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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. L-5793-07

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; THE
COMMISSIONER OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

CARBIDE-GRAPHITE GROUP, INC.; CHEVRON
PHILLIPS CHEMICAL COMPANY, LP; EXXON
MOBIL OIL CORPORATION; PFIZER, INC.; G-I
HOLDINGS, INC.; HERCULES; INCORPORATED;
MID-STATE TRADING COMPANY; OSRAM
SYLVANIA, INC.; QUIGLEY COMPANY, INC.; RCA
CORPORATION; BAYER CROPSCIENCE LP-
(INCORRECTLY NAMED HEREIN RHODIA, INC.);
R.K.D. OIL, INC.; RUTGERS ORGANICS LLC F/K/A
RUETGERS ORGANICS CORPORATION; SIMON
WRECKING COMPANY, INC.; and UNION CARBIDE
CORPORATION,

Defendants/ Third Party
Plaintiff,

v.

BOROUGH OF SAYREVILLE; AIR
PRODUCTS & CHEMICALS INC.;
ARCONIC INC. F/K/A ALCOA INC.;
INTERNATIONAL FLAVORS & INTERNATIONAL
FLAVORS &
FRAGRANCES INC.; and LINDE LLC,

Third Party Defendants.

Civil Action
CONSENT JUDGMENT

This matter was opened to the Court by Gurbir S. Grewal, Attorney General of New Jersey, Louis G. Karagias, Deputy Attorney General, appearing, as attorney for plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), and the attorneys listed on the attached counsel list, appearing, as attorneys for the Defendants and Third-Party Defendants-(collectively, "the Settling Defendants" as defined herein); and the parties have amicably resolved their dispute before trial:

I. BACKGROUND

A. The Plaintiffs initiated this action on June 28, 2007, by filing a Complaint against the Defendants, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -35; the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 to -116 ("the Sanitary Landfill Act"), and the common law.

B. Plaintiffs, in their Complaint, seek reimbursement of the costs they have incurred, and will incur, to remediate the Sayreville Landfill Site, which costs include damages, as defined herein, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances and pollutants at the Sayreville Landfill Property, as well as injunctive and other relief.

C. Plaintiff DEP, in its Complaint, also seeks reimbursement of any costs it has incurred, and will incur, to close the sanitary landfill at the Sayreville Landfill Property, as well as damages, as defined herein, for any natural resource of this State that has been, or may be, injured by the disposal of solid wastes at the Sayreville Landfill Property, as well as injunctive and other relief.

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

E. Some of the Defendants also filed third-party Complaints against the Borough of Sayreville (“Sayreville”) and other parties seeking contribution and indemnification for any costs and damages for which they would be held liable as a result of Plaintiffs’ Complaint.

F. By entering into this Consent Judgment, the Settling Defendants do not admit any liability arising from the transactions and occurrences the Plaintiffs allege in the Complaint and/or that Third-Party Plaintiffs allege in the Third-Party Complaint filed in this action.

G. 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 Sayreville Landfill Property within the meaning of N.J.S.A. 58:10-23.11b.

H. The Plaintiffs further allege, and the Settling Defendants deny, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "not satisfactorily stored or contained" at the Sayreville Landfill Property within the meaning of N.J.S.A. 58:10-23.11f.b(2).

I. The Plaintiffs further allege, and the Settling Defendants deny, that “pollutants,” as defined in N.J.S.A. 58:10A-3n., have been "discharged" at the Sayreville Landfill Property within the meaning of N.J.S.A. 58:10A-3e.

J. The Plaintiffs further allege, and the Settling Defendants deny, that "solid wastes," within the meaning of N.J.S.A. 13:1E-3a., have been "disposed of" at the Sayreville Landfill Property, within the meaning of N.J.S.A. 13:1E-3c., certain of which were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the Sayreville Landfill Property within the meaning of N.J.S.A. 13:1E-3q.

K. On September 8, 1983, the Site was added to the U.S. Environmental Protection Agency’s (“EPA”) National Priorities List of Superfund sites.

L. From August 1986, through mid-1990, plaintiff DEP performed a Remedial Investigation/Feasibility Study (“RI/FS”) of the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which plaintiff DEP investigated the nature and extent of the contamination at the Site.

