



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES

OFFICE OF NATURAL RESOURCE RESTORATION

MAIL CODE 501-04

P.O. Box 420

TRENTON, NJ 08625-0420

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

CATHERINE R. McCABE

Commissioner

IN THE MATTER OF	:	
THE AMERICAN CYANAMID	:	GROUNDWATER ONLY
SUPERFUND SITE	:	NATURAL RESOURCE DAMAGES
PROGRAM INTEREST NO. 001000	:	
AND	:	SETTLEMENT AGREEMENT
WYETH HOLDINGS LLC	:	

The New Jersey Department of Environmental Protection (“DEP”), the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (jointly, the “Department”) enter this Settlement Agreement pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, and in the Commissioner of the Department by N.J.S.A. 13:1D-1 et seq. and the New Jersey Spill Compensation and Control Act, and duly delegated to the Assistant Commissioner, Natural and Historic Resources and the Administrator pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Wyeth Holdings LLC (hereinafter, “Wyeth” or the “Settling Party”) is a Maine Limited Liability company, with offices located at 235 East 42nd Street, New York, NY 10017, and is a settling party to this Natural Resource Damages Settlement Agreement.

2. Wyeth owns the American Cyanamid Superfund Site, encompassing approximately 435 acres, designated as Block 305, Lot 2; Block 340, Lot 2; Block 342, Lot 2; and Block 343, Lot 1 in the Township of Bridgewater, and Block 1, Lot 37.01 in the Borough of Bound Brook, all within Somerset County, New Jersey (hereinafter, “Property”).

3. This Natural Resource Damages Settlement Agreement (hereinafter, "Settlement Agreement") addresses Wyeth’s alleged liability for natural resource damages arising from discharges, as defined in N.J.S.A. 58:10-23.11b, at or from the Property that have impacted or will impact groundwater (the “Discharges”).

4. Wyeth is conducting remediation of the Property pursuant to an Amended and Restated Administrative Consent Order with DEP, dated December 23, 2015 (the “2015 ARACO”), and pursuant to several agreements with the United States Environmental Protection

Agency (“EPA”).

5. Wyeth has conducted a Groundwater Remedial Investigation of the Discharges and submitted the results of that investigation in a report titled *Remedial Investigation Report for Groundwater for the American Cyanamid Company Site* dated February 1, 2006, and in a report titled *Supplemental Remedial Investigation Report for Groundwater for the American Cyanamid Company Site* dated April 3, 2007, which was approved by EPA in a Record of Decision, dated September 2012 (“September 2012 ROD”).

6. EPA announced in a Proposed Plan, dated February 2012, the preferred groundwater remedial action plan for contaminated groundwater that supplements existing groundwater treatment and containment measures with a long-term pump and treatment system and a series of cutoff walls designed to contain and reduce the extent of contaminated groundwater at the Property. The Proposed Plan was approved by EPA in the September 2012 ROD. In its letter dated September 20, 2012, DEP provided EPA with the DEP’s written concurrence with the September 2012 ROD.

7. Since the September 20, 2012 ROD, Wyeth has continued to investigate and delineate the extent of the groundwater contamination at and from the Property. The latest results of these efforts are set forth in the following reports reviewed by DEP and approved by USEPA:

- Second Half 2013 Baseline Groundwater Monitoring Program Interim Technical Memorandum (2H 2013 BGMP) (Golder Associates, July 2014),
- First Half 2015 Semi-Annual Groundwater Monitoring Report (1H 2015 SGMP) (Golder Associates, May 2016),
- 2015 Vapor Intrusion Pathway Evaluation Report (2015 VI report) (Golder Associates, December 2015),
- Off-Site Chlorinated Solvent Groundwater Contamination Evaluation in Support of a NJPDES-DGW Permit Equivalency (Technical Memorandum) (Golder Associates, February 2020), and
- Classification Exception Area and Well Restriction Area Proposal, American Cyanamid Superfund Site (Golder Associates, March 2020)

8. The Department finds that the information provided in the reports referenced in paragraphs 5 - 7 is sufficient to form a rational basis for determining the nature and extent of injuries arising from the Discharges and for determining the nature and extent of Wyeth’s alleged liability for Natural Resource Damages, defined below, arising from the Discharges.

