

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Civil No. 18-cv-3818
v.	:	
	:	(Brown, J.)
IMC EASTERN CORP.,	:	(Lindsay, M.J.)
	:	
	:	
Defendant.	:	
-----	X	

CONSENT JUDGMENT

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the New Cassel/Hicksville Groundwater Contamination Superfund Site in the Towns of Hempstead, North Hempstead, and Oyster Bay, in Nassau County, New York (“the Site”).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

C. In performing response activities at the Site, EPA has incurred response costs and will incur additional response costs in the future.

D. The United States alleges that defendant IMC Eastern Corp. (“Settling Defendant”) operated at a facility located at 570 Main Street in Westbury, New York, where there were releases of hazardous substances and thus is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

E. Settling Defendant has entered into this consent judgment (“Consent Judgment”), and by doing so it does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The United States has reviewed certain financial information and insurance information (hereinafter “Financial Information and Insurance Information”) submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to reimburse response costs incurred and to be incurred at the Site.

G. The United States and Settling Defendant (together, “the Parties”) agree, and this Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated between the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Judgment and the

underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Judgment or this Court's jurisdiction to enter and enforce this Consent Judgment.

III. PARTIES BOUND

2. This Consent Judgment is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Judgment.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Judgment, terms used in this Consent Judgment that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Judgment or in any appendix attached hereto, the following definitions shall apply:

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

“Consent Judgment” shall mean this Consent Judgment and all appendices attached hereto. In the event of conflict between this Consent Judgment and any appendix, this Consent Judgment shall control.

“Day” or “day” shall mean a calendar day. In computing any period under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Judgment is recorded on the Court's docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Insurance Information” shall mean those insurance documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded

annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall 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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper or lower case letter.

“Party” or “Parties” shall mean the United States or Settling Defendant, or the United States and Settling Defendant, respectively.

“Plaintiff” shall mean the United States.

“Section” shall mean a portion of this Consent Judgment identified by a Roman numeral.

“Settling Defendant” shall mean IMC Eastern Corp.

“Site” shall mean the New Cassel/Hicksville Groundwater Contamination Superfund Site, encompassing approximately 6.5 square miles of contaminated groundwater, located in the Towns of Hempstead, North Hempstead, and Oyster Bay, in Nassau County, New York, and generally shown on the map included in Appendix C.

“New Cassel/Hicksville Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the State of New York.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Judgment, the mutual objective of the Parties is for Settling Defendant to make a cash payment to resolve its alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. **Payment of Response Costs.** Settling Defendant shall pay to EPA the principal amount of \$1,000,000. The payment shall be made within 30 days after the Effective Date and, if timely paid, shall include no Interest.

6. Settling Defendant shall make payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling

Defendant by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Eastern District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Judgment. The FLU will provide the payment instructions to the following on behalf of the Settling Defendant:

Robert R. Lucic
Sheehan Phinney Bass & Green, P.A.
1000 Elm Street, PO Box 3701
Manchester, NH 03105-3701
rlucic@sheehan.com

Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XIV (Notices and Submissions).

7. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 5 (Payment of Response Costs) shall be deposited by EPA in the New Cassel/Hicksville Site 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 EPA Hazardous Substance Superfund.

8. **Notice of Payment.** At the time of payment, Settling Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XIV (Notices and Submissions), (b) to DOJ in accordance with Section XIV; and (c) to the EPA Cincinnati Finance Center (“CFC”) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov and chalifoux.jessica@epa.gov

EPA CFC by regular mail: Jessica Chalifoux
United States Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number A245, and DJ Number 90-11-311089/1.

VII. FAILURE TO COMPLY WITH CONSENT JUDGMENT

9. **Interest on Payments.** If Settling Defendant fails to make the payment required pursuant to Paragraph 5 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

10. Stipulated Penalty

a. If any amount due to EPA under Paragraph 5 (Payment of Response Costs) is not paid by the required date, Settling Defendant shall be in violation of this Consent

Judgment and shall pay, as a stipulated penalty, \$2,500 per violation per day in addition to the Interest required by Paragraph 9 (Interest on Payments) until such payment is made.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made through the <http://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$1,000,000
- ii. Name of remitters: IMC Eastern Corp.
- iii. Case number: Index #/Civil Action No.: **Civil No. 18-cv-3818**
- iv. Site name: **New Cassel/Hicksville Groundwater Contamination Site**
- v. Site/spill identifier: **A245**

c. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 8 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but they need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Judgment shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

11. If the United States brings an action to enforce this Consent Judgment, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant’s failure to comply with the requirements of this Consent Judgment.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of any stipulated penalties that have accrued pursuant to this Consent Judgment. Payment of stipulated penalties shall not excuse Settling Defendant from its payment obligations as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Judgment.

