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	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - BURLINGTON COUNTY DOCKET NO. BUR-L-1569-12
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and the ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, v. N.O.C. ENTERPRISES, INC., et al., Defendants.	<u>Civil Action</u> CONSENT JUDGMENT

This matter was opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, A. Paul Stofa, Deputy Attorney General appearing, attorney for plaintiffs New Jersey Department of Environmental Protection ("NJDEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (together with NJDEP, "the Plaintiffs"), and Starkey, Kelly, Kenneally, Cunningham & Turnbach, Dina R. Khajezadeh, Esq. and Charles E. Starkey, Esq. appearing, as attorneys for defendant Tonk's Waste Oil Service, LLC ("the Settling Defendant"); and the Parties having amicably resolved their dispute before trial:

I. BACKGROUND

1. The Plaintiffs initiated this action on May 25, 2012, by filing a complaint (hereinafter, "Complaint") against the Settling Defendant, amongst others, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 ("the Spill Act").

2. Plaintiffs, in their Complaint, seek reimbursement of the costs they have incurred, and will incur, to remediate the Noble Oil Company site located in Tabernacle Township, Burlington County, New Jersey, as well as injunctive and other relief.

3. The Settling Defendant has filed a responsive pleading to the Plaintiffs' complaint and denies all liability with respect to this matter.

4. By entering into this Consent Judgment, the Settling Defendant does not admit any liability arising from the transactions or occurrences the Plaintiffs allege in the complaint filed in this action.

5. The Plaintiffs allege, and the Settling Defendant denies, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" within the meaning of N.J.S.A. 58:10-23.11b. at the Noble Oil Property.

6. The Plaintiffs further allege, and the Settling Defendant denies, that "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).

7. As to the Settling Defendant and the subsequent paragraphs 8 through 32 of this Consent Judgment, the "BACKGROUND" findings noted by the Plaintiffs are to be characterized as allegations.

8. From the early 1950's until June, 1992, a waste oil transfer, storage and treatment facility was operated at the Noble Oil Property by N.O.C. Enterprises, Inc. (hereinafter referred to as "N.O.C."), trading as Noble Oil Company by and under the control of members of the Grungo family under the name of Noble Oil

Company. The facility stored and processed waste crankcase oils, diesel lubricating oil and other waste oils.

9. At the Noble Oil Property, waste oil from various sources was brought to and stored in ten underground storage tanks, ("USTs"), fifteen above-ground storage tanks ("ASTs") and assorted tanker trailers. The waste oil was recycled by N.O.C. and sold as fuel.

10. From 1980 to 1991, NJDEP conducted numerous inspections and issued numerous Notices of Violation against Defendant N.O.C., concerning improper facility operations involving spills of waste oil at the Noble Oil Property.

11. In September 1980, NJDEP took soil samples at the Noble Oil Property which revealed the presence of in-ground oil seepages.

12. A hazardous waste investigation conducted by NJDEP revealed an oil spill near a tanker truck on the Noble Oil Property. In November 1987, another oil spill was discovered to have occurred on the Noble Oil Property at a different location.

13. During an inspection in November 1989, a NJDEP inspector observed waste oil being spilled directly on the soil from a tanker truck unloading at the Noble Oil Property.

14. In December 1989, NJDEP inspected the Site and collected nine soil samples, which revealed the presence of petroleum

hydrocarbons ("PHCs"), volatile organics, and PCBs above NJDEP action levels.

15. In 1990, NJDEP installed six groundwater monitoring wells at the Noble Oil Property. Analysis of initial samples from these wells showed the presence of benzene; however, subsequent sample analyses did not show the presence of benzene.

16. Potable well samples were taken in 1989 and 1992. The sample analyses did not indicate the presence of hazardous substances that could be attributed to discharges at the Noble Oil Property.

17. On November 8, 1991, NJDEP issued a Spill Act directive ("Directive") to defendants N.O.C., Intercontinental Investment Company, Inc., and Christopher R. Grungo (collectively, "the N.O.C. Defendants") pursuant to N.J.S.A. 58:10-23.11f.a., directing those parties to perform the remedial investigation of the contamination at the Noble Oil Property and to address all sources of such contamination. In the alternative, the N.O.C. Defendants were directed to pay NJDEP the estimated cost to conduct these activities.

