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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND THE  
ADMINISTRATOR OF THE SPILL  
COMPENSATION FUND,

Plaintiffs,

v.

DC TRUCKING CORP. (a sole  
proprietorship), DC DEMOLITION &  
RECYCLING, LLC, D.C. TRUCKING &  
EXCAVATING, LLC, AND DONNA  
GIORDANO (individually), *et al.*

Defendants.

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DONNA GIORDANO,

Debtor/Plaintiff,

v.

New Jersey Department of  
Environmental Protection,

Defendant.

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SUPERIOR COURT OF NEW  
JERSEY CHANCERY DIVISION:  
MIDDLESEX COUNTY  
DOCKET NO. C-107-11

Civil Action

JUDICIAL CONSENT ORDER  
& FINAL JUDGMENT

U.S. BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
Case No. 12-25288 (RTL)  
Chapter 13  
Hon. Michael B. Kaplan,  
U.S.B.J.  
Adv. Pro. No. 12-0181  
(MBK)

This matter having been opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, attorney for the Plaintiff, State of New Jersey, Department of Environmental Protection ("the Department"), Bruce A. Velzy, Deputy Attorney General, appearing, by way of a Complaint and Order to Show Cause on May 16, 2011, against Defendants LWS Spector Woodbridge Company LLC (also known as "Spector Woodbridge Co."), LWS Corp., William D. Spector (individually), DC Trucking Corp. (a sole Proprietorship), D.C. Demolition & Recycling, LLC, D.C. Trucking & Excavating, LLC, Donna Giordano (individually) and Thomas Giordano (individually), Henkels & McCoy Corp., J. Fletcher Creamer & Son Inc., Skoda Contracting Co., P&A Construction Corp., and John Doe(s) Haulers, pursuant to the Freshwater Wetlands Protection Act ("FWPA"), N.J.S.A. 13:9B-1 et seq. (except for the Hauler defendants), the Waterfront Development Act ("WDA"), N.J.S.A. 12:5-1 et seq., the Solid Waste Management Act ("SWMA"), N.J.S.A. 13:1E-1 et seq., the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11a et seq. (except for the Hauler defendants), and the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq. (the "Brownfield Act") (except for the Hauler defendants); and

WHEREAS, Defendants Spector Woodbridge Company LLC ("Spector Woodbridge") and LWS Corp. have owned and/or currently own property located at Block No. 531B, Lot No. 100, Woodbridge

Township, New Jersey ("the Spector site"); and

WHEREAS, the Spector Site sits between the Woodbridge Creek and Pennval Road and the New Jersey Turnpike, and a tributary of the Woodbridge Creek runs along the Southern boundary and turns to the northwest at the southwestern corner of the Spector site; and

WHEREAS, D.C. Trucking Corp. ("D.C. Trucking") was a sole proprietorship owned by Donna Giordano, and operated by her and Thomas Giordano; and

WHEREAS, D.C. Trucking leased the Spector site from LWS Corp. and operated a soil stockpiling business at the Spector site; and

WHEREAS, both Donna and Thomas Giordano exercised control over the activities of D.C. Trucking at the Spector site; and

WHEREAS, the Department contends (but the Court makes no finding) that the regulations adopted pursuant to the FWPA, WDA, and SWMA prohibit any person from engaging in regulated activities without a FWPA, WDA, or SWMA permit;

WHEREAS, the Department contends (but the Court makes no finding) that the SWMA prohibits any person from engaging in the collection or disposal of solid waste without obtaining approval from the Department; and

WHEREAS, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AO/NOCAPA")

on May 17, 2004 to Spector Woodbridge Co., LLC, D.C. Trucking, and Thomas and Donna Giordano for violating the WDA and FWPA; and

WHEREAS, the AO/NOCAPA directed D.C. Trucking and the Giordanos to cease accepting additional material; to remove fill from the waterfront development area, freshwater wetlands and freshwater wetlands transition areas; and to restore the site to its pre-disturbed condition, and also assessed a penalty of \$31,000; and

