

State of New Jersey  
Department of Environmental Protection  
Division of Enforcement, Technical and Financial Support  
401 East State Street, 6th Floor West  
PO Box 420  
Trenton, New Jersey 08625  
Telephone: (609) 984-2902  
Fax: (609) 777-0756

**IN THE MATTER OF  
REINAUER BROTHERS OIL CO., INC. SITE  
130 ROUTE 17 SOUTH  
MAHWAH TOWNSHIP  
BERGEN COUNTY**

**ADMINISTRATIVE  
CONSENT ORDER**

**and**

**REINAUER BROTHERS OIL CO., INC. and  
JENNY OIL CORPORATION  
PI # 005563 and PI # 022199**

The following ADMINISTRATIVE CONSENT ORDER is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey (the "Department") by N.J.S.A. 13:1D-1 to -19, and by the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and duly delegated to the Director of the Division of Enforcement, Technical and Financial Support within the Site Remediation Program of the Department pursuant to N.J.S.A. 13:1B-4, and pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") pursuant to the Spill Act.

FINDINGS

The Site and UST Systems

1. The Reinauer Brothers Oil Company, Inc. site (sometimes also known as the "Shorco South" site, the "Jenny Truck Stop" site, the "Shorco Truck Stop" site or by similar names) includes (a) the real property and improvements located at 130 Route 17 South, Mahwah Township, Bergen County, New Jersey, shown as Block 129, Lot 1 on the current tax maps of Mahwah Township (the "Site"), and (b) all other properties and areas to which hazardous substances discharged at the Site have emanated, migrated or come to be located (collectively, the "Contaminated Site").

2. The Site includes thereon underground storage tank systems ("USTs") regulated pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35 ("UST Act") and the Underground Storage Tank Rules, N.J.A.C. 7:14B, described herein below.

### The Settling Parties

3. Reinauer Brothers Oil Company, Inc. ("Reinauer Brothers") is a corporation incorporated in the State of New Jersey on December 18, 1973. Its main business address is 15 West Hollow Road, Brewster, New York 10509-1522.

4. Jenny Oil Corporation, aka Jenny Oil Corp. ("Jenny Oil"), is a corporation incorporated in the State of New York on October 16, 1975. The Secretary of State, State of New York, is designated as the agent upon whom process against Jenny Oil may be served; the post office address from within or without the State of New York to which the Secretary of State shall mail a copy of any process served upon such Secretary of State is: Jenny Oil Corp., c/o Fair Fitzgerald Hershaft, 110 Corporate Park Dr., White Plains, NY 10604.

5. Hereinafter Reinauer Brothers and Jenny Oil are sometimes collectively referred to as the "Settling Parties."

### Ownership of the Site and the UST Systems

6. Reinauer Brothers acquired ownership of the Site sometime prior to 1978 and has owned the Site at all times relevant to this Administrative Consent Order until its conveyance of the Site to Bolla Mahwah Realty Corp. in June of 2013.

7. As certified to the Department in an application to register USTs at the Site received by the Department on or about October 9, 1986, Jenny Oil owned six (6) USTs at the Site with a total capacity of 53,000 gallons, as follows: two (2) 12,000 gal. USTs for medium diesel fuel; one (1) 12,000 gal. UST for unleaded gasoline; one (1) 3000 gal. UST for alcohol enriched gasoline; one (1) 12,000 gal. UST for leaded gasoline; and one (1) 2000 gal. UST for kerosene. The Department assigned UST registration # 0055631 to this UST facility.

8. On May 31, 1995, the UST operator certified to the Department that the six (6) USTs owned by Jenny Oil were closed in July 1987.