18. On December 6, 1991, the N.O.C. Defendants informed NJDEP that they would comply with the Directive by performing the remedial investigation. However, the N.O.C. Defendants never

undertook the required actions, nor did they pay NJDEP the sum cited in the Directive.

19. In 1992, NJDEP collected and analyzed surface and subsurface soil samples, revealing elevated levels of PHCs at the Noble Oil Property.

20. On June 19, 1992, in response to enforcement action by NJDEP, the Superior Court in Burlington County issued an Order to close the Noble Oil facility.

21. In 1996, NJDEP conducted an Interim Remedial Action ("IRA") at the Noble Oil Property that consisted of removing ten USTs and associated piping, decontamination and recycling of 15 ASTs and 22 tanker trailers.

22. As part of the IRA, NJDEP also removed and disposed of 500 tons of contaminated soil, 16 tons of tires and debris, 84,450 gallons of liquid/sludge and 167 drums of waste materials.

23. In 1997, NJDEP discovered Site-related contamination on an adjacent property, which led to the removal of 2,000 cubic yards of contaminated soil.

24. From September 1997 through June 1999, NJDEP performed a Remedial Investigation (hereinafter referred to as the "RI") of the Noble Oil Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C.

7:26E, during which NJDEP investigated the nature and extent of the contamination.

25. Sampling results from the RI revealed the presence of various hazardous substances, primarily petroleum hydrocarbons and PCBs, in the soil at the Noble Oil Site, with sporadic instances of low levels of volatile organic compounds, chlorinated hydrocarbons and methyl tertiary-butyl ether ("MTBE") in on-site groundwater monitoring wells.

26. As part of the RI, the soil contamination, consisting primarily of petroleum hydrocarbons and PCBs, was delineated and approximately 2,100 cubic yards of contaminated soil was excavated and removed from the Property. No exceedances of any soil cleanup criteria were found in post-excavation soil samples.

27. In addition, NJDEP sampled ground water in the vicinity of the Noble Oil Property and found sporadic instances of low levels of volatile organic compounds, chlorinated hydrocarbons and MTBE in on-site monitoring wells.

28. NJDEP also sampled potable wells and found no exceedances of hazardous substances beyond drinking water standards.

29. The Remedial Actions chosen for the Noble Oil Property were excavation and disposal of contaminated soil and limited monitoring of selected on-site wells and selected downgradient

potable residential wells as well as installation of an additional deep groundwater monitoring well.

30. The soil excavation was completed in 2003. The additional deep groundwater monitoring well was installed in 2004.

31. In January and April of 2005, NJDEP conducted sampling of selected groundwater monitoring wells and nearby residential wells. The results showed no detection for volatile organic compounds and petroleum hydrocarbons.

32. On May 27, 2009, NJDEP sealed the groundwater monitoring wells on the Property.

33. NJDEP alleges that it has incurred and may continue to incur cleanup and removal costs as a result of the discharge of hazardous substances at the Noble Oil Site.

34. Plaintiff Administrator alleges that he has in the past or may in the future certify, for payment, valid claims made against the Spill Fund concerning the Noble Oil Site, and that plaintiffs NJDEP and Administrator have in the past or may in the future approve, other appropriations for the Noble Oil site.

35. The costs and damages the Plaintiffs have incurred, and may continue to incur, for the Noble Oil Site are alleged to be "Cleanup and Removal Costs" pursuant to N.J.S.A. 58:10-23.11b., which the Settling Defendant denies. Plaintiffs further allege,

and the Settling Defendant denies, that the costs and damages Plaintiffs have incurred, and may continue to incur, for the Noble Oil Site are also recoverable within the meaning of N.J.S.A. 58:10-23.11(g)(c)(1).

36. The Parties to this Consent Judgment recognize, and this Court by entering this Consent Judgment finds, that the Parties to this Consent Judgment have negotiated this Consent Judgment in good faith; that the implementation of this Consent Judgment will allow the parties to this Consent Judgment to avoid continued, prolonged and complicated litigation; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this consent judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

37. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

38. 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 jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

39. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendant.

