

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA, NEW  
JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND ADMINISTRATOR,  
NEW JERSEY SPILL COMPENSATION  
FUND,

Civil Action No. 2:24-cv-04771

Plaintiffs,

v.

PPG Industries, Inc.,

Defendant.

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**CONSENT DECREE**

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE .....	4
II.	PARTIES BOUND .....	4
III.	DEFINITIONS .....	5
IV.	OBJECTIVES .....	9
V.	PERFORMANCE OF THE WORK .....	9
VI.	PROPERTY REQUIREMENTS .....	10
VII.	FINANCIAL ASSURANCE .....	12
VIII.	INDEMNIFICATION AND INSURANCE .....	17
IX.	PAYMENTS FOR RESPONSE COSTS .....	18
X.	FORCE MAJEURE .....	21
XI.	DISPUTE RESOLUTION .....	22
XII.	STIPULATED PENALTIES .....	24
XIII.	COVENANTS BY PLAINTIFFS .....	26
XIV.	COVENANTS BY SETTLING DEFENDANT .....	27
XV.	EFFECT OF SETTLEMENT; CONTRIBUTION .....	28
XVI.	RECORDS .....	29
XVII.	NOTICES AND SUBMISSIONS .....	31
XVIII.	APPENDIXES .....	32
XIX.	MODIFICATIONS TO DECREE .....	33
XX.	SIGNATORIES .....	33
XXI.	PRE-ENTRY PROVISIONS .....	33
XXII.	INTEGRATION .....	34
XXIII.	FINAL JUDGMENT .....	34

## BACKGROUND

WHEREAS, Plaintiffs United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively referred to as “NJDEP”) filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and the New Jersey Spill Compensation and Control (“Spill Act”), N.J.S.A. 58:10-23.11 through 23.24.

WHEREAS, the Plaintiffs in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA, the Department of Justice (“DOJ”), NJDEP, and the New Jersey Division of Law for response actions at the Riverside Industrial Park Superfund Site in Newark, New Jersey (“Site”), together with accrued interest; and (2) performance by the defendant of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”) and state laws and regulations, as identified in this Decree.

WHEREAS, in accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified the NJDEP on September 29, 2021 of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for the Site, and EPA has provided the NJDEP with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

WHEREAS, in accordance with section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service (NJ Field Office) and New Jersey Department of Environmental Protection’s Office of Natural Resource Restoration on September 29, 2021, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Decree.

WHEREAS, the defendant that has entered into this Decree (“Settling Defendant”) does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

WHEREAS, in accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on May 24, 2013, Fed. Reg. Vol. 78 No. 101 at 341421.

WHEREAS, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA and Settling Defendant completed a Remedial Investigation for the Site in April 2020, and EPA completed a Feasibility Study for the Site in July 2020, in accordance with 40 C.F.R. § 300.430.

WHEREAS, in accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action on July 22, 2020, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting and comments received are available to the public as part of the administrative record upon which the Director of the Superfund and Emergency Management Division, EPA Region 2, based the selection of the response action.

WHEREAS, EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“Record of Decision”), executed on September 28, 2021, on which the NJDEP had a reasonable opportunity to review and comment/on which the NJDEP has given its concurrence except that NJDEP did not concur with the soil gas component of the remedy on the basis that it does not address indoor air with exceedances in currently occupied buildings in accordance with NJDEP’s indoor air remediation standards, N.J.A.C. 7:26D-5. The Record of Decision includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

WHEREAS, based on the information currently available, EPA and the NJDEP have determined that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with this Decree.

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that implementation of this Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and sections 106, 107 and 113(b) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendant may not challenge the terms of this Decree or this Court’s jurisdiction to enter and enforce this Decree.

### **II. PARTIES BOUND**

2. This Decree is binding upon the United States and the NJDEP and upon Settling Defendant and its successors and heirs. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of

Settling Defendant's obligations under this Decree. Settling Defendant's responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 65.

3. In any action to enforce this Decree, Settling Defendant may not raise as a defense the failure of any of its officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendant to take any action necessary to comply with this Decree. Settling Defendant shall provide notice of this Decree to each person representing Settling Defendant with respect to the Site or the Work. Settling Defendant shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

### **III. DEFINITIONS**

4. Subject to the next sentence, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” or “Decree” means this consent decree, all appendixes attached hereto (listed in Section XVIII), and all deliverables incorporated into the Decree under ¶ 7.6 of the SOW. If there is a conflict between a provision in Sections I through XXIII and a provision in any appendix or deliverable, the provision in Sections I through XXIII controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court's approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between February 28, 2021 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant's performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 11.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid;

(v) in taking action under ¶ 19 (Access to Financial Assurance); (vi) in taking response action described in ¶ 48 because of Settling Defendant's failure to take emergency action under ¶ 5.5 of the SOW; (vii) in implementing a Work Takeover under ¶ 10; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after February 28, 2021 on EPA's unreimbursed costs under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State of New Jersey.

“NJDEP Future Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, and State Interest on such costs, that NJDEP will incur after the Effective Date of the Consent Decree in connection with the Work.