9. As certified by Reinauer Brothers to the Department on September 24, 1991 in order to register replacement USTs at the Site, Reinauer Brothers owned seven (7) USTs at the Site, installed in 1987, with a total capacity of 56,000 gallons, as follows: two (2) 12,000 gal. USTs for diesel fuel; two (2) 10,000 gal. USTs for unleaded gasoline; one (1) 8000 gal. UST for unleaded gasoline; one (1) 2000 gal. UST for diesel fuel; and one (1) 2000 gal. UST for kerosene. The Department assigned UST Registration # 0221997 to this facility

10. On January 6, 2011, the UST operator certified to the Department that Reinauer also owned a 1000 gal. UST, contents unknown and date taken out of service unknown.

11. As to the foregoing eight (8) USTs owned by Reinauer Brothers:

- a. On May 3, 1999, the 2000 gal. UST for kerosene was closed;
- b. On July 26, 2004, the 2000 gal. UST for diesel fuel was closed;

c. On January 31, 2013, the UST system operator certified to the Department that on June 29, 2010, one (1) 12,000 gal. UST for diesel fuel, one (1) 8000 gal. UST for unleaded gasoline, and one (1) 10,000 gal. UST for unleaded gasoline were taken out of service.

12. On or about June 27, 2013, Bolla Mahwah Realty Corp. acquired ownership of the Site, including the USTs, from Reinauer Brothers.

#### Department Enforcement and Cleanup Cost Recovery Actions

13. On July 9, 1986, the Department issued a Directive pursuant to N.J.S.A. 13:1D-1 to -19 and the Spill Act to Jenny Oil. In the Directive, the Department determined that Jenny Oil was responsible for hazardous substances discharged at the Site and strictly liable, jointly and severally, for all costs of cleanup and removal of the hazardous substances at the Contaminated Site. It directed Jenny Oil to test all fuel storage systems and repair or replace them, as necessary, and to remediate all hazardous substances at the Contaminated Site. It provided that an agreement by Jenny Oil to comply with the Directive must be memorialized in an Administrative Consent Order, and notified Jenny Oil that if it did not perform the required remediation, the Department might perform the cleanup using public funds, increasing Jenny Oil's liability to three times the costs of the publicly-funded cleanup ("treble damages"), and commence suit against Jenny Oil seeking treble damages.

14. Pursuant to an Administrative Consent Order ("ACO") entered on February 15, 1989, Jenny Oil agreed to conduct remediation in accordance with the requirements set forth in that ACO, to pay stipulated penalties in the event of non-compliance with the ACO, and to pay the Department's cleanup oversight costs.

15. In 1990, the Department filed a cost recovery and enforcement suit against Jenny Oil and others (the "First Suit"), NJDEP v. Avedis Caparyan, et al., Superior Court of New Jersey, Bergen County, Docket No. BER-L-2799-90, seeking penalties for violations of the Spill Act and the Water Pollution Control Act and reimbursement of all cleanup and removal costs incurred by the Department, including treble damages pursuant to the Department's Directive.

16. In 1994, the First Enforcement Suit was settled by a March 8, 1994 Stipulation of Settlement pursuant to which Jenny Oil agreed to pay the Department \$197,000 (\$100,000 for penalties, \$97,000 for Department cleanup costs) to settle the Department's cleanup cost claims and penalties ("First Settlement Agreement"). The First Settlement Agreement provided that it did not relieve Jenny Oil from its obligations to remediate hazardous substances at the Contaminated Site or its liability for natural resource damages ("NRDs").

17. Jenny Oil did not comply with its obligations under the First Settlement Agreement and a judgment of the Court was entered against Jenny Oil for \$197,000, docketed on July 21, 1997 under Docket No. J-340758-97.

18. In 1991, the Department filed a second cost recovery and enforcement suit ("Second Suit"), NJDEP v. Jenny Oil, et al., Superior Court of New Jersey, Bergen County, BER-L-16159-91 against Reinauer Brothers, Jenny Oil and others, seeking an order permitting

the Department to take over unfinished remediation of the Contaminated Site, requiring Reinauer Brothers, Jenny Oil and others to pay Department cleanup oversight costs, and requiring that they pay penalties for non-compliance with the ACO, as well as treble damages pursuant to the Directive.