WHEREAS, D.C. Trucking and the Giordanos timely filed a hearing request in response to the May 17, 2004 AO/NOCAPA, and the matter was transmitted to the New Jersey Office of Administrative Law ("OAL"), docketed as No. ESA 06181-2004S, and assigned to the Hon. Joseph J. Fidler, A.L.J.; and

WHEREAS, the Department inspected the Spector site on June 17, 2004 and observed additional newly placed fill; and

WHEREAS, the Department issued a second AO/NOCAPA against D.C. Trucking and the Giordanos on July 30, 2004, ordering removal of additional fill from the Spector site and assessing a penalty of \$159,700; and

WHEREAS, D.C. Trucking and the Giordanos timely filed a hearing request in response to the July 30, 2004 AO/NOCAPA, and the matter was transmitted to the OAL, docketed as No. ESA-10220-04S, and assigned to the Hon. Joseph J. Fidler, A.L.J.;

WHEREAS, the Department conducted additional Spector site visits from February 2005 until December 2009, and observed that fill continued to be delivered to the site; and

WHEREAS, on May 4, 2011, the Department filed an Order to Show Cause in the Superior Court of New Jersey, Chancery Division, Middlesex County, New Jersey Department of Environmental Protection v. LWS Spector Woodbridge Company, LLC, et. al., Docket No. C-107-11 ("the State Court Litigation"), seeking summary and/or permanent injunctive relief against various defendants, including D.C. Trucking and the Giordanos, and requested remediation and penalties from D.C. Trucking and the Giordanos, for violations of the WDA, FWPA, and SWMA; and

WHEREAS, the Department alleged in its Verified Complaint that Defendants D.C. Trucking, Donna Giordano and Thomas Giordano operated the Spector site and were intimately involved in the placement of 330,000 cubic yards of fill material at the Site absent the required approvals under the FWPA, WDA and SWMA; and

WHEREAS, on January 30, 2014, the Department filed an amended Verified Complaint, naming as defendants companies owned and/or operated by Thomas Giordano and Thomas Giordano, including D.C. Demolition & Recycling, LLC and D.C. Trucking & Excavating, LLC for violating the WDA, SWMA, FWPA, the Spill Act, and the Brownfield Act; and

WHEREAS, Donna Giordano filed a voluntary Chapter 13 petition in U.S. Bankruptcy Court on June 14, 2012, Docket No. 12-25288; and

WHEREAS, Thomas Giordano filed a voluntary Chapter 13 petition in the U.S. Bankruptcy Court on June 19, 2012, Docket No. 12-25607, which was converted to a Chapter 7 bankruptcy on July 2, 2012; and

WHEREAS, the Giordanos filed an Adversary Complaint for Declaratory Relief against the Department in the U.S. Bankruptcy Court on August 9, 2012, Docket No. 12-1811; and

WHEREAS, the Department, Donna Giordano, D.C. Trucking Corp., D.C. Demolition & Recycling, LLC, D.C. Trucking & Excavating, LLC (the companies being referred to collectively as the "D.C. Trucking companies" or "D.C. Trucking Company"), desire to resolve this matter without admitting any fault or without acknowledging the validity of the others' legal arguments or factual contentions, for the purposes of avoiding the cost of ongoing litigation;

**IT IS HEREBY ORDERED AND AGREED:**

This \_\_\_\_\_ day of \_\_\_\_\_, 2014, as follows:

1. Defendant Donna Giordano shall pay \$130,000.00 to settle any and all claims with the Department, plus any proceeds from any gambling or lottery winnings. Upon execution of this Judicial Consent Order and Final Judgment (this "Order") by the parties

and entry hereof by the Superior Court and the Bankruptcy Court, Donna Giordano's and the D.C. Trucking Companies' liability to the Department shall be limited to the amount of \$130,000.00 ("the Settlement Amount"), plus any gambling or lottery winnings prior to May 31, 2019. Gambling winnings are defined as "net" winnings, based on tax returns submitted by Donna Giordano every year for the period of time that she is bound by this JCO. It is agreed upon and understood that the Settlement Amount is based upon Debtor's ability-to-pay as related to Debtor's bankruptcy estate.

