

Program Interest Number #G000004410

IN THE MATTER OF THE	:	
WILLIAM J. HURLEY	:	
INDUSTRIAL COMPLEX	:	ADMINISTRATIVE CONSENT
AND	:	ORDER
HURLEY FELDS 1, LLC	:	

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through -19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through -91, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Remediation Support, Oversight Resources Allocation Element, pursuant to N.J.S.A. 13:1B-4.

### **FINDINGS**

1. The William Hurley Industrial Complex is located at 1 Central Avenue, Farmingdale, also known as Block 49, Lots 30, 31, 44, 45, 45.01, 46, 47, 48, 49 and 50; and Block 221, Lot 4 on the tax maps of Howell Township, Monmouth County (hereinafter "the Site").
2. Hurley Felds 1, LLC, is a New Jersey limited liability corporation whose principal offices are located at 410 9<sup>th</sup> Street, Lakewood, New Jersey.
3. Pursuant to the Bankruptcy Court Order dated February 25, 2005, the property was auctioned on February 14, 2006. The Bankruptcy Order required the successful bidder at the auction to enter into an Administrative Consent Order with the Department in order to provide for the remediation of contamination at the Property ("Property" and "Site" are interchangeable for the purposes of this ACO).
4. On February 14, 2006, Joel Hoffman was the successful bidder at the bankruptcy auction. Joel Hoffman assigned some or all of his interest in title to the Property to Hurley Felds 1, LLC ("Hurley Felds 1"). Hurley Felds 1 is entering into this Administrative Consent Order with the Department in the place and stead of Joel Hoffman in order to provide for the remediation of contamination at the Property, regardless of any assignments of interest in title to the Property.
5. By entering this Administrative Consent Order, Hurley Felds 1 neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives

any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order. The Department may, in conducting its oversight of the remediation, issue "No Further Action" (NFA) determinations or equivalent for any area of concern which comprises lots or tax-parcels within or adjoining the site when contaminated soil at such lots or parcels, and/or any other contaminated media associated with such lots or parcels, has been remediated to the Department's applicable standards. However, the issuance of NFA determinations or the like for any lot or parcel within or adjoining the site shall not relieve Hurley Felds 1 of its remaining obligations under this ACO and the NFA determinations shall be made based upon areas of concern, not lots or parcels specifically.

6. The scope of the investigation and remediation required by this Administrative Consent Order will include all contaminants at the above referenced Site, and all contaminants, which are emanating from or which have emanated from the Site.

## **ORDER**

### **I. Reimbursement of Past Costs**

7. Hurley Felds agrees to pay the Department **\$816,317.15** as reimbursement of past costs in connection with all of the Department's outstanding past costs related to its oversight of remedial activities at the Site, including but not limited to: from May 4, 2001 through December 23, 2005, the investigation of, and response to the contamination that is at and emanating from the Site. The Department will accept this amount to satisfy the total outstanding past costs of \$1,090,892.40 which have accrued through May 11, 2006. Hurley Felds agrees to reimburse the Department pursuant to the following payment plan:

- Within thirty (30) calendar days after the effective date of this ACO, Hurley Felds shall pay the Department \$408,158.59.
- Beginning six (6) months thereafter and continuing every six months for two years, Hurley Felds shall pay the Department \$102,039.64.

Hurley Felds shall make payment of the above amount by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A.

### **II. Remedial Investigation Requirements**

8. Within sixty (60) calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, Respondents agree to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E. Respondents agree to include in the RI Work Plan a baseline

ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

9. Within sixty (60) calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, Respondents agree to modify the RI Work Plan to conform to the Department's comments and agree to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

10. Upon receipt of the Department's written final approval of the RI Work Plan, Respondents agree to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

11. Respondents agree to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

12. If upon review of the RI Report the Department determines that additional remedial investigation is required, Respondents agree to conduct additional remedial investigation as required by the Department including submission of another RI Workplan and schedule, and submit another RI Report.