9. In order to provide compensation for the injuries to natural resources described in paragraph 3 above, Wyeth has entered into an agreement with the non-profit conservation intermediary organization, New Jersey Conservation Foundation (“NJCF”) pursuant to which, and subject to the execution of this settlement, Wyeth will provide funds to NJCF for the purposes of land acquisition, and preservation, which preservation shall include the placement of a conservation easement on the acquired land, as approved by the Department.

10. NJCF has identified the undeveloped parcel set forth and more fully described in Appendix A (collectively, "NJCF Acquisition Property"), which is attached hereto and made a part of this Settlement Agreement. The Department finds that each of the parcels comprising the NJCF Acquisition Property is located, in its entirety, in the same water supply area, Water Supply Area 10, as the Property.

11. As the trustee of all Natural Resources within the jurisdiction of the State of New Jersey for the benefit of its citizens, the Department alleges that the Discharges have injured and continue to injure Natural Resources.

12. Contingent upon the Department's approval of a preliminary assessment report, appraisals, survey and title insurance policies for the NJCF Acquisition Property completed in accordance with the standards for nonprofit acquisitions set forth in the Department's Green Acres Rules, N.J.A.C. 7:36 and the preservation of the NJCF Acquisition Property through the recording of a Department-approved Deed of Conservation Restriction subject to only those encumbrances acceptable to the Department, the Department acknowledges and agrees that the recharge value of the NJCF Acquisition Property, together with the DEP Payment (defined below), will offset the recharge value of the injured groundwater resource allegedly caused by the Discharges. The Department therefore finds and agrees, subject to these contingencies, that the value of the compensation provided in this Settlement Agreement constitutes Wyeth's fair share of Natural Resource Damages addressed in this Settlement Agreement.

13. By entering into this Settlement Agreement, Wyeth does not admit any of these Findings. This Settlement Agreement shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceeding as such, except only to the limited extent necessary to enforce the provisions of this Settlement Agreement or to establish the scope of the release or contribution protection provisions of this Settlement Agreement.

Terms and Commitments

14. "Natural Resources" as used in this Settlement Agreement includes all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

15. "Natural Resource Damages" as used in this Settlement Agreement includes all claims arising from Discharges prior to the Effective Date of this Settlement Agreement that are recoverable by the Department as natural resource damages for injuries to Natural Resources under the Spill Act; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 through -20; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 through -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, the Department'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 Settlement Agreement; and

(b) Compensation for the lost value of, injury to, or destruction of natural resources.

16. Natural Resource Damages do not include, however:

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

(b) Any applicable requirements to remediate the Property pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C et seq.), the Technical Requirements for Site Remediation (N.J.A.C. 7:26E et seq.) and/or 2015 ARACO or any requirements imposed by the USEPA; or

(c) Any obligation to pay the Department's oversight costs determined pursuant to N.J.A.C. 7:26C-4.7 and/or the 2015 ARACO or any requirements imposed by the EPA, except as relates to oversight costs with respect to Natural Resource Damages.

17. "Effective Date" shall be the latter of the date(s) that the Settling Party and the Department have respectively executed this Settlement Agreement.

18. Wyeth agrees that the terms reflected in this Settlement Agreement are premised on current and future compliance with all lawfully imposed requirements for remediation of the Property (see paragraph 4 above). Failure to comply may give rise to additional liability for Natural Resource Damages to the extent that the noncompliance increases the scope or duration of injuries to Natural Resources.

19. Within 60 days of the Effective Date, Wyeth shall make a payment to DEP in the amount of \$1,438,608.00 (the "DEP Payment") to be used, in DEP's sole discretion, for natural resource restoration projects in the state of New Jersey. The payment to DEP shall be made in accordance with the payment instructions in paragraph 26.

20. Wyeth agrees to make a financial contribution in the amount of \$2,799,264.00 to NJCF ("the Financial Contribution") for the purposes of the acquisition of, preservation of, and placement of a Deed of Conservation Restriction, consistent with the model Deed of Conservation Restriction identified in Appendix B, on the NJCF Acquisition Property and/or, if applicable, any Alternative Property (as defined below), as required by this Settlement Agreement and in compensation for the injuries to Natural Resources addressed in this Settlement Agreement. NJCF may work with other entities in completing the acquisitions and title to one or more of the properties may vest with such other entities, provided that the land is preserved, and the required Deed of Conservation Restriction is recorded.

