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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SUSSEX COUNTY
DOCKET NO. L-284-04

NEW JERSEY DEPARTMENT OF :	
ENVIRONMENTAL PROTECTION, et	
al., :	<u>Civil Action</u>
Plaintiffs, :	
v. :	CONSENT JUDGMENT
BOB BALDWIN'S TRANSPORTATION, :	
INC.;	
PEET BLOKKER, INC.;	
ROBERT E. BALDWIN; and :	
TEXACO, INC., :	
Defendants. :	

This matter was opened to the Court by Gurbir S. Grewal, Attorney General of New Jersey, Louis G. Karagias, Deputy Attorney General appearing, attorney for plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the

Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"); and Morris, Downing & Sherred, LLP, Douglas C. Gray, Esq., appearing, as attorney for defendants Bob Baldwin's Transportation, Inc., Robert E. Baldwin and the Estate of Robert E. Baldwin ("the Baldwin Settling Defendants"); and Jeffer, Hopkinson & Vogel, David H. Altman, Esq., appearing, as attorney for defendant Peet Blokker, Inc. ("the Blokker Settling Defendant"); and Chiesa, Shahinian & Giantomasi, PC, Diana Buongiorno, Esq., appearing, as attorney for defendant Texaco Inc. ("the Texaco Settling Defendant") (collectively, "the Settling Defendants"); and the parties have amicably resolved their dispute before trial:

I. BACKGROUND

A. The Plaintiffs initiated this action on May 21, 2004, by filing a complaint against the Settling Defendants, and others, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act") and the common law. The Plaintiffs amended their complaint on August 19, 2004.

B. Plaintiffs, in their complaint, seek reimbursement of the costs they have incurred, and will incur, to remediate the Omega Drive wells contamination, including damages, as defined herein, for any natural resource of this State that has been, or

may be, injured by the discharge of hazardous substances at the Baldwin Property and the Peet Blokker Property located in Vernon Township, New Jersey, as well as injunctive and other relief.

C. The Settling Defendants subsequently filed responsive pleadings in which they deny liability, and assert various defenses to the allegations contained in the Plaintiffs' complaint.

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

E. The Plaintiffs allege, and the Settling Defendants deny, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the Baldwin and Peet Blokker Properties within the meaning of N.J.S.A. 58:10-23.11b.

F. From August 3 through August 8, 1989, defendant Robert Baldwin removed and replaced five underground storage tanks from the Baldwin Property, which removal activities DEP inspected on August 3, 1989.

G. On various occasions between February 1990 and April 1997, DEP inspected the Baldwin Property, and observed several areas of concern, including underground tank systems, floor drains in the maintenance garage, uncontrolled discharges of

potentially contaminated runoff to a storm drain system, and visibly stained soils resulting from spills of petroleum products.

H. Sampling results from the DEP's investigations revealed the presence of various hazardous substances exceeding DEP's cleanup criteria in the soils and groundwater at and underlying the Baldwin Site, including 1,1-dichloroethene, 1,2-dichloroethene, benzene, methyl tertiary butyl ether ("MTBE"), and xylene.

I. On November 2, 2001, the Baldwin Settling Defendants entered into an Administrative Consent Order with DEP ("November 2001 ACO") to address the contamination at the Baldwin Site.

J. On various occasions from the late 1980s through March 1998, DEP inspected the Blokker Property and observed several areas of concern, including a 500-gallon underground fuel oil tank, a floor drain system in the maintenance building, a septic system, several storage areas, and staining near a drum storage area inside the maintenance building.

K. Sampling results from the DEP's investigations revealed the presence of various hazardous substances exceeding the DEP's cleanup criteria in the soils and groundwater at and

underlying the Blokker Site, including benzene, ethylbenzene, toluene and xylene.

L. On October 8, 1998, the Blokker Settling Defendant entered into a Memorandum of Agreement with DEP to address the contamination at and from the Blokker Property.

M. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Baldwin and Blokker Sites, and, further, has approved, or may approve, other appropriations for the Sites.

N. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource and natural resource service of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Baldwin and Blokker Properties.

O. The costs and damages the Plaintiffs have incurred, and will incur, for the Sites are "cleanup and removal costs" pursuant to N.J.S.A. 58:10-23.11b.