2. The Settlement Amount shall be paid as set forth in this and subsequent paragraphs:

a. An initial payment of \$5,000.00 shall be made by Defendant Donna Giordano within three (3) business days of entry of this Order. The payment shall be made from the escrow account of Donna Giordano's bankruptcy counsel, Trenk DiPasquale ("TD"), which contains \$40,000.00. The \$40,000.00 was turned over to TD from Defendant Donna Giordano upon the distribution of life insurance proceeds from the New York Life insurance policy on the life of Thomas Giordano (the "NY Life Insurance Policy"). This initial \$5,000.00 payment shall be deposited into an escrow fund established by Spector-Woodbridge Co. LLC for the removal of fill from the Spector site.

- b. By the within Order, Defendant Donna Giordano assigns to the DEP her rights and interests to the AARP life insurance policy and proceeds in the amount of \$25,000.00. This Order authorizes and directs Defendant Donna Giordano, with the permission of DEP, to provide a copy of this Order to AARP within seven days of the entry hereof by the Superior Court and the Bankruptcy Court and to direct AARP in writing to disburse the \$25,000 in insurance proceeds directly to an escrow fund established by Spector-Woodbridge Co. LLC for the removal of fill from the Spector site. Defendant Donna Giordano shall provide to the Department a copy of her written request to AARP and shall ask AARP to provide to the Department a copy of any check it disburses to the Spector-Woodbridge escrow account.
3. The \$30,000.00 deposited by Donna Giordano into the escrow fund will be used by Spector-Woodbridge to pay for fill removal activities at the Spector Site as directed by the Department.
4. Within five days of receipt of confirmation from the Department that fill removal at the Spector site is complete, and if there are any funds remaining in the Spector-Woodbridge escrow that are attributable to payments by Donna Giordano, they shall be paid to the State of New Jersey as a civil penalty in settlement of the violations alleged in the



Department's complaint and in the Department's AO/NOCAPAs against Donna Giordano and D.C. Trucking. Payments shall be made by check to:

Treasurer, State of New Jersey  
Department of Revenue  
P.O. Box 417  
Trenton, NJ 08625-0417

A copy of this Order shall accompany any such payment.

5. Defendant Donna Giordano grants the Department a mortgage lien for \$100,000.00 (the "Mortgage Lien") on her personal residence located at 20 Madison Avenue, Avenel, New Jersey (the "Property"). In partial satisfaction of the mortgage lien, Donna Giordano will pay \$333 per month for fifty-four (54) months into the escrow account created by Spector-Woodbridge to fund the removal of fill from the Spector site. These payments will commence on December 1, 2014, and continue on the first (1<sup>st</sup>) day of each subsequent month until the last Monthly Payment is made on or before June 1, 2019.

a. Defendant Donna Giordano shall have a ten (10) day "cure period" to make any payments which Defendant has not timely paid to the Department. Said cure period begins once the Department issues a written notice to Giordano in which the Department has declared a default.

b. If Defendant Donna Giordano does not timely cure the failure to make a payment to the Department pursuant to

this paragraph, the Department shall be entitled to pursue any and all legal options to enforce this Consent Order and compel her to make any past due payments.