M. In response to a June 19, 1986 Spill Act Directive, on October 28, 1986, Settling Defendants Chevron Phillips Chemical Company, LP (“Chevron”), Hercules Incorporated (“Hercules”), Mobil Chemical Company, Inc. (“Mobil Chemical”), Quigley Company, Inc. (“Quigley”), Pfizer Inc. (“Pfizer”), RUETGERS Organics Corporation n/k/a Rutgers Organics LLC, and Borough of Sayreville (“Sayreville”) entered into an Administrative Consent Order (“ACO 1”) with plaintiff DEP whereby these Settling Defendants (“ACO 1 Settling Defendants”) agreed to fund the RI/FS being conducted by plaintiff DEP.

N. Sampling results from the Remedial Investigation revealed the presence of various hazardous substances and pollutants in the ground water and wetlands at the Site, including volatile organic compounds, pesticides and acids.

O. Ground water and wetlands are natural resources of the State.

P. On September 28, 1990, EPA issued a Record of Decision (“ROD”) announcing the selected remedial measures for the Site. The ROD called for, among other things, the removal of buried drums, closure of the landfill in accordance with state landfill closure regulations, including placement of a solid waste cap on the landfill, installation of fencing around the landfill, and installation of additional monitoring wells to further assess the impact of the landfill on ground water.

Q. In November 1991, in response to another Spill Act Directive, Settling Defendants Hercules, Mobil Chemical, Pfizer, Quigley, RPI (Bayer CropScience LP, as successor to Rhone-Poulenc Inc. and as incorrectly named Rhodia, Inc. in this action), Ruetgers, Organics Corporation n/k/a Rutgers Organics LLC and Sayreville (“ACO 2 Settling Defendants”) entered into a second ACO (“ACO 2”) with plaintiff DEP whereby the ACO 2 Settling Defendants agreed to perform the activities required by the 1990 ROD. These activities were completed in July 1998.

R. In September 1998, EPA issued a second ROD selecting “No Further Action with Monitoring” for the ground water and “No Further Action” for the surface water and sediments and a five-year maintenance and groundwater monitoring program to observe changes, if any, in groundwater

contamination levels. The ACO 2 Settling Defendants agreed to conduct this groundwater monitoring program.

S. After the original five-year semi-annual monitoring program was completed, a revised maintenance and monitoring program was approved by DEP and conducted by the ACO 2 Settling Defendants.

T. The Sayreville Landfill Site was removed from the National Priorities List in November 2011.

U. Plaintiff DEP has incurred, and may continue to incur, costs as a result of the discharge and/or unsatisfactory storage or containment of hazardous substances and the discharge of pollutants and the disposal of solid wastes at the Sayreville Landfill Property.

V. Plaintiff Administrator may certify for payment, valid claims made against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

W. The Plaintiffs allege that they have incurred, and may in the future incur, cleanup costs and damages, including compensatory damages, lost value and reasonable assessment costs, and any other actual damages, 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 and pollutants, and the disposal of solid wastes at the Sayreville Landfill Property.

X. Plaintiffs allege that the costs and damages the Plaintiffs have incurred, and may incur, for the Site are "cleanup and removal costs" pursuant to N.J.S.A. 58:10-23.11b. Plaintiffs allege that the costs and damages plaintiff DEP has incurred, and may incur as a result of the improper operation of the sanitary landfill facility located at the Sayreville Landfill Property, are "closing costs" within the meaning of N.J.S.A. 13:1E-102a.

Y. The costs and damages plaintiff DEP has incurred, and may incur, for the Site are also recoverable within the meaning of N.J.S.A. 58:10A-10c(2)-(4).

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, the Water Pollution Control Act, the Sanitary Landfill 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 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, the Water Pollution Control Act, the Sanitary Landfill Act, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"Consent Judgment" shall mean this Consent Judgment and the appendices 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, that the Plaintiffs may incur, after the entry of this Consent Judgment, to investigate and remediate the Site under the Spill Act, in connection with the Sanitary Landfill closure of the Site, and in connection with any and all claims against and appropriations from the Spill Fund in connection with the Site.

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

"Natural Resources" means all land, fish, shellfish, wildlife, biota, air, waters, and other such resources owned, managed, held in trust or otherwise controlled by the State.