P. 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 expedite the remediation of the Sites, and 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.

Q. Chevron U.S.A. Inc., Kewanee Industries, Inc., Texaco Inc. and Texaco Downstream Properties Inc., the DEP and the Administrator entered into a valid and binding voluntary "Natural Resource Damages Settlement Agreement," which was effective as of November 21, 2005 (the "2005 Chevron NRDSA," attached hereto as Appendix A). The 2005 Chevron NRDSA remains in force as written and nothing in this Consent Judgment shall be construed to limit or narrow any of the matters addressed in the 2005 Chevron NRDSA. The Plaintiffs have considered the 2005 Chevron NRDSA and the consideration paid in evaluating the fairness of this Consent Judgment and the releases and covenants not to sue contained herein.

R. On or about January 27, 2012, the Blokker Settling Defendant retained the services of a Licensed Site Remediation Professional ("LSRP") pursuant to the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, and is currently addressing the contamination by the use of a LSRP pursuant to SRRA, and the implementing regulations and guidance.

S. On or about May 8, 2012, the Baldwin Settling Defendants retained the services of a LSRP pursuant to SRRA, and are

currently addressing the contamination by the use of a LSRP pursuant to SRRA, and the implementing regulations and guidance.

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

II. JURISDICTION

1. 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.

2. The parties to this Consent Judgment waive all objections and defenses they may have to the 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

3. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendants.

IV. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, or in the regulations promulgated under the Spill Act, shall have

their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"Baldwin Site" shall mean the approximately 17 acres of real property located off of Omega and Theta Drives, Vernon Township, Sussex County, New Jersey, this property being also known and designated as Block 141, Lots 12, 12.06 and 12.07, and Block 141.01, Lot 1 and Block 141.02, Lot 1, on the Tax Map of Vernon Township in effect as of January 1, 2019 (n/k/a Block 391, Lots 1 and 12, Block 403, Lot 1, and Block 404, Lot 2) ("the Baldwin Property"), and all other areas where any hazardous substance discharged there has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. 000510.

"Consent Judgment" shall mean this Consent Judgment and the appendices to this Consent Judgment identified in Section XIX.

"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.

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, which the Plaintiffs will incur, after the effective date of this Consent Judgment to remediate the Baldwin Site and the Blokker Site. These costs shall include all those applicable fees and oversight costs for which the Settling Defendants are obligated to pay the Plaintiffs pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, specifically N.J.A.C. 7:26C-4.1 to - 4.10.

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

"MTBE" shall mean methyl tertiary butyl ether, neat or as a part of gasoline or as a contaminant of other fuel, and the degradation byproducts of commercial grade MTBE, including tertiary butyl alcohol ("TBA"). In addition, MTBE shall include TBA when TBA is present in MTBE gasoline.

"Natural Resource Damages," shall mean all claims arising from discharges at the Baldwin and Blokker Properties that occurred prior to the effective date of this Consent Judgment, and that are recoverable by the Plaintiffs as natural resource damages for injuries to ground water under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33

U.S.C.A. §§ 2701 to -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 to -1387; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9601 to -9675; or any other state or federal common law, statute, or regulation, and include:

a. The costs of assessing injury to ground water and groundwater services, plaintiff DEP's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-4.7, attorney's fees, consultants and experts' fees, other litigation costs, and interest, incurred prior to the effective date of this Consent Judgment; and

b. Compensation for restoration of, the lost value of, injury to, or destruction of ground water and groundwater services.

Natural Resource Damages do not include:

a. Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;

b. Requirements to clean up any contamination as a result of discharges at the Baldwin Property and/or the Blokker Property; or

c. The Settling Defendants' continuing obligation to pay the Plaintiffs' oversight costs determined pursuant to N.J.A.C. 7:26C-4.7, incurred after the effective date of this Consent Judgment.

"Omega Drive wells" shall mean those wells located off of Omega and Theta Drives in Vernon Township, Sussex County, on that portion of the Baldwin Property designated as Block 141.02, Lot 1, on the tax map of Vernon Township in effect as of January 1, 2019 (n/k/a Block 403, Lot 1), which plaintiff DEP has designated as Site Remediation Program Interest No. 253631.

