

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 Richard J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
 Trenton, N.J. 08625-0093
 Attorney for Plaintiff

By: Daniel J. Harrison
 Deputy Attorney General
 Attorney ID No. 151842016
 Ph. 609-376-2735
Daniel.Harrison@law.njoag.gov

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION,	:	LAW DIVISION - ESSEX COUNTY
	:	DOCKET NO. ESX-L-4244-14
	:	
Plaintiff,	:	
	:	
v.	:	<u>Civil Action</u>
	:	
NOVICK CHEMICAL CO., INC., et	:	
al.,	:	NOTICE OF MOTION TO ENFORCE
	:	LITIGANT'S RIGHTS
Defendants.	:	
	:	
	:	

TO: CLERK OF THE SUPERIOR COURT
 Civil Customer Service
 Hall of Records, Room 201
 465 Dr. Martin Luther King Blvd.
 Newark, New Jersey 08302

NOVICK CHEMICAL CO., INC.
 705 Davis Street
 Scranton, Pennsylvania 18505-7571

NOVICK CHEMICAL CO., INC.
 c/o Raymond Felton
 P.O. Box 5600
 99 Wood Avenue South
 Woodbridge, New Jersey 07095

PLEASE TAKE NOTICE that on January 11, 2019, at 10:00 a.m., or as soon thereafter as counsel may be heard, the undersigned will move on behalf of plaintiff New Jersey Department of Environmental Protection before the Superior Court of New Jersey, Essex County, for an Order Enforcing Litigant's Rights pursuant to R. 1:10-3 and assessing penalties against Defendant Novick Chemical Co., Inc.

PLEASE TAKE FURTHER NOTICE that the undersigned will rely upon the attached Certifications and Exhibits in support of the Motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to R. 1:6-2, it is requested that the court consider this motion on the papers.

A proposed form of order is attached.

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

By: /s/ Daniel J. Harrison
Daniel J. Harrison
Deputy Attorney General

Dated: December 6, 2018

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 Richard J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
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 Attorney for Plaintiff

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NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION,	:	LAW DIVISION - ESSEX COUNTY
	:	DOCKET NO. ESX-L-4244-14
Plaintiff,	:	
	:	
v.	:	<u>Civil Action</u>
	:	
NOVICK CHEMICAL CO., INC., et	:	ORDER
al.,	:	
	:	
Defendants.	:	
	:	
	:	

This matter having been opened to the court by Gurbir S. Grewal, Attorney General of New Jersey, by Daniel J. Harrison, Deputy Attorney General appearing, attorney for plaintiff New Jersey Department of Environmental Protection ("Plaintiff"), and the court having considered the papers submitted by Plaintiff and any opposition papers submitted by Defendant Novick Chemical Co., Inc.; and upon consideration of oral argument, if any; and for good cause shown;

IT IS on this day of , 201 ;

ORDERED that Plaintiff's Motion to Enforce Litigant's Rights is granted and this court's order in the above-captioned matter dated August 13, 2014 is hereby enforced; and

IT IS FURTHER ORDERED that Defendant Novick Chemical Co., Inc. is in contempt of court as a result of its failure to comply with the August 13, 2014 Order; and

IT IS FURTHER ORDERED that Defendant Novick Chemical Co., Inc. shall immediately take all steps necessary to comply with its outstanding obligations under the August 13, 2014 Order; and

IT IS FURTHER ORDERED that, as of the date of this order, Defendant Novick Chemical Co., Inc. has accrued stipulated penalties in accordance with the terms of the August 13, 2014 Order in the amount \$ _____; and

IT IS FURTHER ORDERED that the accrued stipulated penalties in the amount \$ _____ are immediately due and owing to the Plaintiff; and

IT IS FURTHER ORDERED that Defendant Novick Chemical Co., Inc. shall pay to the Plaintiff an additional civil penalty for its contempt of court and continued failure to comply with the August 13, 2014 Order in the amount \$ _____; and

IT IS FURTHER ORDERED that, for so long as Defendant Novick Chemical Co., Inc. remains out of compliance with the August

13, 2014 Order and this order, Defendant Novick Chemical Co., Inc. shall be subject to a civil administrative penalty of \$5,000 per day in accordance with the terms of the stipulated penalty provision in the May 1987 Administrative Consent Order; and

IT IS FURTHER ORDERED that a copy of this Order shall be served upon the Defendant Novick Chemical Co., Inc. within seven (7) days of the date hereof.

Hon. _____, J.S.C.

In accordance with R. 1:6-2(a), this motion was:

_____ opposed

_____ unopposed.

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 Richard J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
 Trenton, N.J. 08625-0093
 Attorney for Plaintiff

By: Mark S. Heinzelmann
 Deputy Attorney General
 Attorney ID No. 900982012
 Ph. 609-376-2735

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION,	:	LAW DIVISION - ESSEX COUNTY
	:	DOCKET NO. ESX-L-4244-14
Plaintiff,	:	
	:	
v.	:	<u>Civil Action</u>
	:	
NOVICK CHEMICAL CO., INC., et	:	CERTIFICATION OF MARK S.
al.,	:	HEINZELMANN, DAG, IN SUPPORT
	:	OF PLAINTIFF'S MOTION TO
Defendants.	:	ENFORCE LITIGANT'S RIGHTS
	:	
	:	

I, **MARK S. HEINZELMANN**, being of full age, certify as follows:

1. I am employed by the New Jersey Department of Law & Public Safety, Division of Law, as a Deputy Attorney General, and I have been assigned to represent the New Jersey Department of Environmental Protection ("Department") in this matter.
2. I make this Certification in support of the Department's Motion to Enforce Litigant's Rights, through which the Department seeks enforcement of an order entered by this court

on August 13, 2014 ("Order") against defendant Novick Chemical Co., Inc. ("Defendant") that compels Defendant to, among other things, complete the remediation of discharges of hazardous substances that occurred at real property located at "Foot of Emmet Street," City of Newark, Essex County, New Jersey, also known and designated as Block 1150, Lot 3, on the Tax Map of Newark ("Site"), establish a remediation funding source, pay a civil penalty of \$50,000, and pay civil administrative penalties of \$5,000 per day for each day from the date of the Order that Defendant remains out of compliance with its obligations under the ACO.

3. In May 1987, Defendant executed an Administrative Consent Order ("ACO") with the Department wherein Defendant agreed to, among other things, complete all required remediation at the Site, pay all applicable fees and oversight costs, establish a remediation trust fund, and pay stipulated penalties of \$5,000 per day should Defendant default on its obligations under the ACO. See Exhibit A to the Certification of Sarah Kinsel ("Kinsel Cert.").
4. Though Defendant was one of three corporate entities to sign the ACO, the parties stipulated that each of the corporate entities signing the ACO, including Defendant, would be jointly and severally liable for satisfying the terms of the ACO. Ibid.

5. The ACO is a final order of the Department.
6. Defendant failed to comply with its obligation under the ACO, and as such, in 2014, the Department filed an Order to Show Cause against Defendant seeking to enforce the ACO, collect stipulated penalties pursuant to the terms of the ACO, and collect an additional civil penalty for Defendant's failure to comply. See Kinsel Cert., Exhibit C.
7. Despite effective service, Defendant did not file an answer to the Order to Show Cause. See Kinsel Cert., Exhibit D.
8. On August 13, 2014, this court, having considered the papers submitted by the Department, entered the Order, which requires Defendant to comply with the ACO, pay a civil penalty of \$50,000, and pay stipulated penalties of \$5,000 for each day from the date of the Order that Defendant remains out of compliance with the ACO. See Kinsel Cert., Exhibit E.
9. The Department thereafter served a copy of the Order upon Defendant. See Kinsel Cert., Exhibit F.
10. It has been 1,554 days since this court entered the Order, and as reflected in the Department's Certification in support of this Motion, Defendant has made no effort to comply with the terms of the Order or the ACO. See Kinsel Cert., ¶ 14.
11. Pursuant to the terms of the Order, Defendant has accrued in excess of \$7,770,000 in stipulated penalties.