19. In the Second Suit, the Court on October 24, 1997 entered partial summary judgment in favor of the Department holding Reinauer Brothers and Jenny Oil jointly and severally liable for Department's cleanup oversight costs as provided in paragraph 78 of the ACO.

20. In 1998, the Second Suit was settled by a May 4, 1998 Stipulation of Settlement pursuant to which a Trustee in Bankruptcy for A&T Paramus, a company leasing the Site and operating the USTs at the time, agreed to apply to the Department for a Memorandum of Agreement ("MOA") for remediation of the Contaminated Site, and the Department agreed to accept \$125,000 from Reinauer Brothers and Jenny Oil to settle Department cleanup cost claims of \$578,950.57 and the Department's above-docketed judgment for \$197,000 against Jenny Oil in Docket No. BER-L-2699-90 ("Second Settlement Agreement"). In the Second Settlement Agreement, the Department reserved all rights in the event that the settling parties failed to complete remediation of the Contaminated Site, including the right to renew the Department's claims to perform remediation as required by the ACO, the Spill Act, and other statutes or common law.

21. In 2000, County Oil Corporation, a company replacing A&T Paramus as lessee and operator of the USTs at the Site, entered into an MOA with the Department to remediate the Contaminated Site.

22. On April 26 or May 4, 2001, the Department notified Reinauer Brothers, Jenny Oil, County Oil and others that the Department had terminated the MOA with County Oil Corporation for failure to perform the required remediation.

23. In August 2001, the Department notified Reinauer Brothers, Jenny Oil, County Oil and others that the Department was renewing its claims to perform their obligations under the ACO and the Spill Act to remediate discharges at the Contaminated Site, including resumption of groundwater monitoring, implementation of a Department-approved remedial action work plan, and establishment of a \$4.2 million Remediation Funding Source for the remediation.

24. On November 8, 2001, the Department notified Reinauer Brothers, Jenny Oil, County Oil and others of the Department's termination of the ACO and the Department's intent to remediate the Contaminated Site using public funds due to noncompliance with their remediation obligations.

25. In or about 2004, the Department assumed control, operation and maintenance of a trench interception and recovery groundwater treatment system, installed by County Oil in or about 2001, using public funds.

26. On June 23, 2009, the Department issued a Spill Act Directive to Reinauer Brothers, Jenny Oil, County Oil and others requiring them to pay \$190,000 for the costs of operating and maintaining the trench interception and recovery treatment system for three years.

27. Reinauer Brothers, Jenny Oil, County Oil and other respondents named in the Directive failed to comply with the 2009 Directive.

28. On October 18, 2011, the Department wrote to Reinauer Brothers, Jenny Oil, County Oil and others demanding their payment \$1,333,235,34 to reimburse the Department for cleanup and removal cost claims incurred to date, including public-funded cleanup costs and Department cleanup oversight costs. In the letter, the Department notified them that payment “does not waive your obligation pursuant to N.J.S.A. 58:10B-1.3 to complete any outstanding remediation of the Site [including] a requirement to hire a Licensed Site Remediation Professional (“LSRP”) to oversee the remediation of the Site and submit a LSRP Notification of Retention and Dismissal Form.”

29. Reinauer Brothers, Jenny Oil, County Oil and other recipients of the Department’s letter failed to reimburse the Department for the cleanup and removal costs or oversight costs set forth in its letter.

#### Site Acquisition by Bolla Mahwah Realty Corp.

30. On or about June 27, 2013, Bolla Mahwah Realty Corp. acquired ownership of the Site, including the existing USTs, from Reinauer Brothers.

