq.
New York State Department of
Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road 5th Floor
Tarrytown, NY 10591-5805

with copy to the Department's Project Manager:

Hari Agrawal
Project Manager/Region 2
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101

(b) Copies of work plans and reports shall be submitted as follows:

1. Four copies (one unbound) to:

Hari Agrawal
Project Manager/ Region 2
New York State Department of Environmental Conservation
Division of Environmental Remediation
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101

2. Two copies to:
G. Anders Carlson, Ph.D
Director/Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, NY 12203
3. Michael J. O'Toole Jr., P.E.
Director, Division of Environmental Remediation
New York State Department of
Environmental Conservation
50 Wolf Rd.
Albany, NY 12233-7010
4. Rosalie K. Rusinko, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Rd. 5th Floor
Tarrytown, NY 10591-5805

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

Charles S. Warren, Esq.
Robinson, Silverman, Pearce, Aronsohn, Berman, L.L.P.
1290 Avenue of the Americas
New York, NY 10104

and to:

Steven M. Jurow
New Jersey Transit Corp.
One Penn Plaza East
Newark, NJ 07105-2248

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of

Hazardous Waste Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after its approval of the drawings and submittals described in Subparagraph II.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals. Respondents shall submit same to Director, Division of Environmental Remediation

D. The Department and Respondents reserve the right to designate additional or different addressees for communication or written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address contamination in OU-1 resulting from the disposal of hazardous wastes at the Site.

B. Respondents shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and, if necessary, third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondents shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondents and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondents shall rest solely with Respondents. Respondents retain the right to select or change firms or individuals in its sole discretion.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondents, and the Department also shall have the right to take its own samples. Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by Respondents with respect to implementation of this Order and shall submit these results in the progress reports required by this Order. The Department shall make available to the Respondents split samples and the results of all sampling and/or other data generated by the Department with respect to implementation of this Order.

D. Respondents shall notify the Department at least 10 working days in advance of initiation of field activities to be conducted pursuant to this Order.

E. Unless exempted by 6 NYCRR 375-1.7, Respondents shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondents' obligations under this Order. For

purposes of this Paragraph, "best efforts" includes the payments of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of the effective date of this Order, or within 45 days of the date the Department notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Department, and shall include in that notification a summary of the steps the Respondents have taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondents shall reimburse the Department, in accordance with the Procedure in Paragraph IX, Payment of State Costs, for all costs incurred by the Department in obtaining access, including, but not limited to, attorney fees.

F. Respondents and Respondents' officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Respondents' officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondents.

G. Respondents shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondents with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondents or Respondents' contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondents shall nonetheless be responsible for ensuring that Respondents' contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. The terms of this Order constitute the complete and entire Order concerning the Site's remediation as an inactive hazardous waste disposal site. No term, condition, understanding, or agreement purporting to modify or vary any term of

this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondents of Respondents' obligation to obtain such formal approvals as may be required by this Order.

2. If Respondents desire that any provision of this Order be changed, Respondents shall make timely written application, signed by Respondents, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Rosalie K. Rusinko and to Hari Agrawal.

L. The effective date of this Order is the date the Commissioner or his designee signs it.

DATED: , New York

John P. Cahill

Commissioner
New York State Department
of Environmental Conservation

By:

Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

National Railroad Passenger Corp.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

National Railroad Passenger Corp.

By: _____

Title: _____

Date: _____

DISTRICT OF COLUMBIA)

) s.s.:

CITY OF WASHINGTON)

On this _____ day of _____, 19____, before me personally came _____, to me known, who being duly sworn, did depose and say that he resides in

_____;
that he is the _____ of

_____, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Notary Public

CONSENT BY RESPONDENT

New Jersey Transit Corp.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

New Jersey Transit Corp.

By: _____

Title: _____

Date: _____

STATE OF NEW JERSEY)

) s.s.:

COUNTY OF)

On this _____ day of _____, 19____, before me personally came _____, to me known, who being duly sworn, did depose and say that he resides in

_____;

that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Notary Public

New York State Department Of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, N.Y. 10591
Telephone: (914) 332-1835



Thomas C. Jorling
Commissioner

August 30, 1993

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

Re: AMTRAK SUNNYSIDE YARD
Site #2-41-006

Dear Mr. Warren:

Enclosed is a fully executed copy of the modification to the RI/FS Order on Consent for the Amtrak Sunnyside Yard. The modification was signed by Commissioner Jorling on August 25, 1993.