12. As per their plain language, the ACO and the Order are enforceable in accordance with R. 1:10-3. See Kinsel Cert., Exhibits A & E.
13. "Rule 1:10-3 allows a court to enter an order to enforce litigant's rights commanding a disobedient party to comply with a prior order" In addition, "[o]nce the court determines the non-compliant party was able to comply with the order and unable to show the failure was excusable, it may impose appropriate sanctions Sanctions under Rule 1:10-3 are intended to coerce a party's compliance" Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012).
14. Pursuant to N.J.S.A. 58:10-23.11u(d), Defendant is also subject to additional civil penalties of up to \$50,000 per day for its failure to comply with the ACO and the Order. That statute provides:
- [a]ny person who violates a provision of [the Spill Act], or a court order issued pursuant thereto . . . shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's continuance of the violation shall constitute a separate violation. . . .
- N.J.S.A. 58:10-23.11u(d) [emphasis added].
15. Because the Order enforces an ACO that was entered into by the Department pursuant to the Spill Act, it is also an order issued pursuant to the Spill Act.

16. The Department has been attempting for years to compel Defendant to comply with its obligations to complete the remediation of the discharges at the Site. See Kinsel Cert., ¶15.
17. This is the second time that the Department has been forced to seek judicial relief for Defendant's failure to comply.
18. Despite receiving notice of the Department's Order to Show Cause and the Order, Defendant has offered no excuse for its dilatory behavior. See Kinsel Cert., ¶ 17.
19. By failing to comply with the ACO and the Order, Defendant is now in contempt of court.
20. Defendant's consistent failure to satisfy its obligations under the ACO and the Order subjects the health and safety of the citizens of the City of Newark and the environment to the risk of additional harm, and it subjects Defendant to additional penalties under N.J.S.A. 58:10-23.11u and the plain terms of the ACO and the Order.
21. The Department therefore seeks an order enforcing the ACO and the Order, assessing additional civil penalties against Defendant pursuant to N.J.S.A. 58:10-23.11u for its failure to comply and its contempt of court, and a judgment against the Defendant for \$7,770,000 in stipulated penalties since

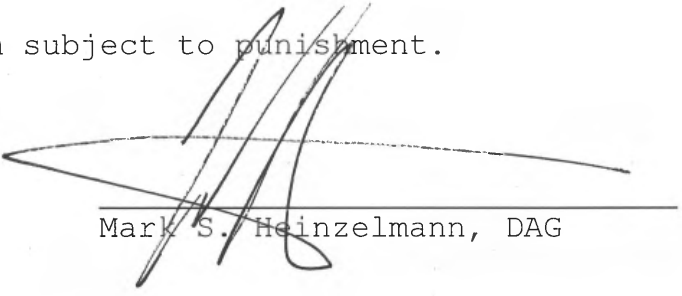
August 13, 2014, when the Order was signed.

22. The penalties against Defendant, though significant, will serve as an appropriate deterrent to Defendant's continued failure to comply with not only an order of the Department, but also an order of the court.

I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 6, 2018



Mark S. Heinzelmann, DAG

CERTIFICATION OF SERVICE

I certify that the original of the within motion, and all supporting papers, were electronically filed with the Clerk of the Superior Court, Essex County. I further certify that copies of the within motion, and all supporting papers, were served upon the following persons via overnight mail in accordance with R. 1:5-2.

NOVICK CHEMICAL CO., INC.
705 Davis Street
Scranton, Pennsylvania 18505-7571

NOVICK CHEMICAL CO., INC.
c/o Raymond Felton
P.O. Box 5600
99 Wood Avenue South
Woodbridge, New Jersey 07095

By: /s/ Daniel J. Harrison
Daniel J. Harrison
Deputy Attorney General

Dated: December 6, 2018

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 Richard J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
 Trenton, N.J. 08625-0093
 Attorney for Plaintiff

By: Daniel J. Harrison
 Deputy Attorney General
 Attorney ID No. 151842016
 Ph. 609-376-2735
Daniel.Harrison@law.njoag.gov

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION,	:	LAW DIVISION - ESSEX COUNTY
	:	DOCKET NO. ESX-L-4244-14
Plaintiff,	:	
	:	
v.	:	<u>Civil Action</u>
	:	
NOVICK CHEMICAL CO., INC., et	:	CERTIFICATION OF SARAH KINSEL
al.,	:	IN SUPPORT OF PLAINTIFF'S
	:	MOTION TO ENFORCE LITIGANT'S
Defendants.	:	RIGHTS
	:	
	:	

I, **SARAH KINSEL**, being of full age, certify as follows:

1. I am employed by the Department of Environmental Protection ("DEP" or "Department") as a Supervising Geologist within the Bureau of Enforcement and Investigations, and I have been employed by the Department since 1987.

2. I am responsible for conducting case reviews to determine compliance with statutes and regulations, including the

Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3 to -31, and the Site Remediation Reform Act, N.J.S.A. 26:2C-1 to -29. At the direction of the Bureau of Enforcement and Investigations' Bureau Chief and/or Section Chief, my responsibilities include investigating, planning, implementing, and overseeing enforcement actions related to remediation of sites within New Jersey that are contaminated with "hazardous pollutants" and "hazardous substances" as defined by N.J.S.A. 58:10A-3(u) and N.J.S.A. 58:10-23.11b., respectively.

3. I obtained a Bachelor of Science in Geology from the University of Minnesota in Duluth, Minnesota in 1983. I received a Master's Degree in Geology from Southern Methodist University in Dallas, Texas in 1987.

4. I make this Certification in support of the Department's Motion to Enforce Litigant's Rights, through which the Department seeks to enforce an order entered by this court ("Order") against defendant Novick Chemical Co., Inc. ("Defendant") that compels Defendant to, among other things, complete the remediation of discharges of hazardous substances that occurred at real property located at "Foot of Emmet Street," City of Newark, Essex County, New Jersey, also known and designated as Block 1150, Lot 3, on the Tax Map of Newark ("Site"), establish a remediation funding source, pay a civil penalty of \$50,000, and pay civil administrative

penalties of \$5,000 per day for each day from the date of the Order that Defendant remains out of compliance with its obligations under the ACO.

5. I am the Compliance Manager for the Site, which the Department has designated as Program Interest Number G000002789, and I am therefore personally familiar with this file.

6. In May 1987, Defendant executed an Administrative Consent Order ("ACO") with the Department wherein Defendant agreed to, among other things, complete all required remediation at the Site, pay all applicable fees and oversight costs, establish a remediation trust fund, and pay stipulated penalties of \$5,000 per day should Defendant default on its obligations under the ACO. [See Exhibit A].

7. Though Defendant was one of three corporate entities to sign the ACO, the parties stipulated that each of the entities signing the ACO, including Defendant, would be jointly and severally liable for satisfying the terms of the ACO. Ibid.

8. The ACO is a final order of the Department.

9. Defendant failed to comply with its obligation under the ACO, and the Department therefore issued to Defendant a Directive and Notice to Insurers dated March 15, 2013 ("Directive"). [See Exhibit B].

10. Defendant did not respond to the Directive, and as such, in 2014, the Department filed an Order to Show Cause against

Defendant seeking to enforce the ACO, collect stipulated penalties pursuant to the terms of the ACO, and collect an additional civil penalty for Defendant's failure to comply. [See Exhibit C].

11. Despite effective service, [see Exhibit D], Defendant did not file an answer to the Order to Show Cause.

12. On August 13, 2014, this court entered the Order requiring Defendant to comply with the ACO, pay a civil penalty of \$50,000, and pay stipulated penalties of \$5,000 for each day from the date of the Order that Defendant remains out of compliance with the ACO. [See Exhibit E].

13. The Department served a copy of the Order upon Defendant. [See Exhibit F].

14. Since August 2014, Defendant has made no effort to comply with the terms of the Order or the ACO.

15. The Department has been attempting for years to compel Defendant to comply with its obligations to complete the remediation of the discharges at the Site.

16. This is the second time that the Department has been forced to seek relief from this court against Defendant.

17. Despite receiving notice of the Department's Order to Show Cause and the Order, Defendant has offered no excuse for its dilatory behavior.

18. In order to ensure that the public health and safety and the environment are protected, Defendant must immediately comply

with its obligations under the Order and the ACO.

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are
willfully false, I am subject to punishment.