"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 DEP, plaintiff Administrator, and the Settling Defendants.

"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 Baldwin Site and the Blokker Site, as well as the Omega Drive wells contamination.

"Peet Blokker Site", or "Blokker Site" shall mean the approximately .60 acres of real property located on the corner of Route 94 and Church Street, Vernon Township, Sussex County,

New Jersey, this property being also known and designated as Block 141, Lot 18, on the Tax Map of Vernon Township in effect as of January 1, 2019 (n/k/a Block 391, Lot 4) ("the Blokker Property"), and all other areas where any hazardous substance discharged there has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. 519622.

"Plaintiffs" shall mean plaintiffs DEP, Administrator, and any successor department, agency or official.

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

"Settling Defendant" or "Settling Defendants," shall mean defendants Bob Baldwin's Transportation, Inc., Robert E. Baldwin, the Estate of Robert E. Baldwin, Peet Blokker, Inc., and Texaco, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 6001 Bollinger Canyon Road, San Ramon, California. Texaco Inc. shall include the following entities: Chevron Corporation (f/k/a ChevronTexaco Corporation), Chevron U.S.A. Inc. (f/k/a Gulf Oil Corporation), in its own name and on behalf of its operating divisions, Chevron Products Company and Chevron Chemical Company, Texaco Inc., TRMI-H LLC (f/k/a TRMI Holdings Inc.), Unocal Corporation, Union Oil Company of California, Four Star Oil & Gas Company (f/k/a Getty Oil

Company), Chevron Phillips Chemical Company LLC, Chevron Phillips Chemical Company LP, Texaco Chemical Company, and Kewanee Industries Inc. Settling Defendants shall also include their officers, directors, employees, predecessors, parents, successors, subsidiaries, 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 Baldwin Site and the Blokker 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 Baldwin Site and the Blokker Site arose independently of its status and capacity as a Related Entity of any Settling Defendant.

"Sites" shall mean the Baldwin Site and the Blokker Site, as defined herein.

"Third Parties" shall mean all persons or entities other than the Settling Defendants.

V. PARTIES' OBJECTIVES

5. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by the Settling Defendants agreeing to remediate their Sites, and to reimburse the Plaintiffs for their Past

Cleanup and Removal Costs, and Natural Resource Damages, and in return for the Plaintiffs agreeing to resolve their claims against the Settling Defendants concerning the Sites as stated in the Complaint and this Consent Judgment.

VI. SETTLING DEFENDANTS' COMMITMENTS

6. Within 30 days of the effective date of this Consent Judgment, the Settling Defendants shall pay the Plaintiffs \$246,670.94 in reimbursement of the Plaintiffs' Past Cleanup and Removal Costs.

7. The Settling Defendants shall pay the amount specified in Paragraph 6 above by certified check or attorney trust account check made payable to the "Treasurer, State of New Jersey." The Settling Defendants shall mail or otherwise deliver the payment and payment invoice to the Section Chief, Environmental Enforcement and Environmental Justice 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.

8. Within 60 days of the effective date of this Consent Judgment, Settling Defendants Blokker and Baldwin shall submit an application to the Green Acres Program, at the address in paragraph 11, to donate land to the State of New Jersey

http://www.nj.gov/dep/greenacres/pdf/donation_7_2010.pdf), and shall reference on the application "Related to ONRR Settlement." Within 365 calendar days of the effective date of this Consent Judgment, or approval by the State of the documents set forth in Paragraphs 8.a. through f. below, whichever comes later, Settling Defendants Blokker and Baldwin shall arrange for the fee simple transfer of a 2.27 acre portion of what was designated Block 94, Lot 1, Vernon Township, Sussex County, New Jersey as of January 1, 2019 (n/k/a Block 58, Lot 7) ("the Parcel") to the State of New Jersey. Settling Defendants Blokker and Baldwin shall comply with the Department's Green Acres Acquisition Procedures, including but not limited to, the execution of a separate Agreement of Purchase and the removal of any liens, judgments, mortgages and other encumbrances on the Plaintiff's interest in the property to be conveyed, subject only to any exceptions acceptable to the Department. The Department will review the Preliminary Assessment report ("PAR") and the Site Investigation Report ("SIR"), if applicable, pursuant to subparagraph b. below and if the PAR and/or SIR disclose the existence of contamination on all or a portion of the Parcel, DEP may request that alternate land be donated to the State. The requirements of the New Jersey Green Acres