Very truly yours,

Rosalie K. Rusinko
Senior Attorney

cc: w/o Enc. S. McCormick
w Enc. R. Gardineer

RECEIVED
N.Y.S.D.E.C.—REGION 2

SEP 3 1993

HAZARDOUS WASTE
REMEDATION

Rich. Gardiner

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development)
and Implementation of Interim Remedial) MODIFICATION
Measures, Remedial Investigation, and) TO AN
Feasibility Study, for an Inactive) ORDER
Hazardous Waste Disposal Site, Under) ON
Article 27, Title 13, of the) CONSENT
Environmental Conservation Law)
of the State of New York (the "ECL") by) DEC Site No.
) 2-41-006
)
NATIONAL RAILROAD PASSENGER CORP.) DEC Index No.
)
NEW JERSEY TRANSIT CORP.) W2-0081-87-06
)
Respondents)

1. Respondents have entered into an Order on Consent (the "Order", Index No. W2-0081-87-06, dated September 21, 1989, with the Department of Environmental Conservation (The "Department")). A copy of which is attached as Appendix "A".

2. Paragraph XXVII of the Order provides for modifications to be made in writing and subscribed by the party to be bound.

3. It has been mutually agreed to modify Paragraphs and VIII and XV of the Order.

4. Paragraph VIII, under the original Consent Order, reads as follows:

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.

5. Paragraph VIII, as modified, shall read:

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.

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

✓ Within 30 days after the Department's approval of the Feasibility Study, Respondents shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with the Citizen Participation Plan approved by the Department on July 19, 1991. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into this Order as

"Appendix A", but shall not be enforceable under this Order.

Before the effective date of the ROD, Respondents may propose additional interim remedial measures ("IRMs"), not covered under paragraph V, for the Site on an as-needed basis. In proposing each IRM, Respondents shall submit to the Department a work plan which includes time frames for the completion of the IRM. Upon the Department's determination that the proposal is an appropriate interim remedial measure and its approval of such work plan, the work plan shall be incorporated into and become an enforceable part of this Order. Respondents shall then carry out such IRM in accordance with the requirements of the approved work plan and this Order. If such IRM work plan is not approved by the Department, Respondents may modify it according to the Department's comments or withdraw it.

6. Paragraph XV B, under the original Consent Order, reads as follows:

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.

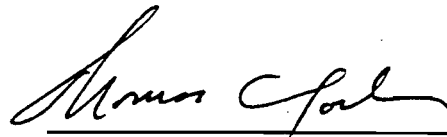
7. Paragraph XV B, as modified shall read:

Within 60 days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Such payment shall be made by check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period. The Department's approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual).

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.

DATED: *Aug. 25*, 1993

Albany, New York



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

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 this Order.

By: Robert T. Noonan

Senior Director Environmental
Title: Control and Industrial Hygiene

Date: July 20, 1993

State of New York
~~DISTRICT OF COLUMBIA~~)
County of New York) s.s.:
~~CITY OF WASHINGTON~~)

On this 20th day of July, 1993, before me personally came Robert T. Noonan, to me known, who being duly sworn, did depose and say that he/~~she~~ resides in Temple Hills, MD; that he/~~she~~ is the ** of National Railroad Passenger Corp., the corporation described herein and which executed the foregoing instrument; and that he/~~she~~ has been authorized by said corporation to sign his/~~her~~ name thereto on behalf of said corporation.

** Senior Director Environmental Control and Industrial Hygiene

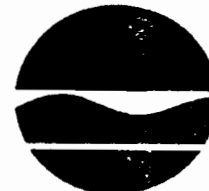
Charles S. Warren
Notary Public

CHARLES S. WARREN
Notary Public, State of New York
No. 4041594
Qualified in New York County
Commission Expires Aug. 19, 1994

*File
proceed*

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

-----X
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

-----X
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.

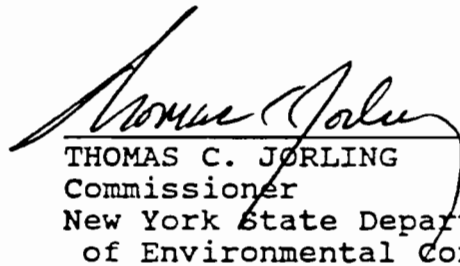
XXVII. The terms hereof shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be 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

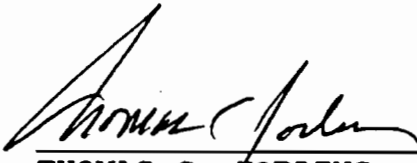

THOMAS C. JORLING
Commissioner
New York State Department
of Environmental Conservation

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. BORLING
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

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;

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.

James J. Zuczek
Notary Public
James J. Zuczek
Notary Public, State of New Jersey
My Commission Expires June 16, 1991

(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.

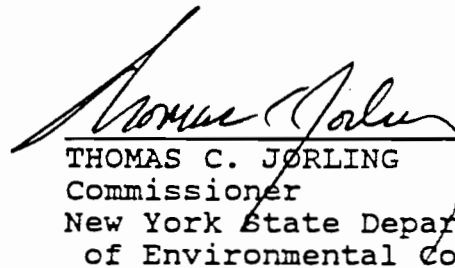
XXVII. The terms hereof shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be 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

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 G. Vinstan
Notary Public

My commission expires June 30, 1991.