Sarah Kinsel
Supervising Geologist
New Jersey Department of
Environmental Protection

Dated: 12-4-18

EXHIBIT A

Let's protect our earth



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS WASTE MANAGEMENT

John J. Trela, Ph.D., Acting Director
401 East State St.
CN 028
Trenton, N.J. 08625
609 - 633 - 1408

IN THE MATTER OF
BERKSHAW ASSOCIATES, INC., NOVICK CHEMICAL CO.,
AND SHOKEDA, INC. t/a DYNAMIC CHEMICAL PRODUCTS
ECRA CASE # 87210

: ADMINISTRATIVE
: CONSENT ORDER

The following FINDINGS are made and ORDER is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP") by N.J.S.A. 13:1D-1 et seq. and the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., and duly delegated to the Assistant Director for Enforcement and Field Operations within the Division of Hazardous Waste Management pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA" or "the Act"), was signed into New Jersey State Law by Governor Thomas H. Kean on September 2, 1983, and took effect on December 31, 1983.
2. ECRA required the NJDEP to adopt rules and regulations to implement the Act. On March 6, 1984, NJDEP adopted the Interim ECRA Regulations, N.J.A.C. 7:1-3 ("Regulations") in compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., upon acceptance for filing by the Office of Administrative Law pursuant to N.J.A.C. 1:30-4.4(d).
3. ECRA requires that the owner or operator of an industrial establishment planning to sell or close or transfer operations (a) notify the NJDEP in writing within five (5) days of the execution of an agreement of sale or public release of its decision to close pursuant to N.J.A.C. 7:1-3.7, (b) submit within (60) days prior to transfer of title or closing operations, a Negative Declaration or Cleanup Plan to the NJDEP for approval, and (c) obtain, upon approval of any necessary Cleanup Plan by the NJDEP, a surety bond or other financial security approved by the NJDEP guaranteeing performance of the Cleanup Plan in an amount equal to the cost estimate for the approved Cleanup Plan.
4. N.J.S.A. 13:1K-13 provides that failure to submit a Negative Declaration or Cleanup Plan pursuant to ECRA is grounds for voiding the sale by NJDEP. Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of ECRA is liable for a penalty of not more than \$25,000.00 for each occurrence, and each day of a violation of a continuing nature constitutes an additional and separate offense. Furthermore, any officer or management official of an Industrial Establishment who knowingly directs or authorizes the violation of any provisions of the Act shall be personally liable for the \$25,000.00 penalties for each violation described above.

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5. On March 5, 1987, Berkshaw Associates, Inc. submitted to NJDEP an application for an Administrative Consent Order ("ACO"). The ACO application is incorporated herein by reference and includes the following information:

A. Industrial Establishment(s)

ECRA Case #87210 SIC #:2800
 Facility Name: Dynamic Chemical Products
 "Newark Facility"
 Facility Location: Foot of Emmet Street
 Newark City, Essex County

Block: 150 Lot: 3

Initial Notice Status: Incomplete

Owner: Berkshaw Associates, Inc., a New Jersey Corporation
 Operator: Shokeda, Inc. trading as Dynamic Chemical Products, a New Jersey Corporation

Other Industrial Establishments: None

B. Transaction:

Seller: Shokeda, Inc., a New Jersey Corporation
 Buyer: Novick Chemical Co., a Pennsylvania Corporation

Description: Dynamic Chemical Products will be ceasing operations in early April due to involuntary bankruptcy. The Trustee has approved a sale of assets of the Newark facility from Shokeda, Inc. t/a Dynamic Chemical Products to Novick Chemical Co.

6. The Transaction described in 5.B above is the sale, transfer and/or closing of an Industrial Establishment as defined by ECRA and the Regulations. NJDEP and the Ordered Party(ies) expressly agree that the Transaction is subject to ECRA and the Regulations. The Ordered Party(ies) has requested that NJDEP prepare an ACO which when effective, will allow the Transaction to be consummated prior to the completion of all administrative requirements.

RB

7. In appropriate cases, NJDEP may allow transactions subject to ECRA to proceed prior to completing the standard ECRA administrative process by execution of an ACO. The ACO specifies a time schedule for completion of ECRA requirements by the industrial establishment and provides for financial assurance in a form and amount acceptable to NJDEP prior to consummation of any transactions subject to ECRA. Failure to fully comply with all the terms and conditions of the ACO shall subject the Ordered Party(ies) to the full range of penalties and remedies prescribed in the Act, the Regulations, and the ACO.
8. In October 1985, Hexagon Enterprises, Inc. ("Hexagon") sold the Newark facility exclusive of the real property to Shokeda, Inc. without notifying the Department or otherwise complying with ECRA.

ORDER

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

9. ECRA Program Requirements for the the Ordered Party(ies) Industrial Establishment
 - A. The Ordered Party(ies) shall complete the Initial Notice (commonly referred to as ECRA I and II) required by N.J.A.C. 7:1-3.7 within thirty (30) days from the effective date of this ACO.
 - B. Within ninety (90) days from receipt of NJDEP's written approval of the Sampling Plan prepared pursuant to N.J.A.C. 7:1-3.7(d)14 and N.J.A.C. 7:1-3.9, the Ordered Party(ies) shall initiate, complete, and submit to NJDEP the results from any NJDEP-approved Sampling Plan including, but not limited to, complete delineation of environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous wastes or substances on or from the subject Industrial Establishment. NJDEP and the Ordered Party(ies) recognize that additional sampling may be necessary during the various stages of the implementation of this ACO and ECRA, including during the implementation of a Cleanup Plan, at the subject Industrial Establishment to delineate fully the nature and extent of environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous substances or wastes on or from the subject Industrial Establishment. Therefore, the Ordered Party(ies) agrees to submit any additional sampling plans for NJDEP review and approval required by NJDEP in writing during the various stages of the implementation of this ACO and ECRA, including during the implementation of a Cleanup Plan, to further delineate the nature and extent of environmental contamination on or from the subject Industrial Establishment. NJDEP and the Ordered Party(ies) mutually agree that the Ordered Party(ies) shall submit to NJDEP any required additional sampling plans for review and approval within thirty (30) days of the receipt of said written request. Within ninety (90) days from receipt of NJDEP's written approval of any additional sampling plans, the Ordered Party(ies) shall initiate, complete and submit to NJDEP the results from any additional NJDEP-approved sampling plan required pursuant to this paragraph.

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- C. NJDEP shall notify the Ordered Party(ies) in writing requiring the Ordered Party(ies) to submit either a Negative Declaration or Cleanup Plan when sampling results have satisfied NJDEP's requirement to delineate fully the nature and extent of environmental contamination on or from the subject Industrial Establishment. the Ordered Party(ies) shall submit a Negative Declaration or Cleanup Plan within sixty (60) days from receipt of a written demand from NJDEP for a Negative Declaration or Cleanup Plan. If a Cleanup Plan is required, the Cleanup Plan shall address remediation of any contamination identified on or from the subject Industrial Establishment. Any Negative Declaration or Cleanup Plan submitted shall conform to N.J.A.C. 7:1-3.
- D. The Ordered Party(ies) shall implement any NJDEP-approved Cleanup Plan in accordance with the approved time schedule or defer implementation of all or part of the Cleanup Plan subject to NJDEP approval pursuant to N.J.A.C. 7:1-3.14.
- E. Should NJDEP determine that any submittal made under Paragraph 8 of this ACO is inadequate or incomplete, then NJDEP shall provide the Ordered Party(ies) with written notification of the deficiency(ies), and the Ordered Party(ies) shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.
- F. All submissions required pursuant to Paragraph 8 or any other provision of this ACO shall be accompanied by all appropriate fees required pursuant to the Fee Schedule for ECRA, N.J.A.C. 7:1-4.

10. Conditions for Financial Assurance

- A. The Ordered Party(ies) shall obtain and provide to NJDEP financial assurance in the form of a surety bond or letter of credit in the amount specified in Paragraph 17. The financial assurance must conform with the requirements of N.J.S.A. 13:1K-9(b)3, N.J.A.C. 7:1-3.10, N.J.A.C. 7:1-3.13, and this ACO. This financial assurance shall be submitted to NJDEP along with a fully executed ACO pursuant to Paragraph 17 of this ACO.
- B. The Ordered Party(ies) shall establish and submit to NJDEP a standby trust fund within seven (7) days from the effective date of this ACO. The financial institution which issues the financial assurance shall agree to promptly and directly deposit all amounts up to the total value of the financial assurance into the standby trust fund upon demand by NJDEP.
- C. Upon NJDEP approval of a Cleanup Plan, the Ordered Party(ies) shall amend the amount of the financial assurance, described in A. above, to equal the estimated cost of implementation of the approved Cleanup Plan, or shall provide such other financial assurance as may be approved by NJDEP in an amount equal to the estimated cost of implementation of the approved Cleanup Plan.