6. The Monthly Payments shall be deducted from the Mortgage Lien.
7. The Monthly Payments shall be sent to an escrow account held by Spector-Woodbridge to pay for removal of fill from the Spector site. Donna Giordano shall list "Spector site fill removal" in the Memo portion of each check. Defendant Donna Giordano shall also send a copy of each check to the following address:

New Jersey Department of Environmental Protection  
Chief, Bureau of Coastal & Land Use Compliance and  
Enforcement  
401 East State Street  
PO Box 420, Mail Code 401-04C  
Trenton, NJ 08625-0420

8. Defendants Donna Giordano and the D.C. Trucking Companies shall satisfy the balance owed on the Mortgage Lien on or before June, 1, 2019. Defendant is entitled to pre-pay the Mortgage Lien without penalty. Upon satisfaction of the Mortgage Lien and payment of any gambling winnings (as that term is defined above), any and all claims by the DEP under this Order are discharged and released by DEP in favor of the Defendants.

9. The Mortgage Lien shall be a nondischargeability claim as that term is contemplated in the Bankruptcy Code. The amount of the nondischargeability claim shall be \$100,000.00 less any Monthly Payments tendered. Upon payment of the Mortgage Lien, the Department consents and agrees to execute any and all documents to release its mortgage lien on the Property and against Defendant personally. This lien will be enforceable in the Superior Court.
10. Upon approval of this Order, TD shall be entitled to release the \$40,000.00 it currently holds in escrow from the NY Life Insurance Policy as follows: (a) \$5,000.00 payment to Spector-Woodbridge escrow fund; (b) \$3,000.00 payment to TD for a portion of its legal fees; and (c) \$32,000.00 payment to Defendant Donna Giordano.
11. The Department consents to Donna Giordano removing a certain piece of equipment at the Spector site known as a screener ("Screener") that is subject to an Order in litigation pending in New Jersey Superior Court. It is in the Defendant's sole discretion to seek removal of the Screener.
12. Defendant Donna Giordano must obtain an order in the Superior Court (Docket No. C-107-11, Middlesex County) to remove the Screener, since it is subject to a June 20, 2012 Order by the Hon. Glenn Berman, J.S.C. Ch. (since retired) requiring that the Screener remain on Site.

13. If Donna Giordano obtains permission from the Superior Court to remove the Screener from the Spector Site, and sells the Screener, she shall immediately (and no more than 48 hours after receiving payment for the Screener's sale) place either 50% of the proceeds from the sale (after paying off any loans securing the Screener) or a sum of \$10,000.00, whichever she chooses, in TD's trust account; to then be promptly disbursed to the Spector-Woodbridge escrow account to be used for fill removal at the Spector site. A true copy of a bill of sale for the Screener, together with documentation of any outstanding loan balances on the Screener, shall be provided to the Department within 30-days of such sale, along with documentation that all sums were placed in TD's trust account and sent to Spector-Woodbridge's escrow account. Any remaining proceeds from the sale of the Screener may be used by the Defendant to purchase equipment for her business.
14. Defendant must notify the Department at least ninety-six (96) hours prior to any date when she intends to remove the Screener from the Spector site. She must provide such notice to the Department in order to make sure the fill around the Screener is not removed from the Spector site or improperly moved around. Holidays and weekends shall not be counted in calculating the ninety-six (96) hours advance notice. Notification to the Department should be made by calling 1-

609-292-1240 and speaking with the bureau chief or the inspector assigned to inspect the Spector site.

15. Defendant Donna Giordano shall file a notice of settlement under Fed. R. Bankr. P. 9019 so as to notice all creditors and parties in interest in the Superior Court Litigation, whether or not such parties were originally scheduled in her Chapter 13 case.

16. Debtor Donna Giordano shall amend her Chapter 13 plan to include the Department's claims as set forth herein and adjust such plan as it applies to unsecured creditors and TD's fees and expenses.

17. Within seven (7) days of winning any amounts from gambling -- where winning means net winnings as set forth in Paragraph 1 -- or the lottery, Donna Giordano shall pay into the Spector-Woodbridge escrow account one hundred percent (100%) of any such gambling and lottery winnings, to be used towards fill removal costs, until the earlier of May 31, 2019 or such time as all fill has been removed from the Spector site. Gambling and lottery winnings will be confirmed based on Donna Giordano's yearly tax returns and Form W-2Gs, true copies of which she shall submit to the Department on a yearly basis within fourteen (14) days of filing her federal income tax return.

