

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	No. 19 Civ. 6749
v.	:	
	:	
HOPEWELL PRECISION, INC. and	:	
JOHN B. BUDD,	:	
	:	
Defendants.	:	
-----	x	

CONSENT DECREE

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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 Hopewell Precision Superfund Site, in the Town of East Fishkill, Dutchess 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 actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

D. The United States alleges that Hopewell Precision, Inc. ("Settling Defendant") 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. The United States has reviewed the Financial 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, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

F. The United States and Settling Defendant agree, and this Court by entering this consent decree ("Consent Decree") finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree 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. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree 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 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree 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 Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree 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 Decree or in any appendix attached hereto, the following definitions shall apply:

“Affected Property” means all real property at the Site and any other real property, owned or controlled by Settling Defendant, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following properties: 15 Ryan Drive and 19 Ryan Drive, East Fishkill, Dutchess County, New York.

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

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

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, 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 Decree 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 B.

“Hopewell Precision Superfund 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).

“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 Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and the Settling Defendant.

“Plaintiff” shall mean the United States.

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

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

“Settling Defendant” shall mean Hopewell Precision, Inc.

“Site” shall mean the Hopewell Precision Superfund Site, including approximately 5.7 acres of land, located in Hopewell Junction, in the Town of East Fishkill, Dutchess County, New York, that are and were the Hopewell Precision Inc. facility, and the buildings and other structures located on those premises, as well as the areas into which contamination from the Hopewell Precision, Inc. facility has migrated or in the future migrates.

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

V. ADMISSIONS

4. Settling Defendant hereby admits, acknowledges, and accepts responsibility for the following:

- a. Settling Defendant currently leases 19 Ryan Drive from John B. Budd and has been operating at 19 Ryan Drive since 1972, with the exception of an approximately three-year period, between 1976 and 1980, when it operated at 15 Ryan Drive.
- b. Settling Defendant has engaged in, among other things, the business of custom sheet metal and machining fabrication. In connection with its operations, until approximately August 1998, Settling Defendant used a vapor degreasing machine at its facility, which it used to clean and degrease parts prior to wet spray paint application. The company used chemical solvents, *i.e.*, trichloroethene (“TCE”) and 1,1,1-trichloroethane (“1,1,1-TCA”), in a vapor degreasing machine until at least 1991. Settling Defendant generated a solvent waste from its use of the vapor degreaser.
- c. As a result of Settling Defendant’s operations, solvents including TCE and 1,1,1-TCA were released into the environment including into the

structures and the soils at 15 and 19 Ryan Drive. These substances then migrated via groundwater beyond the two properties.

- d. EPA, in its September 28, 2009 Record of Decision (“ROD”) for the Site, concluded that soil sampling at 19 Ryan Drive did not reveal 1,1,1-TCA, and while TCE was detected it was below the screening criterion; soil sampling at 15 Ryan Drive revealed TCE above screening criterion in one sample, and while PCE, Cis-1,2-DCE, and MEK (2-butanone) were detected, it was at levels below the screening criterion. EPA concluded in the ROD that no significant soil source areas remain at the facility.
- e. Contamination from the properties has leached into the groundwater at the Site, resulting in a contaminated groundwater plume that extends approximately one-and-a-half miles in a southwesterly direction from the 15 and 19 Ryan Drive properties. This plume of contaminated groundwater has migrated into nearby residential neighborhoods and has contaminated at least 66 private drinking water wells at the Site that serve homes in those neighborhoods as well as ponds that are in the path of the contaminated groundwater plume.

VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs. Settling Defendant shall pay to EPA the principal amount of \$283,950. Payment of the principal amount shall be made in thirteen installments. The first installment payment of \$21,842.31 is due within 30 days of the Effective Date. The subsequent installment payments of \$21,842.31 are due on September 1, December 1, March 1 and June 1 of each year. Each installment payment shall include an additional sum for interest accrued on the unpaid principal amount calculated at the rate of 0.70% per annum. For the first payment this shall be calculated from the Effective Date to the date of payment; for subsequent payments it shall be calculated from the date of the prior payment until the date of payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

6. Settling Defendant shall make payments at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the U.S. Attorney’s Office. The payment instructions provided by the U.S. Attorney’s Office 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 Decree.

7. Deposit of Payment. The total amount of each payment to be paid pursuant to Paragraph 5 (Payment of Response Costs) shall be deposited by EPA in the Hopewell Precision Superfund 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 each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to the EPA Cincinnati Finance Center ("CFC") at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 0201588, and DJ Number 90-11-3-11193.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Payments and Accelerated Payments. If Settling Defendant fails to make any payment required by Paragraph 5 (Payment of Response Costs) by the required due date, all remaining installment payments and all accrued interest (at the rate set forth in Paragraph 5) shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

10. Stipulated Penalty.

a. If any amounts that are due to EPA under Paragraph 5 (Payment of Response Costs) are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9 (Interest on Payments), \$1,000 per violation per day that such payment is late.