"Natural Resource Damages" shall mean all claims arising from discharges at the Sayreville Landfill Property 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 Natural Resources 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; the Sanitary Landfill Act, or any other state or federal common law, statute, or regulation, and include:

- a. The costs of assessing injury to Natural Resources and natural resource 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 Natural Resources and natural resource 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; or

b. Requirements to clean up any contamination as a result of discharges at the Sayreville Landfill Property;

"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 Commissioner, plaintiff Administrator, and the Settling Defendants.

"Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that the Plaintiffs have incurred on or prior to entry of this Consent Judgment to remediate the Site.

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

"Sayreville Landfill Property" or "Property" shall mean the parcel of real property consisting of approximately 35 acres of real property located on Jernee Mill Road, Sayreville, Middlesex County, New Jersey, this property being also known and designated as Blocks 56, 57.02, 57.04 and 57.05, Lots 1.01, 2.02 and 1, respectively, on the Tax Map of the Borough of Sayreville.

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

"Settling Defendant" or "Settling Defendants," shall mean the following parties to the litigation: Defendants- Linde LLC as Successor-in-Interest to Carbide Graphite Group, Inc.; Chevron U.S.A. Inc. as Successor to Chevron Chemical Company, as indemnitor for Chevron Phillips Chemical Company; ExxonMobil Oil Corporation; Pfizer Inc.; Hercules Incorporated; Mid-State Trading Company; Osram Sylvania, Inc.; Quigley Company, Inc.; General Electric Company, as successor-in-

interest to Radio Corporation of America, a/k/a RCA Corporation; Bayer CropScience LP, as successor to Rhone-Poulenc Inc. and as incorrectly named as Rhodia, Inc. now known as Solvay USA Inc., as indemnitor to Bayer CropScience LP in this action (collectively "RPI"); Rutgers Organics LLC f/k/a RUETGERS Organics Corporation ("RUTGERS"); Simon Wrecking Co. Inc.; Union Carbide Corporation; Third Party Defendants- the Borough of Sayreville; Arconic Inc. f/k/a Alcoa Inc., ("Arconic"); International Flavors & Fragrances Inc.; and Linde LLC. Settling Defendants shall also include their officers, directors, employees, predecessors, parents, successors, subsidiaries, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity ("Related Entities"), but only to the extent that the alleged liability of any Related Entity for remediating the 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 Site arose independently of its status and capacity as a Related Entity of any Settling Defendant.

"Site" or Sayreville Landfill Site shall mean the Sayreville Landfill property, consisting of approximately 35 acres of real property located on Jernee Mill Road, Sayreville, Middlesex County, New Jersey, this property being also known and designated as Blocks 56, 57.02, 57.04 and 57.05, Lots 1.01, 2.02 and 1, respectively, on the Tax Map of the Borough of Sayreville ("the Property" or "the Sayreville Landfill Property"), and all other areas where any hazardous substance or pollutant discharged there has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. 134979.

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 compensate the Plaintiffs for alleged injuries to Natural Resources due to the discharge of hazardous substances and pollutants at and emanating from the Property, in return for the Plaintiffs agreeing to resolve all of their claims against the

Settling Defendants concerning the Site, except those reserved in Section VIII, as alleged in the Complaint and as stated in this Consent Judgment.

VI. SETTling DEFENDANTS'/ THIRD PARTY PLAINTIFFS' COMMITMENTS

6. The compensation referred to in Paragraph 5 shall consist of the grant by Settling Defendant Sayreville of a conservation easement that conforms with Appendix C on a 24.15-acre parcel of undeveloped property owned by Sayreville and located off of Bordentown Avenue, Sayreville, New Jersey, identified as Block 20, Lot 1; Block 21, Lots 2 through 7; Block 22, Lot 1; and Block 23, Lot 1 on the tax map of Sayreville (hereinafter referred to as "the Parcel").

7. Within 45 Days of the effective date of this Consent Judgment, the Settling Defendants shall pay the Plaintiffs \$22,989.60 in reimbursement of the Plaintiff DEP's costs of assessing damage to Natural Resources at the Site and \$10,000 in reimbursement of Plaintiffs' attorneys' fees incurred in this matter.