18. By signing this document, and additionally if requested by the Department, Donna Giordano hereby grants the New Jersey Dept. of Taxation and the U.S. Internal Revenue Service permission to share her tax returns with the Department for purposes of ensuring compliance with the terms of this Order.
19. If Donna Giordano receives payment for any fill removed from the Spector site, she shall within five (5) days give these funds to her Bankruptcy Counsel TD, for deposit in the above mentioned Spector-Woodbridge escrow account.
20. Donna Giordano shall not bring additional fill or any other material onto the Spector site.
21. Donna Giordano shall provide any requested information to assist other parties in this matter with removing fill.
22. Donna Giordano shall serve as a fact witness for any party if any cases proceed to trial or a hearing, or for discovery purposes, relating in any way to the Spector site.
23. The Department and Defendant reserve the right to bring a motion in aid of litigant's rights in Superior Court to enforce this Order. Any failure to file a motion in aid of litigant's rights for any event of non-compliance under this JCO shall not constitute a waiver of DEP's right to do so in the future.
24. Subject to the terms of this JCO, the DEP hereby approves the Modified Chapter 13 Plan (the "Modified Plan") filed by

Plaintiff with this Court on April 21, 2014 (Docket No. 60). To the extent that there are or may be any inconsistencies between the treatment of the DEP's claims against Donna Giordano as set forth herein and the treatment of such claims described in the Modified Plan, the terms of this JCO shall control over and supersede the Modified Plan.

25. Unless otherwise directed in writing by the Department, the following person will serve as the Department's contact for all matters concerning this Order:

New Jersey Department of Environmental Protection  
Chief, Bureau of Coastal & Land Use Compliance and  
Enforcement  
401 East State Street  
PO Box 420, Mail Code 401-04C  
Trenton, NJ 08625-0420

WITHDRAWAL OF REQUESTS FOR HEARING

26. Upon signature and entry of this Order, the administrative hearing requests shall be considered withdrawn by the Respondent Donna Giordano and D.C. Trucking Corp. with prejudice, specifically the matters pending in the OAL under Docket Numbers ESA 06181-2004S and ESA 10220-2004S.

STIPULATED PENALTIES

27. Donna Giordano and/or the D.C. Trucking Companies shall be subject to imposition of stipulated penalties as set forth below (each a "Stipulated Penalty" and collectively, the "Stipulated Penalties") for any future failure to comply with

the provisions of this Order, unless the Department notifies them in writing that stipulated penalties will not be assessed for violations of this Order.

28. In the event that Donna Giordano and/or a D.C. Trucking Company fails to perform obligations under this Order, she and/or they shall be liable for Stipulated Penalties of \$500.00 per day until she or they certifies to the Department in writing that she has and/or they have achieved compliance with the payment schedule.

29. Within five (5) calendar days after receipt of a written demand from the Department for Stipulated Penalties, Donna Giordano and/or the applicable D.C. Trucking Company, as applicable, shall make payment of the required amount to the following address:

New Jersey Department of Treasury  
Division of Revenue  
P.O. Box 417  
Trenton, New Jersey 08625-0417

30. Each Stipulated Penalty payment shall include the accompanying invoice provided with the Department's written demand.

31. If any payment is more than ten (10) days late, upon written notice, the Department reserves the right to take all appropriate action to collect any remaining amounts due and owing, including but not limited to, instituting civil



proceedings in aid of litigants rights to collect such Stipulated Penalties pursuant to R. 4:67 and R. 4:70, seeking injunctive relief and/or imposition of appropriate sanctions for violations of this Order.