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 by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Each payment shall reference the CDCS Number, Site/Spill ID Number 0201588, and DJ Number 90-11-3-11193.

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 or compliance is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, 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 Decree.

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

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. 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 Decree, including but not limited to, payment of all amounts that are due under Section VI (Payment of Response Costs), and any interest or stipulated penalties that are due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 33. These covenants extend only to Settling Defendant (and its successors, and assigns) and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree 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 Decree, 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 Decree;
- 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;

- d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences or continues after signature of this Consent Decree 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 Decree 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 Decree, the United States reserves, and this Consent Decree 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 Decree, if the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 33, is false or inaccurate in any material respect.

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 and this Consent Decree, 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, including any claim under the United States 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, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

18. Except as provided in Paragraph 20 (claims against other PRPs) and Paragraph 25 (Res Judicata and other Defenses), these covenants shall not apply in the event 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 Decree) 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 Decree 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 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) and not to assert any claims 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 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 Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. 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 Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons 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 Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved 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 Decree. The “matters addressed” in this Consent Decree 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; 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 Decree) or 15.b (criminal liability), the “matters addressed” in this Consent Decree 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 Decree 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 Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved 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. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, 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 Decree, 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 Decree.

25. 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. PROPERTY REQUIREMENTS

26. 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 needed regarding the Affected Property, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls, it being understood that Settling Defendant does not currently own the Affected Property.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RETENTION OF RECORDS

28. Until 10 years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to its liability or 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 retention policy to the contrary.

29. 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, upon request by EPA or DOJ, except as provided in Paragraph 30 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

30. 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 30.b, and except as provided in Paragraph 30.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 Decree.

31. Business Confidential Claims. Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section 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 Decree for which Settling Defendant asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. 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 or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

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

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

a. it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State of New York, 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. the Financial Information as set forth in Appendix B 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 Decree; and

c. it has 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 submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, 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 the Consent Decree regarding such Party.

As to DOJ:

Dominika Tarczynska
Rachael L. Doud
Assistant U.S. Attorneys
United States Attorney's Office,
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

With a copy to:

EES Case Management Unit
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11193

As to EPA:

James Doyle
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007-1866

As to Settling Defendant:

Richard H. Skeen, President
Hopewell Precision, Inc.
19 Ryan Rd.
Hopewell Junction, New York 12533
rskeen@hopewell-precision.com

Copy to:

Zarin & Steinmetz
81 Main Street, Suite 415

White Plains, New York 10601
Attn: Helen C. Mauch, Esq.
hmauch@zarin-steinmetz.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 Decree.

XVI. INTEGRATION/APPENDICES

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

“Appendix A” is the map of the Site.

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

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree 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 the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree 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, Environmental Enforcement Section, Environment and Natural Resources Section, U.S. Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

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

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 Decree. Settling Defendant further 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 Decree.

XIX. FINAL JUDGMENT

42. The Court shall enter this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2019.

United States District Judge

Signature Page for Consent Decree Regarding Hopewell Precision Superfund Site

FOR THE UNITED STATES OF AMERICA:

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff United States of America

7/19/2019
Dated

By:


DOMINIKA TARCZYNSKA
RACHAEL L. DOUD
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, NY 10007
Telephone: (212) 637-2748
Fax: (212) 637-2686
dominika.tarczynska@usdoj.gov
rachael.doud@usdoj.gov

7/19/2019
Dated


ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding Hopewell Precision Superfund Site

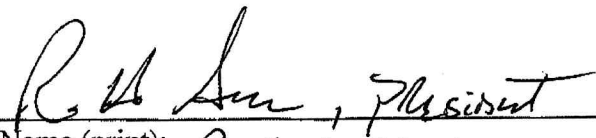
7/16/19
Dated


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

Signature Page for Consent Decree Regarding Hopewell Precision Superfund Site

FOR HOPEWELL PRECISION, INC.:

5-2-2019
Dated


Name (print): Richard Skiep
Title: President
Address: P.O. 551
Hopewell Twp. N.J. 07533

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

Name (print): Helen C. Mauch
Title: Partner
Company: Zarin & Steinmetz
Address: 81 Main Street, Suite 415
White Plains, NY 10601
Phone: (914) 681-0200
email: hmauch@zarin-steinmetz.com

