

**Exhibit E to
Consent Judgment**



State of New Jersey

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. VS. OCCIDENTAL CHEMICAL
CORPORATION, ET AL., DOCKET NO. ESX-L-9868-05 (HEREINAFTER THE "PASSAIC RIVER
LITIGATION") ESCROW ACCOUNT AGREEMENT

Name of Financial Institution

Address

Telephone Number

Escrow Account Number

Pursuant to the Consent Judgment between 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 Settling Third-Party Defendants under the Consent Judgment, this Escrow Agreement and the escrow account is established to hold the Settlement Funds pursuant to the Consent Judgment. Terms used herein shall have the meaning ascribed to them in the Consent Judgment except as otherwise provided herein.

Accredited Financial Institution Name

(hereinafter called "Escrow Agent")

(1) **Escrow Account/Purpose**

Settling Third-Party Defendants agree to deposit, with the Escrow Agent, the Settlement Funds as required by the Consent Judgment; and the Escrow Agent agrees to hold the Settlement Funds in escrow in an interest bearing account pursuant to the Consent Judgment and the terms and conditions of this Escrow Agreement. The sole purpose of the escrow account shall be to ensure that Settlement Funds are set aside and kept available during the pendency of any appeal of the Consent Judgment.

(2) **Amendment of the Escrow Agreement**

This Escrow Agreement may only be amended by a written agreement approved in writing by DEP and the Settling Third-Party Defendants, or as otherwise set forth herein.

(3) **Separation of Funds**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts.

(4) **Escrow Deposits**

Settling Third-Party Defendants agree to deposit the Settlement Funds as required by the Consent Judgment into the escrow account.

(5) **Investment of Escrow Account Funds**

The escrow account shall be invested and maintained so as to maximize yield and minimize risk (subject to the approval of DEP). The escrow account shall also be invested and maintained in a manner fully consistent with the attached Investment Guidelines. The Investment Guidelines may from time to time be revised or modified by DEP, in its discretion, based on prevailing financial market and economic conditions. Any such revisions or modifications by DEP to the Investment Guidelines shall be immediately incorporated into the terms of this Agreement upon receipt by the Settling Third-Party Defendants and Escrow Agent, and thereafter the investment and maintenance of the escrow account shall be fully consistent with such revised or modified Investment Guidelines. Liquidity shall be maintained as directed by DEP.

(6) **Availability of Escrow Funds**

Subject to paragraph 5, the funds in the escrow account shall be kept readily available for withdrawal.

(7) **Interest and Other Income**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that all interest and other income earned as a result of investment of funds in the escrow account shall be deposited as earned into the escrow account, subject to DEP-approved fees and charges of the Escrow Agent. Such interest and other income shall be subject to the same restrictions applicable to the principal of the escrow account.

(8) **Direction of Investments**

Settling Third-Party Defendants shall have no right to direct the investment of the escrow account funds. Investments shall be directed by the Escrow Agent and DEP, as set forth in this Agreement.

(9) **Account as Non-Asset**

All funds deposited in the escrow account shall not be considered an asset of Settling Third-Party Defendants and shall not be available to any creditor of Settling Third-Party Defendants in the event of the bankruptcy, reorganization, insolvency or receivership, or for any other reason. Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that funds deposited in the escrow account are for the sole benefit of the purposes established in paragraph 1 of this Agreement and may be withdrawn only pursuant to the express provisions of this Agreement.

(10) **Monthly Statement-Financial Institution**

The Escrow Agent hereby agrees to submit monthly statements of the escrow account to the DEP. The statements shall report on all transactions charged and credited to the escrow account and shall include an itemization of all accrued interest and all opening and closing balances of principal and income.

(11) **Disbursement of Funds**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that disbursements from the escrow account shall only be made upon written notice from DEP of the following:

- a. The time period for appeal of the Consent Judgment has expired and no appeal was filed or the issuance of a final order approving or upholding the Consent Judgment by the highest appellate court reviewing the entry of this Consent Judgment. Upon such notice from DEP, the Escrow Agent shall disburse the funds in the escrow account, including interest, by check or checks made payable to the "Treasurer, State of New Jersey" to Plaintiffs. 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.
- b. The Consent Judgment has been overturned or remanded on appeal and the time period for appeal of such ruling has expired. One hundred and twenty (120) days after such notice, the Escrow Agent shall disburse the funds placed into the escrow account by a Settling Third-Party Defendant to the depositing Settling Third-Party Defendant, with interest earned thereon.

