

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, N.J. 08625-0093
Attorney for Plaintiffs

By: Louis G. Karagias
Deputy Attorney General
(609) 984-5189

STATE OF NEW JERSEY, DEPARTMENT
OF ENVIRONMENTAL PROTECTION and
ACTING ADMINISTRATOR, NEW JERSEY
SPILL COMPENSATION FUND,

Plaintiffs,

v.

ESTATE OF FREDERICK BARRY;
MARGARET M. BARRY a/k/a MARGARET
MILDENBERG; SAMUEL KHOUDARY; and
THE TRAVELERS INDEMNITY COMPANY,

Defendants.

SAMUEL KHOUDARY,

Third-Party Plaintiff,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
INC., ALLSTATE INSURANCE COMPANY,

Third-Party Defendants.

THE TRAVELERS INDEMNITY COMPANY,

Third-Party Plaintiff,

v.

FITCHBURG MUTUAL INSURANCE CO., et
al.,

Third-Party Defendants.

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION - MONMOUTH
COUNTY
DOCKET NO. MON-L-2719-03

CIVIL ACTION

Consent Judgment

This matter was opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, Louis G. Karagias, Deputy Attorney General, appearing, attorney for Plaintiffs New Jersey Department of Environmental Protection ("DEP," as hereinafter defined), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator," as hereinafter defined) (collectively, the "Plaintiffs"), and Clyde & Co US LLP, Daren McNally, Esq., appearing, attorney for Defendant/Third-Party Plaintiff, The Travelers Indemnity Company, ("Travelers," as hereinafter defined), Herbert B. Bennett Esq., appearing, attorney for Defendant/Third-Party Plaintiff, Samuel Khoudary ("Khoudary," as hereinafter defined), Lynch & Lynch, Edmund Lynch, Esq., appearing, attorney for Third-Party Defendant Allstate Insurance Company ("Allstate," as hereinafter defined), and Methfessel & Werbel, Fredric Gallin, Esq., appearing, attorney for Third-Party Defendant Fitchburg Mutual Insurance Company ("Fitchburg," as hereinafter defined), for entry of a Consent Judgment, and Plaintiffs, Travelers, Khoudary, Allstate and Fitchburg being referred to herein individually as a "Party" and collectively as the "Parties," and the Parties having amicably resolved their dispute(s) before trial.

I. BACKGROUND

A. Plaintiffs initiated the above-captioned matter (the "Action") on June 18, 2003, by filing a complaint against Khoudary, the Estate of Frederick Barry and Margaret Barry a/k/a Margaret Mildenberg (the "Barry Defendants") pursuant to the New Jersey

Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, seeking reimbursement of the Past Cleanup and Removal Costs (as hereinafter defined) they have incurred to date, and Future Cleanup and Removal Costs (as hereinafter defined) which they may incur in the future, as a result of the discharge of hazardous substances at the Bog Creek Farm located on Monmouth County Road 547, also known as 336 Squankum Road and Lakewood-Farmingdale Road, Howell Township, Monmouth County, this property also being known as Block 46, Lot 29 on the Tax Map of Howell Township (the "Site," as hereinafter defined).

B. The Plaintiffs also seek Natural Resource Damages in connection with any natural resources of the State that have been, or may be, injured by the Environmental Contamination (as hereinafter defined) at, on, around, beneath, from, migrating through or emanating from the Site.

C. On July 1, 2005, Defendant Khoudary filed a Third-Party Complaint against Liberty Mutual Insurance Company (improperly pled as Liberty Mutual Insurance Company, Inc.) ("Liberty Mutual") and Allstate seeking insurance coverage under policies allegedly issued to Khoudary in connection with the Action.

D. On July 25, 2005, Plaintiffs filed a Second Amended Complaint against Travelers seeking insurance coverage under policies issued or allegedly issued by Travelers to the Barry Defendants arising out of alleged Environmental Contamination at,

on, around, beneath, from, migrating through or emanating from the site.

E. On May 8, 2006, Travelers filed a Third-Party Complaint against Fitchburg pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-53, to determine the rights, duties and obligations of each such insurer, if any, to the Barry Defendants and/or Plaintiffs.

F. Khoudary, Travelers, Allstate and Fitchburg (collectively the "Settling Defendants," as hereinafter defined), filed responsive pleadings, in which they denied liability and/or asserted various defenses, counterclaims and/or cross claims.

G. The Plaintiffs allege that during the ownership of the Property (as hereinafter defined) by the Barry Defendants, the Barry Defendants failed to satisfactorily store or contain materials that were, or contained, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Property within the meaning of N.J.S.A. 58:10-23.11b.

H. The Plaintiffs also allege that hazardous substances discharged at the Property included, but were not limited to, acetone, benzene, 1,2 dichloroethane, methylene chloride, toluene, trichloroethene and xylene.

I. The Plaintiffs also allege that from 1981 through 1982, Khoudary owned the Property and during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were present on

the Property and certain of which were "discharged" at the Property within the meaning of N.J.S.A. 58:10-23.11b.