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- D. In the event that NJDEP determines that the Ordered Party(ies) has failed to perform any of its obligations under this ACO or ECRA, NJDEP may draw on the financial assurance; provided, however, that before any such demand is made, NJDEP shall notify the Ordered Party(ies) in writing of the obligation(s) with which it has not complied, and the Ordered Party(ies) shall have reasonable time, not to exceed fourteen (14) days, to perform such obligation(s) to NJDEP's satisfaction. Nothing in this paragraph shall prevent NJDEP from collecting stipulated penalties pursuant to the terms of this ACO for cause.
- E. Upon NJDEP's written approval of a Negative Declaration, the Ordered Party(ies) shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this ACO for the facility which is the subject of the NJDEP-approved Negative Declaration. Upon NJDEP's written approval of the completion of any cleanup required by this ACO, as verified by final site inspection pursuant to N.J.A.C. 7:1-3.12(e) and upon the Ordered Party(ies)'s satisfaction of all financial obligations in connection therewith, the Ordered Party(ies) shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this Administrative Consent Ordered for the facility at which the approved cleanup has been completed.

11. Additional Conditions of Consent

- A. The Ordered Party(ies) shall allow NJDEP access to the subject Industrial Establishment for the purpose of undertaking all necessary monitoring and environmental cleanup activities.
- B. Compliance with the terms of this ACO shall not excuse the Ordered Party(ies) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ECRA through this ACO. The execution of this ACO shall not excuse the Ordered Party(ies) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Ordered Party(ies) obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act ("Spill Act") N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this ACO if the terms and conditions of any such permit are more stringent than the terms and conditions of this ACO. Should any of the measures to be taken by the Ordered Party(ies) during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then the Ordered Party(ies) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.
- C. NJDEP reserves the right to stop any construction, improvement(s), or change(s) at the Industrial Establishment(s) subject to this ACO, due to the presence of hazardous substances or wastes, the disturbance of

which, prior to implementation of NJDEP-approved Cleanup Plan, has the potential to cause harm to public health, safety and welfare as determined by the NJDEP.

- D. NJDEP agrees that it will not bring any action, nor will it recommend that the Attorney General's Office bring any action, including monetary penalties, for the Ordered Party(ies) failure to comply with (a) the time requirements in N.J.S.A. 13:1K-9(b)1 that NJDEP be notified within five (5) days of execution of an agreement of sale or public release of its decision to close, and (b) the time requirement in N.J.S.A. 13:1K-9(b)2 that a Negative Declaration or Cleanup Plan be submitted sixty (60) days prior to transfer of title or closing operations.
- E. No obligations imposed by this ACO (other than by paragraph 10.G below) are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Consent Ordered shall constitute continuing regulatory obligations imposed pursuant to the police power of the State of New Jersey, intended to protect the public health, safety and welfare.
- F. This ACO imposes certain requirements and deadlines upon the Ordered Party(ies). The Ordered Party(ies) agrees to use its best efforts to comply with said requirements and NJDEP agrees not to act unreasonably in the enforcement and implementation of this ACO.
- G. In the event that the Ordered Party(ies) fails to comply with any of the provisions of this ACO, the Ordered Party(ies) shall pay to NJDEP stipulated penalties in the amount of up to \$5,000.00 at the discretion of NJDEP for each day on which the Ordered Party(ies) fails to comply with any obligation under this ACO provided, however, that no such stipulated penalty shall be payable by the Ordered Party(ies) with respect to such period that said failure to comply results from Force Majeure. The Ordered Party(ies) waives its rights to contest NJDEP's exercise of discretion concerning the amount of any penalty assessed by NJDEP pursuant to this paragraph.
- H. The provisions of this ACO shall be binding upon the Ordered Party(ies) and its successors in interest, assigns, tenants, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Any officer or management official of the Ordered Party(ies) who knowingly directs or authorizes the violation of any provision of ECRA or the Regulations shall be personally liable for the penalty established pursuant to N.J.S.A. 13:1K-13 and N.J.A.C. 7:1-3.16(d).
- I. The Ordered Party(ies)'s failure to submit an approvable Negative Declaration or Cleanup Plan shall constitute grounds for the NJDEP to void the subject sale or transfer. NJDEP's right to void the subject sale or transfer shall terminate upon NJDEP's written approval of an appropriate Negative Declaration or Cleanup Plan submitted by the Ordered Party(ies) pursuant to this ACO and ECRA.

J. Any submission to be made to NJDEP in accordance with this ACO shall be directed to:

Lance R. Miller, Assistant Director
Industrial Site Evaluation Element
Division of Hazardous Waste Management
CN 028
Trenton, NJ 08625

12. Force Majeure

If any fire, flood, storm, riot, strike, or other circumstance determined by NJDEP to be beyond the control of the Ordered Party(ies) occurs which causes or may cause delays in the achievement of any deadline contained in this ACO, the Ordered Party(ies) shall notify NJDEP in writing within ten (10) days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length, precise cause or causes, measures taken or to be taken and the time required to minimize the delay. the Ordered Party(ies) shall adopt all necessary measures to prevent or minimize any delay. If any delay or anticipated delay has been or will be caused by fire, flood, storm, riot, strike or other circumstances determined by NJDEP to be beyond the control of the Ordered Party(ies), then the time for performance hereunder shall be extended by NJDEP for a period no longer than the delay resulting from such circumstances, provided that NJDEP may grant additional extensions for good cause. If the events causing such delay are not found by NJDEP to be beyond the control of the Ordered Party(ies), failure to comply with the provisions of the ACO shall constitute a breach of the ACO's requirements. The burden of proving that any delay is caused by circumstances beyond the Ordered Party(ies)'s control and the length of such delay attributable to those circumstances shall rest with the Ordered Party(ies). Increases in the costs or expenses incurred in fulfilling the requirements contained herein shall not be a basis for an extension of time. Similarly, delay in completing an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.

13. Reservation of Rights

This ACO shall be fully enforceable in the New Jersey Superior Court having jurisdiction over the subject matter and signatory parties upon the filing of a summary action for compliance pursuant to ECRA. This ACO may be enforced in the same manner as an Administrative Order issued by NJDEP pursuant to other statutory authority and shall not preclude NJDEP from taking whatever action it deems appropriate to enforce the environmental protection laws of the State of New Jersey. It is expressly recognized by NJDEP and the Ordered Party(ies) that nothing in this ACO shall be construed as a waiver by NJDEP of its rights with respect to enforcement of ECRA on bases other than those set forth in the ECRA Program Requirements section of this ACO or by the Ordered Party(ies) of its right to seek review of any enforcement action as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Furthermore, nothing in this ACO shall constitute a waiver of any statutory right of NJDEP to require the Ordered Party(ies) to implement additional remedial measures should NJDEP determine that such measures are necessary to protect the public health, safety and welfare.

2B

14. The Ordered Party(ies) agrees not to contest the authority or jurisdiction of the Department to issue this ACO and also agrees not to contest the terms of this ACO in any act to enforce its provisions.
15. Responsibility of the Ordered Parties
 - A. The Ordered Parties have informed NJDEP that Novick Chemical shall be the lead party for contact with NJDEP and for compliance with the terms and conditions of this ACO. NJDEP and the Ordered Parties have agreed that the Ordered Parties shall be responsible, each of them jointly, severally and individually, for performance of all obligations listed in this ACO.
 - B. NJDEP and the Ordered Parties mutually agree that in the event that Berkshaw Associates, Shokeda, Inc. t/a Dynamic Chemical Products, or Novick Chemical Co. fails or refuses to perform any ECRA obligations, as determined by NJDEP, NJDEP may exercise full discretion concerning the ECRA obligations of the Ordered Parties for ECRA compliance. The Ordered Parties expressly agree that in the event that Berkshaw Associates, Shokeda, Inc. t/a Dynamic Chemical Products or Novick Chemical Co. fails or refuses to perform any obligation(s) under this ACO as determined by NJDEP, NJDEP shall have the right to exercise any option or combination of options available to NJDEP under this ACO, ECRA, the Regulations or any other statute to ensure full and complete ECRA compliance by Berkshaw Associates and/or Shokeda, Inc. t/a Dynamic Chemical Products and/or Novick Chemical Co.
16. The Department reserves its rights and powers to take any action against Hexagon for failure to comply with ECRA or any other law.

