

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 19 Civ. 6749
	:	
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 John B. Budd (“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 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 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 his heirs, 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:

“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.

“Property” means the real property located at 19 Ryan Drive, East Fishkill, Dutchess County, New York.

“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 John B. Budd.

“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 is the current owner of 19 Ryan Drive and has owned the property since approximately 1971-72. Settling Defendant currently leases the property to Hopewell Precision, Inc.
- b. Settling Defendant was the President and sole shareholder of Hopewell Precision, Inc., formerly known as Hopewell Fabricators, Inc. and Hopewell Industries, Inc. (collectively referred to herein as “Hopewell Precision”), from its founding in 1972 until 1985. From 1985 until 1991, Settling Defendant owned eighty percent of Hopewell Precision and served as the company’s Secretary. In 1991, Settling Defendant’s ownership of and employment by Hopewell Precision ended.

- c. Hopewell Precision has been operating at 19 Ryan Drive since 1972, with the exception of an approximately three-year period, between 1976 and 1980, when Hopewell Precision also operated at 15 Ryan Drive.
- d. Hopewell Precision has engaged in, among other things, the business of custom sheet metal and machining fabrication. In connection with its operations, until approximately August 1998, Hopewell Precision 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, trichloroethene (“TCE”) and 1,1,1-trichloroethane (“1,1,1-TCA”), in a vapor degreasing machine until at least 1991. Hopewell Precision generated a solvent waste from its use of the vapor degreaser, which was drained directly onto the ground behind the facility building at 15 Ryan Drive from 1976 to 1980.
- e. From 1976 to 1980, Hopewell Precision employees poured paints and other chemicals into the ground behind the facility building at 15 Ryan Drive.
- f. As a result of Hopewell Precision’s operations while Settling Defendant was its owner and president, solvents including TCE and 1,1,1-TCA were released into the environment including into the structures and the soils at the 15 and 19 Ryan Drive properties. These substances then migrated beyond the two properties.
- g. The U.S. EPA’s September 28, 2009 Record of Decision (“ROD”) for the Site in which one of two remedies was selected for the Site states 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 below the screening criterion. EPA concluded in the ROD that no significant soil source remains at the facility.
- h. Contamination from the properties has leached into the area’s groundwater, 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 locations. This plume of contaminated groundwater extends into nearby residential neighborhoods, and it has migrated into and contaminated: (i) the private wells that serve homes in those neighborhoods; (ii) ponds that are in the path of the contaminated groundwater plume; and (iii) approximately 66 homes that are a part of the Site.

## VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs. Settling Defendant shall pay to EPA the principal amount of \$963,750. Payment of the principal amount shall be made in five installments. The first installment payment of \$250,000 is due within 90 days of the Effective Date and, if timely paid, shall include no interest. The subsequent installment payments of \$178,438 are on each anniversary of the Effective Date of each year following the Effective Date. Each subsequent installment payment shall include an additional sum for interest accrued on the unpaid principle amount calculated at the rate of 0.70% per annum 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 Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Southern District of New York. 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 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 XV (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 shall become due immediately upon such failure, and if the first payment is not timely made, interest (at the rate set forth in Paragraph 5) shall accrue from the Effective Date. 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. JUDGMENT AND NOTICE OF LIEN**

14. Settling Defendant consents to the entry of the consent judgment in favor of the United States for \$963,750 attached hereto as Appendix C. Settling Defendant also consents to the entry of one or more supplemental judgments reflecting any interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). Settling Defendant consents to the filing by the United States in the Recorder's Office, Registry of Deeds or other appropriate office, in the County of Dutchess, State of New York, of a notice of judgment lien regarding the Property based on the consent judgment that is attached as Appendix C.

15. In the event Settling Defendant fails to make any payment required by Paragraph 5 (Payment of Response Costs) by the required due date, the United States may at its sole discretion serve a writ of garnishment on Hopewell Precision, and/or any other tenant at 19 Ryan Drive, to collect lease payments due to Settling Defendant, and Settling Defendant agrees not to file any objection to such writs of garnishment. Nothing herein limits the United States to the remedy described in the preceding sentence, and the United States reserves all available remedies.

### **IX. COVENANTS BY PLAINTIFF**

16. Except as specifically provided in Section X (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 and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 38. These covenants extend only to Settling Defendant (and his heirs, successors, and assigns) and do not extend to any other person.