IV. DEFINITIONS

40. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, or in the regulations promulgated under this act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"Claim" shall mean any and all actual, potential, assigned, threatened or alleged past, present, or future claims, actions, counts, cross claims, counterclaims, rights, obligations, liabilities, duties, debts, demands, lawsuits, damages of any kind, administrative proceedings, statutory or regulatory obligations, arbitrations, mediations, causes of action, orders or directives, penalties or assessments, and any other assertion of responsibility or liability of any kind, whether legal or equitable, and whether currently known or unknown, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, foreseen or unforeseen, and whether sounding in tort, contract,

equity, strict liability, or any other statutory, regulatory, administrative or common law cause of action of any sort, brought or those that could have been brought by any person or entity, in connection with, arising from, or in any way related to this matter, and/or the Site, as that term is defined herein.

"Consent Judgment" shall mean this Consent Judgment.

"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 Consent Judgment, 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.

"Effective Date" shall mean the date this Consent Judgment is entered by the Court.

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that the Plaintiffs will incur after the Effective Date of this Consent Judgment, to remediate the Noble Oil Site.

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

"Noble Oil Property" shall mean the Noble Oil property, consisting of approximately one and a half 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, on the Tax Map of Tabernacle Township.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.

"Party" or "Parties" shall mean plaintiff NJDEP, plaintiff Administrator, and the Settling Defendant.

"Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the Plaintiffs incurred on or before the Effective Date of this Consent Judgment, to remediate the Noble Oil Site.

"Plaintiffs" shall mean the New Jersey Department of Environmental Protection (heretofore and hereinafter referred to as the "NJDEP"), and the Administrator of the New Jersey Spill Compensation Fund (heretofore and hereinafter referred to as the "Administrator"), and any successor department, agency or official.

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

"Settling Defendant" shall mean defendant Tonk's Waste Oil Service, LLC. Settling Defendant shall also include its

officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, shareholders, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity ("Related Entity"), but only to the extent that the alleged liability of any Related Entity for remediating the Noble Oil Site is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Noble Oil Site arose separately and apart of its status and capacity as a Related Entity of any Settling Defendant.

"Site" or "Noble Oil Site" shall mean the Noble Oil Property, and any and all other locations where any hazardous substance that was discharged at the Noble Oil Property has come to be located, which plaintiff NJDEP has designated as Site Remediation Program Interest No. 014267.

V. PARTIES' OBJECTIVES

41. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by the Settling Defendant agreeing to participate in a reimbursement to the Plaintiffs for their Past Cleanup and Removal Costs, in return for the Plaintiffs agreeing to forever resolve all of their claims against the Settling Defendant concerning the

Site as stated in the Complaint and this Consent Judgment, including any Past and Future Cleanup and Removal Costs and any Claims paid or that may be paid by the Administrator for the Noble Oil Site.

VI. SETTLING DEFENDANT'S COMMITMENTS

42. Within 60 days of the Effective Date of this Consent Judgment, the Settling Defendant shall pay the Plaintiffs \$50,000.00 in reimbursement of the Plaintiffs' Past Cleanup and Removal Costs. Should the Settling Defendant be unable to make full payment within 60 days, the Settling Defendant agrees to pay \$25,000.00 within 60 days, an additional \$12,500.00 within 10 months from the first payment, an additional \$12,500.00 by the first anniversary date of the second payment and a final payment in the amount of \$12,500.00 by the second anniversary date of the second payment, for a total payment of \$62,500.00 within three years of the entry of this Consent Judgment.

43. The Settling Defendant shall pay the amount specified in Paragraph 42 above by certified check made payable to the "Treasurer, State of New Jersey." The Settling Defendant shall mail or otherwise deliver the payment and payment invoice to the Section Chief, Environmental Enforcement 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. No payment invoice will be issued by the NJDEP to the Settling Defendant.