21. In the event that the NJCF Acquisition Property cannot be acquired upon reasonable terms, such property (or properties) may be replaced, subject to the Department's approval, which shall not be unreasonably withheld, with an alternative property (or properties) in Water Supply

Area 10 having a recharge value substantially equivalent to the NJCF Acquisition Property or Properties being replaced (the “Alternative Property”).

22. Wyeth shall make the Financial Contribution within 30 days from the acquisition of the last NJCF Acquisition Property or, if applicable, Alternative Property.

23. Within 90 days after the acquisition of the NJCF Acquisition Property or, if applicable, Alternative Property, or such longer period agreed to by the Department, Wyeth agrees to deliver to the Department:

(a) A certificate by NJCF stating that Wyeth made the Financial Contribution.

(b) A copy of the Deed of Conservation Restriction submitted to be recorded, with instructions for the recorded Deed of Conservation Restriction to be sent to the NJDEP Green Acres Program, for the NJCF Acquisition Property and, if applicable, Alternative Properties acquired. Deeds of Conservation Restriction for each of these properties shall be consistent with the model Deed of Conservation Restriction identified in Appendix B, which is attached hereto and made a part hereof.

24. While it is agreed and acknowledged by the Department that the Financial Contribution will be given to NJCF for purposes of the land acquisitions under this Agreement, responsibility of satisfying Wyeth’s commitments in this Settlement Agreement is solely that of Wyeth’s and not NJCF.

25. Within 60 days from the Effective Date, Wyeth shall pay the sum of \$18,000.00 for the DEP’s Office of Natural Resource Restoration’s (“ONRR”) assessment costs, oversight costs, attorneys’ fees, consultants’ and experts’ fees. Wyeth also agrees to pay a lump sum fee in the amount of \$10,000.00 for ONRR’s future oversight costs associated with the ONRR’s administration of the terms of the Settlement Agreement after its Effective Date.

26. Wyeth agrees to make these payments together with the DEP Payment by check made payable to “Treasurer, State of New Jersey” and remit these amounts, with the applicable invoice furnished by the Department, to the Division of Revenue and Enterprise Services at the address stated on the invoice.

27. Within 60 days after the later of the receipt of (x) the recorded Deed of Conservation Restriction the acquired NJCF Acquisition Property and, if applicable, the Alternative Properties by the NJDEP Green Acres Program; (y) the submittals required under paragraph 23 or (z) payment by Wyeth of all oversight costs for which the Department has submitted a request for reimbursement to Wyeth, the Department will issue a release to Wyeth, consistent with Appendix C (the “Release”), which is attached hereto and made a part hereof, for Natural Resource Damages. The Department reserves its rights to seek additional natural resource damages for injuries to Natural Resources for discharges at the Property that have injured Natural Resources other than groundwater, which injuries are not part of this Settlement Agreement or any other natural resource damage settlements with State and/or Federal Natural Resource Trustees.

28. When fully executed, this Settlement Agreement will constitute an administratively approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C. § 9613(f)(2) for the purpose of providing protection from contribution actions for the settled Natural Resource Damages. With the exception of the reservation in paragraph 27 above, Wyeth has resolved its liability for the Natural Resource Damages to the Department. Wyeth shall not be liable for claims for contribution regarding matters addressed in this Settlement Agreement, which are Natural Resource Damages.

29. In accordance with N.J.S.A. 58:10-23.11e2, on May 4, 2020, the Department published notice of this Settlement Agreement in the New Jersey Register and on the Department's website, and arranged notice, as described in the following paragraph, to other potentially responsible parties. The following information was included in such notice:

- a) the name and location of the Property;
- b) the name of the Settling Party;
- c) a summary of the terms of this Settlement Agreement; and
- d) that there are 60 days to comment on this proposed Settlement Agreement.

30. The Department has also arranged for written notice of the Settlement Agreement to all other potentially responsible parties of whom the Department had notice.

31. Upon conclusion of the 60-day comment period set forth in paragraph 29 above, the Department will notify Wyeth that:

- a) the Department received no comments that disclosed facts or considerations that indicated to the Department, in its sole discretion, that the Settlement Agreement was inappropriate, improper, or inadequate;

OR

- b) the Department received comments that disclosed facts or considerations that indicated to the Department, in its sole discretion, that the Settlement Agreement required amendment and the Department provided Wyeth with the specifics of those amendments and provided Wyeth with a Settlement Agreement incorporating the amendments.