32. The payment of Stipulated Penalties shall not alter Donna Giordano's and/or and the applicable D.C. Trucking Company defendants' responsibilities to complete all requirements of this Order.

#### RESERVATION OF RIGHTS

33. The Department and Defendant reserve the right to unilaterally seek to enforce this Order in the Superior Court of New Jersey in the event Donna Giordano and/or a D.C. Trucking Company defendant and/or the Department violates any of its material terms after this document is signed. Before the Department seeks enforcement of this Order pursuant to this paragraph, the Department will notify Donna Giordano and/or the D.C. Trucking Company in writing of the violation(s) of this Order, and she or they shall have a reasonable time under the circumstances, not to exceed thirty (30) calendar days, to complete corrective actions.

34. This Order shall not be construed to affect or waive claims of federal or state natural resources trustees against any party for damages or injury to natural resources.

35. The Department reserves the right to require any party to this Order to take any and all additional measures directed to them in the future should the Department determine that such measures are necessary to protect human health and/or the environment. Nothing in this Order constitutes a waiver of any statutory right or enforcement powers of the Department to require the Donna Giordano and/or a D.C. Trucking Company defendant to undertake such additional measures as the Department shall determine are necessary.

PUBLIC PARTICIPATION PROCESS AND CONTRIBUTION PROTECTION

36. Pursuant to N.J.S.A. 13:9B-21 and N.J.A.C. 7:7A-16.18(a)(3), notice of this Order shall be published in the Department Bulletin and will be subject to a thirty (30) day public comment period.

a. If there are no changes to the settlement pursuant to this public participation process, then this Order shall automatically become final on the 31st day after notice;

b. If the Department proposes to make changes pursuant to this public participation process and changes are agreed to, then this Order, as modified in writing shall become final;

c. If the Department proposes to make material changes to this JCO pursuant to the public participation process and such changes are not agreed to within a reasonable period

of time, not to exceed thirty (30) days thereafter, this Order shall become null and void.

37. When entered, this Order will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) for the purpose of providing protection to Donna Giordano and the D.C. Trucking Company defendants from contribution actions. The signatories agree and, by entering this Order, the Superior Court finds that Donna Giordano and the D.C. Trucking Company defendants are entitled, upon fully satisfying their obligations under this Order, to protection from contribution actions or claims for matters addressed in this Order.

38. In order for Donna Giordano and the D.C. Trucking Company defendants to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Order, the Department will publish notice of this Judicial Consent Order in the New Jersey Register and on plaintiff DEP's website on or about July , 2014 in accordance with N.J.S.A. 58:10-23.11e.2. Such notice will include the following information:

a. the caption of this case;

b. the name and location of the Spector site [Block No. 531B, Lot No. 100, Woodbridge Township, Middlesex County, New Jersey, near the intersection of Pennval Road and Berry

Street];

c. the name of the settling defendants: Donna Giordano, D.C. Trucking Corp., D.C. Demolition & Recycling LLC, and D.C. Trucking and Excavating, LLC ("the D.C. Trucking Companies" or "D.C. Trucking Company"); and

d. a summary of the terms of this Order.

39. The Department, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of this Order to all other potentially responsible parties of whom Donna Giordano and D.C. Trucking Companies had notice as of the date the Department published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 38 above.

40. The Department will submit this Order to the Superior Court and Bankruptcy Court for entry and approval unless, as a result of the notice of this Order pursuant to Paragraph 38 above, the Department receives information that discloses facts or considerations that indicate to them, in their sole discretion, that the Order is inappropriate, improper or inadequate.

#### GENERAL PROVISIONS

41. The other defendants in the State Court Litigation, including, but not limited to Spector Woodbridge, are not precluded from seeking compensatory damages, including claims

for contribution from insurance carriers that issued policies to Thomas or Donna Giordano and/or the D.C. Trucking Companies through direct actions against said insurance carriers, and Donna Giordano and the D.C. Trucking Companies agree to assist defendants in these actions.