VII. PLAINTIFFS' COVENANTS

44. In consideration of the payment the Settling Defendant is making pursuant to Paragraph 42 above, and except as otherwise provided in Paragraphs 49 and 50 below, the Plaintiffs covenant not to further sue or to take administrative action against the Settling Defendant for reimbursement of the Past Cleanup and Removal Costs, Future Cleanup and Removal Costs, and/or past or future Claims by the Plaintiffs concerning the Noble Oil Site, including any direct or indirect Claim for reimbursement from the New Jersey Spill Compensation Fund ("Spill Fund") concerning the Site, and any direct or indirect Claims for relief against any of the Settling Defendants pursuant to the Spill Act or common law, including, but not limited to, any Claims for relief asserted or which could have been asserted by the Plaintiffs in the within action.

45. In further consideration of the payment the Settling Defendant is making pursuant to Paragraph 42 above, the Plaintiffs shall promptly dismiss, with prejudice, the Complaint against the Settling Defendant, without further application to the Court.

46. The covenant contained in Paragraph 44 above shall take effect upon the Plaintiffs' receipt of payment by the Settling Defendant pursuant to Paragraph 42 above, in full, and in the prescribed time and manner.

47. The covenant contained in Paragraph 44 above extends only to the Settling Defendant, and not to any other person.

VIII. PLAINTIFFS' RESERVATIONS

48. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Site.

49. The covenant contained in Paragraph 44 above does not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendant concerning all other matters, including the following:

a. claims based on the Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;

b. liability arising from the Settling Defendant's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance alleged within the State of New Jersey, but for the Noble Oil Site;

c. liability for any future discharge or future unsatisfactory storage or future containment of any hazardous substance by the Settling Defendant at the Noble Oil Property, other than as ordered or approved by plaintiff DEP;

d. criminal liability;

e. liability for any violation by the Settling Defendant of federal or state law that occurs at the Noble Oil Site after the date of the entry of this Consent Judgment.

50. The Department further reserves, and this Consent Judgment is without prejudice to, all rights against third parties with respect to liability for costs, injunctive relief, and damages related to MTBE contamination, and this Consent Judgment in no way limits any potential liability of third parties for any and all costs, injunctive relief, and damages available to the Department being sought in the United States District Court for the District of New Jersey, in the case captioned N.J.D.E.P., et al. v. Amerada Hess Corp., et al., C.A. No. 3:07-5284, and now currently pending in the United States District Court for the Southern District of New York, captioned as In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, MDL No. 1358.

IX. SETTLING DEFENDANT'S COVENANTS

51. The Settling Defendant covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendant, in writing, that they no longer support entry of the Consent Judgment.

52. The Settling Defendant further covenants, subject to Paragraph 54 below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site. This covenant shall preclude the Settling Defendant from making any claims against NJDEP and/or the Administrator for any of the following:

a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Site; and

b. any claim or cause of action concerning the remediation of the Site, including plaintiff NJDEP's selection, performance or oversight of the remediation, or plaintiff DEP's approval of the plans for the remediation.

53. The Settling Defendant's covenants not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 52 above do not apply where the Plaintiffs sue or take

administrative action against the Settling Defendant pursuant to Paragraph 49 above.

X. SETTLING DEFENDANT'S RESERVATIONS

54. The Settling Defendant reserves, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 through -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 through 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Site, including plaintiff DEP's selection and performance of the remediation. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the

Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

55. 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.

XI. NO FINDINGS OR ADMISSIONS OF LIABILITY

56. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendant, or a finding by the Plaintiffs or this Court, of any wrongdoing or liability on the Settling Defendant's part for anything the Plaintiffs have actual knowledge of having occurred at the Site as of the Effective Date of this Consent Judgment. Neither this Consent Judgment nor the fact that it has been signed may be used for any purpose unrelated to the Site other than the enforcement of this Consent Judgment or its protections, or for the interpretation of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

57. 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

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

59. When entered, this Consent Judgment will constitute a judicially 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 Defendant from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendant is entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or Claims for matters addressed in this Consent Judgment.

60. In order for the Settling Defendant to obtain protection under N.J.S.A. 58:10-23.11.f.a.(2)(b) from contribution Claims concerning the matters addressed in this Consent Judgment the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on plaintiff NJDEP's website on [insert 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 name of the Settling Defendant; and
- d. a summary of the terms of this Consent Judgment.

