IN THE MATTER OF CHEMICAL CONTROL SITE 23-63 FRONT STREET ELIZABETH, UNION COUNTY PROGRAM INTEREST NO. G000000610 and CONSTRUCTION AND MARINE EQUIPMENT COMPANY and DENGEL PROPERTIES, LLC	: : : : : : : : : : : : :	SETTLEMENT AGREEMENT

This Agreement is made this _____ day of _____, 2017 by and between Construction and Marine Equipment Company ("CMEQ"), Dengel Properties, LLC ("Dengel"), the New Jersey Department of Environmental Protection ("DEP" or the "Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, the "Parties").

BACKGROUND

1. On September 8, 1983, the Chemical Control Property located at 23-63 Front Street, Elizabeth, New Jersey, that property also being identified as Block 4, Lots 1438, 1438.c and 1438.d on the Tax Map of the City of Elizabeth (the "Property"), was listed on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §§9601 – 9675.

2. The Department has designated the Property, and all other areas to which any hazardous substance discharged there has migrated (the "Site"), as Program Interest No. G000000610.

3. On September 23, 1987, the United States Environmental Protection Agency ("EPA") issued a Superfund Record of Decision (the "ROD"), which set forth "a permanent solution for closure of the Site (the "Remedy"). The Remedy, as identified in the ROD, consisted of the following components:

a. "Treatment of the contaminated soil (approximately 25,000 cubic yards) at the Property using in-situ fixation;

b. Removal of debris remaining from earlier response actions, including drill cuttings, monitoring well development water, items recovered from the Elizabeth River under the initial remedial measure, used disposable equipment, and the decontamination pad;

c. Sealing of the sanitary sewer line under the site where it connects to the South Front Street storm sewer;

d. Repair of the berm that separates the Property from the Elizabeth River; and

e. Collection and analysis of environmental samples, as required, to ensure the effectiveness of the remedy, including an evaluation after five years to assess its protectiveness to public health and the environment."

4. In the ROD, the EPA declared the Remedy is protective of human health and the environment, attains federal and state requirements that are applicable or relevant and appropriate for this action, and is cost-effective."

5. By the letter dated September 18, 1987, the Department concurred with the Remedy.

6. In September 1990, approximately 167 potentially responsible parties (the "EPA Settling PRPs") entered into a consent decree with the EPA whereby the EPA Settling PRPs agreed to implement and finance the Remedy for the Site (the "Consent Decree"). The EPA Settling PRPs also agreed to implement and finance any additional remedial action if the EPA determines it to be "necessary to protect human health or the environment and to meet the requirements of the ROD."

7. Pursuant to Section XIII of the Consent Decree, the EPA Settling PRPs established a financial assurance "to complete the Remedy and to pay all claims that arise in connection with performance of the Remedy.

8. Pursuant to Section VII of the Consent Decree, the EPA Settling PRPs implemented the Remedy. In particular, from August 1993 to April 1994, the EPA Settling PRPs solidified the contaminated soil at the Property using in-situ fixation, as identified in the ROD. Moreover, the EPA Settling PRPs incorporated a slurry wall into the Remedy to further isolate and contain the solidified soils. The slurry wall was constructed around the perimeter of the Property and anchored into a clay layer underlying the Property, thereby cutting off surrounding groundwater from entering and leaving the Property. An eight foot chain-linked fence was also placed around the Property to further restrict unauthorized access.

9. On April 26, 1994, based upon the final inspection of the solidified soils conducted on April 21, 1994, the Department concurred with EPA's determination that the remedial activities were performed in accordance with the design specification approved by the EPA. Thereafter, the EPA issued a certificate of completion of remedial construction.

10. In September 1994, the implementation of the Remedy was completed. Thereafter, the EPA has conducted Five-Year Reviews of the Remedy under CERCLA, all of which concluded that the Remedy is functioning as intended and remains protective of human health and the environment."

11. From 1979 to 1982, DEP and the Administrator incurred over $26 million in cleanup and removal costs within the meaning of N.J.S.A. 58:10-23.11b to address the discharge of hazardous substances at the Site.

12. On February 24, 1981, the Administrator filed a First Priority lien on the Property under the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, in the amount of $18,669,117.18 with the Office of the Register of Deeds of Union County and the Clerk of Middlesex County at Book 3248, Page 980.

13. In November 1998, DEP entered into a settlement agreement with more than 200 potentially responsible parties (the "DEP Settling PRPs") whereby the DEP Settling PRPs agreed to pay DEP $17,400,000.00 in exchange for releasing the DEP Settling PRPs from any and all claims that have been or may be asserted against them under any environmental laws. With the reimbursement previously received from other potentially responsible parties, a total of $21,812,079.77 was reimbursed to DEP for its expenditures in connection with the discharge of hazardous substances at the Site.

14. On March 14, 2003, the Administrator filed a First Priority Lien under the Spill Act with the Clerk of the Superior Court in the amount of $4,665,840.48, as Docketed Judgment No. DJ-65101-03.

15. The City of Elizabeth has issued tax sale certificates corresponding to the unpaid taxes owed on the Property. Dengel has purchased the tax sale certificates from the City of Elizabeth with the intention of foreclosing on the tax liens and acquiring title to the Property by means of foreclosure and/or Sheriff's Sale process, as may be necessary to clear title to the Property.

16. DEP and the Administrator recognize that the Property is a former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant, and, as such, meets the definition of a "Brownfield Site" as defined at N.J.S.A. 58:10B-1.

17. DEP and the Administrator acknowledge that, in this instance, in accordance with N.J.S.A. 58:10-23.11f22(a), Dengel has no obligation to contribute towards natural resource damages - i.e. compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources on or off the Property in connection with the discharge of a hazardous substance at the Property - pursuant to any statutory or civil common law, to any person, or to the State, because Dengel:

(i) acquired the Property after the discharge of the hazardous substance;

(ii) did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L. 1976, c. 141;

(iii) is not in any way responsible for the hazardous substances discharged at or from the Property prior to Dengel's acquisition thereof; and

(iv) has not, by contract, using the term of art "natural resource damages," expressly assumed the liability for the payment of compensation for damage to, or loss of, natural resources, or for the restoration of natural resources, that were injured by a discharge of a hazardous substance at the Property.

18. DEP and the Administrator acknowledge that the re-use of the Property will promote the health and general welfare of the community and environment through the anticipated revitalization of the Property into productive use.

19. The Parties acknowledge that entering into this Agreement is in the public interest, promotes re-use of the Property, and will facilitate the remediation of the Property; and

20. Dengel, CMEQ, and DEP desire to set out their agreement that Dengel and CMEQ will satisfy DEP's unreimbursed cleanup and removal costs for the Site by assuming the following obligations associated with the discharged hazardous substances at the Site, as set forth in Paragraphs 21 and 23, below, in exchange for DEP's release of the First Priority Liens for the Property and contribution protection.

NOW, THEREFORE, IT IS AGREED as follows:

21. Dengel and CMEQ shall undertake the tasks set forth below in accordance with all laws and regulations governing the remediation of contaminated sites, including, but not limited to, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. To that end, and without limitation,

a. Within 30 days after the Effective Date of this Agreement, Dengel shall retain a Licensed Site Remediation Professional ("LSRP") and submit an LSRP retention form to the Department, pursuant to N.J.A.C. 7:26C-2.3(a)2.

b. Within 60 days after Dengel acquires title to the Property, based on Dengel's LSRP's independent professional judgment, Dengel shall file a Deed Notice and establish a Classification Exception Area for the Property, reflecting that the Remedy is protective of the human health and the environment, and submit an application for a Soil Remedial Action Permit ("SRAP") and Groundwater Remedial Action Permit ("GWRAP") in accordance with N.J.A.C. 7:26C

c. After DEP issues the SRAP and GWRAP, Dengel shall comply with all conditions of the SRAP and GWRAP, and based on Dengel's LSRP's independent professional judgment, the LSRP may issue an Entire Site Response Action Outcome for the Property. Notwithstanding any other provision of this Agreement, neither Dengel nor CMEQ shall be responsible for any defect of the Remedy, provided that Dengel or CMEQ shall repair any damage to the cap or the fence.

d. Provide the EPA Five-Year Review Team and DEP with any access to the Property that is required in order for EPA to conduct Five-Year Reviews in accordance with CERCLA.

22. Within 30 days from the Effective Date of this Agreement, the Department shall take appropriate steps to remove the First Priority Lien filed in Book 3248, Page 980 with the Office of the Register of Deeds of Union County and the Clerk of Middlesex County, and the First Priority Lien filed with the Clerk of the Superior Court docketed as DJ-65101-03, including, as necessary, the processing of a warrant of satisfaction and/or a letter of cancellation; provided, however, that Dengel and CMEQ agree that DEP may refile the First Priority Liens referenced in Paragraphs 12 and 14 in the event Dengel fails to submit and prosecute the application for the SRAP and GWRAP pursuant to paragraph 21.b. above. DEP's right to refile the First Priority Liens shall terminate upon the issuance of the SRAP and GWRAP. Notice of all documents related to the removal of the First Priority Liens shall be promptly provided to Dengel and CMEQ.

23. Dengel shall establish Financial Assurance for the repair of any damage to the fence or cap.

CONTRIBUTION PROTECTION

24. This Agreement shall constitute an administrative settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to Dengel and CMEQ from contribution actions.

25. In order for Dengel and CMEQ to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution claims concerning the matters addressed in this Agreement, DEP published notice of this Agreement in the New Jersey Register and published a copy of this Agreement on DEP's website on _____, in accordance with N.J.S.A. 58:10-23.11e2. Such notice included the following information:

i. The caption of this matter;
ii. The name and location of the Property;
iii. The name of the Parties;
iv. A summary of the terms of this Agreement; and
v. That there are 60 days to comment on this Agreement.

26. DEP, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Agreement to all other PRPs of whom DEP had notice as of the date the DEP published

notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 25, above.

27. DEP will execute this Agreement, unless, as a result of the notice of Agreement pursuant to Paragraphs 25 and 26, above, DEP receives information that discloses facts or considerations that indicate to the Department, in its sole discretion, that the Agreement is inappropriate, improper or inadequate.

MISCELLANEOUS

28. This Agreement shall become effective upon execution by the Parties.

29. This Agreement shall be binding upon and inure to the benefit of all corporate successors and assigns of Dengel and CMEQ, so long as the corporate successors and assigns of Dengel and CMEQ are not otherwise responsible for a hazardous substance discharged at the Property, become permittees or co-permittees of any RAP issued in connection with the Site and comply with all applicable requirements for RAP permittees under N.J.A.C. 7:26C, and otherwise comply with the conditions of this Agreement.

30. The Department reserves, and this Agreement is without prejudice to, all rights against Dengel and CMEQ concerning all other matters not addressed in this Agreement.

31. Dengel shall submit written notice to the Department of its acquisition of title to the Property, or failure to do so, within 10 days thereof. This written notice shall be included as an exhibit to this Agreement and thereby become part of this Agreement.

32. If Dengel fails to acquire title to the Property by December 31, 2017, then this Agreement shall terminate in its entirety unless extended by mutual written consent of the Parties.

33. No modification or waiver of this Agreement shall be valid except by written amendment to this Agreement duly executed by the Parties.

34. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement.

35. Each undersigned representative of a party to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement, and to execute and legally bind each party to this Agreement.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Dated: By: _____

Kevin F. Kratina,
Assistant Director
Enforcement & Information Support Element
Site Remediation
and Solid Waste Management Program

Dated: By: _____

Anthony J. Farro, Administrator
New Jersey Spill Compensation Fund

Dated: By: _____

Rich Boornazian, Assistant Commissioner
Natural & Historic Resources

CONSTRUCTION
AND MARINE EQUIPMENT COMPANY

Dated: By: _____
Title: _____

DENGEL PROPERTIES, LLC

Dated: By: _____
Title: _____