

# **Schedule 1 to Consent Judgment**

### Schedule "1"

A. Given the particularized constraints and equities attendant to parties with multiple affiliated entities sued as Third-Party Defendants in the Passaic River Litigation and those parties that were sued by Third-Party Plaintiffs only due to limited drum recycling activities, Plaintiffs and the Settling Third-Party Defendants agree that the individual financial consideration of the Settling Third-Party Defendants may be varied slightly, but only as follows:

1. **"Drum-Site Only Parties."** Third-Party Defendants whose only alleged connection to the Passaic River Litigation in the Third-Party Complaints was via the shipment of drums to recycling facilities ("Drum-Site Only Parties") may pay ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000.00) in order to resolve their alleged liability in accordance with, and be a Settling Third-Party Defendant as defined in, the Consent Judgment. If a Drum-Site Only Party is later found to have Discharged Hazardous Substances to the Newark Bay Complex from sites other than drum-recycling site(s) or is found to be a substantial contributor to the risk that is driving the Past Cleanup and Removal Costs or Future Cleanup and Removal Costs, or is otherwise found to be unsuitable for the provisions hereunder, Plaintiffs may require such party to pay the full \$195,000 (an additional \$50,000) to participate in the Consent Judgment and may exclude such entity from participation in the Consent Judgment (and return that entity's original \$145,000 payment) in the event that the party refuses to pay the full \$195,000 (an additional \$50,000).

2. **Affiliated Entities.** In recognition of the interrelated management, common issues, shared costs, and alleged overlapping liabilities of affiliated companies, if two or more Private Settling Third-Party Defendants are directly or indirectly wholly-owned by the same parent company or shareholder, or if one Private Settling Third-Party Defendant directly or

indirectly wholly-owns or is wholly owned by another Private Settling Third-Party Defendant (all such entities referred to herein as “Affiliated” or “Affiliated Entities”), the Affiliated Entities named as Third-Party Defendants in the Passaic River Litigation as of January 22, 2013 (“Named Affiliated Entities”) shall participate in the Consent Judgment by paying a percentage of the amount required for other Private Settling Third-Party Defendants as follows:

A Settling Third-Party Defendant:	\$195,000 (100%)
Second Named Affiliated Entity:	\$128,700 (66%)
Third Named Affiliated Entity:	\$97,500 (50%)
Fourth Named Affiliated Entity:	\$64,350 (33%)

The Fifth Named Affiliated Entity, and each additional Named Affiliated Entity thereafter, may also pay \$64,350 (33%) to participate in the Consent Judgment and become a Settling Third Party Defendant under the Consent Judgment.

Notwithstanding the foregoing, if a Named Affiliated Entity demonstrates that its sole basis of liability falls within the meaning of “vicarious liability” in Paragraph 18.32 or is vicariously liable solely through the operations of another Named Affiliated Entity, such Named Affiliated Entity may join in one payment as a Settling Third-Party Defendant under this Schedule with its Named Affiliated Entity. Plaintiffs will also consider any additional similar circumstances for treatment as being “vicariously liable” under the definition in Paragraph 18.32 of the Consent Judgment and such determinations will be reflected on those Settling Third-Party Defendant’s execution page(s). If a Named Affiliated Entity is not approved by Plaintiffs for consideration under this provision or is involved at more than the one common site for which it is exposed to vicarious liability, that Named Affiliated Entity shall pay according to the Schedule set forth herein.

Additionally, if Private Settling Third-Party Defendants wish to resolve the liabilities of other, unidentified entities and/or entities that are not named in the Passaic River Litigation as of January 22, 2013 and that are Affiliated Entities (“Unnamed Affiliated Entity”), each additional, Unnamed Affiliated Entity must be explicitly identified by name on that Party’s execution page and, under any circumstance, the Private Settling Third-Party Defendant must pay an additional \$50,000 per newly identified Unnamed Affiliated Entity.