32. In any subsequent administrative or judicial proceeding initiated by the Department for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Property, Wyeth 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 Department raises in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants set forth in this Settlement Agreement.

General Provisions

33. If NJCF cannot purchase all of NJCF Acquisition Property and there is no Alternative Property available that has a recharge value substantially equivalent to the recharge value of the NJCF Acquisition Property not acquired that can be purchased by NJCF with the funds remaining from the Financial Contribution, then the Department may elect to either:

a) Identify another property to be purchased outside of Water Supply Area 10, provided that it has a recharge value substantially equivalent to the recharge value of the NJCF Acquisition Property not acquired which can be purchased by NJCF with the funds remaining from the Financial Contribution; or

b) Have Wyeth pay to the Department an amount equal to the Financial Contribution.

34. If DEP elects to identify another property to be purchased outside Water Supply Area 10, then such property shall, for purposes of this Settlement Agreement be considered an NJCF Acquisition Property and Wyeth shall fulfill the obligations required herein for the NJCF Acquisition Property with respect to such property and, upon doing so, the Department shall issue the Release to Wyeth.

35. If DEP elects to receive the payment specified in paragraph 33.b, then Wyeth shall make such payment within 120 days of receipt of written notice from NJDEP of its election. Upon making the payment, Wyeth shall be deemed to have satisfied its obligations under this Settlement Agreement, other than with respect to any unpaid oversight costs of the Department. Within 60 days after the later of the Department's receipt of (x) this payment or (y) payment by Wyeth of all oversight costs for which the Department has submitted a request for reimbursement to Wyeth, the Department will issue the Release.

36. Nothing in this Settlement Agreement, including the Department's issuance of the Release pursuant to paragraph 27, shall impact Wyeth's obligation to comply with all applicable laws and legally enforceable requirements with respect to the remediation of the Property, including, to the extent applicable, the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), and/or the 2015 ARACO including any consent decrees, settlements or other orders entered into with the United States Environmental Protection Agency ("USEPA").

37. Nothing in this Settlement Agreement shall modify, waive or impair any rights or defenses that Wyeth may have with respect to the remediation of the Property.

38. Nothing in this Settlement Agreement shall be construed as an admission by Wyeth or a finding by the Department of any wrongdoing or liability on the part of Wyeth for the discharge of hazardous substances at or from the Property.

39. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against Wyeth concerning all matters not addressed in this Settlement Agreement, and to which Wyeth reserves all rights and defenses.

40. Nothing in this Settlement Agreement shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey to the extent not inconsistent with this Settlement Agreement or any Release issued hereunder.

41. Nothing in this Settlement Agreement shall restrict the ability of the Department to raise or make the above findings in any other proceeding to the extent not inconsistent with this Agreement.

42. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

43. Wyeth agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Settlement Agreement, and (b) the terms or conditions hereof, except that Wyeth does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Settlement Agreement.

44. This Settlement Agreement shall be binding on Wyeth and any successors, subsidiaries, assigns, trustees in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Wyeth.

45. This Settlement Agreement shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

46. No modification or waiver of this Settlement Agreement shall be valid except by written amendment to this Settlement Agreement duly executed by Wyeth and the Department.

47. Wyeth waives its rights to an administrative hearing concerning the entry of this Settlement Agreement.

48. This Settlement Agreement shall be governed and interpreted under the laws of the State of New Jersey.

49. This Settlement Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Settlement Agreement.

50. The undersigned representative of Wyeth certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Wyeth to this Settlement Agreement.

51. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the payments required of Wyeth under this Settlement Agreement, including those set forth in paragraphs 19, 20, 25, 26 and 33, are required to come into compliance with law.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

Ray Bukowski
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental Protection

NEW JERSEY SPILL COMPENSATION FUND

Date: _____

By: _____

David E. Haymes
Administrator
New Jersey Spill Compensation Fund
and
Director
Division of Enforcement, Technical & Financial Support
New Jersey Department of Environmental Protection

WYETH HOLDINGS LLC

Date: _____

By: _____

Signature