“NJDEP Natural Resource Damages” shall mean all claims arising from discharges at the Site that occurred prior to the effective date of this Consent Decree, and that are recoverable by NJDEP as natural resource damages for injuries to natural resources under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 through -20; the Oil Pollution Act, 33 U.S.C. §§ 2701 through 2761; the Clean Water Act, 33 U.S.C. §§ 1251 through 1387; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 through 9675; the Sanitary

Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq., or any other state or federal common law, statute, or regulation, and include:

a. The costs of assessing injury to natural resources, NJDEP Office of Natural Resource Restoration's ("ONRR's") costs and fees, including costs and fees incurred to determine that Settling Defendant has complied with the requirements of this Consent Decree (oversight costs), attorney's fees, consultants and experts' fees, other litigation costs, and interest, incurred prior to the Effective Date of this Consent Decree; and

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

"NJDEP Natural Resource Damages" do not include:

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

b. Requirements to clean up any contamination as a result of discharges at the Site; or

c. Settling Defendant's continuing obligations to pay NJDEP's oversight costs determined pursuant to N.J.A.C. 7:26C-4.7.

"NJDEP Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs that NJDEP incurred on or before the Effective Date of this Consent Decree in connection with the Site, and State Interest on such costs.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or in accordance with any EPA-approved O&M Plan.

"Paragraph" or "¶" means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" means the United States, the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund, and Settling Defendant.

"Past Response Costs" means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site through February 28, 2021, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

"Performance Standards" means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the Record of Decision.

"Plaintiffs" means the United States and the NJDEP.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Record of Decision” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Unit 1 of the Site signed on September 28, 2021, by the Director of the Superfund and Emergency Management Division, EPA Region 2, and all attachments thereto. The Record of Decision is attached as Appendix A.

“Remedial Action” means the remedial action selected in the Record of Decision.

“Remedial Design” means those activities to be undertaken by Settling Defendant to develop plans and specifications for implementing the Remedial Action as set forth in the SOW.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ 1.3 of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendant” means PPG Industries, Inc. EPA and Settling Defendant acknowledge that this Decree may be amended, upon mutually acceptable terms and conditions, to include additional parties who elect to become Settling Defendants after this Decree becomes effective.

“Site” means the Riverside Industrial Park Superfund Site, comprising approximately 7.6 acres, located in the North Ward community of Newark, Essex County, New Jersey, and depicted generally on the map attached as Appendix C.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of New Jersey.

“State Interest” shall mean the interest rate established by R. 4:42 of the then-current edition of the New Jersey Court Rules.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendant must perform to implement and maintain the effectiveness of the Remedial Action.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid

waste” under section 1004(27) of RCRA; and (d) any “hazardous waste” under N.J.A.C. § 7:26G-5.

“Work” means all obligations of Settling Defendant under Sections V (Performance of the Work) through VIII (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 10.

#### **IV. OBJECTIVES**

5. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through the design, implementation, and maintenance of a response action at the Site by Settling Defendant, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendant as provided in this Decree.

#### **V. PERFORMANCE OF THE WORK**

6. Settling Defendant shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

7. Nothing in this Decree and no EPA approval of any deliverable required under this Decree constitutes a warranty or representation by EPA or the NJDEP that completion of the Work will achieve the Performance Standards.

#### **8. Modifications to the Remedial Action and Further Response Actions**

a. Nothing in this Decree limits EPA’s authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendant’s rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy, then Settling Defendant shall implement the modification as provided in ¶ 8.c.

c. Upon receipt of notice from EPA that it has modified the Remedial Action as provided in ¶ 8.b and requesting that Settling Defendant implement the modified Remedial Action, Settling Defendant shall implement the modification, subject to its right to initiate dispute resolution under Section XI within 30 days after receipt of EPA’s notice. Settling Defendant shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or, if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The Remedial Action modification, the approved

modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

9. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendant's obligations to comply with all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Record of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

#### 10. **Work Takeover**

a. If EPA determines that Settling Defendant (i) has ceased to perform any of the Work required under this Section; (ii) is seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) is performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, EPA may issue a notice of Work Takeover to Settling Defendant, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendant must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendant does not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Settling Defendant and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XI but shall terminate the Work Takeover if and when: (i) Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XI (Dispute Resolution) that EPA is required to terminate the Work Takeover.

### **VI. PROPERTY REQUIREMENTS**

#### 11. **Agreements Regarding Access and Noninterference**

a. As used in this Section, "Affected Property" means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Remedial Action.

b. Settling Defendant shall use best efforts to secure from the owner(s) of all Affected Property, an agreement, enforceable by Settling Defendant and by Plaintiffs, requiring such owner to provide Plaintiffs and Settling Defendant, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner's property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;

- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 11.b must commit the owner to refrain from using its property in any manner that EPA or NJDEP determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following:

- (1) engaging in activities that could interfere with the Remedial Action;
- (2) using contaminated groundwater;
- (3) engaging in activities that could result in human exposure to contaminants in soils and groundwater;
- (4) constructing new structures that may interfere with the Remedial Action; and
- (5) constructing new structures that may cause an increased risk of inhalation of contaminants.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendant would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements.

e. Settling Defendant shall provide to EPA and the NJDEP a copy of each agreement required under ¶ 11.b. If Settling Defendant cannot accomplish what is required through best efforts in a timely manner, it shall notify EPA and the NJDEP, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendant, or take independent action, to obtain such access or use restrictions.

12. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are appropriate, Settling Defendant shall cooperate with EPA’s and the NJDEP’s efforts to secure and ensure compliance with such Institutional Controls.