13. Within sixty (60) calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, Respondents agree to modify the RI Report to conform to the Department's comments and agree to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

### **III. Remedial Action**

14. Within sixty (60) calendar days after receipt of the Department's written approval of the RI Report, Hurley Felds 1 agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

15. Within sixty (60) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, Hurley Felds 1 agrees to modify the Remedial Action Work Plan to conform to the Department's

comments and agrees to submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

16. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, Hurley Felds 1 agrees to implement the approved Remedial Action Work Plan in accordance with the schedule therein.

17. Hurley Felds 1 agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

18. If upon review of the RA Report the Department determines that additional remediation is required, Hurley Felds 1 agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and RA Reports, as applicable.

19. Within sixty (60) calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, Hurley Felds 1 agrees to modify the RA Report to conform with the Department's comments and agrees to submit the modified RA Report to the Department. The determination as to whether or not the modified RA Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### **IV. Additional Remedial Investigation and Remedial Action**

20. If at any time that this Administrative Consent Order is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety and the environment, Hurley Felds 1 agrees to conduct such additional remediation as the Department directs.

#### **V. Natural Resource Damages Liability**

21. A Subsequent Purchaser Natural Resource Damages Certification signed by Hurley Felds 1 is attached as Appendix A to this ACO and is incorporated herein. Based on that certification Hurley Felds 1 may not be liable for the payment of compensation for damages 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.

## **VI. Progress Reports**

22. Hurley Felds 1 agrees to submit quarterly progress reports which detail the status of Hurley Felds 1's compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). Hurley Felds 1 agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. Hurley Felds 1 agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. Hurley Felds 1 may request that the Department allow progress reports be submitted semi-annually or annually.

## **VII. Project Coordination**

23. Hurley Felds 1 agrees to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this Administrative Consent Order and the applicability of penalties and any other remedies available to the Department.

24. Within seven (7) calendar days after the effective date of this Administrative Consent Order, Hurley Felds 1 agrees to submit to the Department the name, title, address and telephone number of the individual who shall be Hurley Felds 1's technical contact for the Department for all matters concerning this Administrative Consent Order and Hurley Felds 1 agrees that the person listed below is Hurley Felds 1's agent for the purpose of service for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to this agent of the date, time and place of such meeting. Hurley Felds 1 agrees to ensure that the agent is available for and participates in such meeting.

25. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, Hurley Felds 1 agrees to submit all payments and copies of all documents required by this Administrative Consent Order to the Department's contact.

26. Hurley Felds 1 agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to Paragraph 25, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

27. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that Hurley Felds 1 submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

### **VIII. Remediation Funding Source and Remediation Funding Source Surcharge**

28. To the extent required by law, Hurley Felds 1 agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs and restoration costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. Hurley Felds 1 agrees that the initial remediation funding source amount is **\$5,000,000.00**. The remediation funding source surcharge required pursuant to N.J.A.C. 7:26C-7.8 will not be applied to this matter.

### **IX. Project Cost Review**

29. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, Hurley Felds 1 agrees to submit to the Department a detailed review of all remediation costs expended by Hurley Felds 1 to comply with this Administrative Consent Order, including:

- a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- b) The detailed estimated remediation and restoration costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- c) The reason for any changes from the previously submitted cost review.

30. At any time after Hurley Felds 1 submits the first cost review pursuant to the preceding paragraph Hurley Felds 1 may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, Hurley Felds 1 may amend the amount of the then existing remediation funding source consistent with that approval.

31. If the estimated costs of meeting Hurley Felds 1's obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, Hurley Felds 1 agrees to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source

or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

32. If Hurley Felds 1 implements a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, the Hurley Felds 1 agrees to maintain a remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount that is sufficient to pay for the operation, maintenance and monitoring of the engineering and institutional controls.

#### **X. Oversight Cost Reimbursement**

33. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 33, determined pursuant to N.J.A.C. 7:26C-9.3, Hurley Felds 1 agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period being charged.

34. Hurley Felds 1 agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

35. Hurley Felds 1 also agrees to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

#### **XI. Reservation of Rights**

36. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that Hurley Felds 1 has violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, the Department will notify Hurley Felds 1 in writing of the obligation(s) which it has not performed, and Hurley Felds 1 shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

37. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Hurley Felds 1 for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, Hurley Felds 1 may raise, among other defenses, a defense that Hurley Felds 1 failed to comply with a decision of the Department, made pursuant to this Administrative

Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If Hurley Felds 1 is successful in establishing such a defense based on the administrative record, Hurley Felds 1 shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although Hurley Felds 1 may raise such defenses in any action initiated by the Department for injunctive relief, Hurley Felds 1 hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order and under no circumstances shall Hurley Felds 1 initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

38. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

39. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which Hurley Felds 1 may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, Hurley Felds 1 reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

40. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release Hurley Felds 1 from any liabilities or obligations Hurley Felds 1 may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

## **XII. Force Majeure**

41. If any event specified in the following paragraph occurs which Hurley Felds 1 believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, Hurley Felds 1 agrees to notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Hurley Felds 1 agrees to take all necessary action to prevent or minimize any such delay.

42. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:



- a) Hurley Felds 1 has complied with the notice requirements of the preceding paragraph;
- b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Hurley Felds 1; and
- c) Hurley Felds 1 has taken all necessary action to prevent or minimize any such delay.

43. The burden of proving that any delay is caused by circumstances beyond the control of Hurley Felds 1 and the length of any such delay attributable to those circumstances shall rest with Hurley Felds 1.

44. "Force Majeure" shall not include the following:

- a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
- b) Increases in the cost or expenses incurred by Hurley Felds 1 in fulfilling the requirements of this Administrative Consent Order;
- c) Contractor's breach, unless Hurley Felds 1 demonstrates that such breach falls within the above paragraphs; and
- d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

### **XIII. Penalties**

45. Hurley Felds 1 agrees to pay penalties for its violations of this Administrative Consent Order and for its violations of a deed notice or declaration of environmental restriction that is part of a remedial action implemented pursuant to the order, according to the amounts and conditions in this section.

46. Hurley Felds 1 agrees:

- a) That each violation of any requirement, condition or deadline in this Administrative Consent Order constitutes an additional, separate, and distinct violation to which penalties apply;
- b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i, on any unpaid penalty pursuant to this Administrative Consent Order commencing on the first day after it has agreed to pay a penalty pursuant to this Administrative Consent Order;

d) That nothing in this Administrative Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order;

e) That its payment of a penalty pursuant to this Administrative Consent Order does not alter Hurley Felds 1's responsibility to complete any requirement of this Administrative Order; and

f) To regard payments of penalties pursuant to this Administrative Consent Order as payments of civil or civil administrative penalties pursuant to the Spill Compensation And Control Act, N.J.S.A. 58:10-23.11 through - 23.14.

47. Hurley Felds 1 agrees to pay a penalty for all violations of this Administrative Consent Order beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

Calendar Days After Due Date	Penalty
1 – 7 days	\$ 500 per calendar day
8 – 14 days	\$ 1,000 per calendar day
15 days and over	\$ 2,500 per calendar day

48. The Department will provide Hurley Felds 1 with written notice of each violation, including a description of the conditions of this Administrative Consent Order that Hurley Felds 1 has violated, the date that Hurley Felds 1 was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 47, above.

49. Hurley Felds 1 agrees to pay each penalty required by this Administrative Consent Order by cashier's check or certified check payable to the "Treasurer, State of New Jersey," accompanied by DEP Form 062A and a letter referencing this Administrative Consent Order and the violations for which Hurley Felds 1 is submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 48, above.

50. Hurley Felds 1 agrees that nothing herein shall limit the Department's ability, upon Hurley Felds 1's failure to pay a penalty pursuant to this Administrative Consent Order, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Administrative Consent Order.

51. Hurley Felds 1 agrees to pay a penalty in the amount of the economic benefit (in dollars) which Hurley Felds 1 has realized as a result of not complying, or by delaying compliance, with the requirements of this Administrative Consent Order, including the following:

- a) The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
- b) The return earned or that may be earned on the amount of the avoided costs;
- c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
- d) All other benefits resulting from the violation.

52. Hurley Felds 1 agrees that the Department will consider the following factors in determining a penalty for economic benefit:

- a) The amount of capital investments required, and whether they are one-time or recurring;
- b) The amount of one-time nondepreciable expenditures;
- c) The amount of annual expenses;
- d) The useful life of capital;
- e) Applicable tax, inflation and discount rates;
- f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and
- g) Any other factors relevant to economic benefit.

53. If the total economic benefit was derived from more than one violation, Hurley Felds 1 agrees that the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

#### **XIV. Dispute Resolution**

54. In the event a conflict arises between Hurley Felds 1 and the Department, Hurley Felds 1 may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

## **XV. General Provisions**

55. In addition to the Department's statutory and regulatory rights to enter and inspect, Hurley Felds 1 agrees to allow the Department and its authorized representatives access to all areas of the Site Hurley Felds 1 has access to, at all times, for the purpose of monitoring Hurley Felds 1's compliance with this Administrative Consent Order and/or to perform any remedial activities Hurley Felds 1 fails to perform as required by this Administrative Consent Order. Hurley Felds 1 agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 36, above.

56. Hurley Felds 1 agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Hurley Felds 1 of its obligation to obtain written approvals as required herein.

57. Hurley Felds 1 agrees to provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and agrees to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. Hurley Felds 1 agrees to be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

58. Nothing in this Administrative Consent Order relieves Hurley Felds 1 from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse Hurley Felds 1 from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that Hurley Felds 1 obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10:23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Hurley Felds 1 during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1

et seq., then Hurley Felds 1 agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

59. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

60. Upon the receipt of a written request from the Department, Hurley Felds 1 agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, were developed pursuant to this Administrative Consent Order. Hurley Felds 1 reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

61. Hurley Felds 1 agrees to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

62. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Hurley Felds 1 and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and Hurley Felds 1. The Department reserves the right to require the resolution of any outstanding violations of the rules of this prior to executing any such amendment.

63. Hurley Felds 1 waives its rights to an administrative hearing concerning the entry of this Administrative Consent Order.

64. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

65. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

66. This Administrative Consent Order represents the entire integrated agreement between the Department and Hurley Felds 1 concerning the site subject to this Administrative Consent

Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

67. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Hurley Felds 1 agrees to record a copy of this Administrative Consent Order with the County Clerk, Monmouth County, State of New Jersey and agrees to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.

68. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this Administrative Consent Order.

69. Hurley Felds 1 agrees to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of Hurley Felds 1's divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, Hurley Felds 1 may make a written request to the Department 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 receipt of written approval by the Department, Hurley Felds 1 may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, Hurley Felds 1 agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. Hurley Felds 1 reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, Hurley Felds 1 agrees not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

70. Hurley Felds 1 agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, Hurley Felds 1 agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. Hurley Felds 1 agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the

Department may request and, within fourteen (14) days of the Department's written request, the Hurley Felds 1 agrees to obtain and submit to the Department additional remediation funding source pursuant to this Administrative Consent Order.

71. If Hurley Felds 1 implements a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source while such controls are required. This Administrative Consent Order shall otherwise be terminated pursuant to paragraph 72 below.

72. If Hurley Felds 1 remediates contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Hurley Felds 1 of written notice from the Department stating that Hurley Felds 1 has completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore Hurley Felds 1 does not need to continue to maintain a remediation funding source, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. Such written notice shall not relieve Hurley Felds 1 from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Administrative Consent Order.