31. Pursuant to a Purchase and Sale Agreement dated June 12, 2013, between Reinauer Brothers and Bolla Mahwah Realty Corp., Bolla Mahwah Realty Group agreed to assume responsibility for remediation of all hazardous substances at the Contaminated Site under the direction of an LSRP, including without limitation, compliance with applicable UST removal and closure requirements, in accordance with environmental laws and the Department’s rules and regulations, as required for an LSRP to issue an entire site unrestricted use Response Action Outcome (“RAO”) for soils and an entire site limited restricted use RAO for ground water, including establishment of any required Remedial Action Permit, Remediation Funding Source and financial assurance associated with remediation of the ground water.

#### Unreimbursed Cleanup and Removal Costs of the Department and the Spill Fund

32. This Site has a long history of unauthorized discharges of hazardous substances not remediated by the Site owners or operators, Reinauer Brothers and Jenny Oil, and unreimbursed cleanup and removal costs incurred by the Department and the New Jersey Spill Compensation Fund (“Spill Fund”) to remediate such discharges and hazardous substances, including publicly-funded cleanup and removal costs and Department oversight costs, for which the Department and the Administrator allege that Reinauer Brothers and Jenny Oil are strictly liable, jointly and severally, under the Spill Act.

33. As of September 26, 2013, the Department and the Spill Fund have incurred unreimbursed cleanup and removal costs as a result of discharges of hazardous substances at the Site totaling \$1,436,274.39, as documented in the Department’s Cost Summary, with Cost Runs, dated February 20, 2015, which Reinauer Brothers and Jenny Oil acknowledge they have received and reviewed.

34. Over the past several months, the Department, the Administrator, Reinauer Brothers and Jenny Oil have engaged in ongoing negotiations to settle the Department's and the Administrator's claims for unreimbursed cleanup and removal costs incurred by the Department and the Spill Fund as a result of hazardous substances discharged at the Site.

35. Pursuant to these settlement discussions, the Department, the Administrator, Reinauer Brothers and Jenny Oil have reached an agreement to enter into the within Administrative Consent Order settling the Department's and the Administrator's aforesaid unreimbursed cleanup and removal cost claims, including publicly-funded cleanup and removal costs and Department oversight costs, on the terms and conditions set forth hereinafter.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

36. In settlement and satisfaction of the Department's and the Administrator's claims against Reinauer Brothers and Jenny Oil for cleanup and removal costs incurred by the Department and the Spill Fund prior to the Effective Date of this Administrative Consent Order, Reinauer Brothers and Jenny Oil, jointly and severally, agree to pay a total amount of one million dollars (\$1,000,000.00), as follows:

a. Reinauer Brothers and Jenny Oil shall pay \$300,00.00 by cashier's or certified check made payable to "Treasurer, State of New Jersey" and remit with the applicable invoice accompanying this Administrative Consent Order to the Division of Revenue at the address stated on said invoice within sixty (60) days after the Effective Date of this Administrative Consent Order;

b. Reinauer Brothers and Jenny Oil shall pay \$350,000.00 on the third anniversary of the Effective Date of this Administrative Consent Order by cashier's or certified check made payable to "Treasurer, State of New Jersey" and remit with the applicable invoice accompanying this Administrative Consent Order to the Division of Revenue at the address stated on said invoice;

c. Reinauer Brothers and Jenny Oil shall pay a sum total of \$350,000.00 in quarterly installment payments, each in the amount of \$17,500.00, by checks made payable to "Treasurer, State of New Jersey" and remit with the applicable invoice accompanying this Administrative Consent Order to the Division of Revenue at the address stated on said invoice, during the five (5) years following the above-referenced due date for Reinauer Brothers' and Jenny Oil's initial payment of \$300,000;

d. Reinauer Brothers and Jenny Oil shall make their foregoing settlement payments strictly in accordance with the following Schedule:

<b>PAYMENT #</b>	<b>AMOUNT DUE</b>	<b>DATE DUE</b>
1	\$300,000.00	60 days after the Effective Date of this document
2	\$17,500.00	150 days after the Effective Date of this document
3	\$17,500.00	240 days after the Effective Date of this document
4	\$17,500.00	330 days after the Effective Date of this document
5	\$17,500.00	1 year and 60 days after the Effective Date of this document
6	\$17,500.00	1 year and 150 days after the Effective Date of this document
7	\$17,500.00	1 year and 240 days after the Effective Date of this document
8	\$17,500.00	1 year and 330 days after the Effective Date of this document
9	\$17,500.00	2 years and 60 days after the Effective Date of this document
10	\$17,500.00	2 years and 150 days after the Effective Date of this document
11	\$17,500.00	2 years and 240 days after the Effective Date of this document
12	\$17,500.00	2 years and 330 days after the Effective Date of this document
13	\$350,000.00	3 years after the Effective Date of this document
14	\$17,500.00	3 years and 60 days after the Effective Date of this document
15	\$17,500.00	3 years and 150 days after the Effective Date of this document
16	\$17,500.00	3 years and 240 days after the Effective Date of this document
17	\$17,500.00	3 years and 330 days after the Effective Date of this document
18	\$17,500.00	4 years and 60 days after the Effective Date of this document
19	\$17,500.00	4 years and 150 days after the Effective Date of this document
20	\$17,500.00	4 years and 240 days after the Effective Date of this document
21	\$17,500.00	4 years and 330 days after the Effective Date of this document
22	\$17,500.00	5 years and 60 days after the Effective Date of this document

37. In the event that Reinauer Brothers and Jenny Oil fail to comply with the settlement payment schedule in paragraph 36 of this Administrative Consent Order:

a. Reinauer Brothers and Jenny Oil, jointly and severally, agree that they shall pay stipulated penalties to the Department in the amount of 10% of the amount of each required payment for each day that Reinauer Brothers or Jenny Oil fails to make each required payment on or before the date it was due (i.e., \$30,000 for each day that they fail to make the initial payment of \$300,000 when due, \$1,750 for each day they fail to make a \$17,500.00 quarterly payment when due, and \$35,000 for each day they fail to make the \$350,000 payment when due). Payment shall be made by cashier's or certified check payable to the "Treasurer, State of New Jersey" remitted to the Division of Revenue at the address stated on the above said invoices.;

b. Reinauer Brothers and Jenny Oil, jointly and severally, agree that if they fail to make a required payment on or before the date that it was due under paragraph 36 of this Administrative Consent Order, the Department may also, in its sole and unreviewable discretion, require that Reinauer Brothers and Jenny Oil pay to the Department the entire outstanding balance of their joint and several payment obligations to the Department under this Administrative Consent Order, with interest calculated for the late payment(s) according to the rate established by R. 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey or three (3%) percent, whichever rate is greater. Such payment shall be due and payable sixty (60) days following their receipt of a written demand of the Department that they pay the entire outstanding balance of their joint and several payment obligations. Payment shall be made by cashier's or certified check payable to the "Treasurer, State of New Jersey" and remitted to the Division of Revenue at the address stated in the above-referenced invoices. The Department's exercise of its discretion herein to require that Reinauer Brothers and Jenny Oil pay the entire outstanding balance of their joint and several payment obligations to the Department shall not relieve the Settling Parties of their joint and several obligations pursuant to this Administrative Consent Order to pay stipulated penalties for each day that Reinauer Brothers and Jenny Oil fail to make each required payment on the date that it was due.;

c. Reinauer Brothers and Jenny Oil agree, jointly and severally, that the Department may also upon written demand, in its sole and unreviewable discretion, require that Reinauer Brothers, upon its receipt of any then remaining mortgage payment drafts submitted by or on behalf of Bolla Mahwah Realty Corp. under the Purchase Money Mortgage between Bolla Mahwah Realty Corp. and Reinauer Brothers dated June 12, 2013 (the "Mortgage"), immediately endorse and make payable each such mortgage payment draft to the "Treasurer, State of New Jersey" and remit such payments to the Division of Revenue at the address stated in the above-referenced invoices. The foregoing obligation of Reinauer Brothers to endorse, make payable and remit mortgage payment drafts of Bolla Mahwah Realty Corp. to the Treasurer, State of New Jersey, shall continue and remain in effect until such time as such payments, singly or in combination with other payments received by the State from Reinauer Brothers pursuant to this Administrative Consent Order, satisfy the Settling Parties' total payment obligations to the State of New Jersey pursuant to this Administrative Consent Order, at which point in time Reinauer Brothers' obligation to endorse and make payable the mortgage payment drafts submitted by or on behalf of Bolla Mahwah Realty Corp. to the Treasurer, State of New Jersey, shall cease. The Department's exercise of its discretion herein to require that Reinauer Brothers endorse and make payable to the Treasurer, State

of New Jersey, the foregoing mortgage payments shall not relieve the Settling Parties of their joint and several obligations pursuant to this Administrative Consent Order to pay stipulated penalties for each day that Reinauer Brothers and Jenny Oil fail to make each required payment on the date that it was due.;

d. Reinauer Brothers and Jenny Oil, jointly and severally, hereby waive any claim or right to an administrative hearing to contest: (i) their agreement and obligation to pay stipulated penalties as provided in subparagraph a. of this paragraph; (ii) the Department's demand that they pay the entire outstanding balance of their payment obligations, with accrued interest, pursuant to subparagraph b. of this paragraph; or (iii) the Department's demand that Reinauer Brothers endorse and make payable to the State mortgage payment drafts pursuant to subparagraph c. of this paragraph.;

e. The Department's discretion to enforce any or all of the foregoing provisions requiring that Reinauer Brothers and Jenny Oil: (i) pay stipulated penalties pursuant to subparagraph a.; (ii) pay the entire outstanding balance of their payment obligations, with accrued interest, pursuant to subparagraph b.; or (iii) endorse and make payable to the State the mortgage payment drafts pursuant to subparagraph c. of this paragraph, shall not affect any other remedies available to the Department in law or equity for Reinauer Brothers' and Jenny Oil's failure to make the required payments when due under paragraph 36 of this Administrative Consent Order.

38. The Department's failure to enforce against the Settling Parties any covenant, condition or sanction for noncompliance contained in this Administrative Consent Order shall not be construed as, or deemed to be, a waiver of the Department's right to do so thereafter.

39. This Administrative Consent Order shall be fully enforceable in the Superior Court of New Jersey as a Final Administrative Order upon the filing of a summary action for compliance pursuant to R. 4:67-1 et seq. and/or the Spill Act. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act. The Department, in its discretion, may also bring a summary action in the Superior Court of New Jersey to collect the penalties stipulated herein as a judgment pursuant to R. 4:70-1 et seq. and/or the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

40. Conditional Covenant Not To Sue. The Department and the Administrator covenant that they shall not file, assert, pursue or make any claims, causes of action, suits and demands against the Settling Parties for Contaminated Site cleanup and removal costs incurred by the Department and the Spill Fund prior to the Effective Date of this Administrative Consent Order or seek to compel the Settling Parties to perform further remediation of the Contaminated Site, provided that this covenant not to sue shall not become legally effective unless and until all of the following conditions are satisfied:

a. Reinauer Brothers and Jenny Oil fulfill their joint and several settlement payment obligations under this Administrative Consent Order;

b. the contaminated soils at the Contaminated Site are remediated to unrestricted use

standards in accordance with all applicable environmental laws, and rules and regulations of the Department, including, but not limited to, the Administrative Rules for the Remediation of Contaminated Sites (“ARRCS”), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation Rules (“Technical Requirements”), N.J.A.C. 7:1E, and an LSRP issues an entire site unrestricted use RAO for soils certifying completion of such remediation;

c. the contaminated ground water at the Contaminated Site is remediated to unrestricted use standards, or limited restricted use standards, in accordance with all applicable environmental laws and rules and regulations of the Department, and an LSRP issues an entire site unrestricted use RAO or an entire site limited restricted use RAO for ground water certifying completion of such remediation;

d. in the event that an entire site limited restricted use RAO for groundwater is issued, the person responsible for remediating the Contaminated Site obtains a Remedial Action Permit (“RAP”) for the operation, maintenance and monitoring of the Classification Exception Area (“CEA”) and any other institutional controls required by the Department for remediation of the ground water; and

e. more than three (3) years have passed after the date that the LSRP has filed the last of the aforementioned RAOs with the Department and the Department has not audited the RAO in that time frame, provided that if the Department has conducted and completed an audit prior to said three (3) year period and the RAO is determined to be satisfactory, this last condition shall be deemed satisfied as of the date the audit is complete.

It is expressly acknowledged, understood and agreed by the Settling Parties that this is a conditional covenant not to sue by the Department and the Administrator, which is conditioned upon remediation of the entire Site as set forth above; it shall not become legally effective until such remediation has been completed as set forth above, provided, however, that the Settling Parties shall be credited with all settlement payments made, and if the Settling Parties make their settlement payments in accordance with the above schedule, their settlement payments shall be deemed in full satisfaction of any obligation to pay the Department’s cleanup and removal costs incurred prior to the Effective Date. The conditional covenant not to sue contained herein does not pertain to any matters other than those expressly stated.

41. The Department and the Administrator reserve, and this Administrative Consent Order is without prejudice to, all rights and claims against the Settling Parties concerning all other matters, including the following:

a. Claims based on the Settling Parties’ failure to satisfy any provision, term or condition of this Administrative Consent Order;

b. Liability for remediation of the entire Contaminated Site in accordance with environmental laws and the Department’s rules and regulations, if the conditional Covenant Not To Sue in the preceding paragraph does not become legally effective;

c. Liability for the identification and restoration of natural resources injured or damaged as a result of discharges of hazardous substances at the Site, or monetary compensation for injury to, or loss of, natural resources, caused by discharges of hazardous substances at the Site;

d. Liability for any claim filed with or against the Spill Fund concerning the Contaminated Site;

e. Liability for any past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside of the Site;

f. Liability for failure to comply in the future with federal or state laws or regulations; or

g. Criminal liability.

42. Nothing in this Administrative Consent Order shall be construed as precluding the Department and the Administrator from taking whatever action they deem necessary or appropriate to enforce the environmental laws of the State of New Jersey.

43. Nothing in this Administrative Consent Order shall restrict the ability of the Department and the Administrator to raise or make the above findings of fact in any other proceeding.

44. Nothing in this Administrative Consent Order shall be deemed an admission of any fault, fact or liability by the Settling Parties.

45. In the event that the Covenant Not To Sue in paragraph 40 of this Administrative Consent Order becomes legally effective, this Administrative Consent Order 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) resolving the liability of the Settling Parties to the Department and the Spill Fund for the purpose of protecting the Settling Parties against contribution actions or claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §§ 9601 et seq., the Spill Act, the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53-1 et seq., the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 to -5.8, or any other statute, regulation or common law principles, relating to cleanup and removal costs incurred by the Department and the Spill Fund prior to the Effective Date as a result of discharges of hazardous substances at the Site. The Settling Parties and Department agree that when the above Covenant Not To Sue becomes legally effective, the Settling Parties are entitled to protection pursuant to N.J.S.A. 58:10-23.11f.a(2)(b) and 42 U.S.C.A. § 9613(f)(2) against contribution actions or claims pursuant to CERCLA, the Spill Act, the Joint Tortfeasors Contribution Law, the Comparative Negligence Act, or any other statute, regulation or common law principles, relating to cleanup and removal costs incurred by the Department and the Spill Fund prior to the Effective Date as a result of discharges of hazardous substances at the Site.