In order to include an Unnamed Affiliated Entity in the Consent Judgment or to demonstrate the vicarious liability of two Named Affiliated Entities as set forth above, the submission for inclusion into the administrative record prior to the opening of the Record for public comment must contain a verified statement (a) asserting and describing the corporate relationship and common ownership between or among the Settling Third-Party Defendants and/or Unnamed Affiliated Entities, and (b) describing all Affiliated Entities’ association with Discharges of Hazardous Substances to the Newark Bay Complex, if any, from identified site(s). The addition of any Unnamed Affiliated Entity or treatment as a vicariously liable Settling Third-Party Defendant shall be at Plaintiffs’ discretion after consideration of the information required above and any additional information requested by Plaintiffs.

Nothing herein shall change the definition in Paragraph 18.32 of Settling Private Third-Party Defendants. To the extent there is an ambiguity or question as to the appropriate application of any provision in this Schedule 1, the payment terms of Paragraph 18.32 and Paragraph 20 shall apply.

B. **Later Joining Parties.** In addition to the Third-Party Defendants who execute this Consent Judgment and are “Settling Third-Party Defendants” before its publication, it is anticipated that additional Third-Party Defendants and later identified persons may also wish to

voluntarily join this Consent Judgment after it receives the approvals necessary to be published for notice and comment. A person may later join in this Consent Judgment, and be treated as “Settling Third-Party Defendants” hereunder, if Plaintiffs in their discretion determine that such party is appropriately a Party to this Consent Judgment. In such instance, the following shall constitute the minimum consideration that a late-joining entity shall pay:

1. If a Third-Party Defendant named in the litigation as of January 22, 2013 (and any of its affiliated entities, named or unnamed) does not participate therein, and is not a “Settling Third-Party Defendant” at the time of publication of the Consent Judgment, but later wishes to join and participate in the Consent Judgment, such party may participate and become a Settling Third-Party Defendant by paying 150% of the settlement amount that similarly situated Private Settling Third-Party Defendants or Public Settling Third-Party Defendants (and their respective named or unnamed affiliates) agreed to pay prior to publication.

2. If a person was not named and served as a Third-Party Defendant as of January 22, 2013, and is not an Unnamed Affiliated Entity, but is thereafter named and served or otherwise wishes to voluntarily participate in this Consent Judgment, such person may seek to participate in the same amounts as other Private Settling Third-Party Defendants (\$195,000) or Public Settling Third-Party Defendants (\$95,000). An Unnamed Affiliated Entity that is later named and served may seek to participate in the same amount as other Unnamed Affiliated Entities (\$50,000).

3. If an unnamed entity as of January 22, 2013 that is an Affiliated Entity with a Settling Third-Party Defendant wishes to participate in this Consent Judgment after its publication, such Affiliated Entity may seek to participate by paying an additional (\$50,000).



4. The addition of any Settling Third-Party Defendant shall be at Plaintiffs' sole discretion after review of the verified submittal in Section C.

C. **Inclusion & Reopener.** If a Later Joining Party, as identified in Section B.1. B.2., or B.3., seeks to participate in the Consent Judgment, that party must make a verified submittal to Plaintiffs identifying the Later Joining Party, geographic location and source of any alleged past Discharges, and the Hazardous Substances allegedly discharged into the Newark Bay Complex. Upon review and approval by Plaintiffs, and payment by the Later Joining Party, the Later Joining Party shall constitute a "Settling Third-Party Defendant" for all purposes hereunder. If at any time the Later Joining Party is found to be a substantial contributor to Past Cleanup and Removal Costs or Future Cleanup and Removal Costs, or is otherwise found to be unsuitable for the provisions hereunder, Plaintiffs may deny such entity from participation.

D. **Inability to Pay.** Plaintiffs in their discretion may provide a payment schedule or other special payment terms for Settling Third-Party Defendants that are bankrupt, dissolved, insolvent or otherwise have limited ability to pay, as such terms may be defined in the discretion of Plaintiffs.