73. Hurley Felds 1 may assert a claim of confidentiality for any information submitted by Hurley Felds 1 pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

74. Hurley Felds 1 agrees to submit to the Department, along with two original copies of the Administrative Consent Order, signed by Hurley Felds 1, documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind Hurley Felds 1 to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

75. By their signatures below, the Department and Hurley Felds I enter into this Administrative Consent Order for the purposes stated herein. However, the parties acknowledge that the sale of the Property has been contested by persons not a party to this Administrative Consent Order. Therefore, the department and Hurley Felds I agree that none of the duties, obligations or agreements in this Administrative Consent Order shall become effective until Howell Township's appeals related to the sale of the Property have ended and the sale upheld, or the time for such appeals has expired. This document shall become effective on the date which the sale of the Property is upheld or the time for appeals has expired. Further, should the sale of

the Property be determined to be invalid or otherwise fail, the Department and Hurley Fields I agree that this Order will become void and of no force or effect.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Ronald T. Corcory, Assistant Director  
Oversight Resources Allocation Element

HURLEY FELDS 1, LLC

Date \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title



IN THE MATTER OF THE	:	
WILLIAM J. HURLEY	:	SUBSEQUENT PURCHASER
INDUSTRIAL COMPLEX	:	
	:	NATURAL RESOURCE DAMAGES
AND	:	
	:	
Hurley Felds 1, LLC	:	CERTIFICATION

Name of Subsequent Purchaser: \_\_\_\_\_

Address of Subsequent Purchaser: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name of Authorized Individual: \_\_\_\_\_

Authorized Individual's Title: \_\_\_\_\_

I hereby certify, on behalf of Hurley Felds 1, LLC, that I am authorized to make this binding Certification for the real property known as The William J. Hurley Industrial Complex, located at 1 Central Avenue, Farmingdale, formerly identified as Block 49, Lots 30, 31, 44, 45, 45.01, 46, 47, 48, 49 and 50; and Block 221, Lot 4 on the tax maps of Howell Township, Monmouth County (the "Property"), and all other areas where any hazardous substance discharged there has become located, which the New Jersey Department of Environmental Protection (the Department) refers to as Site Remediation Program Interest Number G000004410 ("the Site"), and, with regard to that Property, Hurley Felds 1, LLC further certifies as follows:

1. Hurley Felds 1, LLC acquired title to the Property on or about May 8, 2006. I have attached a copy of the May 3, 2006 U.S. Bankruptcy Court Order, confirming that the property was purchased at auction on February 14, 2006 by Joel Hoffman. The property was later assigned to and purchased by Hurley Felds 1, LLC.

2. Hurley Felds 1, LLC:

a. Acquired the Property on or after January 8, 1998, the effective date of P.L.1997, c.278;

b. Acquired the Property after the discharge of hazardous substances, as defined pursuant to N.J.S.A. 58:10-23.11b, at the Property;

c. Has not discharged, at the Property, any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, is not in any way responsible, other than by purchasing the property, pursuant to any law, for any hazardous substance, as defined pursuant to N.J.S.A. 58:10-23.11b, discharged at the Property, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, or to anyone liable for cleanup and removal costs pursuant to N.J.S.A. 58:10-23.11g;

d. 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.

3. Hurley Felds 1, LLC is familiar with the Property and with all matters addressed in this Certification.

4. I have enclosed with this Certification documentary evidence, such as a corporate resolution or a certification by a corporate officer, that I have the authority to complete this Certification on behalf of Hurley Felds 1, LLC.

5. I certify that I have not modified, deleted, or added any text to the Department’s model Subsequent Purchaser Natural Resource Damages Certification and have only inserted the applicable information as indicated by the bracketed instructions in that model.

6. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment, and that I will also forfeit any covenant the Department may have made concerning natural resource damages, in that event.

**Hurley Felds 1, LLC**

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

Signature of Authorized Individual

\_\_\_\_\_  
Print Name of Authorized Individual

Dated: \_\_\_\_\_ \_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Print Name of Witness

Attachments:

Attachment A Bankruptcy Court Order

Attachment B Documentary Evidence of Authority for Signing Individual to Certify on  
Behalf of [Hurley Felds 1, LLC]