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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
THE COMMISSIONER OF THE NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA
SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, MAXUS
INTERNATIONAL ENERGY COMPANY,
REPSOL YPF, S.A., YPF, S.A., YPF
HOLDINGS, INC., YPF INTERNATIONAL
S.A. (f/k/a YPF INTERNATIONAL LTD.)
and CLH HOLDINGS,

Defendants

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS,
INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,
Third-Party Defendants.

GORDON & GORDON
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

CONSENT JUDGMENT

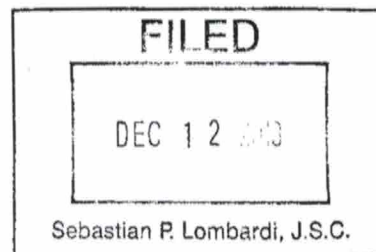


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This matter was opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, John F. Dickinson, Jr., Deputy Attorney General, and Special Counsel William J. Jackson and Michael Gordon appearing, attorneys for plaintiffs New Jersey Department of Environmental Protection (“DEP”), the Commissioner of the New Jersey Department of Environmental Protection (“Commissioner”), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “Plaintiffs”), and the Third-Party Defendants listed on the attached Exhibits A and B. The Parties¹ have amicably resolved their dispute before trial and request entry of this Consent Judgment as provided below:

I. BACKGROUND

1. Plaintiffs initiated the Passaic River Litigation on December 13, 2005 by filing a complaint against Occidental Chemical Corporation (“OCC”), Tierra Solutions, Inc. (“Tierra”), Maxus Energy Corporation (“Maxus”), Repsol YPF, S.A., YPF, S.A., YPF Holdings, Inc., and CLH Holdings, Inc. pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 (the “Spill Act”), the Water Pollution Control Act, N.J.S.A. 58:10A-1 through -35 (“WPCA”), and New Jersey common law, which complaint has been subsequently amended (“Complaint”).

2. Plaintiffs, in their Complaint, seek past and future costs and damages associated with the Discharge of 2,3,7,8 – TCDD (“dioxin”) and other Hazardous Substances at and from the Lister Property. Plaintiffs allege that dioxin and other Hazardous Substances from the Lister Property have migrated throughout the Newark Bay Complex.

¹ Certain capitalized terms in this Consent Judgment are defined in Section IV and such definitions are controlling.

3. Defendants Maxus and Tierra (“Third-Party Plaintiffs”) filed Third-Party Complaints against Settling Third-Party Defendants and others on February 4 and 5, 2009, alleging that Settling Third-Party Defendants are liable in contribution for the costs and damages incurred and to be incurred by Defendants Maxus and Tierra in remediating contamination and in contribution for any judgment obtained by Plaintiffs against Defendants Maxus and Tierra related to Discharges of Hazardous Substances into the Newark Bay Complex from the Third-Party Sites, under the Spill Act and other New Jersey statutes authorizing contribution, including without limitation the Joint Tortfeasor Contribution Act, N.J.S.A. 2A:53A-1 et seq., and/or N.J.S.A. 59:9-3. Additional third-party claims were alleged against certain Settling Public Third-Party Defendants under the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., Passaic Valley Sewerage Commission Statutes N.J.S.A. 58:14-7 and 58:14-8, and for nuisance and breach of the public trust.

4. The Settling Third-Party Defendants subsequently filed responsive pleadings in which they denied liability and asserted various defenses to the allegations contained in Defendants Maxus and Tierra’s Third-Party Complaints.

5. By orders dated December 15, 2010 and April 24, 2012, the Court reserved (i) any and all claims Plaintiffs may have against current Third-Party Defendants and claims against any future third- or fourth-party defendants that could be brought during the pendency of, and after the conclusion of the Passaic River Litigation, and (ii) any and all natural resource damages claims, other than the cost of a natural resource damage assessment, that Plaintiffs may have against current Defendants that could be brought during the pendency of, and after the conclusion of, the Passaic River Litigation (the “Reserved Claims” as further defined by Paragraph 18.28).

6. By entering into this Consent Judgment, the Settling Third-Party Defendants do not admit any liability, including without limitation any liability arising from the claims, transactions or occurrences Defendants Maxus and Tierra allege or could have alleged in this action, pursuant to R. 4:8-1(a) or otherwise, or for any claims Plaintiffs have alleged or could allege concerning the Newark Bay Complex.

7. Defendants Maxus and Tierra allege that Hazardous Substances have been Discharged at and from the Third-Party Sites and that such Discharges have contributed to the damages alleged by Plaintiffs against Defendants Maxus and Tierra and to costs and damages that Defendants Maxus and Tierra allege they have otherwise incurred or will incur with regard to the Newark Bay Complex and the Passaic River Litigation. Pursuant to the Order on Track VII Trial Plan issued pursuant to Case Management Order No. XVII in this litigation ("Track VII Order"), each Third-Party Defendant was required to stipulate to or deny the occurrence of any Discharge of Hazardous Substances at or from Third-Party Sites with which they are associated in a Third-Party Complaint that entered the Newark Bay Complex, directly or indirectly. Notwithstanding any stipulations, all Settling Third-Party Defendants deny Maxus and Tierra's allegations that any alleged Discharges from such Third-Party Sites have contributed to the damages and costs that Maxus and Tierra allege they have incurred or will incur with regard to the Newark Bay Complex.

8. Plaintiffs allege that the State of New Jersey has incurred, and may continue to incur, costs and damages as a result of the Discharge of Hazardous Substances at and from the Lister Property and to the Newark Bay Complex.

9. Plaintiff Administrator has certified or may certify for payment claims made against the Spill Compensation Fund ("Spill Fund") concerning the Lister Property and / or the

Newark Bay Complex, and, further, has approved or may approve other appropriations for the Newark Bay Complex.

10. Plaintiffs allege that they have incurred, and will continue to incur, costs and damages, including without limitation Economic Damages and assessment costs for natural resources and natural resource services of New Jersey that have been or may be injured, as a result of the Discharge(s) of Hazardous Substances at and from the Lister Property and to the Newark Bay Complex.

11. Plaintiffs allege that costs and damages they have incurred, and will incur, for the Lister Property and Newark Bay Complex are Cleanup and Removal Costs pursuant to N.J.S.A. 58:10-23.11b.

12. Plaintiffs allege that costs and damages that Plaintiff DEP has incurred, and will incur, for Discharges at and from the Lister Property and to the Newark Bay Complex are also recoverable within the meaning of N.J.S.A. 58:10A-10c.(2)-(4).

13. The Parties intend that this Consent Judgment, the motions filed in support of the Consent Judgment and Dismissal Order will result in the dismissal of all claims by Third-Party Plaintiffs against Settling Third-Party Defendants. The Parties to this Consent Judgment agree and consent to the publishing of this Consent Judgment, Order Dismissing Certain Claims, attached hereto as Exhibit C ("Dismissal Order"), and Case Management Order, attached hereto as Exhibit D ("Case Management Order"), for notice and public comment as provided herein, and agree to support entry of the orders and this Consent Judgment on their common expectation and intention that the entry of this Consent Judgment and motions filed in support thereof will result in the dismissal of all claims by Third-Party Plaintiffs against Settling Third-Party Defendants in the Third-Party Complaints.

14. The Parties represent that the Parties to this Consent Judgment have negotiated this Consent Judgment at arm's-length and in good faith; that the implementation of this Consent Judgment will allow the Parties to avoid prolonged and complicated litigation; that the implementation of this Consent Judgment will save and preserve Plaintiffs' limited resources by avoiding the expenditure of inordinate amounts of those limited resources to allege and prosecute claims against the Settling Third-Party Defendants; and that this Consent Judgment warrants approval consistent with the purposes of the Spill Act.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

15. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, the WPCA, and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment for the purposes of implementing this Consent Judgment and resolving the underlying Passaic River Litigation and the claims alleged by Defendants Maxus and Tierra against the Settling Third-Party Defendants.

16. For the sole purpose of entry and enforcement of this Consent Judgment, Dismissal Order and Case Management Order, the Parties waive all objections and defenses they may have to jurisdiction of this Court, or to venue in this County. The Parties shall not challenge the Court's continuing jurisdiction to enforce this Consent Judgment, the Dismissal Order, or Case Management Order.

III. PARTIES BOUND

17. This Consent Judgment applies to and is binding upon Plaintiffs, Settling Third-Party Defendants and, pursuant to Section XII herein, the Defendants, Third-Party Plaintiffs, and to the extent provided by law non-parties and non-settling parties.

IV. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in this Consent Judgment that are defined in the Spill Act, the WPCA, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply, solely for the purpose of this Consent Judgment, the Dismissal Order and the Case Management Order and for no other purpose:

18.1. "Claims" shall mean the following:

- a. All claims of Plaintiffs against Defendants for Discharges to the Newark Bay Complex or otherwise sought by Plaintiffs from Defendants in the Passaic River Litigation;
- b. All claims of Plaintiffs for which Third-Party Plaintiffs allege or could have alleged that they are entitled to contribution from Third-Party Defendants in the Third-Party Complaints for Discharges of Hazardous Substances to the Newark Bay Complex or otherwise sought by Third-Party Plaintiffs from Third-Party Defendants in the Passaic River Litigation, including without limitation all claims which could have been brought but for the limitation referenced in paragraph 15 of Third-Party Complaint B, paragraph 14 of Third-Party Complaint C, and paragraph 7 of Third-Party Complaint D (*i.e.*, Maxus and

Tierra's stated reference to an agreement with certain parties identified on Exhibit A to Third-Party Complaints B, C, and D "not to pursue claims against CPG members to recover costs incurred under the 1994 AOC, the CPG AOCs or Newark Bay AOC, to the extent such costs are attributable to the facilities identified in Exhibit B" to Third-Party Complaints B, C, and D unless and until certain conditions are met);

- c. All claims for Past Cleanup and Removal Costs (excluding Natural Resources Damages, except as otherwise provided herein, but including Natural Resources Damages Assessment Costs) paid or incurred by Plaintiffs, Third-Party Plaintiffs, or any other person in connection with Discharges of Hazardous Substances to the Newark Bay Complex by Settling Third-Party Defendants or otherwise sought by Plaintiffs in the Passaic River Litigation;
- d. All claims for Future Cleanup and Removal Costs (excluding Natural Resource Damages, except as otherwise provided herein, but including Natural Resource Damage Assessment Costs) paid or incurred by Plaintiffs in connection with response actions (including without limitation investigations and removal and remedial actions) and other activity in the Newark Bay Complex, but only to the extent such investigations, response actions and other activity are undertaken as part of the Diamond Alkali Superfund Process, including but not limited to the preparation and implementation of the Focused Feasibility Study;
- e. All claims for Future Cleanup and Removal Costs under the Spill Act for Discharges of Hazardous Substances contained in sewage or stormwater, including without limitation combined sewage and stormwater, to the Newark

Bay Complex by Settling Public Third-Party Defendants;

- f. All claims for Economic Damages and punitive damages caused in whole or in part by Defendants or sought by Plaintiffs in the Passaic River Litigation;
- g. All claims for Natural Resource Damages associated with Settling Third-Party Defendants' Discharges of Hazardous Substances to the Newark Bay Complex; and
- h. All claims for Past Cleanup and Removal Costs and Future Cleanup and Removal Costs caused by, associated with, arising from, or related to the ownership, management or control of submerged lands within the Newark Bay Complex by Settling Public Third-Party Defendants.

18.2. "Cleanup and Removal Costs" shall have the meaning ascribed to them in the Spill Act, N.J.S.A. 58:10-23.11b, and, to the extent not within the meaning ascribed under the Spill Act, shall also include direct and indirect costs and damages recoverable under N.J.S.A. 58:10A-10 of the WPCA, and shall include all costs of "response" as defined under 42 U.S.C. § 9601. For purposes of this Consent Judgment, Cleanup and Removal Costs include, without limitation, the costs of evaluating and developing navigation in the Newark Bay Complex to the extent such costs are incurred as part of the Diamond Alkali Superfund Process, and for which recovery is sought under the Spill Act, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, ("CERCLA") or common law, but not otherwise.

18.3. "Complaint" shall mean the complaint filed by Plaintiffs on December 13, 2005, as subsequently amended, against Defendants.

18.4. "Consent Judgment" shall mean this Consent Judgment.

18.5. “Diamond Alkali Superfund Process” shall mean all investigations and/or response actions (including without limitation removal actions and remedial actions) undertaken in respect to the Diamond Alkali Superfund Site (added to the National Priorities List on September 21, 1984, reference number NJD980528996, and including operable units thereof or added thereto) pursuant to CERCLA by Plaintiffs and by federal agencies, separately or in conjunction with each other, or by other entities pursuant to administrative orders, that address or respond to any Discharge of Hazardous Substances that are located or come to be located within the Diamond Alkali Superfund Site (regardless of the location of the source of such Discharge whether inside or outside the Newark Bay Complex), and all federal or CERCLA enforcement activities and litigation directly related thereto. For purposes of this definition, “remedial actions” include monitored natural remediation and no further action when such actions (or no action) have been selected as part of any remedy in the Diamond Alkali Superfund Process without deferral to the Plaintiffs for subsequent action. “Diamond Alkali Superfund Process” shall not include any Other Action or other CERCLA investigations and/or remedial actions at any Superfund site other than the Diamond Alkali Superfund Site (*e.g.*, the Berry’s Creek Study Area).

18.6. “Diamond Alkali Superfund Site” shall mean the geographic area consisting of all operable units or areas identified for investigation and/or response actions (including without limitation removal and remedial actions) by the United States Environmental Protection Agency (“U.S. EPA”), the Plaintiffs, or any other agencies and departments of the State of New Jersey as part of the Diamond Alkali Superfund Process, and as those areas may be expanded, including without limitation: the Lower Passaic River Study Area, the Lister Avenue Removal Area (Phase I and II), the Newark Bay Study Area and the Lister Property.

18.7. “Discharge(s)” and “Discharged” shall have the meanings ascribed to “discharge” in N.J.S.A. 58:10-23.11b and 58:10A-3, except that, for purposes of this Consent Judgment, “Discharge(s)” and “Discharged” shall also include the emission of Hazardous Substances into the atmosphere to the extent such emission contributes to contamination of water or sediments in the Newark Bay Complex.

18.8. “Economic Damages” shall mean any and all damages, loss of value of real or personal property, costs, lost income and tax revenue, and expenditures, including costs for impacts to navigation and commerce in the Newark Bay Complex, with applicable Interest.

18.9. “FFS Area” shall mean the area subject to the Focused Feasibility Study, including the Passaic River from river mile (“RM”) 0.0 to RM 8.3.

18.10. “Focused Feasibility Study” or “FFS” shall mean the Draft Source Control Early Action Focused Feasibility Study for the Lower Passaic River Restoration Project issued in June 2007 by Malcolm Pirnie, Inc. for the U.S. EPA, U.S. Army Corps of Engineers, and the New Jersey Department of Transportation, and any subsequent draft or final version thereof or modification thereof.

18.11. “Future Cleanup and Removal Costs” shall mean Cleanup and Removal Costs incurred on or after the effective date of this Consent Judgment.

18.12. “Hazardous Substances” shall have the meaning ascribed to them in N.J.S.A. 58:10-23.11b, and shall also be deemed, for purposes of this Consent Judgment only and without prejudice to the interpretation of the meaning of Hazardous Substances under the Spill Act, to include “Pollutants,” as that term is defined in N.J.S.A. 58:10A-3, including Pollutants contained within (i) sewage, including sewer systems and those system’s main outfalls and Combined Sewer Outfalls (“CSOs”) and (ii) stormwater.

18.13. "Interest" shall mean interest at the rate established by R. 4:42 of the then-current edition of the New Jersey Court Rules.

18.14. "Lister Avenue Removal Area (Phase I and II)" shall mean that area selected for a non-time critical removal under the Administrative Settlement Agreement and Order on Consent, Docket No. 02-2008-2020, between U.S. EPA, OCC and Tierra.

18.15. "Lister Property" shall mean the former Diamond Shamrock Corporation facility located at and including the real property of 80 Lister Avenue (and 120 Lister Avenue after its acquisition by Diamond Shamrock Corporation on April 19, 1984), Newark, Essex County, New Jersey, this property being known and designated as Block 2438, Lot(s) 57, 58 and 59, on the Tax Map of the City of Newark.

18.16. "Lower Passaic River Study Area" shall mean the lower 17 miles of the Passaic River and its tributaries, from the confluence with Newark Bay to the Dundee Dam, as identified in the May 8, 2007 Administrative Order on Consent concerning the Lower Passaic River Study Area, and as may be expanded by U.S. EPA.

18.17. "Matters Addressed," for purposes of the scope of contribution protection provided under this Consent Judgment to the Settling Third-Party Defendants, are all liabilities of the Settling Third-Party Defendants associated with Discharges of Hazardous Substances into the Newark Bay Complex from Third Party Sites, regardless of the location of the source of such Discharge whether inside or outside the Newark Bay Complex, including without limitation all liabilities and losses for the Claims, and all other Past Cleanup and Removal Costs and Future Cleanup and Removal Costs (including the payment of compensation for damages to, or the loss of, natural resources, or for restoration of natural resources) incurred by Plaintiffs, or any other person, associated with Discharges of Hazardous Substances to the Newark Bay Complex;

provided, however, "Matters Addressed" in this Consent Judgment does not include (i) the Cleanup and Removal Costs or other damages or claims for which Plaintiffs have reserved their rights under Section VIII of this Consent Judgment, in the event that Plaintiffs assert rights against the Settling Third-Party Defendants within the scope of such reservation, (ii) the Reserved Claims except to the extent affected by this Consent Judgment, (iii) Other Actions, or (iv) claims reserved by Settling Third-Party Defendants in Paragraph 36. "Matters Addressed" also include compliance with the 2003 Directive No. 2003-01, Natural Resources Injury Assessment and Interim Compensatory Restoration of Natural Resource Injuries, but only as to enforcement of the directive and otherwise included within Claims herein, and the payment of Settlement Funds pursuant to this Consent Judgment shall constitute remediation in compliance with Directive No. 2003-01.

18.18. "Natural Resource Damages," for purposes of this Consent Judgment only, shall mean all claims arising from Discharges at or to the Newark Bay Complex, known or unknown, that occurred prior to the effective date of this Consent Judgment and that are recoverable by any New Jersey state natural resource trustee as damages for injuries to natural resources under the Spill Act; the WPCA; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through -1387; CERCLA, or any other state or federal common law, statute, or regulation, for compensation for the restoration and/or replacement of, the lost value of, injury to, or destruction of natural resources and natural resource services, but do not include (1) compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages or (2) Natural Resource Damage Assessment Costs.

18.19. "Natural Resource Damage Assessment Costs" shall mean the costs of assessing injury to natural resources and natural resource services, including without limitation oversight costs, attorneys' fees, consultants' and experts' fees incurred as part of such assessment.

18.20. "Newark Bay Complex" shall mean (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, (v) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA in the Diamond Alkali Superfund Process, and (vi) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, any adjacent waters and sediments of (i) through (v).

18.21. "Newark Bay Study Area" shall mean Newark Bay and portions of the Hackensack River, Arthur Kill, and the Kill Van Kull, as identified in the February 13, 2004 Administrative Order on Consent between the U.S. EPA and OCC, and as may be expanded by U.S. EPA.

18.22. "Other Action" or "Other Actions" shall mean past, present or future judicial, civil and administrative claims between Plaintiffs and any Settling Third-Party Defendant(s) or among Settling Third-Party Defendants relating to the Discharge of a Hazardous Substance at, onto or from a Third-Party Site (upland area) to the extent that the losses, liabilities, costs, penalties or damages sought in such alleged claims are (i) caused, in whole or part, by a Discharge of Hazardous Substances not located in the Newark Bay Complex and that does not come to be located in the Newark Bay Complex, or (ii) not caused in whole or in part by a Discharge of Hazardous Substances from the Lister Property. Other Action shall also mean any pending litigation or administrative proceeding or separate agreement (including a settlement agreement or consent judgment) between Plaintiffs and any Settling Third-Party Defendant and

between any Settling Third-Party Defendants (except the Passaic River Litigation), and any pending or future action (including for contribution) arising out of such pending litigation, administrative proceeding or agreement, regardless of the subject matter of the litigation, administrative proceeding or agreement. Other Action shall include without limitation the litigation styled New Jersey Dept. of Env'tl. Prot., et al., v. Exxon Mobil Corp., Docket No. UNN-L-3026-04, consolidated with New Jersey Dept. of Env'tl. Prot., et al., v. Exxon Mobil Corp., Docket No. UNN-L-1650-05 (formerly docketed as HUD-L-4415-04 prior to consolidation with UNN-L-3026-04).

18.23. "Passaic River Litigation" shall mean the action, originally initiated by Plaintiffs through the Complaint on December 13, 2005, against Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Maxus International Energy Company ("MIEC"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF International S.A. (formerly known as and as successor, at law or in equity, to YPF International Ltd.) ("YPFI"), YPF Holdings, Inc. ("YPFH") and CLH Holdings, Inc. ("CLHH") (collectively, "Defendants"), pursuant to the Spill Act, the WPCA, and common law, and the claims through which the Third-Party Plaintiffs allege or could have alleged that they are entitled to contribution from Third-Party Defendants in the Third-Party Complaints, including without limitation, all claims which could have been brought but for an existing agreement between Third-Party Plaintiffs and certain Third-Party Defendants referenced in paragraph 15 of Third-Party Complaint B, paragraph 14 of Third-Party Complaint C, and paragraph 7 of Third-Party Complaint D.

18.24. "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral.

18.25. "Party" or "Parties" shall mean Plaintiff DEP, Plaintiff Commissioner, Plaintiff Administrator, and the Settling Third-Party Defendants.

18.26. "Past Cleanup and Removal Costs" shall mean Cleanup and Removal Costs incurred before the effective date of this Consent Judgment.

18.27. "Plaintiff(s)" shall mean DEP, Commissioner, Administrator, any predecessor or successor department, agency or official thereof.

18.28. "Reserved Claims" shall mean those claims reserved by orders dated December 15, 2010 and April 24, 2012, as described in Paragraph 5 herein.

18.29. "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

18.30. "Settlement Funds" shall mean the total moneys paid or to be paid to Plaintiffs by Settling Third-Party Defendants, including any amounts dedicated from Municipal State Aid payments, under Section VI of this Consent Judgment.

18.31. "Settling Third-Party Defendants" shall mean collectively the Settling Public Third-Party Defendants, the Settling Private Third-Party Defendants, and any other Party included in the Consent Judgment under Schedule 1, and "Settling Third-Party Defendant" shall mean any of the Settling Third-Party Defendants individually.

18.32. "Settling Private Third-Party Defendant" shall mean those entities listed in Exhibit A hereto, including their respective officers, directors, employees, and predecessors. Settling Private Third-Party Defendant shall also include those direct and indirect (current and former) parents, members (in the case of a limited liability corporation), partners (in the case of partnerships), joint venturers (in cases of joint ventures), successors, subsidiaries (both present and former), indemnitors, trustees in bankruptcy, or receivers appointed pursuant to a proceeding

in law or equity of those entities listed in Exhibit A, to the extent that the alleged liability of any such parent, member, partner, joint venturer, successor, subsidiary, indemnitor, trustee or receiver is based solely upon its status and in its capacity as a related entity of those entities listed in Exhibit A (as may be amended to include parties who enter this Consent Judgment after the effective date) (“vicarious liability”), and not to the extent that the alleged or potential liability of such entity arises independently of its status and capacity as a related entity of any Settling Private Third-Party Defendant. If the alleged or potential liability of an Affiliated Entity (as defined in Schedule 1) arises independently of its status and capacity as a related entity, that Affiliated Entity shall pay pursuant to Schedule 1, paragraph 2.

18.33. “Settling Public Third-Party Defendant” shall mean those entities listed in Exhibit B hereto, including their officers, directors, employees, and predecessors. Settling Public Third-Party Defendant shall also include all departments, agencies, commissions, committees, boards, councils, subdivisions and instrumentalities thereof, police and fire departments, emergency and first aid squads, public school districts and boards of education, departments of public works, subsidiaries, indemnitors, trustees in bankruptcy, or receivers appointed pursuant to a proceeding in law or equity of those entities listed in Exhibit B (as may be amended to include parties who enter this Consent Judgment after the effective date).

18.34. “Third-Party Defendants” shall mean those entities named as third-party defendants by Defendants Maxus and Tierra in the Third-Party Complaints filed in this action on February 4 and 5, 2009 and as may be later amended.

18.35. “Third-Party Sites” shall mean the sites and/or facilities identified in the Passaic River Litigation (including private and public sewer systems and those systems’ main outfalls and combined sewer outfalls (“CSOs”), as well as those sites and/or facilities, whether known or

unknown, owned, previously owned, operated, or previously operated by a Settling Third-Party Defendant or at which a Settling Third-Party Defendant may otherwise be a potentially responsible party (*i.e.*, any person who has discharged a hazardous substance or is any way responsible for any hazardous substance) pursuant to N.J.S.A. 58:10-23.11g), from where a Settling Third-Party Defendant Discharged, caused to be Discharged or is alleged to have Discharged any Hazardous Substance into, or which Hazardous Substance reached, migrated or was transported by any means into, the Newark Bay Complex. Lister Property is deemed a Third-Party Site only as to Settling Third-Party Defendant Veolia ES Technical Solutions, LLC, and the City of Newark (due to their prior association with such property, however, nothing herein shall be construed as an admission that such entities are responsible for a Discharge of Hazardous Substances at or from the property).

V. PARTIES' OBJECTIVES

19. The Parties' non-exclusive objectives in entering into this Consent Judgment, Dismissal Order and Case Management Order are (a) to protect public health and safety and the environment, consistent with the purposes that the Spill Act is intended to serve; (b) to recover a portion of funds expended and secure additional funds for the investigation and remediation of Hazardous Substances within the Newark Bay Complex related in whole or in part to Discharges from the Lister Property by Defendants; (c) save and avoid the expenditure of an inordinate amount of Plaintiffs' limited resources that would be incurred if forced to allege and prosecute claims against the Settling Third-Party Defendants, and (d) to resolve the Claims as to the Settling Third-Party Defendants, and to secure contribution protection as to Matters Addressed in this Consent Judgment, protection from discovery and further litigation, and dismissal of all

claims against Settling Third-Party Defendants pursuant to the terms of this Consent Judgment, Dismissal Order and Case Management Order and as provided by New Jersey law.

VI. SETTling THIRD-PARTY DEFENDANTS' COMMITMENTS

20. Except as may be set forth on the individual signature pages and in conformance with "Schedule 1," within forty-five (45) days of entry of this Consent Judgment, each Settling Private Third-Party Defendant shall pay into an escrow account for the benefit of Plaintiffs to be established under the Escrow Agreement attached as Exhibit E to this Consent Judgment One Hundred and Ninety Five Thousand Dollars (\$195,000), and within sixty (60) days of entry of this Consent Judgment or January 5, 2014 (whichever is later) each Settling Public Third-Party Defendant shall pay into the escrow account for the benefit of Plaintiffs Ninety-Five Thousand Dollars (\$95,000). In alternative to payments to the escrow account, each municipal Settling Public Third-Party Defendant may authorize that \$95,000 be deducted from their next two Municipal State Aid payments immediately following the entry of this Consent Judgment, in lieu of direct payments to the escrow account. The first reduction shall be \$50,000 and the second reduction shall be \$45,000. Such authorization shall be considered Settlement Funds as if the Settling Public Third-Party Defendant were making a direct payment to the escrow account. Except as provided below or as provided by the Escrow Agreement, after entry of the Consent Judgment and expiration of any deadline to appeal, the escrow agent shall disburse the Settlement Funds, plus interest, if any, as provided in the escrow agreement, by check or checks made payable to the "Treasurer, State of New Jersey." The payment or payments shall be mailed or otherwise delivered to the Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093. In the event (i)

this Consent Judgment and/or the Dismissal Order and Case Management Order are overturned, remanded or modified on appeal such that the Consent Judgment is void as provided by Paragraph 57, or (ii) a party opts out of this Consent Judgment pursuant to Paragraph 58, the funds placed into the escrow account by such Settling Third-Party Defendant or received by Plaintiffs shall be returned, with interest if any, as provided by the Escrow Agreement (for municipal Settling Public Third-Party Defendants paying through their Municipal State Aid payment, the deducted Settlement Funds shall be added to the next State Aid payment to such Settling Public Third-Party Defendant, subject to appropriation by the State Legislature).