### **X. RESERVATION OF RIGHTS BY UNITED STATES**

17. 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 16 (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 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.

18. 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 or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 38, is false or inaccurate in any material respect.

#### **XI. COVENANTS BY SETTLING DEFENDANT**

19. 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.

20. Except as provided in Paragraph 22 (claims against other PRPs) and Paragraph 27 (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 X (Reservations of Rights by United States), other than in Paragraph 17.a (liability for failure to meet a requirement of the Consent Decree) or 17.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.

21. 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).

22. 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 if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION**

23. Except as provided in Paragraph 22 (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 XI (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).

24. 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 X (Reservations of Rights by United States), other than in Paragraphs 17.a (liability for failure to meet a requirement of Consent Decree) or 17.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.

25. 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).

26. 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.

27. 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 IX.

### **XIII. PROPERTY REQUIREMENTS**

28. Agreements Regarding Access and Non-Interference. Settling Defendant shall, with respect to its Property:

a. Provide the United States and its designated representatives with reasonable access at all reasonable times to the Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents;
- (6) Assessing Settling Defendant's compliance with the Consent Decree;
- (7) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Property.

b. Refrain from using the Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment because of exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

- (1) Prohibiting any activities which could interfere with response actions at the Site;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting any activities which could result in exposure to contaminants in subsurface soils and groundwater;
- (4) Ensuring that any new structures on the Property will not be constructed in a manner that could interfere with response actions at the Site; and
- (5) Ensuring that any new structures on the Property will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

29. 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 Property, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

30. Notice to Successors-in-Title.

a. Settling Defendant shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Property in the appropriate land records. The notice must: (1) include a proper legal description of the Property; (2) provide notice to Settling Defendant's successors-in-title: (i) that the Property is part of, or related to, the Site; (ii) that EPA has selected and begun performance of a response action for the Site; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Defendant shall, prior to entering into a contract to Transfer its Property, or 60 days prior to Transferring its Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA has selected and begun performance of a response action regarding the Site; and
- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

31. In the event of any Transfer of the Property, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree.

32. 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.

#### XIV. RETENTION OF RECORDS

33. 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.

34. 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 35 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

35. 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 35.b, and except as provided in Paragraph 35.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.

36. 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 accorded 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.

37. 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.

38. 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 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 that it has no insurance policies responsive to EPA's request for insurance policies that might indemnify him against any liability under CERCLA for releases or threatened releases of hazardous substances at or from the Facility.

#### **XV. NOTICES AND SUBMISSIONS**

39. 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  
Eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-11-3-11193

**As to EPA:** Lorenzo Thantu, Remedial Project Manager, USEPA,  
Emergency and Remedial Response Division – 20<sup>th</sup> Fl.,  
New York, New York, 10007-1866

**As to Setting Defendant:** John B. Budd  
3802 E. Summitridge Lane  
Orange, California 92867  
jack3b98@yahoo.com

**With a copy to:** Robert J. Alessi  
Jeffrey D. Kuhn  
DLA Piper (US)  
677 Broadway – Suite 1205  
Albany, New York 12207  
robert.alessi@dlapiper.com  
jeffrey.kuhn@dlapiper.com

#### **XVI. RETENTION OF JURISDICTION**

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

#### **XVII. INTEGRATION/APPENDICES**

41. 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.

“Appendix C” is a Consent Judgment signed by the Parties.

#### **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

42. 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.

43. 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.

#### **XIX. SIGNATORIES/SERVICE**

44. Each undersigned representative of Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 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.

45. 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.

46. 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 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.

#### **XX. FINAL JUDGMENT**

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

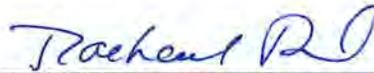
SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
United States District Judge

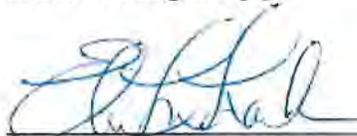
Signature Page for Consent Decree Regarding Hopewell Precision Superfund Site

**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*

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



~~JOHN B. PRINCE~~ ANGELA CARPENTER

Acting Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway  
New York, NY 10007

Signature Page for Consent Decree Regarding Hopewell Precision Superfund Site

**FOR JOHN B. BUDD:**

8-27-18

Date

  
Name (print): John B. Budd  
Title: *SELF*  
Address: 3802 E. Summitridge Lane  
Orange, California 92867