- c. A Settling Third-Party Defendant opted-out of the Consent Judgment as provided therein. Within thirty (30) days of such notice, the Escrow Agent shall disburse the funds placed into the escrow account by the opting out Settling Third-Party Defendant to such Settling Third-Party Defendant, with interest earned thereon less ratable share of the Escrow Agent fees and expenses. Payment shall be made in the name of each Settling Third-Party Defendant as set forth on the signature pages to the Consent Judgment.

(12) **Compensation of Escrow Agent**

Notwithstanding the terms of paragraph 11 of this Escrow Agreement, the Escrow Agent shall be entitled to take reasonable compensation for its services in administering the escrow account to be established under this Agreement. Such compensation may be deducted by the Escrow Agent directly from the escrow account from time to time, but in no event more frequently than once a month, unless more frequent deductions are approved in writing by DEP. All such deductions shall be fully documented and shown as a debit to the escrow account by the Escrow Agent under the monthly statements to be submitted to DEP, pursuant to paragraph 10 of this Escrow Agreement. In all cases, the amount or rate of such compensation shall be reasonable, shall not exceed the amount or rate of compensation customarily charged by the Escrow Agent for like services, and shall be subject to the written approval of DEP. Under no event shall the Escrow Agent's compensation exceed the interest earned on the escrow account or reduce the principal in the escrow account. For purposes of this Agreement, and unless and until written approval to modify such compensation is given by DEP, the amount or rate of compensation to be charged by the Escrow Agent hereunder shall be as follows (detailed):

(13) **Termination**

This Escrow Agreement shall terminate upon payment of all funds in the escrow account under Paragraph 11 (a) or (b).

(14) **Notice and Instruction**

All notices and instructions related to this Escrow Agreement shall be in writing and, except monthly bank statements to DEP under paragraph 10, shall be made by certified or registered mail, return receipt requested.

In Witness Whereof, the parties to this Escrow Agreement have executed same on this _____ day of _____, 20__.

By _____
Signature

Print or Type Name

ATTEST:

Title

By _____
Signature

Print or Type Name

(Accredited Financial Institution Name)

By _____
Signature

Print or Type Name

Title

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVESTMENT GUIDELINES

PORTFOLIO OBJECTIVES

Maximize Return, Minimize Risk

GUIDELINES

The Escrow Agent shall use all reasonable efforts to invest in funds at the highest available rates of interest, consistent with the timing of the escrow fund withdrawal requirements, in the following:

- A. Obligations issued or guaranteed by an instrumentality or agency of the United States of America, whether now existing or hereafter organized;*
 - B. Obligations issued or guaranteed by any State of the United States or the District of Columbia;*
 - C. Repurchase agreements (including repurchase agreements of the Escrow Agent) fully secured by obligations of the kind specified in (A) or (B) above, as well as in money market funds and in common funds of the Escrow Agent invested in obligations specified in (A) and (B) above;*
- and*
- D. Interest bearing deposits in any bank or trust company (which may include the escrow agent) which has combined capital surplus and retained earnings of at least \$50,000,000. Any interest payable on said funds shall become part of the escrow account balance.*
 - E. Maximum maturity of individual securities limited to 10 years.*
 - F. The average maturity should be between 3 and 5 years in accordance with the needs specified in the closure/post-closure financial plan.*
 - G. For all county, municipal, and local governments, please refer to N.J.S.A. 40A:5-15.1, which provides specific guidance for the allowable investment of public funds.*

To facilitate these investments the facility shall provide the Escrow Agent and the Chief, Bureau of Transfer Stations and Recycling Facilities, with a schedule of anticipated escrow account withdrawals consistent with the DEP approved closure/post-closure financial plan. The parties understand that said schedule shall be solely for the guidance of the Escrow Agent for investment purposes and shall not be considered as a firm escrow withdrawal schedule.