23

17. This ACO shall take effect upon the execution of this ACO by the parties together with the obtaining of financial assurance in the amount of \$750,000.00. This ACO shall be null and void unless the parties sign and submit this ACO and financial assurance to NJDEP within thirty (30) days of the date of signing of this Administrative Consent Order by NJDEP. Upon the effective date of this Administrative Consent Order, the Ordered Party(ies) may complete the Transaction subject to this Administrative Consent Order. The Ordered Party(ies) shall submit a fully executed ACO to NJDEP together with the financial assurance required within one (1) business day from the effective date.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: May 21, 87

By: Ronald Corcoran
Ronald Corcoran, Assistant
Director for Enforcement

BERKSHAW ASSOCIATES, INC.
(Ordered Party)

Date: _____

By: Robert Shaw
Name: Robert Shaw
Title: Mr.

SHOKEDA, INC. t/a DYNAMIC CHEMICAL
PRODUCTS
(Ordered Party)

Date: May 28, 1987

By: Howard S. Shindell
Name: Howard S. SHINDELL
Title: PRESIDENT

NOVICK CHEMICAL CO.
(Ordered Party)

Date: May 28, 1987

By: Novick Chemical Corp.
Name: Edward Novick
Title: Mr.

RB

EXHIBIT B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

*Enforcement and Information Support Element
Bureau of Enforcement and Investigations
PO Box 420
401-06T
Trenton, New Jersey 08625-0420
Telephone: (609) 633-1480
Fax: (609) 633-1439*

DIRECTIVE AND NOTICE TO INSURERS

EA ID #: PEA120001 - G000002789

Site Name: Dynamic Chemical Products, Inc. Site
Respondents: Novick Chemical Company, Inc., Berkshaw Associates Inc. and Shokeda, Inc.
Location: Foot of Emmet St., Newark City, New Jersey 07199
PI #: G000002789
Case #s: E87210, E88893, E98459, E20030015

This Directive and Notice to Insurers is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "NJDEP") by N.J.S.A. 13:1D-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director of the Enforcement and Information Support Element pursuant to N.J.S.A. 13:1B-4. This Directive and Notice to Insurers is issued in order to notify the above-captioned Respondent that the Department, pursuant to the Spill Compensation and Control Act, has determined that it is necessary to cleanup and remove discharges, and in order to notify the Respondent that the Department believes them to be responsible for the hazardous substances that were discharged and/or the remediation of the discharges.

FINDINGS

1. The Dynamic Chemical Products, Inc. Site, is located at the Foot of Emmet Street and is also known as Block 1150, Lot 3, on the tax maps of Newark City, Essex County (hereinafter "the Site"). The Site, and all other areas to which any hazardous substances discharged on the Site have migrated, are collectively referenced hereinafter as "the Contaminated Site".
2. Berkshaw Associates, Inc., with its main business address at 25 Lake St., Paterson, New Jersey, 07501, was formed in New Jersey on May 5, 1977.
3. Berkshaw Associates, Inc. owned the Site from May 1977 to August 2004.
4. The Site was used for bulk chemical storage and chemical distribution center since the 1960s until December 31, 2002. Repackaging of bulk chemicals and specialty blending was also conducted at the Site. There are five buildings at the Site used in storing chemicals. Chemicals are stored in

Dynamic Chemical Co. Inc. Site
PEA120001 - G000002789
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drums and in tanks. One of the buildings is a tank farm containing 24 tanks ranging in size from 2,000 to 10,000.

5. Prior to 1983, Dynamic Chemical Products, Inc. was owned and operated by Berkshaw Associates, Inc. From July 1974 to September 1983, Dynamic Chemical Products, Inc. operated at the facility under a lease agreement with Berkshaw Associates, Inc.
6. In September 1983 Dynamic Chemical Products, Inc. was sold by Berkshaw Associates, Inc. to Hexagon Enterprises, Inc.
7. From September 1983 to June 1985, the business operations at the Site were conducted by Dynamic Chemical Products, Inc. as a wholly owned subsidiary of Hexagon Enterprises, Inc.
8. In June 1985, Shokeda, Inc. purchased the stock of Dynamic Chemical Products, Inc. from Hexagon Enterprises, Inc. and continued to lease the property from Berkshaw Associates, Inc.
9. In October 1985, Dynamic Chemical Products, Inc. was merged with Shokeda, Inc. All or substantially all of the products distributed by Dynamic Chemical Products, Inc. continued to be distributed by Shokeda, Inc. under the name "Dynamic Chemical Products".
10. Shokeda, Inc., t/a Dynamic Chemical Products, continued operations until April 1987 when operations ceased due to involuntary bankruptcy.
11. Novick Chemical Company, Inc., with its main business address at 705 Davis St., Scranton, PA, 18505, was incorporated in the State of Pennsylvania in June 1970 and authorized in the State of New Jersey in June 1987.
12. In May 1987 the assets of Dynamic Chemical Products were purchased by Novick Chemical Company, Inc. The sale of the assets of Shokeda, Inc., t/a Dynamic Chemical Products was approved by the United States Bankruptcy Court Order, Case No. 87-02007.
13. On May 28, 1987, Berkshaw Associates, Inc., Shokeda, Inc., t/a Dynamic Chemical Products and Novick Chemical Company, Inc. entered into an Administrative Consent Order (ACO) to remediate the Site. The United States Bankruptcy Court Order approving the private sale of assets of Shokeda, Inc., t/a Dynamic Chemical Products, made the sale contingent upon receipt of an ACO from NJDEP.
14. Novick Chemical Co., Inc. (Novick) assumed the obligation of complying with Environmental Cleanup Responsibility Act (ECRA), now Industrial Site Recovery Act (ISRA), according to the United States Bankruptcy Court Order, Case No. 87-02007.
15. Novick Chemical Company, Inc. conducted operations at the Site from 1987 until December 31, 2002.
16. In August 2004, the City of Newark acquired the property from Berkshaw Associates, Inc. through Final Judgement of a foreclosure action.
17. In August 1983, Berkshaw Associates, Inc. (Berkshaw) conducted an evaluation of Dynamic Chemical Products, Inc. (Dynamic) operations, in order to determine its environmental liability. Soil

Dynamic Chemical Co. Inc. Site
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and groundwater samples were collected in 1983 as part of Berkshaw's evaluation of the Dynamic Site. Analytical results for soil and groundwater samples collected at the Dynamic Site in 1983, submitted to the Department in November 10, 1986, exhibited contamination of soil and groundwater. Specific compounds detected above the Department's Default Impact to Ground Water Soil Remediation Standards include:

<u>Contaminant</u>	<u>Highest Concentration (mg/kg)</u>	<u>IGW SRS^(a) (mg/kg)</u>
1,2-dichloroethene (trans)	16	0.4
ethylbenzene	45	8
tetrachloroethylene	39	0.005
toluene	131	4
trichloroethylene	51	0.007

Notes

(a) Default Impact to Ground Water Soil Remediation Standards

Specific compounds detected in ground water sampling results above the Department's Ground Water Remediation Standards include:

<u>Contaminant</u>	<u>Highest Concentration (ug/L)</u>	<u>GWRS^(a) (ug/L)</u>
1,2-dichloroethene (trans)	6976	100
1,1-dichloroethene	251	1
tetrachloroethylene	275	1
toluene	8608	600
trichloroethylene	83	1
vinyl chloride (VC)	501	1

Notes

(a) Ground Water Remediation Standards (GWRS) – the applicable GWRS are the Ground Water Quality Standards developed pursuant to N.J.A.C. 7:9C-1.7(c) and (d), for Class II ground water

18. From 1986 through 2000, additional remediation was conducted at the Dynamic Site by Berkshaw and Novick Chemical Co. Analytical results for soil and groundwater samples collected at the Dynamic Site during this period of time exhibited contamination of soil and groundwater. Specific compounds detected above the Department's Default Impact to Ground Water Soil Remediation Standards include:

<u>Contaminant</u>	<u>Highest Concentration (mg/kg)</u>	<u>IGW SRS^(a) (mg/kg)</u>
1,2-dichloroethene (cis)	160	0.2
ethylbenzene	2790	8
tetrachloroethylene	2410	0.005
toluene	23600	4
trichloroethylene	1790	0.007
1,1,1-trichloroethane	333	0.2

Notes

(a) Default Impact to Ground Water Soil Remediation Standards

Dynamic Chemical Co. Inc. Site
PEA120001 - G000002789
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Specific compounds detected in ground water sampling results above the Department's Ground Water Remediation Standards include:

<u>Contaminant</u>	<u>Highest Concentration (ug/L)</u>	<u>GWRS^(a) (ug/L)</u>
1,2-dichloroethene (cis)	74,000	70
1,1-dichloroethane	1220	50
ethylbenzene	42300	700
tetrachloroethylene	2200	1
toluene	229,000	600
trichloroethylene	5420	1
1,1,1-trichloroethane	438	30
vinyl chloride	14200	1
xylene	18,000	1000

Notes

(a) Ground Water Remediation Standards (GWRS) – the applicable GWRS are the Ground Water Quality Standards developed pursuant to N.J.A.C. 7:9C-1.7(c) and (d), for Class II ground water

19. In a letter dated February 19, 2002 and pursuant to paragraph 9.C. of the May 28, 1987 ACO, the Department required that Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Company, Inc. submit the Site Clean Up Plan to the Department by August 27, 2002.
20. On September 9, 2003, the Department issued a Notice of Violation to Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Company, Inc. for failure to submit the Site Clean Up Plan by the due date of August 27, 2002.
21. In January 7, 2004, the Department issued a Demand for Stipulated Penalties to Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Company, Inc. for failure to comply with provisions of the May 28, 1987 ACO.
22. On May 15, 2007, Berkshaw Associates, Inc. submitted a Remedial Action Workplan (RAW) for the Site to the Department.
23. On July 18, 2007, the Department issued a Compliance Status Notice to Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Company, Inc. advising them that the Department determined that the May 15, 2007 RAW did not comply with the Technical Requirements for Site Remediation (TRSR), N.J.A.C. 7:26E.
24. On November 14, 2007, the Department issued a letter to Berkshaw Associates, Inc. and Novick Chemical Company, Inc. informing them that, due to their failure to remediate the Site in accordance with the May 28, 1987 ACO, the Department would proceed to draw down on the letter of credit posted as financial assurance for the Site.
25. The substances referenced in the paragraph(s) above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.

Dynamic Chemical Co. Inc. Site
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26. Berkshaw Associates. Inc., Shokeda, Inc. and Novick Chemical Co. Inc., are responsible for the hazardous substances that were discharged at the Site and/or for the remediation of the hazardous substances which were discharged to the lands and waters of the state.
27. Pursuant to N.J.S.A. 58:10-23.11g.c., Berkshaw Associates. Inc., Shokeda, Inc. and Novick Chemical Co. Inc. are strictly liable, without regard to fault, for all cleanup and removal costs.
28. Pursuant to N.J.S.A. 58:10-23.11f., whenever any hazardous substance is discharged, the Department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of such discharge, or may direct any person in any way responsible for the hazardous substance to clean up and remove, or arrange for the cleanup and removal of the discharge.

DIRECTIVE

29. The Department hereby directs Berkshaw Associates. Inc., Shokeda, Inc. and Novick Chemical Co. Inc. to take the following actions:
 - a) Hire a Licensed Site Remediation Professional to perform the remediation if one has not already been retained for the Site
 - b) Notify the Department of the name and license information of the LSRP that has been hired to perform the remediation, if the Department has not already been notified
 - c) Conduct the required remediation pursuant to N.J.A.C. 7:26E without prior Department approval
 - d) Establish a remediation funding source pursuant to N.J.A.C. 7:26C-5.2 (a)2i in an amount determined pursuant to N.J.A.C. 7:26C-5.3
 - e) Pay all applicable fees and oversight costs
 - f) Provide access to the contaminated site to the Department
 - g) Provide access to all applicable documents concerning remediation to the Department
 - h) Meet regulatory remediation timeframes and mandatory remediation timeframes
 - i) Obtain all necessary permits.
30. Berkshaw Associates. Inc., Shokeda, Inc. and Novick Chemical Co. Inc. must reply to the Department pursuant to N.J.A.C. 7:26C-9.11(f), regarding its decision to comply with this Directive and Notice to Insurers, within 7 calendar days after Berkshaw Associates. Inc.'s, Shokeda, Inc.'s and Novick Chemical Co. Inc.'s receipt of this Directive and Notice to Insurers.

NOTICE

31. If Berkshaw Associates. Inc., Shokeda, Inc. and Novick Chemical Co. Inc. fail to respond or comply with this Directive and Notice to Insurers, the Department may conduct the remediation using public funds.

Dynamic Chemical Co. Inc. Site
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32. Failure to comply with this Directive and Notice to Insurers will increase Berkshaw Associates, Inc.'s, Shokeda, Inc.'s and Novick Chemical Co. Inc.'s potential liability to the Department in an amount equal to three (3) times the cost of arranging for the cleanup and removal of the discharge and may cause a lien to be placed on Berkshaw Associates, Inc.'s, Shokeda, Inc.'s and Novick Chemical Co. Inc.'s real and personal property pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f., including a first priority lien on the property subject of the discharge.
33. Pursuant to N.J.S.A. 58:10-23.11u., the Department may issue an order to require compliance with the Spill Compensation and Control Act and/or assess penalties. Failure by Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. to comply with this Directive may result in the issuance of an order and/or the assessment of penalties of up to \$50,000 per day and each day of violation constitutes an additional, separate and distinct violation of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

RESERVATION OF RIGHTS

34. The Department reserves the right to direct Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. to take or arrange for the taking of any and all additional remediation which the Department determines to be necessary to protect the public health and safety or the environment and to seek full reimbursement and treble damages for all costs incurred in taking such additional remediation.
35. Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. are advised that the discharges referenced in this Directive and Notice to Insurers may also constitute violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and that Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. may, therefore, be subject to the penalties prescribed for violations of these Acts. The Department reserves all rights and remedies under those Acts as well as any other rights and remedies under any applicable law.

NOTICE TO INSURERS

36. BE ON NOTICE THAT, pursuant to N.J.S.A. 58:10-23.11s., any claims for costs of cleanup or civil penalties by the State and any claim for damages by any injured person, may be brought directly against the bond, insurer or any other person providing evidence of financial responsibility. Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. are therefore urged to contact such insurers and notify them of the issuance of this Directive and Notice to Insurers.

Date: MAR 15 2013



Kevin F. Kratina, Assistant Director
 Enforcement and Information Support Element



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

*Enforcement and Information Support Element
Bureau of Enforcement and Investigations
401 East State Street
PO Box 420
401-06T
Trenton, New Jersey 08625-0420
Telephone: (609) 633-1480
Fax: (609) 633-1439*

SEE ATTACHED SERVICE LIST

RE: DIRECTIVE AND NOTICE TO INSURERS

Dynamic Chemical Products, Inc. Site
Foot of Emmet Street
Newark, Essex County

MAR 15 2013

PI#: PEA120001 - G000002789

Dear Respondents:

There is enclosed for service upon you a Directive and Notice to Insurers issued by the New Jersey Department of Environmental Protection ("the Department").

Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. must communicate their response to the Department in writing pursuant to N.J.A.C. 7:26C-4.2(g) within the timeframe set forth in this Directive. If the Respondents choose not to follow the enclosed Directive and Notice to Insurers, the required remedial activities will be conducted by the Department using public funds. The Respondents Berkshaw Associates, Inc., Shokeda, Inc. and Novick Chemical Co. Inc. may be responsible for reimbursement of up to three times the amount of the public funds expended.

If you would like to discuss this matter, please contact Sarah Kinsel, Compliance Manager, at the address above, or by telephone at (609) 292-3005.

Sincerely,

Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element

c: Sarah Kinsel, Compliance Manager, BEI
Adam Zipkin, Director, City of Newark Economic & Housing Development (property owner)

SERVICE LIST

CERTIFIED MAIL/RRR

7008 1140 0000 1263 4557

Novick Chemical Co. Inc.
c/o Edward Novick
705 Davis Street
Scranton, PA 18505-7571

*USPS
Email request*

CERTIFIED MAIL/RRR

7008 1140 0000 1263 4564

Novick Chemical Co. Inc.
c/o W. Raymond Felton
P.O. Box 5600
99 Wood Avenue South
Woodbridge, NJ 07095

*USPS
Email request*

CERTIFIED MAIL/RRR

7008 1140 0000 1263 4571

Berkshaw Associates Inc.
c/o Robert J. Shaw
1 Clayton Ct
Savannah, GA 31411

*USPS
Email request*

CERTIFIED MAIL/RRR

7008 1140 0000 1263 4588

Shokeda, Inc.
c/o Howard S. Shindell
Executive Director of MIT Holdings
37 West Fairmount Ave., Ste 202
Savannah, GA 31406

*USPS
Email request*

CERTIFIED MAIL/RRR

7008 1140 0000 1263 4595

Berkshaw Associates Inc.
c/o Robert J. Shaw
RR 1 Box 471
Edgartown, MA 02539

*USPS
Email request*

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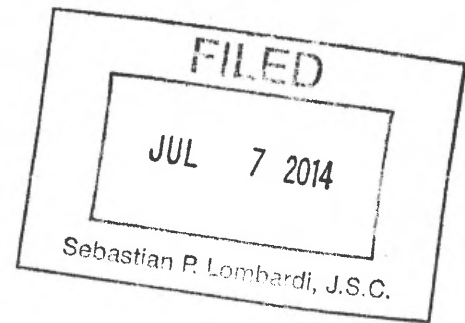
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Agent for Novick Chemical

EXHIBIT C

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiff

By: Mark S. Heinzelmann
Deputy Attorney General
Attorney ID: 900982012
(609) 984-5016



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.