13. Notwithstanding any provision of the Decree, EPA and the NJDEP retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

## VII. FINANCIAL ASSURANCE

14. To ensure completion of the Work required under Section V, Settling Defendant shall secure financial assurance, initially in the following amounts, as follows: (i) \$15,890,628.00 (“Estimated Cost of the Work Excluding O&M”), for the benefit of EPA; and (ii) \$7,000,000.00 (“O&M Financial Assurance Amount”) for the benefit of NJDEP. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially similar to the relevant sample documents available from EPA, except that the financial assurance for the O&M Financial Assurance Amount shall not be in the form provided in Paragraphs 14(e) or (f); and (ii) for the Estimated Cost of the Work Excluding O&M, be satisfactory to EPA and, for the O&M Financial Assurance Amount, be satisfactory to NJDEP. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendant may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment to EPA of the Estimated Cost of the Work Excluding O&M, performance of the Work (excluding O&M), or both, and to NJDEP of the O&M Financial Assurance Amount, that is issued by a surety company among those listed as acceptable sureties on federal bonds and licensed in the State of New Jersey as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit for the Estimated Cost of the Work Excluding O&M, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency; and an irrevocable letter of credit for the O&M Financial Assurance Amount, payable to NJDEP or at the direction of NJDEP, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal agency or the State of New Jersey, and licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey;

c. a trust fund for the Estimated Cost of the Work Excluding O&M established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and a trust fund for the O&M Financial Assurance Amount established for the benefit of NJDEP that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated by the State of New Jersey and who is not the person responsible for conducting the remediation, including O&M;

d. a policy of insurance for the Estimated Cost of the Work Excluding O&M that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an

insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency; and a policy of insurance for the O&M Financial Assurance Amount that provides NJDEP with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the State of New Jersey and is licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey;

e. a demonstration by Settling Defendant that it meets the relevant test criteria of ¶ 15, accompanied by a standby funding commitment that requires Settling Defendant to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover;

f. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of the Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with the Settling Defendant; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 15; or

g. a line of credit for the O&M Financial Assurance Amount, payable to NJDEP or at the direction of NJDEP, that is issued by an entity that has the authority to issue lines of credit and whose line-of-credit operations are regulated and examined by a federal agency or the State of New Jersey, and licensed by the New Jersey Department of Banking and Insurance to conduct business in the State of New Jersey.

15. Settling Defendant seeking to provide financial assurance for the Estimated Cost of the Work Excluding O&M by means of a demonstration or guarantee under ¶ 14.e or 14.f must, within 30 days after the Effective Date:

a. demonstrate that:

(1) Settling Defendant or guarantor has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of

the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

- (2) Settling Defendant or guarantor has:
- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
  - ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
  - iii. tangible net worth of at least \$10 million; and
  - iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for Settling Defendant or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of lodging of this Decree, a sample letter and report is available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

16. Settling Defendant providing financial assurance by means of a demonstration or guarantee under ¶ 14.e or 14.f must also:

- a. annually resubmit the documents described in ¶ 15.b within 90 days after the close of the Settling Defendant's or guarantor's fiscal year;
- b. notify EPA within 30 days after the Settling Defendant or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of the Settling Defendant or guarantor in addition to those specified in ¶ 15.b; EPA may make such a request at any time based on a belief that the Settling Defendant or guarantor may no longer meet the financial test requirements of this Section.

17. Settling Defendant has selected, and EPA has found satisfactory, a letter of credit as an initial form of financial assurance for the Estimated Cost of the Work Excluding O&M, and Settling Defendant has selected, and NJDEP has found satisfactory, a letter of credit as an initial form of financial assurance for the O&M Financial Assurance Amount. Within 45 days after the Effective Date, Settling Defendant shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance for the Estimated Cost of the Work Excluding O&M and NJDEP's approval of financial assurance for the O&M Financial Assurance Amount, and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, and to EPA and the NJDEP in accordance with ¶ 63.

**18. Adequacy of Financial Assurance**

a. Settling Defendant shall diligently monitor the adequacy of the financial assurance. If Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant shall notify EPA and NJDEP of such information within seven days. If EPA determines that the financial assurance for the Estimated Cost of the Work Excluding O&M provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, or if NJDEP determines that the financial assurance for the O&M Financial Assurance Amount is inadequate or otherwise no longer satisfies the requirements of this Section, EPA or NJDEP, as appropriate, will notify Settling Defendant of such determination. Settling Defendant shall, within 30 days after notifying EPA and NJDEP or receiving notice from EPA or NJDEP under this Paragraph, secure and submit to EPA or NJDEP, as appropriate, for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA or NJDEP, as appropriate, may extend this deadline for such time as is reasonably necessary for Settling Defendant, in the exercise of due diligence, to secure and submit to EPA or NJDEP, as appropriate, a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendant shall follow the procedures of ¶ 20 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

b. Settling Defendant shall submit to NJDEP annually from the date that the financial assurance for the O&M Financial Assurance Amount is established under Paragraph 17 an estimate of the future costs to operate, maintain and inspect the engineering controls components of the selected remedy implemented under this Decree. If Settling Defendant is maintaining a trust fund, letter of credit, line of credit, surety bond, or a policy of insurance as financial assurance for the O&M Financial Assurance Amount, Settling Defendant shall also annually provide to NJDEP a written statement from the trustee, lender, or insurance company confirming the current value of the mechanism and confirming that the mechanism shall continue to remain in effect for the next consecutive 12-month period.

19. **Access to Financial Assurance**

a. If EPA issues a notice of a Work Takeover under ¶ 10.b with respect to the non-O&M portion of the Work, then, in accordance with any applicable financial assurance mechanism, including the related standby funding commitment, EPA may require that any funds guaranteed be paid in accordance with ¶ 19.f.

b. If EPA issues a notice of a Work Takeover under ¶ 10.b with respect to the O&M portion of the Work, then NJDEP, in accordance with any applicable financial assurance mechanism is entitled to: (1) the performance of the O&M by another party; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 19.f.

c. If EPA or NJDEP is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 19.f.

d. If, upon issuance of a notice of a Work Takeover under ¶ 10.b with respect to the non-O&M portion of the Work, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 14.e or 14.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendant shall, within 10 days after such demand, pay the amount demanded as directed by EPA.

e. If, upon issuance of a notice of a Work Takeover under ¶ 10.b with respect to the O&M portion of the Work, NJDEP is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, for the O&M, then NJDEP is entitled to demand an amount, as determined by NJDEP, sufficient to cover the cost of the remaining O&M to be performed. Settling Defendant shall, within 30 days of such demand, pay the amount demanded as directed by NJDEP.

f. Any amounts required to be paid under this ¶ 19 must be, as directed by EPA and/or NJDEP, as appropriate: (i) paid to EPA in order to facilitate the completion of the non-O&M portion of the Work by EPA, and/or to NJDEP to facilitate the completion of the O&M portion of the Work by NJDEP, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the non-O&M portion of the Work and/or the O&M portion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

20. **Modification of Amount, Form, or Terms of Financial Assurance.** Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendant may submit a request to change the form, terms, or amount of the financial assurance mechanism or mechanisms. Any such request must be submitted to EPA and NJDEP

in accordance with ¶ 17, and must include an estimate of the cost of the remaining Work including the O&M, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA, or NJDEP if the request concerns the O&M Financial Assurance Amount, will notify Settling Defendant of its decision regarding the request. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's or NJDEP's decision, as appropriate, by the earlier of 30 days after receipt of EPA's or NJDEP's decision or 120 days after EPA's and NJDEP's receipt of the request. Settling Defendant may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval, or NJDEP's approval if the request concerns the O&M Financial Assurance Amount; or (b) in accordance with any resolution of a dispute under Section XI. Settling Defendant shall submit to EPA or NJDEP, as appropriate, within 30 days after receipt of EPA's or NJDEP's approval, as appropriate, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

21. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA, in consultation with NJDEP, issues a Certification of Work Completion under ¶ 5.10 of the SOW; (b) in accordance with EPA's approval, in consultation with NJDEP, of such release, cancellation, or discontinuation of financial assurance for the Estimated Cost of the Work Excluding O&M, or NJDEP's approval, in consultation with EPA, of such release, cancellation, or discontinuation of financial assurance for the O&M Financial Assurance Amount; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XI.

## **VIII. INDEMNIFICATION AND INSURANCE**

### **22. Indemnification**

a. Plaintiffs do not assume any liability by entering into this Decree or by virtue of any designation of Settling Defendant as EPA's and the NJDEP's authorized representatives under section 104(e)(1) of CERCLA. Settling Defendant shall indemnify and save and hold harmless Plaintiffs and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendant as EPA's and the NJDEP's authorized representative under section 104(e)(1) of CERCLA. Further, Settling Defendant agrees to pay Plaintiffs all costs they incur including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control in carrying out activities under with this Decree. Plaintiffs may not be held out as parties to any contract entered into by or on behalf of Settling Defendant in carrying out activities under

this Decree. Settling Defendant and any such contractor may not be considered an agent of Plaintiffs.

b. Either Plaintiff shall give Settling Defendant notice of any claim for which such Plaintiff plans to seek indemnification in accordance with this ¶ 22, and shall consult with Settling Defendant prior to settling such claim.

23. Settling Defendant covenants not to sue and shall not assert any claim or cause of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendant shall indemnify and save and hold Plaintiffs harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of work at or relating to the Site, including claims on account of construction delays.

24. **Insurance.** Settling Defendant shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name Plaintiffs as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant under this Decree. Settling Defendant shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ 5.8 of the SOW. In addition, for the duration of this Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Decree. Prior to commencement of the Work, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendant shall ensure that all submittals to EPA under this Paragraph identify the Riverside Industrial Park Superfund Site, Newark, New Jersey, and the civil action number of this case.

## **IX. PAYMENTS FOR RESPONSE COSTS**

25. **Payment for Past Response Costs and NJDEP Past Cleanup and Removal Costs.**

a. Within 30 days after the Effective Date, Settling Defendant shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$2,883,120.00. The

Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey shall provide to Settling Defendant, in accordance with ¶ 63, instructions for making this payment, including a Consolidated Debt Collection System (“CDCS”) reference number. Settling Defendant shall make such payment at <https://www.pay.gov> in accordance with the FLU’s instructions, including references to the CDCS Number. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 63. If the payment required under this Paragraph is late, Settling Defendant shall pay, in addition to any stipulated penalties owed under Section XII, an additional amount for Interest accrued from the Effective Date until the date of payment.

b. Within 30 days after the Effective Date, Settling Defendant shall pay to the State \$116,880.00 in reimbursement of NJDEP Past Cleanup and Removal Costs. Payment shall be made in accordance with ¶ 26.c (Payment of NJDEP Future Cleanup and Removal Costs).

**26. Payments by Settling Defendant for Future Response Costs and NJDEP’s Future Cleanup and Removal Costs and Stipulated Penalties**

a. **Periodic Bills.** On a periodic basis, EPA will send Settling Defendant a bill for Future Response Costs, including a cost summary report generated by the E-Recovery system listing direct and indirect costs paid by EPA, its contractors, subcontractors, and DOJ. Settling Defendant may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendant must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendant shall pay the bill, or if it initiates dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Settling Defendant shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendant shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 63 and the purpose of the payment. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 63.

c. **Payment of NJDEP Future Cleanup and Removal Costs and Stipulated Penalties.** Settling Defendant shall reimburse NJDEP for all NJDEP Future Cleanup and Removal Costs. NJDEP will periodically bill Settling Defendant for these costs. Settling Defendant shall pay such amounts, and any stipulated penalties, to NJDEP by check made payable to the “Treasurer, State of New Jersey” and remitted with the applicable invoice

furnished by the NJDEP to the Division of Revenue and Enterprise Services at the address stated on said invoice or otherwise provided by Plaintiffs.

d. **Payment of NJDEP Natural Resource Damages.** NJDEP reserves its right to file Natural Resource Damages claims pertaining to the Site.

e. **Contesting NJDEP Future Cleanup and Removal Costs.**

- (1) Settling Defendant may contest NJDEP Future Cleanup and Removal Costs by submitting a written request to NJDEP, within forty-five (45) days after the billing date indicated on the cost invoice Settling Defendant received from NJDEP. Settling Defendant shall include the following information in a request for an oversight cost review:
  - i. A copy of the invoice;
  - ii. Payment of all uncontested charges; and
  - iii. A list of the specific cost charges contested.
- (2) Settling Defendant shall send to NJDEP, as provided in Section XVII (Notices and Submissions):
  - i. a copy of the transmittal letter and check paying the uncontested NJDEP Future Cleanup and Removal Costs;
  - ii. The factual questions at issue in each of the contested charges;
  - iii. The name, mailing address, email address, and telephone number of the person making the request; and
  - iv. Information supporting the request or other written documents relied upon to support the request.
- (3) If any information required by the above or the payment required by 26.e(1)ii is not included in the request for a cost review, NJDEP shall deny the request.
- (4) Upon NJDEP's receipt of a request for a cost review, NJDEP shall attempt to resolve any of the factual issues in dispute. If NJDEP determines that a billed cost was incorrect, NJDEP shall adjust the cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.
- (5) NJDEP's decision shall be binding on Settling Defendant unless, within ten (10) days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion

for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Decree.

- (6) If NJDEP prevails in the dispute, Settling Defendant shall pay the sums due (with accrued State Interest) to NJDEP within fourteen (14) days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued State Interest) for which it did not prevail to NJDEP within seven (7) days after the resolution of the dispute. All payments to NJDEP under this Paragraph shall be made in accordance with ¶ 26.c (Payment of NJDEP Future Cleanup and Removal Costs). The dispute procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Defendant's obligation to reimburse NJDEP for NJDEP Future Cleanup and Removal Costs. If Settling Defendant does not file a request for a cost review within forty-five (45) days after the billing date shown on the invoice for NJDEP's costs, the full amount of the costs shall be due and owing. If the invoice is not paid, NJDEP may avail itself of such remedies or sanctions available to NJDEP by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 38 (Stipulated Penalties – NJDEP Cleanup and Removal Costs).

27. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 25.a and 26.b in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

## **X. FORCE MAJEURE**

28. "Force majeure," for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors that delays or prevents the performance of any obligation under this Decree despite Settling Defendant's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

29. If any event occurs for which Settling Defendant will or may claim a force majeure, Settling Defendant shall notify EPA's Project Coordinator by email. The deadline for the initial notice is three (3) days after the date Settling Defendant first knew or should have known that the event would likely delay performance. Settling Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendant knew or should have known. Within seven (7) days thereafter, Settling Defendant shall send a further notice to EPA and the NJDEP that includes: (i) a description of the event and its effect on Settling Defendant's completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendant to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 28 and whether Settling Defendant has exercised its best efforts under ¶ 28, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or complete notices under this Paragraph.

30. EPA, after a reasonable opportunity for review and comment by the NJDEP, will notify Settling Defendant of its determination whether Settling Defendant is entitled to relief under ¶ 28, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendant has the burden of proving that it is entitled to relief under ¶ 28 and that its proposed extension was or will be warranted under the circumstances.

31. The failure by EPA to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendant from timely completing a requirement of the Decree, Settling Defendant may seek relief under this Section.

## **XI. DISPUTE RESOLUTION**

32. Unless otherwise provided in this Decree, Settling Defendant must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendant shall not initiate a dispute challenging the Record of Decision. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

33. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") in accordance with ¶ 63. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 30 days after the dispute

arises, unless the parties to the dispute otherwise agree. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Settling Defendant initiate formal dispute resolution under ¶ 34.

#### 34. **Formal Dispute Resolution**

a. **Statements of Position.** Settling Defendant may initiate formal dispute resolution by serving on the Plaintiffs, within 30 days after the conclusion of informal dispute resolution under ¶ 33, an initial Statement of Position regarding the matter in dispute. The Plaintiffs' responsive Statements of Position are due within 30 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 14 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** An EPA management official at the level of the Deputy Director of the Superfund and Emergency Management Division, EPA Region 2, or, at the sole discretion of EPA, someone occupying a higher position, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendant unless it timely seeks judicial review under ¶ 35.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

d. The NJDEP shall receive all Statements of Position served by the Parties under ¶ 34.a. NJDEP may elect, in its sole discretion, to participate in the dispute resolution procedures established in this Section.

#### 35. **Judicial Review**

a. Settling Defendant may obtain judicial review of the Formal Decision by filing, within 30 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 10; (iv) determinations about financial assurance under Section VII; (v) EPA's selection of modified or further response actions; (vi) any other items requiring EPA approval under the Decree; and (vii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendant bears the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 35.b shall be governed by applicable principles of law.