Program (see www.nj.gov/dep/greenacres) includes the following submissions:

- a. Application for land transfer;
- b. Preliminary Assessment/Site Investigation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-3.1 through 3.14;
- c. Survey, see standard scope of survey work link at www.nj.gov/dep/greenacres;
- d. Title search dating back 60 years;
- e. Title insurance policy written for the benefit of the State of New Jersey; and
- f. Draft subdivision deed after approval thereof by the municipality.

9. Within 120 days of the receipt of comments from the DEP concerning the documents in Paragraph 8.b. through 8.f., Settling Defendants Blokker and Baldwin shall revise their documents in accordance with DEP's comments.

10. Within 20 calendar days of receipt by Settling Defendants Blokker and Baldwin of the Green Acres Program's written confirmation letter of interest in the Parcel described in Paragraph 8 above, Settling Defendants Blokker and Baldwin shall pay to the State of New Jersey \$5,000.00 for reimbursement to the Green Acres Program for their review of documents and

processing of the land transfer. This check shall reference "Related to ONRR Settlement" and be made payable to the State of New Jersey pursuant to paragraph 12 below with a copy of the check to Chief, Office of Natural Resource Restoration, Department of Environmental Protection, Division of Parks and Forestry, 1st Floor, 501 East State Street, Mail Code 501-01, P.O. 420, Trenton, N.J. 08625-0420. Any request for an extension of the due date shall be made in writing to the address in paragraph 12 below.

11. By entering into this Consent Judgment, the Settling Defendants' agree to provide plaintiff DEP for three years after entry of this Consent Judgment, and within 30 days of a request from the Department or its designated agent, with all information concerning the Sites or products sold or stored at the Sites that the Settling Defendants have in their or their agent's custody or control, including information regarding product refiners, product manufacturers, product distributors, common carriers, franchisors, petroleum marketers, tank owners, tank operators, and tank manufacturers. This obligation is not limited to documents, but also includes all information that can be obtained through interviews. A determination by Plaintiff DEP that the Settling Defendants have failed to cooperate and comply with this obligation is grounds for Plaintiffs to withhold the

covenant not to sue or release, as applicable, or, if the covenant not to sue or release has already been issued, to issue an order declaring the covenant not to sue or release issued pursuant to this Consent Judgment null and void.

12. All correspondence, documents and payments made pursuant to Paragraphs 8 and 10 shall be sent to:

Department of Environmental Protection
Green Acres Program
Administrator
Office of Natural Resource Restoration
1st Floor
501 East State Street
Mail Code 501-01
P.O. Box 420
Trenton, New Jersey 08625-0420

13. The Plaintiffs will consider a written request for an extension of time to perform the requirements of Paragraphs 8 and 10 above, provided that Settling Defendants Blokner and Baldwin submit any extension request to the Chief, Office of Natural Resource Restoration, 501 East State Street, P.O. Box 420, Mail Code 501-01, Trenton, New Jersey 08625 two weeks prior to any applicable deadline to which the extension request refers. Such a request shall include an explanation as to the nature and extent of the delay. Extensions will be granted at the sole discretion of the DEP's Office of Natural Resource Restoration though consent to a request for extension of time shall not be unreasonably withheld.

14. The Baldwin Settling Defendants and the Blokker Settling Defendant are responsible for the remediation of their respective Sites. The Baldwin and Blokker Settling Defendants agree that all investigation and remediation of hazardous substances they perform will be performed pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and the implementing regulations and guidance, notwithstanding N.J.S.A. 58:10C-27.e. The Baldwin Settling Defendants shall reimburse the Plaintiffs for any and all Future Cleanup and Removal Costs incurred by the Plaintiffs at the Baldwin Site and pay the amount of each invoice within 45 days of receipt. The Blokker Settling Defendant shall reimburse the Plaintiffs for any and all Future Cleanup and Removal Costs incurred by the Plaintiffs at the Blokker Site and pay the amount of each invoice within 45 days of receipt.