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

Name (print): Jeffrey D. Kuhn  
Title: Of Counsel  
Company: DLA Piper LLP (US)  
Address: 677 Broadway – Suite 1205  
Albany, New York 12207  
Phone: 518.788.9708  
email: jeffrey.kuhn@dlapiper.com

Appendix A

C:\MSIGIS\Hopewell\GIS\_projects\Site\_location\_RI.mxd



CDM

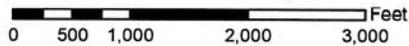


Figure 2  
Site Map  
Hopewell Precision Site  
Hopewell Junction, New York

**Appendix B**

**List of the financial documents submitted to EPA by Settling Defendant**

1. September 30, 2010 Letter and attached “Response of John B. Budd to U.S. EPA’s Request for Information Dated July 15, 2010 Regarding the Hopewell Precision Area Site, Hopewell Junction, New York” and documents bearing the Bates numbers B244-B527.
2. “Response to Documents Request from John B. Budd for Update of Ability to Pay Analysis Hopewell Precision Superfund Site, June 3, 2015” and attached documents bearing the Bates numbers B001-B512.
3. “Response to August 21, 2015 Follow-Up Questions Regarding John B. Budd Ability-to-Pay Analysis Hopewell Precision Superfund Site” and attached documents bearing Bates numbers B513-B583.
4. “Response to September 29, 2015 Follow-Up Questions Regarding John B. Budd Ability-to-Pay Analysis Hopewell Precision Superfund Site” and attached documents bearing Bates numbers B584-B632.
5. Information provided in January 29, 2016 Email from Jeffrey Kuhn and attached Exhibit A, B and C.
6. Information provided in June 27, 2016 Email from Jeffrey Kuhn and attached “Summary Basis Chart” and documents bearing Bates numbers B633-B707.
7. Information provided in January 8, 2017 Email from Jeffrey Kuhn.
8. Information provided in February 3, 2017 Email from Jeffrey Kuhn and attached documents bearing Bates numbers B708-764

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York  
By: DOMINIKA TARCZYNSKA  
RACHAEL L. DOUD  
Assistant United States Attorney  
86 Chambers Street  
New York, New York 10007  
Telephone No.: (212) 637-2748

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

HOPEWELL PRECISION, INC, and  
JOHN B. BUDD,

Defendants.

CONSENT JUDGMENT

\_\_ Civ. \_\_ ( )

Judgment # \_\_\_\_\_

-----X

WHEREAS, the United States of America (the "United States" or the "plaintiff"), on behalf of the Administrator of the U.S. Environmental Protection Agency, commenced this action by filing a complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607; and

WHEREAS, the United States and Defendant John B. Budd have entered into a Consent Decree to resolve this matter;

NOW, on the signed consent of the plaintiff and Defendant John B. Budd, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

1. The United States have judgment against Defendant John B. Budd in the amount of \$963,750, with interest at the rate of 0.07% pursuant to 42 U.S.C. § 9607(a), compounded annually, and the United States has execution therefor.

2. Execution of this judgment shall be stayed as long as the Defendant John B. Budd abides by the terms, conditions, and provisions set forth in the Consent Decree entered in by the Parties.

Dated: New York, New York

July 19, 2018~~9~~

Agreed and Consented to:

**FOR THE UNITED STATES OF AMERICA**

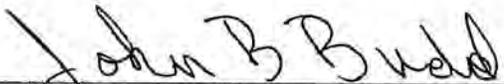
GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By:

  
DOMINIKA TARCZYNSKA  
RACHAEL L. DOUD  
Assistant United States Attorneys  
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Telephone: (212) 637-2748/3274  
Fax: (212) 637-2686  
dominika.tarczynska@usdoj.gov  
rachael.doud@usdoj.gov

**FOR JOHN B. BUDD:**

9-11-18  
Dated:

  
Name (print): John B. Budd  
Title: Self  
Address: 3802 E. Summitridge Lane  
Orange, California 92867

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

Name (print): Jeffrey D. Kuhn  
Title: Of Counsel  
Company: DLA Piper LLP (US)  
Address: 677 Broadway – Suite 1205  
Albany, New York 12207  
Phone: 518.788.9708  
email: jeffrey.kuhn@dlapiper.com

SO ORDERED:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE