



State of New Jersey

Department of Environmental Protection

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

IN THE MATTER OF THE NOBLE :
OIL SITE :
PI NO. 014267 :
AND :
C & M INDUSTRIES, INC. :
Respondent. :

SETTLEMENT AGREEMENT

I. BACKGROUND

A. The New Jersey Department of Environmental Protection ("DEP") and the Administrator of the New Jersey Spill Compensation Fund ("the Administrator") are asserting claims against **C & M Industries, Inc.**, (the "Settling Party") and others, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24.

B. On May 25, 2012, DEP and the Administrator filed a Complaint against the Settling Party and others in the matter captioned, N.J. Department of Environmental Protection, et al. v. N.O.C. Inc., et al., Docket No. BUR-L-001569, in which DEP and the Administrator seek reimbursement of the costs they have incurred to remediate the Noble Oil Company site ("the Site").

C. By entering into this Settlement Agreement, the Settling Party does not admit any liability to DEP and the Administrator arising out of the transactions or occurrences DEP and the Administrator allege caused the contamination at and from the Site.

D. The Noble Oil site consists of approximately 1.6 acres of real property located at 30 Cramer Road, Tabernacle Township, Burlington County ("the Noble Oil property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site").

E. From approximately 1950 to 1992, Noble Oil Company operated a business storing and processing waste oils in underground and above-ground storage tanks at the Noble Oil property.

F. DEP and the Administrator allege that on various occasions between 1950 and 1992, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were not satisfactorily stored or contained at the Noble Oil Property within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were "discharged" within the meaning of N.J.S.A. 58:10-23.11b.

G. As early as 1980, DEP detected evidence of oil, which is a petroleum product and therefore is classified as a hazardous substance pursuant to N.J.S.A. 58:10-23.11b, having

been discharged into the soil at the Noble Oil site. Between 1980 and 1992, DEP conducted a number of inspections and sampling events that revealed high concentrations of total petroleum hydrocarbons (TPHC) in the surface and subsurface soils.

H. The Noble Oil facility was closed by court order on June 19, 1992, and subsequently DEP began efforts to remediate the Site.

I. In 1996, DEP closed 10 underground storage tanks and associated piping, decontaminated and dismantled 15 above-ground storage tanks and 22 tanker trailers. DEP also removed from the Site all the potential sources of contamination, including 500 tons of contaminated soil, 84,450 gallons of liquids and sludges, and 167 drums of waste material.

J. From 1997 to 1999 DEP conducted a more extensive Remedial Investigation at the Site revealing the presence of yet more soil contaminated with TPHC. DEP removed an additional 2,100 cubic yards of soil from the Site.

K. Groundwater sampling revealed low levels of hazardous substances not requiring active remediation but requiring only limited monitoring of selected onsite wells and selected downgradient potable residential wells.

L. DEP conducted an additional groundwater investigation in 2006 that revealed lower levels of hazardous substances than previously discovered at the Site.

M. DEP and the Administrator have incurred, as of June 25, 2010, **\$2,462,255.08** in unreimbursed costs to remediate the Site. Since that date, DEP and the Administrator have continued to costs related to the Site.

N. The costs DEP and the Administrator have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

O. The parties to this Settlement Agreement ("the Parties") recognize that they have negotiated this Settlement Agreement in good faith, that the implementation of this Settlement Agreement will avoid prolonged and complicated litigation among the Parties, and that this Settlement Agreement is fair, reasonable, and in the public interest.

THEREFORE, the Parties hereby **STIPULATE and AGREE**:

II. PARTIES BOUND

1. This Settlement Agreement applies to, and is binding upon, DEP, the Administrator, and the Settling Party.

III. DEFINITIONS

2. Unless otherwise expressly provided, terms used in this Settlement Agreement that are defined in the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act") or in the regulations promulgated under the Spill Act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

"Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that DEP and the Administrator have incurred, or will incur, to remediate the Noble Oil Site, as defined in N.J.S.A. 58:10-23.11b. "Past cleanup and removal costs" shall mean all such costs incurred up to June 25, 2010. "Future cleanup and removal costs" shall mean all costs incurred and to be incurred after June 25, 2010.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an arabic numeral or an upper case letter.

"Party" or "Parties" shall mean DEP, the Administrator and the Settling Party.

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Settlement Agreement.

"Settling Party" shall mean **C & M Industries, Inc.**, and any predecessor, successor, assign, division, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity.

"Site" shall mean the Noble Oil Company property, consisting of approximately 1.6 acres of real property located at 30 Cramer Road, Tabernacle Township, Burlington County, New Jersey, this property being also known and designated as Block 325, Lot 1.03 and 2.02 , on the Tax Map of Tabernacle Township (the "Noble Oil property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which DEP has designated as Site Remediation Program PI No. 014267.

"Spill Act" shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24.

"Spill Fund" shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i.

IV. PARTIES' OBJECTIVES

3. The Parties' objectives in entering into this Settlement Agreement are to protect public health and safety and the environment by the Settling Party agreeing to reimburse DEP and

the Administrator for the Settling Party's share of their Past Cleanup and Removal Costs, in return for DEP and the Administrator agreeing to resolve their claims against the Settling Party concerning the Site as stated in this Settlement Agreement.

V. SETTLING PARTY'S COMMITMENTS

4. Within 30 days of the date of the effective date of this Settlement Agreement, as described in Section XII ("Effective Date"), the Settling Party shall pay DEP and the Spill Fund **\$19,823.23** toward reimbursement of DEP and the Spill Fund's Past Cleanup and Removal Costs.

5. The Settling Party shall pay the amount specified in Paragraph 4 above by certified, cashier's or company check made payable to the "Treasurer, State of New Jersey" and with "Noble Oil Site" referenced on the check. The Settling Party shall mail or otherwise deliver the payment to:

Section Chief
Cost Recovery & Natural Resource Damages Section
N.J. Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093.

VI. DEP & THE ADMINISTRATOR'S COVENANT

6. In consideration of the payment the Settling Party is making pursuant to Paragraph 4, above, and except as otherwise

provided in Paragraph 8 below, DEP and the Administrator covenant not to sue or to take administrative action against the Settling Party for reimbursement of Past Cleanup and Removal Costs and any Future Cleanup and Removal Costs they have incurred and will incur for the Noble Oil Site.

7. The covenant contained in Paragraph 6, above, shall take effect upon DEP and the Administrator receiving the payment the Settling Party is required to make pursuant to Paragraph 4, above, in full, and in the prescribed time and manner.

8. In consideration of the payment the Settling Party is making pursuant to Paragraph 4, above, the Plaintiffs shall, within 30 days of receiving the payment, file with the court a Stipulation of Dismissal With Prejudice dismissing the Complaint against the Settling Party in the N.J. Department of Environmental Protection, et al. v. N.O.C. Inc., et al. matter.

VII. DEP & ADMINISTRATOR'S RESERVATIONS

9. The covenant contained in Paragraph 6, above, does not pertain to any matters other than those expressly stated in this Settlement Agreement. DEP and the Administrator reserve, and this Settlement Agreement is without prejudice to, all rights against the Settling Party concerning all other matters, including the following:

- a. claims based on the Settling Party's failure to comply with Paragraph 4 of this Settlement Agreement;
- b. liability arising from the Settling Party's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance at the Site;
- d. criminal liability.

VIII. SETTLING PARTY'S COVENANTS

10. The Settling Party further covenants not to sue or assert any claim or cause of action against the State of New Jersey ("State"), including any department, agency or instrumentality of the State, concerning the Site. This covenant shall include any direct or indirect claim for reimbursement from the Spill Fund concerning the Site.

11. Nothing in this Settlement Agreement 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.

IX. FINDINGS & ADMISSIONS OF LIABILITY

12. Nothing contained in this Settlement Agreement shall be considered an admission by the Settling Party, or a finding by DEP

and the Administrator, of any wrongdoing or liability on the Settling Party's part for anything DEP and the Administrator have actual knowledge of having occurred at the Site as of the effective date of this Settlement Agreement.

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

13. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Settlement Agreement may have under applicable law.

14. The Settling Party expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that the Settling Party may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Settlement Agreement.

15. When fully executed, this Settlement Agreement will constitute an administratively approved 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 the Settling Party from contribution actions. The Parties agree that the Settling Party is entitled, upon fully satisfying its obligation under this Settlement Agreement, to protection from

contribution actions or claims for matters addressed in this Settlement Agreement.

16. In order for the Settling Party to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Settlement Agreement, DEP published notice of this Settlement Agreement in the New Jersey Register and on DEP's website on [date], 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 Noble Oil Property;
- c. the names of the Settling Parties; and
- d. a summary of the terms of this Agreement.

17. DEP also has, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of this Settlement Agreement to all other potentially responsible parties of whom DEP had notice as of the date of the written notice.

18. At the end of the 30-day comment period required under N.J.S.A. 58:10-23.11e2, DEP and the Administrator will sign this Settlement Agreement unless, as a result of the notice of this Settlement Agreement pursuant to Paragraphs 15 and 16, DEP receives information that discloses facts or considerations that indicate to them, in their sole discretion, that the Settlement Agreement is inappropriate, improper or inadequate.

XI. GENERAL PROVISIONS

19. DEP and the Administrator enter into this Settlement Agreement pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Party by this Settlement Agreement are continuing regulatory obligations pursuant to these police powers.

20. No payment owed or made pursuant to this Settlement Agreement is intended to constitute a debt, damage claim, penalty or other claim that may be limited or discharged in a bankruptcy proceeding.

XII. EFFECTIVE DATE

21. The effective date of this Settlement Agreement shall be the latest date as of which DEP, the Administrator, or the Attorney General or his designee, signs and dates this Settlement Agreement.

XIII. MODIFICATION

22. This Settlement Agreement represents the entire integrated agreement between DEP, the Administrator, and the Settling Party concerning the Noble Oil site, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

XIV. SIGNATORIES/SERVICE

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

24. This Settlement Agreement 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 Settlement Agreement.

25. Each Settling Party 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 Settlement Agreement.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Kevin Kratina
Assistant Director
Division of Site Remediation

Dated: October , 2012

NEW JERSEY SPILL COMPENSATION
FUND

By: _____
Anthony J. Farro, Administrator
New Jersey Spill Compensation
Fund

Dated: October , 2012

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for New Jersey
Department of Environmental
Protection and New Jersey Spill
Compensation Fund

By: _____
Mary Ellen Halloran
Deputy Attorney General

Dated:

SETTLING PARTY SIGNATURE PAGE
(if not represented by an attorney)

[INSERT NAME OF SETTLING PARTY]

Dated:

[NAME OF PERSON SIGNING]