8. The Settling Defendants shall pay the amount specified in Paragraph 7 above by certified check made payable to the "Treasurer, State of New Jersey." Payment shall be made to the address referenced on the attached invoice. The Settling Defendants shall mail or otherwise deliver a copy of the payment and invoice to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

9. The Settling Defendants' obligations to pay the amounts owed to the Plaintiffs in the prescribed form and manner pursuant to Paragraph 7 and 8, above, are joint and several, without regard to fault. In the event of insolvency or other failure by any Settling Defendant to satisfy any provision of this Consent Judgment, the remaining Settling Defendants shall satisfy such provision.

10. Settling Defendant Sayreville shall provide to the Department for its review and approval prior to recording the conservation easement, but no later than 30 days of the effective date of this Consent Judgment, the following:

(a) either a certification by Settling Defendant Sayreville certifying that there have been no changes to the Parcel since the preliminary assessment/site investigation report, dated May 2010, was approved by the Department in October 2010; or

(b) a current preliminary assessment/site investigation report for the Parcel as per Subchapter 3 of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and

(c) a current update of the title report dated December 2009; and

(d) an updated survey package which includes any revisions to the title (the “Survey Package”) consisting of, but not limited to, 15 copies of the site plan and 15 copies of a property description, with a reduced plan attached, prepared in accordance with New Jersey Green Acres, “Scope of Work for Professional Land Surveying,” (found at: <http://www.nj.gov/dep/greenacres>) of the Parcel as depicted in the diagram attached hereto as Appendix B; and

(e) a present condition report, which is part of the conservation easement (Appendix C).

11. Settling Defendant Sayreville alleges that the Parcel consists entirely of uncontaminated property and is free from any easements, including utility easements.

12. The address to which the updated title and Survey Package are to be submitted is:

Chief
Office of Natural Resource Restoration
Division of Parks and Forestry
New Jersey Department of Environmental Protection
501 East State Street
P.O. Box 420
Mail Code 501-01
Trenton, New Jersey 08625-0420

A copy of the letter submitting the updated title and the Survey Package is to be simultaneously sent to:

Section Chief
Environmental Enforcement Section

Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

13. Within 45 days of the effective date of this Consent Judgment or 45 days after DEP has approved the conservation easement, whichever is later, Settling Defendant Sayreville, as the owner of the Parcel, shall record with the Clerk of Middlesex County the conservation easement on the Parcel reflected in the Survey Package approved by Plaintiff DEP, a copy of which is attached hereto as Appendix C. A copy of the recorded conservation easement shall be forwarded to the Department at the address listed in Paragraph 12, above, within 30 days of its filing.

14. Settling Defendant Sayreville agrees to bear the full cost of the tasks described in Paragraphs 10 through 13, above. The other Settling Defendants shall not be responsible for any of Plaintiffs' costs in reviewing, approving or overseeing any of the tasks, including the Survey Package.

VII. PLAINTIFFS' COVENANT & RELEASE

15. In consideration of the payments and other compensation the Settling Defendants are making pursuant to Paragraphs 6 through 14, above, and except as otherwise provided in Paragraphs 20-23 below, the Plaintiffs covenant not to further sue or to take administrative action against the Settling Defendants for reimbursement of the Past Cleanup and Removal Costs and Future Cleanup and Removal Costs.

16. In further consideration of the payments and other compensation the Settling Defendants are making pursuant to Paragraphs 6 through 14, above, and except as otherwise provided in Paragraphs 20-23 below, the Plaintiffs fully and forever release, covenant not to sue and not to otherwise take administrative action against the Settling Defendants for any and all of the Plaintiffs' causes of actions for Natural Resource Damages for the Site.

17. In further consideration of the payments and other compensation the Settling Defendants are making pursuant to Paragraphs 6 through 14, above, the Plaintiffs shall promptly dismiss, with prejudice, the complaint against the Settling Defendants, which is hereby ordered, and the Third-Party Plaintiffs shall dismiss, with prejudice, their Third-Party Complaint against those Third-Party Defendants which are Settling Defendants and without prejudice as to those Third-Party Defendants which are not Settling Defendants, if any.

18. The covenants and release contained in Paragraphs 15 through 17, above, shall take effect upon the Settling Defendants full compliance with all of the commitments set forth in Paragraph 6 through 14, above.