L-4244-14

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

BERKSHAW ASSOCIATES, INC.;
NOVICK CHEMICAL CO., INC.;
AND SHOKEDA, INC. t/a DYNAMIC
CHEMICAL PRODUCTS

Defendants.

Civil Action

ORDER TO SHOW CAUSE

This summary action having been opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, by Mark S. Heinzelmann, Deputy Attorney General appearing, attorney for Plaintiff New Jersey Department of Environmental Protection ("DEP" or "the Department"), seeking relief on the return date by way of

summary proceeding, pursuant to R. 4:67 and R. 4:70, based upon the facts set forth in the verified complaint filed herewith; and good cause being shown;

IT IS on this 7th day of July, 2014;

ORDERED that Defendants appear and show cause before the Honorable Sebastian P. Lombardi, Superior Court of New Jersey, Law Division, at the Essex County Court House, 50 West Market Street, Newark, New Jersey, on the 13th day of August, 2014, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why an order should not be entered:

1. Enforcing the Administrative Consent Order ("ACO") agreed to by Defendants forcing Defendants to:
 - a. complete the required remediation; and
 - b. pay a civil administrative penalty in accordance with the stipulated penalty provision within the ACO;
2. Ordering Defendants to complete the remediation in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and N.J.S.A. 58:10B-1.3b;
3. Ordering Defendants to establish and maintain a remediation funding source in an amount necessary to pay the estimated cost of remediation, as determined by the Department, pursuant to N.J.S.A. 58:10B-3a;

4. Ordering Defendants to pay a civil penalty for its violation of the Final Order, SRRA and N.J.S.A. 58:10B-1.3b; and
5. Granting Plaintiff DEP such other relief as this Court deems just and proper.

IT IS FURTHER ORDERED that within 7 days of this date, Plaintiff DEP's attorney shall serve Defendants with true and correct copies of this Order to Show Cause, Verified Complaint, supporting certifications and supporting brief by regular and certified mail, return receipt requested; and

IT IS FURTHER ORDERED that Plaintiff DEP must file with the court its proof of service of the pleadings on Defendants no later than three (3) days before the return date; and

IT IS FURTHER ORDERED that Defendants shall file a written answer, an answering affidavit or a motion returnable on the return date of this Order to Show Cause, and shall serve copies of the same upon Plaintiff DEP's attorney by August 4, 2014. The answer, answering affidavit or motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the opposition papers must also be sent directly to the chambers of Judge Lombardi; and

IT IS FURTHER ORDERED that Plaintiff DEP must file and serve any written reply to the Defendants' opposition by August 8.

2014. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Lombardi; and

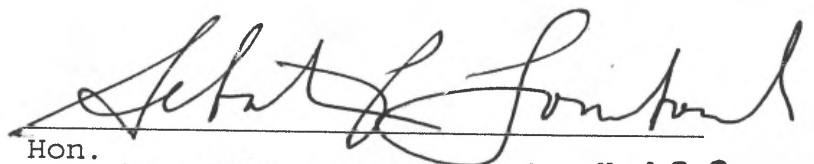
IT IS FURTHER ORDERED that if Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date, and the relief may be granted by default, provided that Plaintiff filed its proof of service and a proposed form of order at least three (3) days prior to the return date; and

IT IS FURTHER ORDERED that Defendants take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date of the order to show cause and proof of service within 35 days from the date of service of this order to show cause.

If Defendants are unable to obtain an attorney, Defendants may contact a Lawyer Referral Service or, if Defendants cannot afford to pay for an attorney, contact a Legal Services Office. The telephone numbers for these services in the county in which this

action is pending are: (973) 622-6204 (Lawyer Referral Service) and (973) 624-4500 (Legal Services Office).

IT IS FURTHER ORDERED that the Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the Court and parties are advised to the contrary no later than 3 days before the return date.


Hon.

Hon. Sebastian P. Lombardi, J.S.C.

EXHIBIT D

Name and Address of Sender *sent 1/14/14*
Mark S. Heinzelmann, DAG
 Division of Law, Richard J. Hughes Justice Complex
 25 Market Street, PO Box 093, Trenton, NJ 08625-0093

Check type of mail or service:

- ☒ Certified
☐ COD
☐ Delivery Confirmation
☐ Express Mail
☐ Insured
☐ Recorded Delivery (International)
☐ Registered
☒ Return Receipt for Merchandise
☐ Signature Confirmation

Affix Stamp Here
 (If issued as a
 certificate of mailing,
 or for additional
 copies of this bill)
 Postmark and
 Date of Receipt

Line	Article Number	Addressee Name, Street, and PO Address	Postage	Fee	Handling Charge	Actual Value If Registered	Insured Value	Due Sender If COD	DC Fee	SC Fee	SH Fee	RD Fee	RR Fee
1	70001670000830903136	Novick Chemical Co., Inc. c/o Edward Novick 705 Davis Street Scranton, PA 18505-7571											
2													
3													
4													
5	70001670000830903129	Novick Chemical Co., Inc. c/o W. Raymond Felton P.O. Box 5600 99 Wood Avenue South Woodbridge, NJ 07095											
6													
7													
8													
9	70001670000830903112	Shokeda, Inc. c/o Howard S. Shindell Executive Director of MIT Holdings 37 West Fairmount Ave., Suite 202 Savannah, GA 31406											
10													
11													
12													
13													
14													
15													
Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office	Postmaster, Per (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for the reconstruction of nonnegotiable documents under Express Mail document reconstruction insurance is \$500 per piece subject to additional limitations for multiple pieces lost or damages in a single catastrophic occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500, but optional Express Mail Service merchandise insurance is available for up to \$5,000 to some, but not all countries. The maximum indemnity payable is \$25,000 for registered mail. See Domestic Mail Manual R900, S913, and S921 for limitations of coverage on insured and COD mail. See International Mail Manual for limitations of coverage on international mail. Special handling charges apply only to Standard Mail (A) and Standard Mail (B) parcels.								

PS Form 3877, August 2000

Complete by Typewriter, Ink, or Ball Point Pen

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Chemical Co., Inc.
 Bond Felton
 Box 5600
 99 Avenue South
 Woodbridge, NJ 07095

2. Article Number



COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent☐ Address

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

UNITED STATES POSTAL SERVICE

Domestic Return Receipt

102595-00-M-095



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 USPS
 Permit No. G-10

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Mark S. Heinzelmann, DAG
Division of Law
Richard J. Hughes Justice Complex
25 Market Street, PO Box 093
Trenton, NJ 08625-0093

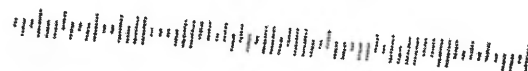


EXHIBIT E

JOHN J. HOFFMAN
 ACTING ATTORNEY GENERAL OF NEW JERSEY
 R.J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
 Trenton, New Jersey 08625
 Attorney for New Jersey Department of Environmental Protection

By: Mark S. Heinzelmann
 Deputy Attorney General
 Attorney ID: 900982012
 (609) 984-5016

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - ESSEX COUNTY
 DOCKET NO. ESX-L-4244-14

NEW JERSEY DEPARTMENT OF
 ENVIRONMENTAL PROTECTION,

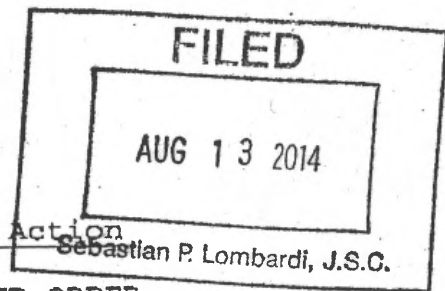
Plaintiff,

v.