46. In accordance with N.J.S.A. 58:10-23.11e2, the Department on [DATE TO BE INSERTED BEFORE EXECUTION OF ACO] published a copy of this Administrative Consent Order on the Department's website, published notice of this Administrative Consent Order in the

New Jersey Register, and provided written notice to other potentially responsible parties in this case of which the Department had notice at the time of such publication. Such notice included the following information:

- a. the caption of this case;
- b. the names of the Settling Parties;
- c. the location on which hazardous substance discharges occurred;
- d. a summary of the terms of this Administrative Consent Order, including a summary of any monetary payments made or to be made; and
- e. notice that a copy of the draft Administrative Consent Order is available on the Department's website.

47. As a result of such notice, the Department did not receive public comments disclosing facts or circumstances that it determined would render the execution of this Administrative Consent Order improper, unreasonable or contrary to the public interest, and the Department has determined to execute this Administrative Consent Order as reasonable, appropriate and in the public interest.

48. In any subsequent administrative or judicial proceeding or litigation initiated by the Department or the Administrator for injunctive relief, recovery of costs, damages or other appropriate relief concerning the Contaminated Site, the Settling Parties (subject to all other defenses which are reserved) shall not assert, and may not maintain, any defense, avoidance 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 the Department or Administrator raise in the subsequent proceeding were or should have been brought in any prior judicial or administrative proceeding or litigation concerning the Contaminated Site; provided, however, that nothing in this paragraph shall affect the enforceability of this Administrative Consent Order.

49. It is expressly acknowledged, understood and agreed by the Settling Parties that their joint and several obligations and liability for penalties and other potential sanctions under to this Administrative Consent Order are imposed pursuant to the police and regulatory powers of the State of New Jersey for the enforcement of law, and for the protection of public health, safety, welfare and the environment. No obligations, penalties or other sanctions imposed by this Administrative Consent Order are intended to constitute a debt, claim or civil action that can be stayed, limited, discharged or barred in a bankruptcy proceeding or corporate dissolution proceeding.

50. Reinauer Brothers and Jenny Oil each represent and warrant that it has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (c) filed for corporate dissolution; (d) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets; or (e) suffered the attachment or judicial seizure of all, or substantially all, of its assets. In the event that either of the Settling Parties files a voluntary

petition in bankruptcy or an involuntary petition in bankruptcy is filed by its creditors, or either of the Settling Parties files for corporate dissolution, or a receiver is appointed to take possession of all, or substantially all, of its assets, such Settling Party agrees that it will notify the Department in writing within thirty (30) days of its knowledge of the applicable filing or event.

51. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.

52. The Settling Parties consent to the entry of this Administrative Consent Order and waive their right to a hearing concerning the terms hereof pursuant to N.J.S.A. 52:14B-1 et seq.

53. The Settling Parties agree not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except as to interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce the provisions of this Administrative Consent Order.

54. This Administrative Consent Order shall be binding on the Settling Parties and their officers, managers, employees, agents, successors, assigns, tenants and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

55. This Administrative Consent Order shall become legally effective upon its execution by each of the Settling Parties and the Department (the "Effective Date").

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

DATE: \_\_\_\_\_

By: \_\_\_\_\_

Anthony Farro, Director  
Division of Enforcement, Technical and Financial  
Support and Assignment Element

NEW JERSEY SPILL COMPENSATION FUND

DATE: \_\_\_\_\_

By: \_\_\_\_\_

Anthony Farro, Administrator

REINAUER BROTHERS OIL COMPANY, INC.

DATE: \_\_\_\_\_

By: \_\_\_\_\_

Richard V. Kennon  
President

JENNY OIL CORPORATION

DATE: \_\_\_\_\_

By: \_\_\_\_\_

Richard V. Kennon  
President