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

VIII. PLAINTIFFS' RESERVATIONS

20. 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 the Site, or to reimburse the Plaintiffs for any additional cleanup and removal costs and damages, if, at any time following entry of this Consent Judgment:

- i. Plaintiff DEP discovers conditions at the Site, 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 remediation undertaken by Settling Defendants for the Sayreville Landfill Site is not protective of human health and safety, or the environment.

21. For the purposes of Paragraph 20, the information and the conditions known to the Plaintiffs shall include only the information and conditions known to the Plaintiffs as of the date of entry of the Consent Judgment by the Court.

22. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Site, or to direct the Settling Defendants to undertake any remediation authorized by law concerning the Site. Settling Defendants retain all defenses to any action initiated under this paragraph by Plaintiffs. The Settling Defendants agree that all investigation and remediation of hazardous substances they perform under State oversight (as opposed to federal oversight) will be performed pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and the accompanying regulations and guidance, notwithstanding N.J.S.A. 58:10C-27e.

23. The covenants and release contained in Paragraphs 15 through 17, 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 Site;
- c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendants at the Property, other than as provided for in ACOs 1 and 2, or as otherwise ordered or approved by plaintiff DEP;
- d. criminal liability;
- e. liability for any claim pending or filed on or after the effective date of this Consent Judgment against the Spill Fund or the Sanitary Landfill Fund concerning the Sayreville Landfill Site;

f. liability for any non-compliance with ACOs 1 and 2, any amendments thereto, or any subsequent agreement entered into between the Settling Defendants and EPA and/or Plaintiff DEP.

24. 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 , or the Sanitary Landfill Fund within the meaning of N.J.S.A. 13:1E-107 or N.J.A.C. 7:1I.

IX. SETTLING DEFENDANTS' COVENANTS

25. 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.

26. The Settling Defendants further covenant, subject to Paragraph 28 below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site. This covenant shall include the following:

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

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

27. The Settling Defendants' covenants not to sue or to assert any claim or cause of action against the State pursuant to Paragraphs 25 and 26b, above, do not apply where the Plaintiffs sue or take administrative action against the Settling Defendants pursuant to Paragraph 20 and Paragraph 23.

X. SETTLING DEFENDANTS' RESERVATIONS

28. 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 or her office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Site, including plaintiff DEP's selection and performance of the remediation, 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, the Water Pollution Control Act and/or the Sanitary Landfill Act.

XI. FINDINGS & ADMISSIONS OF LIABILITY

29. Nothing contained in this Consent Judgment shall be considered an admission of any issue of fact or law 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 Site as of the effective date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

30. 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.

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 Site against any person not a Party to this Consent Judgment.

32. 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, that the Settling Defendants have resolved their liability to the Plaintiffs for all Past Cleanup and Removal Costs and Future Clean Up and Removal Costs and all Natural Resource Damages and 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.

33. In order for the Settling Defendants to obtain protection under N.J.S.A. 58:10-23.11.f.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 Sayreville Landfill Property;
- c. the names of the Settling Defendants;
- d. a summary of the terms of this Consent Judgment; and
- e. that there are 60 days to comment on the proposed Consent Judgment.

34. 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 33, above.

35. Following the expiration of the 60-day comment period required in N.J.S.A. 58:10-23.11e2, the Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 54,

below, unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 33 and 34, 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.

36. 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 Site, the Settling Defendants 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, and any claims for contribution brought in the subsequent proceeding by any Settling Defendant, 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

37. 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

38. 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 Site, including technical records and contractual documents.

39. The Settling Defendants may assert a claim of confidentiality or privilege for any information submitted to the Plaintiffs pursuant to this Consent Judgment. The Settling Defendants, however, agree not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

XV. RETENTION OF RECORDS

40. The Settling Defendants shall preserve for a minimum of seven years after the effective date of this Consent Judgment, all data and information, including technical records, potential evidentiary documentation and contractual documents, in any of the Settling Defendant's² possession or in the possession of their ~~its~~ divisions, employees, agents, accountants, or contractors, which in any way concern the Property, despite any document retention policy to the contrary.