VIII. COVENANTS BY PLAINTIFF

14. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site and 570 Main Street, Westbury, New York. With respect to present and future

liability, 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 Consent Judgment. These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 32. These covenants extend only to Settling Defendant and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Judgment is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 14 (Covenants by Plaintiff). Notwithstanding any other provision of this Consent Judgment, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Judgment;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;¹
- d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Judgment by Settling Defendant;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site after signature of this Consent Judgment by Settling Defendant; and
- f. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

16. Notwithstanding any other provision of this Consent Judgment, the United States reserves, and this Consent Judgment is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action, seeking relief other than as provided in this Consent Judgment if the Financial Information or the Insurance Information provided by Settling

¹ In a consent decree entered in *State of New York v. Next Millennium, LLC et al.*, 06-CV-1133 (SJF)(ARL), the State of New York released, *inter alia*, Settling Defendant from "claims that were, or could now or hereafter be, asserted by the State against [Settling Defendant] arising out of or in connection with the disposal, release, and/or threat of release of hazardous substances at or from the NCIA and/or at or from the sites alleged to have been owned or operated by [Settling Defendant] and/or at or from the Upgradient Sites, including but not limited to any and all injuries to natural resources."

Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 33, is false or, in any material respect, inaccurate.

X. COVENANTS BY SETTLING DEFENDANT

17. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, 570 Main Street, Westbury, New York, and this Consent Judgment, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site and 570 Main Street, Westbury, New York, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or state law, relating to the Site and 570 Main Street, Westbury, New York.

18. Except as provided in Paragraph 20 (claims against other potentially responsible parties (“PRPs”) and Paragraph 26 (Res Judicata and other Defenses), these covenants shall not apply in the event that the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by United States), other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Judgment) or 15.b (criminal liability), but only to the extent that Settling Defendant’s claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

19. Nothing in this Consent Judgment shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person, including, but not limited to, any PRP, as defined at 40 C.F.R. §304.12(m), if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

21. Except as provided in Paragraph 20 (claims against other PRPs), nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. Except as provided in Section X (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and

causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Judgment diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons not a Party hereto to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

22. The Parties agree, and by entering this Consent Judgment this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Judgment. The “matters addressed” in this Consent Judgment are all response actions taken or to be taken and all response costs incurred or to be incurred at or in connection with the Site by the United States or any other person, and all response actions taken or to be taken and all response costs incurred or to be incurred by the United States at or in connection with 570 Main Street, Westbury, New York; provided, however, that if the United States exercises rights under the reservations in Section IX (Reservations of Rights by United States), other than in Paragraphs 15.a (liability for failure to meet a requirement of Consent Judgment) or 15.b (criminal liability), the “matters addressed” in this Consent Judgment will no longer include those response costs or response actions that are within the scope of the exercised reservation.

23. The Parties further agree, and by entering this Consent Judgment this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Judgment constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

24. The Parties further agree, and by entering this Consent Judgment this Court orders the following:

- a. that all claims and causes of action filed by Settling Defendant in this action are dismissed with prejudice;
- b. that all claims and causes of action filed against Settling Defendant in this action, including all third-party and fourth-party claims asserted against Settling Defendant, are dismissed with prejudice;
- c. that all claims and causes of action filed by any person in this action, including all third-party and fourth-party claims are dismissed with prejudice to the extent that they cover costs incurred or to be incurred by Settling Defendant; and
- d. that all other claims and causes of action filed by any person in this action are dismissed without prejudice.

25. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Judgment, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Judgment, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ 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 for matters related to this Consent Judgment.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VIII.

XII. ACCESS TO INFORMATION

27. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

28. Privileged and Protected Claims

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 28.b, and except as provided in Paragraph 28.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiff 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, 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 Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendant shall retain all Records that it claims to be privileged or protected until the United States has 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 may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to 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 pursuant to this Consent Judgment.

29. **Business Confidential Claims.** Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Judgment for which Settling Defendant asserts a business confidentiality claim. Records that Settling Defendant claims to be confidential business information will be accorded the protection consistent with Section 104(e)(7) of CERCLA. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such Records without further notice to Settling Defendant.

30. Notwithstanding any provision of this Consent Judgment, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

31. Until 10 years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that if Settling Defendant is potentially liable as an owner or operator of the Site, Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

32. After the conclusion of the record retention period, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records and if requested by EPA or DOJ, except as provided in Paragraph 28 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

33. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, documents, or other information (including records, reports, documents, and other information in electronic form) (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendant executes this Consent Judgment; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site and has submitted to EPA all such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Judgment, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Consent Judgment regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov
Re: DJ# 90-11-3-11089/1

And

Alex.Weinberg@usdoj.gov

As to DOJ by regular mail: U.S. Attorney's Office, E.D.N.Y.
271 Cadman Plaza East
Brooklyn, NY 11201
Attn.: AUSA Alex S. Weinberg

As to EPA: Chief, New York Remediation Branch
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866
Attention: New Cassel/Hicksville Groundwater
Contamination Superfund Site Remedial Project Manager

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007
Attention: New Cassel/Hicksville Groundwater
Contamination Site Attorney

As to Settling Defendant:

Robert R. Lucic
Sheehan Phinney Bass & Green, P.A.
1000 Elm Street, PO Box 3701
Manchester, NH 03105-3701
rlucic@sheehan.com

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Judgment.

XVI. INTEGRATION/APPENDICES

36. This Consent Judgment and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Judgment. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Judgment. The following appendices are attached to and incorporated into this Consent Judgment:

“Appendix A” is a list of the financial documents submitted to EPA by Settling Defendant.

“Appendix B” is a list of the insurance documents submitted to EPA by Settling Defendant.

“Appendix C” is a map of the Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Judgment shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Judgment disclose facts or considerations that indicate that this Consent Judgment is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Judgment without further notice.

38. If for any reason this Court should decline to approve this Consent Judgment in the form presented, this Consent Judgment is voidable at the sole discretion of any Party, and the terms of this Consent Judgment may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

39. Each undersigned representative of Settling Defendant and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, certify that he or she is authorized to enter into the terms and conditions of this Consent Judgment and to execute and bind legally such Party to this document.

40. Settling Defendant agrees not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Consent Judgment unless the United States has notified Settling Defendant in writing that it no longer supports entry of this Consent Judgment.

41. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Judgment.

XIX. FINAL JUDGMENT

42. Upon entry of this Consent Judgment by the Court, this Consent Judgment shall constitute the final judgment between the United States and Settling Defendant. The Court enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Judgment Regarding New Cassel/Hicksville Groundwater
Contamination Superfund Site

FOR THE UNITED STATES:

JEAN E. WILLIAMS
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

MARK J. LESKO
Acting United States Attorney
Eastern District of New York

ALEX WEINBERG

Digitally signed by ALEX
WEINBERG
Date: 2021.04.07 09:36:07 -04'00'

Dated

ALEX S. WEINBERG
Assistant United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

Evangelista, Pat


Digitally signed by Evangelista,
Pat
Date: 2021.04.07 14:31:32 -04'00'

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

Signature Page for Consent Judgment Regarding New Cassel/Hicksville Groundwater
Contamination Superfund Site

FOR IMC Eastern Corp.:

3/8/2021
Dated


Name (print): Chris M. Rawnsley
Title: Secretary, IMC Eastern
Address: 175 Jaffrey Road
Peterborough, NH 03458

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____
Title: _____
Address: _____
Phone: _____
email: _____

APPENDIX A

1. Business Financial Disclosure Statement and Supplemental Information Request completed for the U.S. Attorney's Office for the Eastern District of New York, dated October 15, 2019, completed by Chris Rawnsley, Corporate Secretary, IMC Eastern Corporation.
2. IMC Eastern Corporation's Tax Filings for the State of New York for FY 2015, 2016, and 2017.
3. IMC Eastern Corporation's Balance Sheets and Statements of Earnings for FY 2015, 2016, 2017, 2018, and 2019.
4. Promissory Note between IMC Eastern Corporation and Parent executed on March 15, 1993 with corresponding carrying value for current period expressed through a statement dated October 8, 2019.
5. Certificate of Merger encompassing NMB (USA), Inc.'s ownership of IMC Eastern Corporation dated February 10, 1984.
6. Communications via letters from Nationwide Indemnity (formerly Wausau Insurance) to IMC Eastern Corporation on September 11, 2008 and September 11, 2019.
7. Check issuance log from Nationwide Indemnity dated September 19, 2019 for IMC Magnetics Corporation reflecting a check for \$167,206.00.
8. Wausau Insurance policy documentation for IMC Magnetics General Liability policies covering multiple periods.

APPENDIX B

Insurer	Policy Number	Effective Date	Expiration Date
Employers Mutual Liability Insurance Company of Wisconsin	Unknown	April 18, 1960	March 1, 1972
Employers Mutual Liability Insurance Company of Wisconsin	0523 08 036073	March 1, 1972	March 1, 1973
Employers Mutual Liability Insurance Company of Wisconsin	0524 08 036073	March 1, 1973	March 1, 1974
Employers Mutual Liability Insurance Company of Wisconsin	0525 08 036073	March 1, 1974	March 1, 1975
Employers Mutual Liability Insurance Company of Wisconsin	0526 08 036073	March 1, 1975	March 1, 1976
Employers Mutual Liability Insurance Company of Wisconsin	0527 08 036073	March 1, 1976	March 1, 1977
Employers Mutual Liability Insurance Company of Wisconsin	0527 09 036073	April 1, 1976	March 1, 1977
Employers Mutual Liability Insurance Company of Wisconsin	0528 08 036073	March 1, 1977	March 1, 1978
Employers Mutual Liability Insurance Company of Wisconsin	0528 09 036073	March 1, 1977	March 1, 1978
Employers Mutual Liability Insurance Company of Wisconsin	0529 08 036073	March 1, 1978	March 1, 1979
Employers Mutual Liability Insurance Company of Wisconsin	0529 09 036073	March 1, 1978	March 1, 1979
Employers Mutual Liability Insurance Company of Wisconsin	0523 08 036073	March 1, 1979	March 1, 1980

Employers Mutual Liability Insurance Company of Wisconsin	0528 08 036073	March 1, 1979	March 1, 1980
Employers Mutual Liability Insurance Company of Wisconsin	Unknown	March 1, 1980	October 1, 1983

APPENDIX C



Figure 1
Site Location Map



New Case/Hicksville Groundwater Contamination Superfund Site
Nassau County, NY