61. The 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 the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 60 above.

62. The Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 76 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraph 60 above, the 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.

63. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs pursuant to paragraph 49 above for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Site, the Settling Defendant shall not assert, and may not 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 the Plaintiffs raise 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.

XIII. GENERAL PROVISIONS

64. The Plaintiffs enter into this Consent Judgment 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 Defendant by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XIV. ACCESS TO INFORMATION

65. Following entry of this Consent Judgment, but subject to Paragraph 66 thereof, upon receipt of a written request by one or more of the Plaintiffs, the Settling Defendant shall submit or make available to the Plaintiffs all information the Settling Defendant has concerning the Site, including technical records and contractual documents.

66. The Settling Defendant may assert a claim of confidentiality or privilege for any information submitted to the Plaintiffs pursuant to this Consent Judgment. The Settling Defendant, however, agrees not to assert any privilege or

confidentiality claim concerning data related to Site conditions, sampling, or monitoring that may be in their possession and control.

XV. RETENTION OF RECORDS

67. The Settling Defendant shall preserve during the pendency of this Consent Judgment and for a minimum of seven years after its Effective Date, a single copy of all data and non-privileged documents, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

68. After the seven-year period specified in Paragraph 67 above, the Settling Defendant may request of plaintiff NJDEP, in writing, that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from plaintiff DEP, the Settling Defendant may discard only those documents the Plaintiffs do not require the Settling Defendant to preserve for a longer period.

XVI. NOTICES AND SUBMISSIONS

69. 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 NJDEP & Administrator:

Section Chief
Environmental Enforcement Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
(609) 633-8713

As to Settling Defendant:

Dina R. Khajezadeh, Esq.
Starkey, Kelly, Kenneally, Cunningham & Turnbach
1593 Route 88 West
Brick, New Jersey 08724

and

Cynthia Tonkovich
1210 Cox Cro Road
Toms River, New Jersey 08755.

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

71. The Settling Defendant shall not construe any informal advice, guidance, suggestions, or comments by the Plaintiffs, or by persons acting for them, as relieving the Settling Defendant of its obligation to obtain written approvals or modifications as required by this Consent Judgment.

XVII. EFFECTIVE DATE

72. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XVIII. RETENTION OF JURISDICTION

73. 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 of this Consent Judgment, or to effectuate or enforce compliance with its terms.

XX. MODIFICATION

74. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XXI. ENTRY OF THIS CONSENT JUDGMENT

75. The Settling Defendant consents to the entry of this Consent Judgment without further notice.

76. Upon conclusion of the public comment period specified in Paragraph 60 above, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

77. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

78. Entry of this Consent Judgment is conditioned upon issuance by the Court of a Bar Order as to Contribution and Other Claims ("Bar Order") submitted to the Court on the same date as this Consent Judgment, under which the Court shall determine that all claims against the Settling Defendants brought by, or to be brought by, or available to any person in this Action or any other action related to the Site, are hereby barred, permanently enjoined, dismissed with prejudice, satisfied, and are otherwise unenforceable, except for those Claims of the Plaintiffs subject to the limitations set forth in Paragraphs 49 and 50 above.

XXII. SIGNATORIES/SERVICE

79. 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.

80. 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.

81. Each Settling 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 Defendant agrees 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 day of , 2014.

Hon. John E. Harrington, J.S.C.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:

Kevin F. Kratina, Assistant
Director, Enforcement and Assignment
Element, Site Remediation Program

Dated:

NEW JERSEY SPILL COMPENSATION FUND

By:

Anthony Farro, Administrator
New Jersey Spill Compensation Fund

Dated:

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

By:

A. Paul Stofa
Deputy Attorney General

Dated:

STARKEY, KELLY, KENNEALLY,
CUNNINGHAM & TURNBACH
Attorneys for defendant Tonk's Waste
Oil Service, LLC

By: _____
Dina R. Khajezadeh, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Tonk's Waste Oil
Service, LLC

Name: Cynthia Tonkovich

Title: Managing Partner

Address: 1210 Cox Cro Road
Toms River, New Jersey 08755