41. After the seven-year period specified in Paragraph 40, above, each Settling Defendant may advise plaintiff DEP, in writing, that it will discard or destroy any information or documents which in any way concern the Site. Such written notice 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. DEP shall be given an opportunity to take possession of these documents prior to their disposal or destruction.

XVI. NOTICES AND SUBMISSIONS

42. 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, Commissioner & Administrator:

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

As to:

Borough of Sayreville
Ryan J Scerbo, Esq.
DeCotis, Fitzpatrick, Cole & Giblin, LLP
61 South Paramus Road
Suite 250
Paramus, NJ 07652

Bayer Cropscience, LP, as successor to
Rhone-Poulenc Inc., and as incorrectly
named as Rhodia Inc., now known as Solvay
USA Inc.

Brian Montag, Esq.
Gail Howie Conenello, Esq.
K&L Gates LLP
One Newark Center
Tenth Floor
Newark, NJ 07102

Jeffrey Lang, Esq.
Senior HSE Counsel
Solvay USA Inc.
504 Carnegie Center
CN5203
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Rutgers Organics LLC f/k/a RÜETGERS Organics Corporation
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Bressler, Amery & Ross, P.C.
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Florham Park, N.J. 07932
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djcamerson@bressler.com

And

Andrew Kruzcek, EHSQ Manager
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EHS Services
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Piscataway, N.J. 08855
723-735-0204
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ExxonMobil Oil Corporation
Andrew M. Gilchrist, Esq.
Exxon Mobil Corporation
22777 Springwoods Village Parkway, N1.4B.331
Spring, TX 77389

Richard F. Ricci, Esq.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

Chevron USA Inc. as successor to
Chevron Chemical Company
Dennis M. Toft, Esq.
Diana L. Buongiorno, Esq.
Chiesa, Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052

Robert A. Malinoski
Senior Counsel
Environmental & Safety Law Group
Chevron Law Department
Chevron U.S.A. Inc.
1400 Smith Street, 5th Floor
Houston, Texas 77002

Osram Sylvania, Inc.
Dennis M. Toft, Esq.
Diana L. Buongiorno, Esq.
Chiesa, Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052

Hercules Incorporated
Glenn A. Harris Esq.
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210 Lake Drive East, Suite 200
Cherry Hill, NJ 08002-1163

Pfizer, Inc.
Gareth J. Port
Senior Paralegal
Legal Division
Pfizer Inc.
235 East 42nd Street, 235/25/01
New York, New York 10017

Quigley Company, Inc.
Howard B. Epstein, Esq.
Theodore A. Keyes, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NJ 10022

General Electric Company, as successor-
in-interest to Radio Corporation of
America, a/k/a RCA Corporation
Ira Gottlieb, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056

Union Carbide Corporation
Kenneth H. Mack Esq.
Fox Rothschild LLP
Princeton Pike Corporate Center
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648

Linde LLC
Anthony J. Marchetta, Esq.
C. John DeSimone III, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07054

International Flavors & Fragrances Inc.
Linda Mack, Esq.
Fox Rothschild LLP
Princeton Pike Corporate Center
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648

Mid State Trading Co. and Simon
Wrecking Co. Inc.

Sharon Oras Morgan, Esq.
Fox Rothschild LLP
Citizens Bank Center, Suite 1300
919 N. Market Street
P.O. Box 2323
Wilmington, DE 19899-2323

Arconic Inc., formerly known as Alcoa Inc.

Franklin W. Boenning, Esq.
Franklin W. Boenning LLC
1577 Grouse Lane
Mountainside, New Jersey 07092

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

44. 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 Settling Defendant of its obligation to obtain written approvals or modifications as required by this Consent Judgment.

XVII. EFFECTIVE DATE

45. 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

46. 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. APPENDICES

47. The following appendices are attached to and incorporated into this Consent Judgment:
- a. “Appendix A” is a tax map of the Sayreville Landfill Property;
 - b. “Appendix B” is a 2010 survey showing the lots and blocks of the Parcel subject to the Conservation Easement; and

c. "Appendix C" is a Model Conservation Easement for the Parcel being preserved pursuant to this Consent Judgment.