VII. PLAINTIFFS' COVENANTS & RELEASE

15. In consideration of the remediation, payments, information and restoration project the Settling Defendants are performing/providing pursuant to Paragraphs 6 through 11 above, and except as otherwise provided in Paragraphs 21 through 27 below, the Plaintiffs covenant not to further sue or to take administrative action against the Settling Defendants for reimbursement of Past Cleanup and Removal Costs.

16. In further consideration of the remediation, payments, information and restoration project the Settling Defendants are performing/providing pursuant to Paragraph 6 through 11 above, and except as otherwise provided in Paragraphs 21 through 27 below, the Plaintiffs fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Settling Defendants for any and all of the Plaintiffs' causes of actions for Natural Resource Damages.

17. In further consideration of the remediation, payments, information and restoration project the Settling Defendants are performing/providing pursuant to Paragraphs 6 through 11 above, the Plaintiffs agree to the prompt dismissal of the complaint against the Settling Defendants without prejudice as to Future Cleanup and Removal Costs, which is hereby ordered.

18. The covenant and release contained in Paragraph 16 above shall take effect upon the State of New Jersey receiving the land transfer of a 2.27 acre portion of what was designated Block 94, Lot 1, Vernon Township, New Jersey as of January 1, 2019 (n/k/a Block 58, Lot 7) or the payment referenced in Paragraph 19 below.

19. In lieu of the fee simple transfer of the Parcel to the State of New Jersey pursuant to Paragraph 8, the Settling Parties shall pay \$30,000 as compensation for Natural Resource

Damages, but only in the event either one of the following occurs:

a. The Settling Defendants cannot obtain subdivision approval for the Parcel from the municipality; or

b. The Green Acres Program will not issue a letter of interest for the Parcel pursuant to Paragraph 10.

The Settling Defendants shall pay \$30,000 within 30 days upon notice from the municipality or the Green Acres Program of the events described in 19.a. or 19.b. above. Upon payment of the \$30,000, the covenant and release contained in Paragraph 16 shall take effect. The payment shall be made and delivered in accordance with Paragraph 7.

20. The covenants and releases contained in Paragraphs 15 through 17 above are further conditioned upon the Settling Defendants' satisfactory performance of their other obligations under this Consent Judgment, and extend only to the Settling Defendants, and not to any other person.

VIII. PLAINTIFFS' RESERVATIONS

21. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendants to

further remediate their respective Sites, or to reimburse the Plaintiffs for any additional costs and damages, if, before a LSRP issues a Response Action Outcome pursuant to N.J.S.A. 58:10C-14.d. and N.J.A.C. 7:26C-6.2(a) for the Blokker Site and/or the Baldwin Site:

- i. plaintiff DEP discovers conditions at the Site(s), previously unknown to plaintiff DEP; or
- ii. plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the remedial action to be implemented at the Site(s) is not protective of human health and safety, or the environment.

22. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendants to further remediate their respective Sites, or to reimburse the Plaintiffs for any additional costs and damages, if after a LSRP issues a Response Action Outcome pursuant to N.J.S.A. 58:10C-14.d. and N.J.A.C. 7:26C-6.2(a) for the Blokker Site and/or the Baldwin Site:

i. plaintiff DEP discovers conditions at the Site(s) previously unknown to plaintiff DEP; or

ii. plaintiff DEP receives information, previously unknown to plaintiff DEP, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate that the remedial action implemented for the Site(s) is not protective of human health and safety, or the environment.

23. For the purposes of Paragraph 21, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date an approved remedial action work plan is issued for the Site(s) by a LSRP.

24. For the purposes of Paragraph 22, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date a LSRP issues a Response Action Outcome for the Site(s).

25. 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 Baldwin Site and/or the Blokker Site, or file suit, directing the Settling Defendants to undertake any

remediation authorized by law concerning the Blokker Site and/or the Baldwin Site.

26. The covenant contained in Paragraph 15 above and the covenant and release contained in Paragraph 16 above do 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 Defendants concerning all other matters, including the following:

- a. claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment;
- b. liability arising from the Settling Defendants' past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Blokker Site and/or the Baldwin Site;
- c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendants at the Blokker Site and/or the Baldwin Site, other than as otherwise ordered or approved by plaintiff DEP;
- d. criminal liability;

- e. liability for any violation by the Settling Defendants of federal or state law that occurs during or after the remediation of the Sites;
- f. liability for any claim pending or filed on or after the effective date of this Consent Judgment against the Spill Fund concerning the Sites; and
- g. liability for any Future Cleanup and Removal Costs.

27. The release contained in Paragraph 16 above does not pertain to any matters other than those expressly stated. The Plaintiffs reserve and this Consent Judgment is without prejudice to, claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment.

28. This Consent Judgment does not resolve the liability of Third Parties with respect to discharges of hazardous substances at the Sites. This Consent Judgment merely resolves the Settling Defendants' liability with respect to such discharges.

29. Plaintiffs further reserve, and this Consent Judgment is without prejudice to, all rights against all Third Parties, other than Settling Defendants, 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 any Third Party for any and all costs, injunctive relief, and damages available to Plaintiffs that are currently being sought in the United States District Court for the District of New Jersey, in the case captioned New Jersey Dep't of Environmental Protection, et al. v. Amerada Hess Corp., et al., Civil Action Nos. 07-cv-5284 and 15-cv-06468 (D.N.J.) (FLW) (LHG), and also pending in the United States District Court for the Southern District of New York, captioned as New Jersey Dep't of Environmental Protection, et al. v. Atlantic Richfield Company, et al., 08 Civ. 00312 (VSB) (S.D.N.Y.); In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, MDL No. 1358 (VSB) (S.D.N.Y.).

30. Neither this Consent Judgment, nor the fact that it has been signed, may be used by anyone for any purpose unrelated to the Site and the resolution of Plaintiffs' claims against the Settling Defendants, other than for enforcement of this Consent Judgment or its protections, or for the interpretation of this Consent Judgment. The Settling Defendants hereby acknowledge that their decision to enter into this Consent Judgment represents a business decision based upon, among other things, a desire to avoid the risk, time and expense of litigation. As such, this Consent Judgment does not constitute an admission of liability on the part of any Settling Defendant. Neither this

Consent Judgment, nor any part of it, may be used in any way by or against any Settling Defendant in any legal proceeding, except in an action to enforce this Consent Judgment.

31. By entering into this Consent Judgment, the Settling Defendants assign all claims to Plaintiffs for contribution, indemnity, or otherwise they may have against Third Parties, except the Settling Defendants' insurers, with respect to discharges of hazardous substances at the Sites. By assigning these claims, the Settling Defendants further agree not to pursue any claims for contribution, indemnity, or otherwise against any Third Parties, except the Settling Defendants' insurers, with respect to discharges of hazardous substances at the Sites.

IX. SETTLING DEFENDANTS' COVENANTS

32. The Settling Defendants covenant 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 Defendants, in writing, that they no longer support entry of the Consent Judgment.

33. The Settling Defendants further covenant, subject to Paragraphs 34 and 35 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 Sites. This covenant shall include the following:

- a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Blokker Site and the Baldwin Site; and
- b. any claim or cause of action concerning the remediation of the Blokker Site and the Baldwin Site, including plaintiff DEP's selection, performance or oversight of the remediation, or plaintiff DEP's approval of the plans for the remediation.

34. The Settling Defendants' covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 33 above do not apply where the Plaintiffs sue or take administrative action against the Settling Defendants pursuant to Paragraphs 21 through 29 above.

X. SETTLING DEFENDANTS' RESERVATIONS

35. The Settling Defendants reserve, 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 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 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 Blokker Site and the Baldwin Site, including plaintiff DEP's selection and performance of the remediation, or plaintiff DEP's oversight or approval of the Settling Defendants' plans or activities relating to the remediation. The foregoing applies only to claims that the Settling Defendants 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.

36. 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. FINDINGS & ADMISSIONS OF LIABILITY

37. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendants, or a finding by the Plaintiffs, of any wrongdoing or liability on the Settling Defendants' part for anything the Plaintiffs have actual knowledge of having occurred at the Blokker Site and the Baldwin Site as of the effective date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

38. 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.

39. Subject to Paragraph 31, each Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that each Settling Defendant may have concerning any matter, transaction, or occurrence concerning the Sites against any person not a Party to this Consent Judgment.