21. Settling Third-Party Defendants' obligations to pay the amounts owed to the Plaintiffs under Paragraph 20 are several only, except that the obligations of an Affiliated Entity, as defined in Schedule 1, are joint and several among all Affiliated Entities with whom it is affiliated. In the event of insolvency, or other failure by any Settling Third-Party Defendant to satisfy any provision of this Consent Judgment, no other Settling Third-Party Defendant shall be responsible to satisfy such provision, except as provided above as to Affiliated Entities. Failure of a Settling Third-Party Defendant to pay the Settlement Funds as provided in Paragraph 20 shall void this Consent Judgment as to that Settling Third-Party Defendant unless such Settling Third-Party Defendant satisfies its payment obligation and cures such default within thirty (30) days of written notice from a Plaintiff. Any internal allocation by Plaintiffs of Settlement Funds toward Past Cleanup and Removal Costs, Future Cleanup and Removal costs, or other costs and damages shall not be binding on Settling Third-Party Defendants.

VII. PLAINTIFFS' COVENANTS

22. In consideration of the payments the Settling Third-Party Defendants are making pursuant to Paragraph 20 above, and except as otherwise provided in Section VIII (Plaintiffs'

Reservations) below, Plaintiffs covenant not to sue and agree not to take or procure judicial or administrative action (including without limitation the issuance of a directive) for any Claims against any Settling Third-Party Defendant under State and federal statutory and common law. Plaintiffs' covenants extend to and inure to the benefit of any persons or entities who acquire title to a Third-Party Site after the entry of this Consent Judgment for those Discharges of Hazardous Substances that occurred prior to the entry of this Consent Judgment.

23. Plaintiffs and Settling Third-Party Defendants agree to join and support each other in defending this Consent Judgment, the Dismissal Order and the Case Management Order in any appeal thereof, and in seeking to dismiss any claim that is barred or otherwise precluded by this Consent Judgment brought against that Settling Third-Party Defendant after entry of this Consent Judgment, the Dismissal Order and the Case Management Order.

VIII. PLAINTIFFS' RESERVATIONS

24. Subject to Plaintiffs' Covenants in Section VII, Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Newark Bay Complex or to direct the Settling Third-Party Defendants to undertake any remediation authorized by law concerning the Newark Bay Complex or otherwise.

25. The covenants contained in Section VII do not pertain to any matters other than those expressly stated. Notwithstanding anything to the contrary herein, including Plaintiffs' Covenants in Section VII, Plaintiffs reserve, and this Consent Judgment is without prejudice to and shall have no effect and limitation on, all rights against the Settling Third-Party Defendants concerning the following, even to the extent such are considered Claims or within Matters Addressed:

- a. Failure of a Settling Third-Party Defendant to satisfy its obligation to contribute to the Settlement Funds under Paragraph 20 of this Consent Judgment;
- b. Future Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, in excess of the Settlement Funds in connection with the Diamond Alkali Superfund Process outside of the FFS Area, sought pursuant to CERCLA or other federal law, and only as to Cleanup and Removal Costs that exceed this amount;
- c. Future Cleanup and Removal Costs (excluding investigation costs as part of the Diamond Alkali Superfund Process) actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, in excess of two and one-half (2.5) times the Settlement Funds in connection with the Diamond Alkali Superfund Process within the FFS Area, sought pursuant to CERCLA or other federal law, and only as to any Cleanup and Removal Costs exceeding this amount;
- d. Claims or administrative action (including claims for Cleanup and Removal Costs or other damages or penalties) for the future Discharge or release of sewage or stormwater or Hazardous Substances within sewage or stormwater under the Water Pollution Control Act or other statute or regulation applicable to the regulation of sewage or stormwater, excluding the Spill Act;
- e. Cleanup and Removal Costs or damages not caused, in whole or in part, by Discharges of Hazardous Substances from the Lister Property and for which remedial action is not taken as part of the Diamond Alkali Superfund Process,

other than a Discharge of Hazardous Substances otherwise ordered or approved by Plaintiffs or addressed in Paragraph 18.1.e;

- f. Liability for any future Discharge of any Hazardous Substance (but not including the migration of any Hazardous Substance from a Discharge that occurred prior to entry of this Consent Judgment but enters or moves within the Newark Bay Complex thereafter), other than a future Discharge of a Hazardous Substance ordered or approved by plaintiff DEP or addressed in Paragraph 18.1.e;
- g. Liability for any air emissions, except as provided herein;
- h. Criminal liability;
- i. Liability for current administrative orders, consent decrees, judgments or ongoing remediation efforts that are the subject of separately enforceable legal obligations that are not otherwise specifically released under this Consent Judgment; and
- j. Natural Resource Damages, but only after and to the extent that:
 - (1) a formal Natural Resource Damage Assessment has been completed under applicable law or regulations,
 - (2) a trustee determination of Settling Third-Party Defendants' liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by Settling Third-Party Defendants; and
 - (3) the collective liability established in an administrative or judicial proceeding of all Settling Third-Party Defendants for Natural Resource Damages exceeds twenty percent (20%) of the Settlement Funds. Settling Parties reserve all rights in any such proceeding.

Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey under this Section shall include all Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey regardless of whether such costs are recovered from or advanced or reimbursed by any person not a Settling Third-Party Defendant (except that such costs paid in settlement of liability of a Settling Third-Party Defendant that is an agency or department of the State of New Jersey shall not be included); provided, however, that there shall never be any double recovery by the State of New Jersey against any Settling Third-Party Defendant for the Matters Addressed herein. Settling Third-Party Defendants reserve all rights and defenses in any action by Plaintiffs under this Section.

26. Except to the extent Reserved Claims are affected by this Consent Judgment, the December 15, 2010 and April 24, 2012 orders reserving such claims shall remain in effect and shall not be disturbed by entry of this Consent Judgment.

27. Notwithstanding anything to the contrary herein, the Parties agree that this Consent Judgment shall not release, be applied as a credit against, a defense to, contribution protection for, or a compromise of any claims, costs, damages or penalties that are the subject of an Other Action. Further, Plaintiffs reserve, and this Consent Judgment is without prejudice to, the right to institute proceedings against any or all of the Settling Third-Party Defendants in a new action or to issue a directive or other administrative order to any or all Settling Third-Party Defendants seeking to compel any Settling Third-Party Defendant to perform response actions or cleanup and removal actions related to any Other Action, or matters covered by Paragraph 26 (Reserved Claims) to the extent such Reserved Claims are not affected by this Consent Judgment.

IX. SETTLING THIRD-PARTY DEFENDANTS' COVENANTS

28. Subject to the conditions in Section XVIII, the Settling Third-Party Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless Plaintiffs notify the Settling Third-Party Defendants, in writing, that they no longer support entry of the Consent Judgment.

29. The Settling Third-Party Defendants further covenant, subject to Paragraph 30 below, not to sue or assert any claim or cause of action for monetary relief against any Plaintiff for Past Cleanup and Removal Costs incurred in the Newark Bay Complex or Future Cleanup and Removal Costs with respect to the Diamond Alkali Superfund Process, including any direct or indirect claim for reimbursement from the Spill Fund. Settling Third-Party Defendants do not waive any claims and rights under federal law against any Settling Third-Party Defendant or against any other person and explicitly reserve any and all such claims against each other, as provided in Paragraph 36, including claims for response costs that may also constitute Cleanup and Removal Costs under the Spill Act. However, as to any state law claim under the Spill Act, each Settling Private Third-Party Defendant further covenants, subject to Paragraphs 27, 31, 35 and 36, not to sue or assert any such claim or cause of action against any Settling Public Third-Party Defendant, severally or joint, for monetary relief under the Spill Act for such Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process. Each Settling Public Third-Party Defendant covenants, subject to Paragraphs 27, 31, 35 and 36, not to sue or assert any such claim or cause of action against any Settling Private Third-Party Defendant, severally or joint, for monetary relief under the Spill Act for such Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process.

30. A Settling Third-Party Defendant's covenant not to sue or to assert any claim or cause of action against a Plaintiff pursuant to Paragraph 29 above does not apply in the event, and to the extent, that Plaintiffs sue or take administrative action jointly or severally against Settling Third-Party Defendants pursuant to Plaintiffs' reserved rights under Paragraph 25(b), 25(c), or 25(j) (but for purposes of 25(j) a Settling Third-Party Defendant's right to reassert any claim or cause of action against a Plaintiff shall only apply to state or federal claims for payment or compensation for Natural Resources Damages).

31. Settling Third-Party Defendants covenant not to sue for, and hereby waive, any claim for Settlement Funds against any other Settling Third-Party Defendant; provided, however, that Settling Third-Party Defendants reserve all rights and claims for Settlement Funds based on claims for contractual indemnity against any party, including Settling Third-Party Defendants as provided in Paragraph 36(d) herein.

32. (a) Settling Third-Party Defendants hereby agree to assign to Plaintiffs, upon request, their claims and causes of action for Economic Damages, in accordance with subsection (c), and the right to recovery thereon, without representation of value or existence, which each Settling Third-Party Defendant has as of the effective date of this Consent Judgment against the Defendants arising out of contamination at or from the Lister Property and into the Newark Bay Complex. Plaintiffs and each of the Settling Third-Party Defendants shall execute a separate assignment and cooperation agreement to effectuate such assignment, if so requested by Plaintiffs, in the case of each of the Public Settling Third-Party Defendants, in a form substantially similar to the form attached hereto as Exhibit F or, in the case of each of the Private Settling Third-Party Defendants, in a form governed by this Paragraph and materially consistent with Exhibit F to the extent consistent with the corporate requirements of any particular Private

Settling Third Party and not potentially implicated by or related to existing claims in an Other Action.

(b) In exchange for the assignment of claims herein, Plaintiffs agree that any judgment Plaintiffs obtain against Defendants for Economic Damages (including the Economic Damages assigned by Settling Third-Party Defendants) obtained under common law shall be limited to Defendants' apportioned liability. Such apportionment shall be made without the need for Defendants to file additional or amended claims against the Third-Party Defendants. Any credit or reduction of any recovery by Plaintiffs under the Spill Act or any other statute shall be as provided by New Jersey law. Furthermore, each Settling Third-Party Defendant releases and forever discharges all persons and entities other than Defendants from any of the Economic Damages assigned to Plaintiffs herein; provided, however that if any assigned claims revert to a Settling Third-Party Defendant, the conditions of this Paragraph shall no longer apply as to that Settling Third-Party Defendant. Plaintiffs agree that they shall not sell, transfer or assign any Economic Damages claims assigned by any Settling Third-Party Defendant.

(c) Economic Damages agreed to be assigned by Settling Third-Party Defendants do not include claims against the Defendants for their: (a) actually incurred past or future costs of investigation and remediation of Hazardous Substances, (b) contribution claims (if any) for Natural Resource Damages, (c) costs expended on community improvement projects, SEPs or similar activities undertaken in settlement or resolution of an environmental liability, (d) the loss in market value of their own real property or personal property (including, for purposes of the Private Settling Third-Party Defendants, the individual corporate entity value or corporate good will), (e) individual breach of contract claims, bad faith contract claims, and punitive damages

claims, or (f) other claims specifically reserved by Settling Third-Party Defendants herein, including those claims specifically reserved in Paragraph 36.

33. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J.

X. SETTLING THIRD-PARTY DEFENDANTS' RESERVATIONS

34. Settling Third-Party Defendants reserve all rights, claims and defenses against any person not a Party to this Consent Judgment except as to those claims and causes of action assigned to Plaintiffs under Paragraph 32 and in any separate assignments of claims and causes of action executed by Settling Third-Party Defendants at the request of Plaintiffs.

35. The Parties intend and agree that this Consent Judgment, and any Dismissal Order entered pursuant to this Consent Judgment, is not a judicially-approved settlement of liability as to any claims in any Other Action, and the Settling Third-Party Defendants expressly reserve their rights, claims and defenses, including without limitation claims for contribution and other third-party cross-claims, in any Other Action. The Parties further intend and agree that this Consent Judgment, and any Dismissal Order entered pursuant to this Consent Judgment, will not bar the assertion of any contribution and / or other claims by any Settling Third-Party Defendants against any Settling Third-Party Defendants in any Other Action. The Parties agree that they will not raise this Consent Judgment and the Dismissal Order entered pursuant to this Consent Judgment as a bar or defense to claims by Settling Third-Party Defendants or Plaintiffs in any Other Action.

36. Reservations by Settling Third-Party Defendants

(a) *Claims Under Federal Law.*

- i. *Reservation of Claims.* Subject to Paragraph 31 (Covenant Not To Sue for Settlement Funds) and subparagraphs (c), (e) and (f) below, Settling Third-Party Defendants reserve all rights, claims and defenses, including without limitation claims for contribution and cost recovery in any action under any statute of the United States, including but not limited to CERCLA, in any federal court of the United States against any entity including without limitation any Settling Third-Party Defendant, (a “United States Claim”).
- ii. *No Bar to Contribution.* Subject to Paragraph 31 (Covenant Not To Sue for Settlement Funds) and subparagraphs (c) and (e) herein, the Parties intend and agree that this Consent Judgment, and the Dismissal Order entered pursuant to this Consent Judgment, will not bar the assertion of any United States Claims for contribution or cost recovery and / or other claims by any Settling Third-Party Defendant against any Settling Third-Party Defendant(s).