Appendix A

C:\VMS\GIS\Hopewell\GIS_projects\Site_location_RI.mxd



0 500 1,000 2,000 3,000 Feet

Figure 2
Site Map
Hopewell Precision Site
Hopewell Junction, New York

CDM

Appendix B

List of the financial documents submitted to EPA by Settling Defendant

1. Hopewell Precision, Inc. Draft Reviewed Financial Statements and Supplementary Information, December 30, 2016 and 2017.
2. Hopewell Precision, Inc. Audited Financial Statements and Supplementary Information, December 30, 2011-2015.
3. Hopewell Precision, Inc. Audited Financial Statements and Supplementary Information, June 30, 2009 and 2010.
4. Hopewell Precision, Inc. Annual Internal Income Statement for year ended 2017.
5. Hopewell Precision, Inc. Monthly Internal Income Statement for January – March 2015.
6. Hopewell Precision, Inc. Monthly Internal Balance Sheets and Income Statements for January – August 2015.
7. Hopewell Precision, Inc. Accounts Payable Aging Statements as of April – August, 2015.
8. Hopewell Precision, Inc. Accounts Receivable Aging Statements, as of April – August, 2015.
9. Hopewell Precision, Inc. Monthly Internal Income Statement, April – August, 2015.
10. Hopewell Precision, Inc. Trial Balance, April – August, 2015.
11. Hopewell Precision, Inc. Employee Payroll Breakdown for Daniel E. Keefe and Richard Skeen dated December 10, 2015.
12. Hopewell Precision, Inc. Employee Compensation by employee, 2010-2014.
13. Hopewell Precision, Inc. Employee Compensation by employee, 2004-2010.
14. Hopewell Precision, Inc. Summary of loan owed by Richard Skeen, Loan #35050, August 2008 - April 2010.
15. Hopewell Precision, Inc. Summary of stockholder loan owed by Donna Czarny, Account #35060, June 2009 – September 2010.
16. Hopewell Precision, Inc. Business Council Workers' Compensation, Manufacturers Group Self Insurance Trust, 2014, dated May 11, 2015.
17. Settlement Agreement, New York State Workers' Compensation Board and Equipment Purchase and Hopewell Precision, Inc., July 10, 2012.
18. Hopewell Precision, Inc., General Loan and Security Agreement between Hopewell Precision, Inc. and Donna Czarny, January 2012.
19. Vehicle Cash Purchase Agreement between Hopewell Precision, Inc. and Jim Reed's Truck Sales, Inc., December 31, 2015.
20. New York Vehicle Retail Installment Contract, RR-3-42124EC64-94399 (2011 Ford), between Hopewell Precision, Inc. and Friendly Ford, July 10, 2014.
21. Vehicle Purchase Agreement, 2014 Lincoln, between Hopewell Precision, Inc. and Sunshine Ford-Lincoln, Inc., undated.
22. Hopewell Precision, Inc., Summary of Vehicles Driven by Employees, undated but provided with September 22, 2010 response.
23. Equipment Purchase and Security Agreement between Hopewell Precision, Inc. and Amada America, Inc., November 11, 2014.

24. Equipment Purchase and Security Agreement between Hopewell Precision, Inc. and Amada America, Inc., Robotic Bending Machine, March 28, 2014.
25. Equipment Purchase and Security Agreement between Hopewell Precision, Inc. and Amada America, Inc., Sheetworks Software, March 28, 2014.
26. Landlord's Consent and Waiver of Lien, between Hopewell Precision, Inc. (Tenant) and M&T Bank (Lender), February 2014.
27. Valuation Memorandum (Valuation date as of December 31, 2016), Hopewell Precision, Inc., Prepared by Barry R. Goodman, Advanced Valuation Services, September 19, 2017.
28. Valuation Memorandum (Valuation date as of December 31, 2015), Hopewell Precision, Inc., Prepared by Barry R. Goodman, Advanced Valuation Services, August 16, 2016.
29. U.S. Corporate Income Tax Returns, Form 1120, for Hopewell Precision, Inc., 2010-2016.
30. IRS, Form W-2 (Wage and Tax Statement) for Richard H. Skeen, 2011-2014.
31. Statement regarding Financial Condition sent to Dominika Tarczyska, signed by Richard H. Skeen, President, Hopewell Precision, Inc., undated but provided with April 18, 2018 information response.
32. Letter from Helen Collier Mauch and Jeremy E. Kozin to Dominika Tarczyska and Andrew Paschak dated October 2015.
33. Letter from Helen Collier Mauch and Michael D. Zarin to Dominika Tarczyska and Andrew Paschak dated June 23, 2015.
34. Letter from Helen Collier Mauch and Michael D. Zarin to Beverly Kolenberg dated December 15, 2010.
35. Letter from Helen Collier Mauch and Michael D. Zarin to Beverly Kolenberg dated September 22, 2010.
36. Rental Agreement between John B. Budd and Hopewell Precision dated March 1, 2006.
37. Hopewell Precision, Inc. Rent Check Summary from John B. Budd dated March 18, 2015.