36. **Escrow Account.** For disputes regarding a Future Response Cost or NJDEP Future Cleanup and Removal Cost billing, Settling Defendant shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs or NJDEP Future Cleanup and Removal Costs; and (c) send to EPA and NJDEP, in accordance with ¶ 63, copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA or NJDEP may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendant shall cause the escrow agent to pay the amounts due to EPA and the NJDEP under ¶ 26, if any, by the deadline for such payment in ¶ 26. Settling Defendant is responsible for any balance due under ¶ 26 after the payment by the escrow agent.

37. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 40.

## XII. STIPULATED PENALTIES

38. Unless the noncompliance is excused under Section X (Force Majeure), Settling Defendant is liable to the United States and the NJDEP for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX; (ii) to establish and maintain financial assurance in accordance with Section VII; (iii) to submit timely or adequate deliverables under Section 8 of the SOW; and (iv) to establish an escrow account under ¶ 36 (Escrow Account):

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,250
15th through 30th day	\$1,875
31st day and beyond	\$2,500

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 38.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$500
15th through 30th day	\$1,000
31st day and beyond	\$1,500

39. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendant is liable for a stipulated penalty in the amount of \$3,000,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 19 (Access to Financial Assurance) to fund the performance of the Work by EPA.

40. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate noncompliances with this Decree. Stipulated penalties accrue regardless of whether Settling Defendant has been notified of its noncompliance, and regardless of whether Settling Defendant has initiated dispute resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ 7.6 of the SOW, during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XI, during the period, if any, beginning on the 21<sup>st</sup> day after the later of the date that EPA's Statement of Position is received or the date that Settling Defendant's reply thereto (if any) is received until the date of the Formal Decision under ¶ 34.b; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 35, during the period, if any, beginning on the 31<sup>st</sup> day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

41. **Demand and Payment of Stipulated Penalties.** Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, or NJDEP's determination that Settling Defendant has failed to comply with ¶¶ 38.a.(i) or 38.a.(ii), EPA or NJDEP may, as appropriate, send Settling Defendant a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendant may initiate dispute resolution under Section XI within 45 days after receipt of the demand or contest NJDEP Future Cleanup and Removal Costs under ¶ 26.e within the 45-day period. Settling Defendant shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 45 days after receipt of the demand. Settling Defendant shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest or State Interest, as appropriate, accrued from the date of receipt of the demand through the date of payment. Settling Defendant shall make payment to EPA at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID and DJ numbers listed in ¶ 63, and the purpose of the payment. Settling Defendant shall send a notice of this payment to DOJ and EPA, in accordance with ¶ 63. All payments to NJDEP under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 26.c. The payment of stipulated

penalties and Interest or State Interest, as appropriate, if any, does not alter any obligation by Settling Defendant under the Decree.

42. Nothing in this Decree limits the authority of the United States or the NJDEP: (a) to seek any remedy otherwise provided by law for Settling Defendant's failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendant's noncompliances with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

43. Notwithstanding any other provision of this Section, the United States, or the NJDEP, may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

### XIII. COVENANTS BY PLAINTIFFS

44. **Covenants for Settling Defendant by United States.** Subject to ¶ 47, the United States covenants not to sue or to take administrative action against Settling Defendant under Sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs.

45. The covenants under ¶ 44: (a) take effect upon the Effective Date; (b) are conditioned on the satisfactory performance by Settling Defendant of the requirements of this Decree; (c) extend to the successors of Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant; and (d) do not extend to any other person.

46. **Covenants for Settling Defendant by NJDEP.** In consideration of the payment Settling Defendant is making pursuant to ¶¶ 25.b. and 26.c, above, and except as otherwise provided in ¶ 47 (General Reservations), below, NJDEP covenants not to sue or take administrative action against Settling Defendant for reimbursement of NJDEP Past Cleanup and Removal Costs or NJDEP Future Cleanup and Removal Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

47. **General Reservations.** Notwithstanding any other provision of this Decree, the United States and the NJDEP reserve, and this Decree is without prejudice to, all rights against Settling Defendant regarding the following:

a. liability for failure by Settling Defendant to meet a requirement of this Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

- c. liability based on Settling Defendant's ownership of the Site when such ownership commences after Settling Defendant's signature of this Decree;
- d. liability based on Settling Defendant's operation of the Site when such operation commences after Settling Defendant's signature of this Decree and does not arise solely from Settling Defendant's performance of the Work;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Decree by Settling Defendant, other than as provided in the Record of Decision, under this Decree, or ordered by EPA;
- f. liability for the groundwater pump-and-treat and targeted in-situ remediation components of the Remedial Action selected in the Record of Decision;
- g. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that are not covered by ¶ 8.b;
- h. liability to the United States for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; liability to the NJDEP for NJDEP Natural Resource Damages;
- i. liability for failure to comply with applicable State laws, regulations, guidance, and rules subsequent to the Site being deleted by EPA from the National Priorities List, including but not limited to, the Spill Act, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et. seq., 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 the Remediation Standards, N.J.A.C. 7:26D; and
- j. criminal liability.