40. 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 Defendants from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendants are entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment.

41. In order for the Settling Defendants 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 DEP's website on 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 Sites;
- c. the name of the Settling Defendants; and
- d. a summary of the terms of this Consent Judgment; and
- e. that there are 60 days to comment on the proposed Consent Judgment.

42. 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 41 above.

43. The Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 63 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraph 41 above, the Plaintiffs receive information that disclose facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

44. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Blokker Site and the Baldwin Site, each 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

45. Site Access. In addition to plaintiff DEP's statutory and regulatory authority to enter and inspect the Sites, the Settling Defendants shall allow plaintiff DEP and its authorized representatives access, upon reasonable written notice, to all areas of the Blokker Site and/or the Baldwin Site to:

- a. remediate the Blokker Site and/or the Baldwin Site;
- b. monitor the Settling Defendants' compliance with this Consent Judgment;
- c. perform any remedial investigation or remedial action that this Consent Judgment requires, or plaintiff DEP otherwise orders, which the Settling Defendants are unwilling and/or unable to perform; and
- d. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this State injured by the discharge of hazardous substances at the Sites.

46. The Settling Defendants shall ensure that any sale or transfer of their Properties are conditioned upon plaintiff DEP and its authorized representatives having continuing access for the purposes stated in Paragraph 45 above. This obligation shall cease upon the issuance of a Response Action Outcome to

the Settling Defendants for the Blokker Site or the Baldwin Site, as applicable.

47. 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 Defendants by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XIV. ACCESS TO INFORMATION

48. Upon receipt of a written request by one or more of the Plaintiffs, any Settling Defendant shall submit or make available to the Plaintiffs all information the Settling Defendant has concerning the Blokker Site and the Baldwin Site, including technical records and contractual documents.

49. 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.

XV. RETENTION OF RECORDS

50. Each Settling Defendant shall preserve during the pendency of this Consent Judgment and for a minimum of seven years following the completion of the remediation, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendants' possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Blokker Site and the Baldwin Site, despite any document retention policy to the contrary.

51. After the seven-year period specified in Paragraph 50 above, any Settling Defendant may request of plaintiff DEP, 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

52. 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 DEP & Administrator:

Section Chief
Environmental Enforcement and Environmental Justice Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
609-376-2708

As to Bob Baldwin's Transportation, Inc. and Robert E. Baldwin:

The Estate of Robert E. Baldwin
5 Omega Drive
Vernon, New Jersey 07462

As to Texaco:

Andrea Hogan, Senior Counsel
Environmental & Safety Law Group
Chevron U.S.A. Inc.
Law Department
1400 Smith Street, Room 05054
Houston, Texas 77002

As to Peet Blokker, Inc.:

David H. Altman, Esq.
Jeffer Hopkinson & Vogel
1600 Route 208 North
Hawthorne, New Jersey 07506

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

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

XVII. EFFECTIVE DATE

55. 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

56. 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, or to resolve disputes, including any appeal from an administrative determination of a dispute between the parties.

XIX. MODIFICATION

57. This Consent Judgment represents the entire integrated agreement between the Plaintiffs and the Settling Defendants concerning the Sites, and supersedes all prior negotiations, representations or agreements, either written or oral, except as follows:

(a) the 2005 Chevron NRDSA (referenced in Section I, paragraph Q above), attached hereto as Appendix A, in its entirety shall survive this Consent Judgment;

(b) the November 2001 ACO (referenced in Section I, paragraph I above), attached hereto as Appendix B, shall survive this Consent Judgment with the following modification:

Paragraph 39, which reads:

Robert E. Baldwin shall establish a remediation funding source, pursuant to N.J.A.C. 7:26C-7 in the amount of \$500,000, which is necessary to pay the estimated cost of the remediation. The remediation funding source shall be in effect for a period of not less than the actual time necessary to conduct the remediation.,

shall be replaced with the following:

The Estate of Robert E. Baldwin shall establish a remediation funding source for the estimated cost of the remediation of the Site in accordance with the requirements of Subchapter 5 of the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-5.