J. The Plaintiffs also allege that groundwater is a "natural resource" of the State, as defined in N.J.S.A. 58:10-23.11b., that has been, or may be, injured by the discharges of hazardous substances at the Property.

K. On September 8, 1983, the United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B. The National Priorities List, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety, and the environment.

L. The Plaintiffs also allege that from 1984 through 1985, EPA performed a remedial investigation and feasibility study of the Property, pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination, and to evaluate various ways to remediate the contamination.

M. The Plaintiffs further allege that sampling results from the remedial investigation and feasibility study of the Site revealed that soil near the waste disposal pits on the Property was contaminated with volatile organic compounds. Groundwater at the Site was contaminated with volatile organic compounds, and contaminated sediments were present in Squankum Brook.

N. On September 30, 1985, EPA, with Plaintiff DEP's concurrence, issued a Record of Decision ("1985 ROD") for the Site, in which EPA documented and explained the preferred remedy to address the contaminated soil at the Site.

O. The Plaintiffs also allege that the remedy EPA selected in the 1985 ROD primarily provides for the excavation and incineration of the buried wastes and contaminated soil at the Site; the backfill, regrade and revegetation of the Site; and the initiation of a long-term monitoring program to ensure the effectiveness of the remedy. The monitoring program involves periodic samplings and analyses of groundwater, surface water, and sediments at the Site.

P. On or about June 28, 1989, EPA, with Plaintiff DEP's concurrence, issued a second Record of Decision ("1989 ROD") for the Site, in which EPA documented and explained the preferred remedy to address the contaminated ground water, surface water, and sediments at the Site.

Q. The Plaintiffs also allege that the remedy EPA selected in the 1989 ROD primarily provides for installation of an on-site remediation system to extract and treat the contaminated groundwater, followed by reinjection on-site; restoration of the upper Kirkwood aquifer to DEP cleanup standards; and the excavation and incineration of contaminated sediments in Squankum Brook.

R. On March 31, 1989, DEP issued a directive ("1989 Directive") to the Barry Defendants and Khoudary pursuant to

N.J.S.A. 58:10-23.11f.a., directing them to arrange for the cleanup and removal of the hazardous substances that were discharged at the Property by paying to DEP the cost of the remedy EPA selected in the 1989 ROD.

S. The Barry Defendants failed to respond to the 1989 Directive, thus requiring DEP to perform the remedial action selected for the Site using public funds.

T. On April 4, 1989, Khoudary informed DEP that he was unable to comply with the 1989 Directive, thus requiring DEP to perform the remedial action selected for the Site using public funds.

U. DEP and EPA implemented both the 1985 ROD and 1989 ROD using public funds.

V. On November 29, 1995, the Administrator filed a first priority lien (Docketed Judgment No. DJ-312495-95) against the Property pursuant to N.J.S.A. 58:10-23.11f. and/or g.

W. On November 15, 1995, the Administrator also filed a non-priority lien (Docketed Judgment No. DJ-312500-95) against the revenues and other real and personal property of the Barry Defendants pursuant to N.J.S.A. 58:10-23.11f. and/or g.

X. On February 24, 2000, the Administrator filed an amended first priority lien (Docketed Judgment No. DJ-312495-95) against the Property.

Y. On December 5, 2005, default judgment was entered against the Barry Defendants by the Honorable Jamie S. Perri, J.S.C.

Z. On January 5, 2006, the Administrator filed an amended first priority lien (Docketed Judgment No. DJ-312495-95) against the Property in the amount of \$429,645.05.

AA. On June 28, 2006, the Honorable Jamie S. Perri, J.S.C., entered an order modifying final judgments by default against the Barry Defendants in the amount of \$3,853,015.12.

BB. Plaintiffs allege that they have incurred, and may continue to incur, costs to remediate the Site, and that they have incurred, and may continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Site.

CC. By entering into this Consent Judgment, the Settling Parties (as hereinafter defined) do not admit the allegations set forth in either the Complaint or Third Party Complaints; including amendments thereto, filed in this Action or this Consent Judgment and expressly deny any liability from the transactions and occurrences alleged in the Complaint and/or Third Party Complaints, including amendments thereto. In addition, the Insurer Defendants (as hereinafter defined) do not admit that they owe any insurance coverage, or any obligation to pay, other than their respective settlement amount, for any Claims (as hereinafter defined) that have been asserted in this matter against Khoudary, the Barry Defendants or any other party to this Action.

DD. The Parties recognize, and the Court by entering this Consent Judgment finds, that the Parties have negotiated this Consent Judgment in good faith, and that the implementation of this Consent Judgment will allow the Parties to avoid continued, prolonged and complicated litigation among the Parties, and this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this consent judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this Action, pursuant to the Spill Act, Declaratory Judgment Act and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment solely for the purposes of implementing this Consent Judgment and resolving the Action. The Parties waive all objections and defenses they may have to jurisdiction of the Court, or to venue in this County, for the sole purpose of entering and enforcing this Consent Judgment.