48. Subject to ¶ 44, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

#### **XIV. COVENANTS BY SETTLING DEFENDANT**

##### **49. Covenants by Settling Defendant**

a. Subject to ¶ 50, Settling Defendant covenants not to sue and shall not assert any claim or cause of action against the United States or the NJDEP under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the New Jersey State Constitution, the New

Jersey Spill Act, or at common law regarding the Work, past response actions relating to the Site, Past Response Costs and Future Response Costs.

b. Subject to ¶ 50, Settling Defendant covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work and past response actions regarding the Site, Past Response Costs, Future Response Costs, NJDEP Past Cleanup and Removal Costs, NJDEP Future Cleanup and Removal Costs, or any direct or indirect claim for reimbursement from the Spill Compensation Fund within the meaning of N.J.S.A. 58:10-23.11k or N.J.A.C. 7:11 or the Sanitary Landfill Facility Contingency Fund within the meaning of N.J.S.A. 13:1E-107 or N.J.A.C. 7:11 concerning the Site.

50. **Settling Defendant’s Reservation.** The covenants in ¶ 49 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the NJDEP to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 47.a through 47.i.

51. **De Minimis/Ability to Pay Waiver.** Settling Defendant shall not assert any claims and waives all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that it may have against any third party who enters or has entered into a *de minimis* or “ability-to-pay” settlement with EPA to the extent Settling Defendant’s claims and causes of action are within the scope of the matters addressed in the third party’s settlement with EPA, provided, however, that this waiver does not apply if the third party asserts a claim or cause of action regarding the Site against the Settling Defendant. Nothing in the Decree limits Settling Defendant’s rights under section 122(d)(2) of CERCLA to comment on any *de minimis* or ability-to-pay settlement proposed by EPA.

## XV. EFFECT OF SETTLEMENT; CONTRIBUTION

52. The Parties agree and the Court finds that: (a) the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA, and to NJDEP within the meaning of Section 113(f)(2) of CERCLA and Section 7f.a.(2)(b) of the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(b); and (c) Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA and N.J.S.A. 58:10-23.11f.a.(2)(b), or as may be otherwise provided by law, for the “matters addressed” in this Decree. The “matters addressed” in this Decree are the Work, Past Response Costs, Future Response Costs, NJDEP Past Removal and Cleanup Costs, and NJDEP Future Removal and Cleanup Costs, provided, however, that if the United States exercises rights under the reservations in ¶¶ 47.a through 47.h, or if the NJDEP exercises rights under the reservation in ¶¶ 47.h or 47.i, the “matters addressed” in this Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

53. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ, EPA and the NJDEP no later than 60 days prior to the initiation of such suit or claim. Settling Defendant shall, with respect to any suit or claim brought

against it for matters related to this Decree, notify DOJ, EPA and the NJDEP within 10 days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify DOJ, EPA and the NJDEP within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

54. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against Settling Defendant by either Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the NJDEP in the subsequent proceeding were or should have been brought in the instant case.

55. Nothing in this Decree diminishes the right of the United States or NJDEP under section 113(f)(2) and (3) of CERCLA or the Spill Act to pursue any person not a party to this Decree to obtain additional response costs or response action or cleanup and removal costs or natural resource damages and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2) or the Spill Act.

## **XVI. RECORDS**

56. **Settling Defendant Certification.** Settling Defendant certifies that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the NJDEP or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA and NJDEP requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA, and State law.

### **57. Retention of Records and Information**

a. Settling Defendant shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Certification of Work Completion under SOW ¶ 5.10 (the “Record Retention Period”):

- (1) All records regarding Settling Defendant’s liability under CERCLA or the Spill Act regarding the Site;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Settling Defendant in the course of performing the Remedial Action.

b. At the end of the Record Retention Period, Settling Defendant shall notify EPA and NJDEP that they have 90 days to request the Settling Defendant’s Records subject to this Section. Settling Defendant shall retain and preserve its Records subject to this Section until

90 days after EPA's and NJDEP's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

58. Settling Defendant shall provide to EPA and the NJDEP, upon request and subject to ¶¶ 59 and 60, copies of all Records and information required to be retained under this Section. Settling Defendant shall also make available to EPA and the NJDEP, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

**59. Privileged and Protected Claims**

a. Settling Defendant may assert that all or part of a record requested by Plaintiffs is privileged or protected as provided under federal law and/or State law, in lieu of providing the record, provided that Settling Defendant complies with ¶ 59.b, and except as provided in ¶ 59.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiffs with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Settling Defendant shall provide the record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all records that it claims to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor.

c. Settling Defendant shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Settling Defendant is required to create or generate in accordance with this Decree.

**60. Confidential Business Information (CBI) Claims.** Settling Defendant may claim that all or part of a record provided to Plaintiffs under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which it claims is CBI by labeling each page or each electronic file "claimed as confidential business information" or "claimed as CBI." Records that Settling Defendant claims to be CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no CBI claim accompanies records when they are submitted to EPA and the NJDEP, or if EPA notifies Settling Defendant that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Settling Defendant.

61. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

62. Notwithstanding any provision of this Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XVII. NOTICES AND SUBMISSIONS

63. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*  
[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ # 90-11-2-12543

As to EPA: *via email to:*  
[Evangelista.pat@epa.gov](mailto:Evangelista.pat@epa.gov)  
Director, Superfund and Emergency Management  
Division  
And  
[Smeraldi.josh@epa.gov](mailto:Smeraldi.josh@epa.gov)  
Remedial Project Manager  
Re: Site/Spill ID # NJSFN0204232

As to the Regional  
Financial Management *via email to:*  
[cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)  
Re: Site/Spill ID # NJSFN0204232

As to the NJDEP:

Section Chief  
Environmental  
Enforcement and  
Environmental Justice  
Section  
Department of Law and  
Public Safety, Division  
of Law, Richard J.  
Hughes Justice  
Complex, P.O. Box 093,  
Trenton, N.J. 08625-  
0093  
609-633-8713