(c) The November 2001 ACO shall terminate when the LSRP for the Baldwin Site issues, subject to any reviews and approvals by the DEP, the following:

1.) a groundwater remedial action permit for the Baldwin Site; and

2.) a Response Action Outcome for the Baldwin Site.

(d) It is the parties' understanding that the terms of the November 2001 ACO, as amended in subparagraph (b) above, will be applied in accordance with the Guidance issued by the DEP on February 6, 2012 titled "Status of Administrative Consent Orders and Remediation Agreements," attached hereto as Appendix C. To the extent that there are substantive or procedural conflicts between the terms of the November 2001 ACO, as amended in subparagraph (b) above, and this Consent Judgment, the terms of this Consent Judgment shall control.

58. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

59. All notices or other documents any Settling Defendant is required to submit to the Plaintiffs under this Consent Judgment shall, upon approval or modification by the Plaintiffs,

be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

60. In the event the Plaintiffs approve or modify a portion of a notice or other document any Settling Defendant is required to submit under this Consent Judgment, the approved or modified portion shall be enforceable under this Consent Judgment.

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

XX. ENTRY OF THIS CONSENT DECREE

62. The Settling Defendants consent to the entry of this Consent Judgment without further notice.

63. Upon conclusion of the public comment period specified in Paragraph 41 above and subject to Paragraph 43 above, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

64. 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.

XXI. SIGNATORIES/SERVICE

65. 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.

66. 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.

67. 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 his/her/its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendants agree 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.

XXII. Appendices

68. The following appendices are attached to and incorporated into this Consent Judgment.

"Appendix A" is a Natural Resource Damages Settlement Agreement effective November 21, 2005;

"Appendix B" is an Administrative Consent Order captioned "In the Matter of the Baldwin Enterprises, Inc. a/k/a Bob Baldwin's Transportation, Inc. KCSL #NJD982796450 and Robert E. Baldwin President, Baldwin Enterprises, Inc.[,] Robert E. Baldwin, Individually" dated November 2, 2001; and

"Appendix C" is a DEP guidance document titled Status of Administrative Consent Orders and Remediation Agreements dated February 6, 2012.

SO ORDERED this day of , 2020.

Honorable Rosemary E. Ramsay, P.J. Cv.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Ray Bukowski, Assistant
Commissioner
Natural and Historic Resources

Dated:

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Kevin F. Kratina, Assistant
Director
Enforcement and Information
Support Element, Site Remediation

Dated:

NEW JERSEY SPILL COMPENSATION
FUND

By: _____
David E. Haymes, Administrator
New Jersey Spill Compensation Fund

Dated:

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Louis G. Karagias
Deputy Attorney General

Dated:

Morris, Downing & Sherred,
LLP
Attorneys for Bob Baldwin's
Transportation, Inc., and the
Estate of Robert E. Baldwin

By: _____
Douglas C. Gray, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Bob Baldwin's
Transportation, Inc.

Name: Douglas C. Gray, Esq.

Title: Attorney

Address: Morris, Downing & Sherred,
LLP
One Main Street
Newton, N.J. 07860

Telephone No.: (973) 383-2711

Person Authorized to Accept Service on
Behalf of the Estate of Robert E. Baldwin

Name: David L. Johnson, Esq.

Title: Co-Executor

Address: Morris, Downing & Shered, LLP
One Main Street
Newton, N.J. 07860

Telephone No. (973) 383-2711

Chiesa, Shahinian &
Giantomasi PC
Attorneys for Texaco Inc.

By: _____
Diana Buongiorno, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Texaco Inc.

Name: Andrea Hogan, Esq.

Title: Senior Counsel

Address: Chevron U.S.A. Inc.
1400 Smith Street
Room 05054
Houston, Texas 77002

Telephone No.: (925)842-4422
E-mail: andrea.hogan @ chevron.com

Jeffer, Hopkinson & Vogel
Attorneys for Peet Blokker,
Inc.

By: _____
David H. Altman, Esq.

Dated:

Person Authorized to Accept Service on Behalf of
Peet Blokker, Inc.

Name: David H. Altman, Esq.

Title: Attorney

Address: Jeffer, Hopkinson & Vogel
1600 Route 208 North
P.O. Box 507
Hawthorne, N.J. 07507

Telephone No.: (973) 423-0100