42. Additionally, Donna Giordano and the D.C. Trucking Companies assign all rights she or they have under any insurance policies relating in any way to the Spector site to Spector-Woodbridge and any other party or parties who seek to enforce her or their rights pursuant to any such insurance policies.

43. Notwithstanding any language to the contrary in this Order, it is not the intention to forego, release, restrict or otherwise waive any claims or rights that Donna Giordano, the D.C. Trucking Companies, the estate of Thomas Giordano, their business entities and/or or third-parties have against insurance carriers who issued policies to D.C. Trucking Corp., Donna Giordano, or any of the D.C. Trucking Companies and/or Donna Giordano's business entities. Nothing in this Order shall be construed to create any rights in the insurance carriers which issued policies to Donna or Thomas Giordano and/or the D.C. Trucking Companies.

44. Nothing contained in this Order shall restrict the ability of the Department to raise the above Findings in any other proceeding.
45. This Order shall be binding on the Department, Donna Giordano and the D.C. Trucking Companies, their respective agents, successors, assigns, and any trustees in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
46. Donna Giordano and the D.C. Trucking Companies, as well as the Department, agree not to contest the terms or conditions of this Order except that they may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce the provisions of this Order.
47. This Order shall not relieve Donna Giordano and the D.C. Trucking Company defendants from obtaining and complying in the future with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
48. No modification or waiver of this Order shall be valid except by joint written application to the Court, duly executed by the Department and the parties to such modification or waiver, and approved by the appropriate Court (that is, the New Jersey Superior Court and the U.S.

Bankruptcy Court for the District of New Jersey (Trenton Vicinage), as applicable).

49. Donna Giordano and the D.C. Trucking Companies shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving either party from its obligations under this Order, the FWPA, WFD, SWMA, and Spill Act and their implementing regulations.
50. Nothing in this Order shall preclude the Department from taking enforcement action against any party to this Order for matters not set forth in the recitations of this Order.
51. No obligations or penalties which are/may be imposed by this Order are intended to constitute debts which may be limited or discharged in a future bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
52. This Order shall be governed and interpreted under the laws of the State of New Jersey and under Title 11 of the United States Code.
53. If any provision of this Order is found invalid or unenforceable, the remainder of this Order shall not be affected thereby, and each provision shall be valid and

enforced to the fullest extent permitted by law. The Department does, however, retain the right to seek termination of the remainder of this Order if, after such finding, it determines that the remaining Order does not serve the purpose for which it was intended.

54. This Order represents the entire integrated Order between the Department and signatories below on the matters contained herein.

55. The Department reserves the right to unilaterally seek termination of this Order in the event any party to this Order violates its terms and further reserves the right to take any additional enforcement action it deems necessary.

56. The Department reserves the right to bring a motion in aid of litigant's rights in Superior Court for enforcement of this Order. The Department also reserves the right to reopen the bankruptcy case and seek a nondischargeable priority claim, for the amount of payments that are due and owing.

57. No modification or waiver of this Order shall be valid except as authorized by the Department or by the Department's modification in writing.

58. This Order shall become final and effective upon signature of the Department, Donna Giordano, and the D.C. Trucking Companies; the completion of the public notice process



outlined in paragraphs 37-40 above; and its entry by the Bankruptcy Court and the Superior Court."

59. Upon entry of an order of the Bankruptcy Court confirming the Modified Plan (a "Confirmation Order"), and after the Superior Court enters this Order, the claims asserted by all parties in the State Court Litigation against Donna Giordano and the D.C. Trucking Companies shall be dismissed. The dismissal of such claims which parties to the State Court Litigation have or may have against Donna Giordano and the D.C. Trucking Companies shall not prejudice, waive, release, discharge or modify such rights, claims and/or defenses, if any, that such parties (including, for purposes hereof, the Department) have or may have against one another and which have or may hereafter be asserted in the State Court Litigation; it being expressly understood that all such rights, claims and/or defenses are hereby preserved to the full extent permitted by applicable law (the foregoing being hereinafter referred to as the "Reservation of Rights"). Furthermore, the entry into this settlement by the Department shall not be deemed to constitute a waiver of any defenses or claims it may have or a waiver of any claims or defenses any party in the State Litigation may have. Prior to the entry of the Confirmation Order, the Department shall make application to the Superior Court of New Jersey having jurisdiction over

the State Court Litigation and secure the entry of this Order approving the Reservation of Rights hereinabove provided for.