Gwen Zervas  
Director, Division of  
Remediation  
Management,  
Department of  
Environmental  
Protection, 401 East  
State Street Mail Code  
401-406, P.O. Box 420  
Trenton, N.J. 08625-  
0420

As to Settling *via email to:*  
Defendant:

Scott Krall  
Global Director Environmental Affairs  
Environment, Health and Safety  
PPG Industries, Inc.  
SKrall@ppg.com

## **XVIII. APPENDIXES**

64. The following appendixes are attached to and incorporated into this Decree:

“Appendix A” is the Record of Decision.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

## **XIX. MODIFICATIONS TO DECREE**

65. Except as provided in ¶ 8 of the Decree and ¶ 7.6 of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIII and the Appendixes must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIII and the Appendixes must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the remedy, a modification to the Decree, including the SOW, to implement an amendment to the Record of Decision that “fundamentally alters the basic features” of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

## **XX. SIGNATORIES**

66. The undersigned representative of the United States, the undersigned representative of the NJDEP, and the undersigned representative of Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

## **XXI. PRE-ENTRY PROVISIONS**

67. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶¶ 68, 70 and 71, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

68. This Decree will be lodged with the Court for at least 60 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

69. NJDEP, in accordance with N.J.S.A. 58:10-23.11e.2, shall arrange for written notice of this Decree to all other potentially responsible parties of whom NJDEP had notice as of the date NJDEP published notice of the proposed settlement in this matter in the New Jersey Register. NJDEP shall publish notice of this Decree in the New Jersey Register and on NJDEP’s web site for public comment for a period of sixty (60) days. In accordance with N.J.S.A. 58:10-23.11e.2, such notice shall include the following information: a) the caption of this case; b) the name and location of the Site; c) the name of the Settling Defendant; d) a summary of the terms of this Decree; and e) that there are sixty (60) days to comment on the proposed Decree.

70. NJDEP reserves the right to withdraw or withhold its consent to this Decree if NJDEP receives information that discloses facts or considerations that indicate to NJDEP in its sole discretion, that the Decree is inappropriate, improper, or inadequate.

71. Settling Defendant agrees not to oppose or appeal the entry of this Decree.

**XXII. INTEGRATION**

72. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

**XXIII. FINAL JUDGMENT**

73. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO **ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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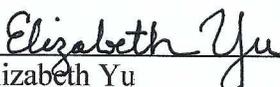
United States District Judge

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR THE UNITED STATES:**

Todd Kim  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

4-11-2024  
Dated

  
\_\_\_\_\_  
Elizabeth Yu  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: (202) 305-5950  
Elizabeth.yu@usdoj.gov

Philip R. Sellinger  
United States Attorney  
District of New Jersey

Alex Silagi  
Assistant United States Attorney  
United States Attorney's Office  
District of New Jersey  
970 Broad Street, Ste. 700  
Newark, New Jersey 07102

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY:**

**Pat Evangelista**

Digitally signed by Pat  
Evangelista  
Date: 2024.03.28 08:57:21  
-04'00'

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Pat Evangelista  
Director, Superfund and Emergency  
Management Division  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007

**WILLIAM  
REILLY**

Digitally signed by  
WILLIAM REILLY  
Date: 2024.03.27 16:46:07  
-04'00'

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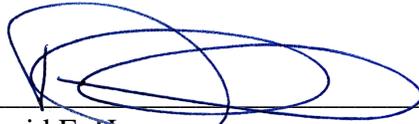
William J. Reilly  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 17th Floor  
New York, NY 10007

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION:**

March 12, 2024

Dated



David E. Haymes  
Assistant Commissioner  
Contaminated Site Remediation &  
Redevelopment

March 12, 2024

Dated



Paul Stofa  
Chief Advisor  
Legal & Regulatory Affairs  
New Jersey Department of Environmental  
Protection

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR THE NEW JERSEY SPILL  
COMPENSATION FUND:**

March 12, 2024  
Dated

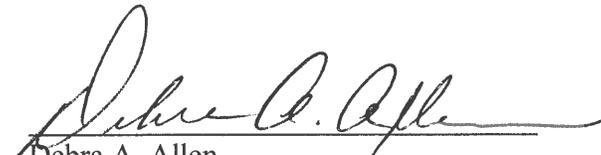
  
David E. Haymes  
Administrator  
New Jersey Spill Compensation Fund

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR MATTHEW J. PLATKIN,  
ATTORNEY GENERAL OF NEW  
JERSEY:**

Attorney for the New Jersey Department of  
Environmental  
Protection and Administrator of the New  
Jersey Spill Compensation Fund

3/27/24  
Dated

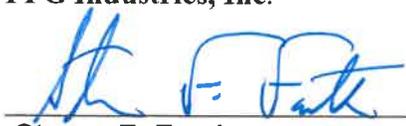
  
Debra A. Allen  
Deputy Attorney General

Signature Page for Consent Decree in *U.S. v. PPG Industries, Inc.* (D.N.J.)

**FOR: PPG Industries, Inc.**

March 1, 2024

Dated

  
Name: **Steven F. Faeth**  
Title: **VP Environmental Affairs & Asst. Gen. Counsel**  
Address: **One PPG Place  
Pittsburgh PA 15272**

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Jessica Thompson  
Title: Senior Counsel EHS & Sustainability  
Company: PPG Industries, Inc.  
Address: One PPG Place  
Pittsburgh PA 15272  
Phone: (412) 596-8909  
email: jsthompson@PPG.com