NOVICK CHEMICAL CO., INC.,
 et al.

Defendants.

Civil Action
 Sebastian P. Lombardi, J.S.C.
 PROPOSED ORDER



This matter having been opened to the Court by, John J. Hoffman, Acting Attorney General of New Jersey, by Mark S. Heinzelmann, Deputy Attorney General, appearing, attorney for plaintiff New Jersey Department of Environmental Protection (the "Department"), and the Court having considered the Order to Show Cause submitted in support herein; and for good cause shown;

IT IS on this 13th day of August, 2014;

ORDERED that the Administrative Consent Order, a Final Order of the Department, agreed to by, inter alia, Defendant Novick Chemical Co., Inc., is hereby enforced; and it is further

ORDERED that Defendant Novick Chemical Co., Inc. has violated the ACO; and it is further

ORDERED that Defendant Novick Chemical Co., Inc. must refrain from violating the ACO; and it is further

ORDERED that Defendant Novick Chemical Co., Inc. is required to remediate the Former Dynamic Site in accordance with SRRA and N.J.S.A. 58:10B-1.3b, and must:

- a. hire a licensed site remediation professional ("LSRP");
- b. notify the Department of the name and license information of the LRSP in addition to the scope of remediation to be completed;
- c. complete the required remediation;
- d. submit an initial receptor evaluation to the Department;
- e. submit a site investigation report to the Department and perform a remedial investigation;
- f. pay the required fees and the Department's oversight costs;

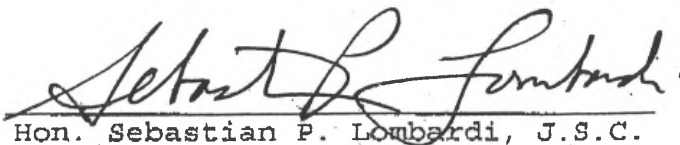
g. comply with all applicable timeframes and permit requirements; and it is further

ORDERED that Defendant Novick Chemical Co., Inc. shall pay a civil administrative penalty of \$5,000. per day ^{from this date} by in accordance with the terms of the stipulated penalty provision within the ACO; and it is further

ORDERED that Defendant Novick Chemical Co., Inc. shall pay a civil penalty for its violations of the ACO in the amount of \$50,000 by August 27, 2014 and it is further

ORDERED that Defendant Novick Chemical Co., Inc. shall establish and maintain a remediation funding source in an amount necessary to pay the estimated cost of remediation as determined by the Department in accordance with N.J.S.A. 58:10B-3a; and it is further

ORDERED that a copy of this signed Order be served upon all parties within seven (7) days of its receipt by counsel for the Department.


Hon. Sebastian P. Lombardi, J.S.C.

In accordance with the required statement to R. 1:6-2(a), this motion was opposed ✓ unopposed.

EXHIBIT F



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

JOHN J. HOFFMAN
Acting Attorney General

JEFFREY S. JACOBSON
Director

September 2, 2014

[VIA Certified Mail, Return Receipt Requested]

Novick Chemical Co., Inc.
c/o W. Raymond Felton
P.O. Box 5600
99 Wood Avenue South
Woodbridge, New Jersey 07095

Re: DEP v. Novick Chemical Co., Inc., et al.
Docket No. ESX-L-4244-14

Dear Mr. Felton:

This office represents Plaintiff New Jersey Department of Environmental Protection ("DEP") in the above-referenced matter. In accordance with Judge Lombardi's Order dated August 13, 2014, and received by this office on August 29, 2014, please find attached a copy of Judge Lombardi's Order granting DEP's Order to Show Cause against Defendant Novick Chemical Co., Inc. Should you have any questions, please do not hesitate to contact me at the below telephone number.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____

Mark S. Heinzelmann
Deputy Attorney General

Enclosures



JOHN J. HOFFMAN
 ACTING ATTORNEY GENERAL OF NEW JERSEY
 R.J. Hughes Justice Complex
 25 Market Street
 P.O. Box 093
 Trenton, New Jersey 08625
 Attorney for New Jersey Department of Environmental Protection

By: Mark S. Heinzelmann
 Deputy Attorney General
 Attorney ID: 900982012
 (609) 984-5016

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - ESSEX COUNTY
 DOCKET NO. ESX-L-4244-14

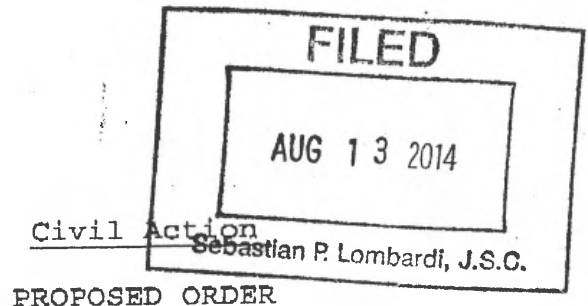
NEW JERSEY DEPARTMENT OF
 ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

NOVICK CHEMICAL CO., INC.,
 et al.

Defendants.



This matter having been opened to the Court by, John J. Hoffman, Acting Attorney General of New Jersey, by Mark S. Heinzelmann, Deputy Attorney General, appearing, attorney for plaintiff New Jersey Department of Environmental Protection (the "Department"), and the Court having considered the Order to Show Cause submitted in support herein; and for good cause shown;

IT IS on this 13th day of August, 2014;

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ORDERED that Defendant Novick Chemical Co., Inc. is required to remediate the Former Dynamic Site in accordance with SRRA and N.J.S.A. 58:10B-1.3b, and must:

- a. hire a licensed site remediation professional ("LSRP");
- b. notify the Department of the name and license information of the LRSP in addition to the scope of remediation to be completed;
- c. complete the required remediation;
- d. submit an initial receptor evaluation to the Department;
- e. submit a site investigation report to the Department and perform a remedial investigation;
- f. pay the required fees and the Department's oversight costs;

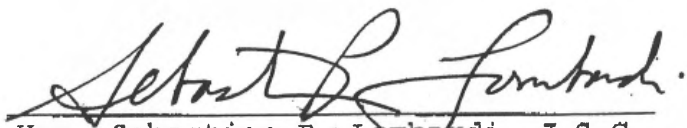
g. comply with all applicable timeframes and permit requirements; and it is further

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ORDERED that a copy of this signed Order be served upon all parties within seven (7) days of its receipt by counsel for the Department.


Hon. Sebastian P. Lombardi, J.S.C.

In accordance with the required statement to R. 1:6-2(a), this motion was opposed ✓ unopposed.

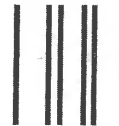
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece or on the front if space permits. 		A. Received by (Please Print Clearly) <i>X Ho</i> B. Date of Delivery	
1. Article Addressed to: Novick Chemical Co., Inc. c/o W. Raymond Felton P.O. Box 5600 99 Wood Avenue South Woodbridge, NJ 07095		C. Signature <i>X</i> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Copy from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7000 1670 0008 3090 2672	
PS Form 3811, July 1999		Domestic Return Receipt	
		102595-00-M-0952	

UNITED STATES POSTAL SERVICE

NO 070

08 SEP '14

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TO: Mark S. Heinzelmann, DAG
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093





State of New Jersey

PHILIP D. MURPHY
Governor

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

MICHELLE L. MILLER
Acting Director

December 6, 2018

[via Electronic Filing]

Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Blvd.
Newark, New Jersey 08302

Re: New Jersey Department of Environmental Protection
v. Novick Chemical Co., Inc., et al.
Docket No. ESX-L-4244-14

Dear Clerk of the Superior Court:

This office represents Plaintiff New Jersey Department of Environmental Protection in the above-captioned matter. Plaintiff recently filed the following papers via eCourts:

- Notice of Motion to Enforce an Order of this Court and to Assess Penalties against Defendant Novick Chemical Co., Inc.;
- Certification of Deputy Attorney General Mark S. Heinzelmann in Support of the Motion to Enforce;
- Certification of Supervising Geologist Sarah Kinsel in Support of the Motion to Enforce, with Exhibits;
- A proposed form of order; and
- A signed Certification of Service.



December 6, 2018

Page 2

Because the filing party is a State entity, a filing fee is not required. Please do not hesitate to contact me if you require any other information or materials with regard to this Motion.

Thank you for your courtesy.

Respectfully,

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

By: /s/ Daniel J. Harrison
Daniel J. Harrison
Deputy Attorney General

Enclosures

c. Service list contained on Notice of Motion