60. The undersigned warrant that they are authorized to sign this Order and bind themselves, their successors, assignees, and/or trustees to comply with the terms and provisions of this Order.

61. Defendant Donna Giordano voluntarily dismisses the Adversary Complaint against NJDEP and any other parties.

62. Provided this settlement passes through the public comment process of the Spill Act and the Freshwater Wetlands Protection Act without material change, or with changes acceptable to all signatories, the Department hereby releases any and all claims against Donna Giordano and the D.C. Trucking Companies upon the entry of this Order by the Superior Court and the Bankruptcy Court, except for the terms and conditions set forth herein.

63. Defendant Donna Giordano and the D.C. Trucking Companies hereby release any and all claims against DEP, the State of New Jersey, and any employees or agents of the State and/or the Department.

64. This Order and all of the terms and conditions herein are hereby APPROVED in their entirety pursuant to applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

65. Upon entry of an Order Confirming Donna Giordano's Modified Chapter 13 Plan, the September 7, 2012 Stipulation and Order entered by this Court shall be of no further force or effect.

66. This Order and all of the terms and conditions herein are hereby APPROVED in their entirety pursuant to applicable provisions of the New Jersey Court Rules.

**EXECUTION PAGES TO THIS ORDER ARE APPENDED FOLLOWING THIS PAGE,  
AND ARE INCORPORATED HEREIN IN THEIR ENTIRETY.**

FOR NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dated: 6/24/14 By: Lawrence J. Baier  
Lawrence J. Baier, Chief, Bureau of  
Coastal Land Use Compliance &  
Enforcement

Dated: 6/24/14 By: Thomas Farrell  
Thomas Farrell, Chief, Bureau of  
Solid Waste Compliance & Enforcement

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Kevin Kratina, Assistant Director  
Enforcement & Information Support  
Element  
Division of Site Remediation  
Enforcement, Technical & Financial  
Support

**FOR THE DEFENDANTS**

DONNA GIORDANO, Individually

Dated: 6/26/14 By: Donna Giordano  
Donna Giordano

D.C. DEMOLITION & RECYCLING, LLC

Dated: 6/26/14 By: Donna Giordano  
Donna Giordano

D.C. TRUCKING & EXCAVATING, LLC

Dated: 6/26/14 By: Donna Giordano  
Donna Giordano

D.C. TRUCKING CORP.

Dated: 6/26/14 By: Donna Giordano  
Donna Giordano

This Consent Order having come before the Court, and it appearing that its terms will best serve the public interest and the respective interests of the parties, and for other good cause shown:

IT IS ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2014, as follows:

1. This Consent Order shall bind and obligate the parties as described above.

2. The Court retains jurisdiction for the purpose of enforcing this Consent Order, for determinations on the imposition of stipulated penalties, and for all other matters it deems appropriate.

3. The Court shall entertain an application by plaintiff DEP on short notice, to enforce this Consent Order and for imposition of appropriate sanctions if DEP alleges that defendants have not timely complied with any of its provisions.

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Hon. Travis J. Francis, A.J.S.C.

This Consent Order having come before the Court, and it appearing that its terms will best serve the public interest and the respective interests of the parties, and for other good cause shown:

IT IS ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2014,  
as follows:

1. This Consent Order shall bind and obligate the parties as described above.

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Hon. Michael B. Kaplan, U.S.B.J.