- (b) *Claims under State Law.* Subject to Paragraphs 27 (Other Actions), 29 and 31 (Covenants Not to Sue), 35 (Other Actions) and 39 (Contribution Protection), Settling Third-Party Defendants reserve all rights, claims and defenses, including without limitation contribution, under any New Jersey statute or common law they have or may have against any entity, including without limitation any Settling Third-Party Defendant, for: (i) Discharges of

Hazardous Substances at or from Third-Party Sites; (ii) costs, damages or judgments for any claims asserted by Plaintiffs pursuant to Section VIII (Plaintiffs' Reservations); and (iii) any costs or damages unrelated to the contamination at or from the Lister Property and into the Newark Bay Complex or that otherwise are not being sought in the Passaic River Litigation. Notwithstanding the foregoing, other than in Other Actions, unless a claim arises solely under State law requiring a filing in a state court, all Settling Third-Party Defendants agree to assert their claims in federal court that arise in whole or in part as a result of Discharges of Hazardous Substances at or from the Lister Property.

- (c) Notwithstanding any provision in subparagraphs (a) and (b) herein, if any claims asserted in federal court are barred under the Eleventh Amendment of the United States Constitution nothing herein shall preclude or prevent Settling Third-Party Defendants from bringing such claims under State statute or common law in state court.
- (d) Settling Third-Party Defendants reserve any rights to assert claims for contractual indemnity for the Settlement Funds against any insurer and any other person or entity including without limitation any Settling Third-Party Defendant.
- (e) For any claim reserved under subparagraph (a) by a Settling Third-Party Defendant against any other Settling Third-Party Defendant relating to Discharges to the Newark Bay Complex, Settling Third-Party Defendants agree not to bring such claims in any court proceeding until at least sixty (60)

days after notifying the Settling Third-Party Defendant and negotiating in good faith to develop during the 60-day period a case management order for the orderly prosecution, defense and disposition of such claims, except that this subparagraph shall not apply to any claim a Settling Third-Party Defendant must bring sooner than 60 days to avoid the claim being waived or barred. Settling Third-Party Defendants hereby agree that all applicable statutes of limitation are tolled during the negotiating period prescribed in this subparagraph.

- (f) This Paragraph 36 does not apply to, and does not reserve or limit, any claim, right or defense that could be asserted by or against Plaintiffs.

XI. FINDINGS & NON-ADMISSIONS OF LIABILITY

37. Nothing contained in this Consent Judgment shall be considered an admission of any issue of fact or law by the Settling Third-Party Defendants as to any matter, or a finding by the Court or by Plaintiffs of any wrongdoing or liability on the Settling Third-Party Defendants' part for any matters, including matters Plaintiffs and Defendants have alleged in the Passaic River Litigation.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

38. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment, except as provided in Paragraphs 18.32, 18.33 and 22. Further, nothing in this Consent Judgment, including without limitation Plaintiffs' covenant not to sue under federal law, waives or limits, and shall not be deemed to waive or limit Eleventh Amendment immunity under the United States Constitution,

if any, of the State of New Jersey, Plaintiffs, or any Settling Third-Party Defendant, or consent to jurisdiction in federal court.

39. (a) Upon entry, this Consent Judgment will constitute a judicially approved settlement of liability to the State of New Jersey within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) for the Matters Addressed and for the purpose of providing protection to the Settling Third-Party Defendants from contribution actions and within the meaning of 42 U.S.C.A. § 9613(f)(2) as provided below under federal law. The Parties agree, and the Court by entering this Consent Judgment so intends, that the Settling Third-Party Defendants are entitled, upon satisfying their payment obligations under Paragraph 20 of this Consent Judgment to protection from contribution, except as provided in Paragraphs 27 and 35 (Other Actions), for:

- (i) Past Cleanup and Removal Costs of Plaintiffs and any other person (including the Third-Party Plaintiffs) sought under applicable State law associated with Discharges of Hazardous Substances (including Hazardous Substances contained in sewage and stormwater) to the Newark Bay Complex;
- (ii) Future Cleanup and Removal Costs of Plaintiffs and any other person (including the Third-Party Plaintiffs) sought under applicable State law associated with Discharges of Hazardous Substances (including Hazardous Substances contained in sewage and stormwater) to the Newark Bay Complex;
- (iii) Past Cleanup and Removal Costs of Plaintiffs sought under CERCLA or other federal law;

- (iv) Future Cleanup and Removal Costs of Plaintiffs sought under CERCLA or other federal law up to the amounts set forth in Section VIII;
- (v) Natural Resource Damage Assessment Costs;
- (vi) Natural Resources Damages sought under applicable state and federal law up to the amounts set forth in Section VIII; and
- (vii) the Settlement Funds paid herein by each Settling Third-Party Defendant; provided, however, that contractual indemnity claims for Settlement Funds are not barred.

(b) The Parties agree, and the Court by entering this Consent Judgment so intends, that, except as provided by Section X (Settling Third-Party Defendants' Reservations), this Consent Judgment should not be construed to limit or provide protection from contribution for:

- (i) Past Cleanup and Removal Costs incurred by Third-Party Plaintiffs, Third-Party Defendants or any other person (excluding the State of New Jersey and any agencies and departments thereof) sought under CERCLA or other federal law;
- (ii) Future Cleanup and Removal Costs incurred by Third-Party Plaintiffs, Third-Party Defendants or any other person (excluding the State of New Jersey and any agencies and departments thereof) sought under CERCLA or other federal law;
- (iii) Future Cleanup and Removal Costs of Plaintiffs sought under CERCLA or other federal law above the limits set forth in Section VIII;
- (iv) Future Cleanup and Removal Costs of Plaintiffs or any other person for future Discharges of Hazardous Substances after the entry of this Consent

Judgment under State or federal law (other than for Hazardous Substances contained in sewage or stormwater under the Spill Act);

- (v) Natural Resources Damages above the limits set forth in Section VIII; and
- (vi) Relief sought in any Other Action.

(c) The Parties agree that this Consent Judgment and the Dismissal Order shall not be a release of or a compromise of any claims, costs, damages or penalties under CERCLA or other federal law by any Settling Third-Party Defendant or any person or entity not a party to this Consent Judgment nor of any claims, costs, damages or penalties in any Other Action. Settling Third-Party Defendants acknowledge that any Settling Third-Party Defendant and any person or entity not a party to this Consent Judgment (including Third-Party Plaintiffs) may assert claims under CERCLA or other federal law against any person or entity, including any Settling Third-Party Defendant, and such claims are not intended to be barred by CERCLA § 113(f)(2), except as provided in subparagraph (a) herein.

40. In order for the Settling Third-Party Defendants to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution claims concerning the Matters Addressed in this Consent Judgment, Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on Plaintiff DEP's website on [], in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Newark Bay Complex;
- c. the names of the Settling Third-Party Defendants; and
- d. a summary of the terms of this Consent Judgment.

41. Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom Plaintiffs had notice as of the date Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 40.

42. Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Section XVIII unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 40 and 41, Plaintiffs receive information that discloses facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

43. In any subsequent administrative or judicial proceeding for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Newark Bay Complex, no Party shall assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment and the covenants not to sue set forth herein.

44. Except as provided by Paragraph 32(b), if a fact-finder apportions any portion of Plaintiffs' damages to a Settling Third-Party Defendant, Plaintiffs agree to reduce their recoveries from the Defendants to the extent and as required by New Jersey law. The Parties agree that nothing herein is intended to shift onto Plaintiffs or otherwise alter Plaintiffs' burden of proof in the Passaic River Litigation, in an Other Action, or in claims reserved from this Consent Judgment

XIII. NOTICES AND SUBMISSIONS

45. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP, Commissioner & Administrator:

Section Chief
Cost Recovery and Natural Resource Damages Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
(609) 984-4863

Settling Third-Party Defendants

[Contact for each Settling Third-Party Defendant is listed with that Party on its respective signature page.]

46. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

47. The Settling Third-Party Defendants shall not construe any informal advice, guidance, suggestions, or comments by Plaintiffs, or by persons acting for them, as relieving the Settling Third-Party Defendants of their obligation to obtain written approvals or modifications as required by this Consent Judgment.

XIV. EFFECTIVE DATE

48. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment has been entered by the Court.

XV. RETENTION OF JURISDICTION

49. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification pursuant to Paragraph 51 of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including without limitation any appeal from an administrative determination of a dispute between the Parties.

XVI. RETENTION OF RECORDS

50. Until completion of the Diamond Alkali Superfund Process, each Settling Third-Party Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to cleanup and removal or response actions taken at the Diamond Alkali Superfund Site or to the liability of any Settling Third-Party Defendant for Cleanup or Removal Costs, Natural Resource Damages, response actions or response costs at or in connection with the Diamond Alkali Superfund Site, regardless of any retention policy to the contrary. In no event shall this Section XVI require preservation of records beyond ten (10) years from the effective date of the Consent Judgment unless Plaintiffs provide written notice to a Settling Third-Party Defendant upon good cause requiring preservation of records for an additional fixed term not to exceed five (5) years, or as further extended upon good cause and in writing for additional five (5) year periods. To the extent a Settling Third-Party Defendant is a party to a current or future Administrative Order on Consent ("AOC"), Consent Decree, or Court Order which requires such party to maintain documents and information beyond the

requirements of this Consent Judgment, such AOC, Consent Decree or Court Order shall control as to that Settling Third-Party Defendant.

XVII. MODIFICATION

51. This Consent Judgment and any notices or other documents specified in this Consent Judgment may be modified only by agreement of the Parties. All such modifications shall be made in writing.

52. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications made pursuant to Paragraph 51 to this Consent Judgment.

XVIII. ENTRY OF THIS CONSENT JUDGMENT AND FURTHER ASSURANCES

53. The Settling Third-Party Defendants consent to the entry of this Consent Judgment without further notice only if entry of this Consent Judgment results in the dismissal of all of Third-Party Plaintiffs' claims in the Third-Party Complaints against Settling Third-Party Defendants as set forth herein.

54. Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for entry.

55. If less than 75% of the Private Third-Party Defendants or 50% of the Public Third-Party Defendants execute or perform under this Consent Judgment, this Consent Judgment is voidable at the sole discretion of Plaintiffs.

56. Subject to Paragraph 21, this Consent Judgment is void as to any Settling Third-Party Defendant that fails to pay its Settlement Funds in accordance with Paragraph 20.

57. Except as provided in Paragraph 58 below, the Parties agree that this Consent Judgment shall be void and of no effect if the Court fails to (i) dismiss all of Third-Party Plaintiffs' claims in the Third-Party Complaints against all Settling Third-Party Defendants, including, *inter alia*, for costs allegedly incurred or to be incurred for investigation, removal and remediation of Discharges of Hazardous Substances in the Newark Bay Complex; (ii) approve and enter the Dismissal Order in the form attached as Exhibit C or in materially the same form as attached, contribution protection is provided and claims are barred as set forth in this Consent Judgment and the Dismissal Order; and (iii) approve and enter the Case Management Order in the form attached as Exhibit D or in materially the same form as attached. This Consent Judgment shall be void and of no effect if any appellate court reverses, remands, vacates or modifies the Consent Judgment and/or Dismissal Order such that either will not result in the dismissal of all claims brought by Third-Party Plaintiffs against all Settling Third-Party Defendants. In such event, the terms of this Consent Judgment may not be used as evidence in any litigation, administrative proceeding or other proceeding.

58. If Third-Party Plaintiffs have any cause of action against a Settling Third-Party Defendant other than a cause of action under the Spill Act, through the Joint Tortfeasors Contribution Act, or that is otherwise commonly alleged against all Settling Third-Party Defendants (*i.e.*, a particularized cause of action), and such particularized cause of action is not dismissed as to any Settling Third-Party Defendant, this Consent Judgment shall not be void; provided that any Settling Third-Party Defendant that is subject to a particularized cause of action may choose to either remain a Settling Third-Party Defendant or to opt-out of the Consent Judgment and, in that instance, would not be obligated to satisfy the payment obligations of Paragraph 20. The opt-out of any Settling Third-Party Defendant shall not affect the Consent

Judgment, Dismissal Order or payment obligations under Paragraph 20 as to any other Settling Third-Party Defendant. Settling Third-Party Defendants opting out of this Consent Judgment as provided herein shall provide notice to Plaintiffs, the Court and all other Parties within sixty (60) days after the Court declines to approve the Dismissal Order or Case Management Order as to that Settling Third-Party Defendant. Plaintiffs shall have ninety days (90) days after the Court declines to approve the Dismissal Order or Case Management Order as to any Settling Third-Party Defendant to opt out of this Consent Judgment by providing notice to the Court and all other Parties. Any Party that fails to opt out of this Consent Judgment in the time periods set forth above shall be bound by the terms of this Consent Judgment.

59. This Consent Judgment shall not be effective as to any Settling Third-Party Defendant that has not paid in full its court costs, Special Master fees and liaison counsel / common counsel fees outstanding at the time of entry of this Consent Judgment.

60. Each of the parties to this Agreement shall use its best efforts to fulfill and cause to be fulfilled the terms and conditions of this Consent Judgment and to effectuate the dismissal of all claims in the Third-Party Complaints against Settling Third-Party Defendants as set forth herein.

XIX. SIGNATORIES/SERVICE

61. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

62. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

63. Each Settling Third-Party Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Third-Party Defendants agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

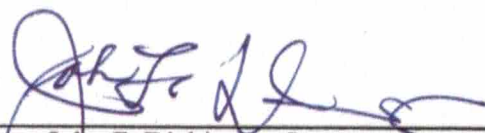
SO ORDERED this ^{4th} 12 day of December, 2013.



, J.S.C.

ORDER entered for the reasons
stated in an oral decision
on 12/12/13

JOHN J. HOFFMAN, ACTING ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

John F. Dickinson, Jr.
Deputy Attorney General

Dated: 12/12/13