XX. MODIFICATION

48. This Consent Judgment, including the appendices identified in Section XIX, represents the entire integrated agreement between the Plaintiffs and the Settling Defendants concerning the Sayreville Landfill Site; provided, however, nothing in this Consent Judgment is intended to supersede ACO 1 or ACO 2, or any amendments thereto, concerning the Sayreville Landfill Site. The ACO 1 and ACO 2 Settling Defendants must fulfill all remediation obligations imposed upon them pursuant to the ACOs and any other remediation agreement entered into between the ACO 1 and/or ACO 2 Settling Defendants and EPA and/or plaintiff DEP.

49. 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.

50. All notices or other documents that 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.

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

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

XXI. ENTRY OF THIS CONSENT DECREE

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

54. Upon conclusion of the public comment period specified in Paragraph 35, above, the Plaintiffs shall promptly submit this Consent Decree to the Court for entry.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Dated:

By: _____
Raymond Bukowski, Assistant Commissioner
Natural & Historic Resources

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:

DeCotis, Fitzpatrick, Cole & Giblin, LLP

Attorneys for the Borough of Sayreville

By: _____
Ryan J. Scerbo, Esq.

Dated:

Person Authorized to Accept Service on Behalf of the Borough of Sayreville.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

K&L Gates, LLP

Attorneys for Bayer Cropscience, LP, as
successor to Rhone-Poulenc Inc., and as
incorrectly named as Rhodia Inc., now known as
Solvay USA Inc.

By: _____
Brian Montag, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Solvay USA Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Bressler, Amery & Ross, PC

Attorneys for Rutgers Organics LLC f/k/a
RUETGERS Organics Corporation

By: _____
Donald Jay Camerson, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Rutgers Organics LLC f/k/a
RUETGERS Organics Corporation

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Lowenstein Sandler LLP

Attorneys for ExxonMobil Oil
Corporation

By: _____
Richard F. Ricci, Esq.

Dated:

Person Authorized to Accept Service on Behalf of ExxonMobil Oil Corporation

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Chiesa, Shahinian & Giantomasi PC

Attorneys for Chevron USA Inc. as successor to
Chevron Chemical Company

By: _____
Dennis M. Toft, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Chevron USA Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Chiesa, Shahinian & Giantomasi PC

Attorneys for Osram Sylvania, Inc.

By: _____
Dennis M. Toft, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Osram Sylvania, Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Ballard Spahr LLP

Attorneys for Hercules Incorporated

By: _____
Glenn A. Harris, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Hercules Incorporated

Name: _____

Title: _____

Address: _____

Telephone No.: _____

For Pfizer Inc.

By: _____
Merrill E. Fliederbaum, Esq.
Assistant General Counsel

Dated:

Person Authorized to Accept Service on Behalf of Pfizer Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Schulte Roth & Zabel LLP

Attorneys for Quigley Company, Inc.

By: _____
Howard B. Epstein, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Quigley Company, Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

McCarter & English, LLP

Attorneys for General Electric Company, as
successor-in-interest to Radio Corporation of
America, a/k/a RCA Corporation

By: _____
Ira Gottlieb, Esq.

Dated:

Person Authorized to Accept Service on Behalf of General Electric Company

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Fox Rothschild LLP

Attorneys for Union Carbide Corporation

By: _____
Kenneth H. Mack, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Union Carbide Corporation

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Day Pitney LLP

Attorneys for Linde LLC

By: _____
Anthony J. Marchetta, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Linde LLC

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Fox Rothschild LLP

Attorneys for International Flavors & Fragrances
Inc.

By: _____
Linda Mack, Esq.

Dated:

Person Authorized to Accept Service on Behalf of International Flavors & Fragrances Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Fox Rothschild LLP

Attorneys for Mid-State Trading Co. and Simon
Wrecking Co. Inc.

By: _____
Sharon Oras Morgan, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Mid-State Trading Co.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Person Authorized to Accept Service on Behalf of Simon Wrecking Co. Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Franklin W. Boenning LLC

Attorneys for Arconic Inc. formerly known as
Alcoa Inc.

By: _____
Franklin W. Boenning, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Arconic Inc.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Day Pitney LLP

Attorneys for Linde LLC as Successor-
In-Interest to Defendant Carbide
Graphite Group, Inc.

By: _____
Anthony J. Marchetta, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Linde LLC

Name: _____

Title: _____

Address: _____

Telephone No.: _____