III. PARTIES BOUND

2. This Consent Judgment is binding upon the Parties.

IV. PURPOSE AND SCOPE

3. The purpose of this Consent Judgment is to resolve all past, present and/or future potential and/or actual disputes, including but not limited to insurance coverage disputes between and among the Parties, in connection with any and all Environmental

Contamination at, on, around, beneath, from, migrating through or emanating from this Site.

V. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act or in the regulations promulgated under the Spill Act shall have their statutory or regulatory meaning. The definitions contained herein shall apply only to this Consent Judgment and shall not apply to any other document, including without limitation any policy of insurance, nor shall they be used in evidence, except with respect to enforcement of this Consent Judgment. Furthermore, for purposes of this Consent Judgment, each defined term stated in a singular form shall include the plural form and each defined term stated in a plural form shall include the singular form. Pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine or neutral gender. When used in this Consent Judgment, the word "including" shall mean "including, but not limited to."

"Administrator" means the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. 58:10-23.11j, in his/her capacity as such, as well as in his/her capacity as alleged third-party beneficiary of any insurance policies at issue in this matter and/or subrogee of the Barry Defendants.

"Allstate" means (i) The Allstate Insurance Company;

(ii) each of its present and future, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; (iii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates of any of the foregoing but only if an entity described in (i) or (ii) above has the power or authority to act on such Person's behalf; (iv) the past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and (v) the predecessors, successors and assigns of any of the foregoing. Notwithstanding the foregoing, "Allstate" shall not include any Person that is first acquired by, first acquires, or first merges into Allstate (as constituted on the Effective Date) after the Effective Date other than with respect to Claims against such Person under, arising from or relating to insurance policies issued by Allstate as constituted on or before the Effective Date.

"AICO" shall mean the corporate entity identified as the purchaser of the Property in two deeds from Sam Khoudary: (1) Deed dated January 8, 1982, recorded January 20, 1982 in Deed Book 4338, Page 18 and (2) Deed dated January 8, 1982, recorded January 5, 1983 in Deed Book 4387, Page 678; corrected by Deed from Sam Khoudary dated April 12, 1983, recorded May 9, 1983, in Deed Book 4405, Page 99. Upon information and belief, "AICO", a/k/a the All Insurance Corporation, was incorporated in the State of Delaware on

May 16, 1978. Its registered agent is Ella Peddrec, 1231 Fieldsboro Road, Townsend, New Castle County, Delaware 19734.

"Barry Policies" means any and all policies of insurance of any kind whatsoever issued or alleged to have been issued by Travelers and/or Fitchburg under which Plaintiffs and/or the Barry Defendants, claim or may claim to be entitled to insurance, whether primary, umbrella, excess or otherwise, whether liability, first-party property or otherwise, and whether known or unknown.

"Claim" means any and all actual, potential, threatened or alleged past, present, or future claims, actions, counts, cross claims, counterclaims, rights, obligations, liabilities, duties, debts, demands, lawsuits, administrative proceedings, statutory or regulatory obligations, arbitrations, mediations, causes of action, orders or directives and any other assertion of responsibility or liability of any kind, whether legal or equitable, and whether currently known or unknown, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, foreseen or unforeseen and whether sounding in tort, contract, equity, strict liability or any other statutory, regulatory, administrative or common law cause of action of any sort.

"Consent Judgment" means this Consent Judgment.

"Day" means a calendar day unless expressly stated to be a working day. "Working day" means a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or

State holiday, time shall run until the close of business of the next working day.

"DEP" means the New Jersey Department of Environmental Protection and any successor department or agency of the State in its individual capacity, as alleged third-party beneficiary of any insurance policies at issue in this matter and/or subrogee of the Barry Defendants.

"Effective Date" means the date on which this Consent Judgment shall have been executed by all Parties and entered by the Court as reflected on the signature page of this Consent Judgment.

"Environmental Contamination Claim" means any Claim that has been made, asserted or filed, or which may be made, asserted or filed in the future (whether now known or unknown), by any Person that involves, arises out of or relates in any way to Environmental Contamination (as defined herein). Environmental Contamination Claims include, without limitation, Claims alleging bodily injury, property damage, personal injury, natural resource damage, costs with respect to cleanup studies, analyses, investigations, ongoing maintenance responsibilities, response and/or remediation involving, arising out of or relating to Environmental Contamination, whether at law or in equity, and whether sounding in tort, contract, equity, nuisance, trespass, negligence, diminution in value, strict liability or any other statutory or common law cause of action of any kind whatsoever involving, arising out of or

relating to Environmental Contamination, as well as any and all past, present or future:

(a) Claims of actual, potential, threatened or alleged personal injury or bodily injury relating to or arising out of Environmental Contamination;

(b) Claims of actual, potential, threatened or alleged property damage, including, but not limited to damage, destruction, loss of use, diminished value of any property right, or expectancy, and any economic losses, and any Claim relating to actual, potential, threatened or alleged damage to, destruction of, or limitation or loss of use of natural resources relating to or arising out of Environmental Contamination;

(c) Claims seeking to compel, through injunctive relief, equitable relief, or the enforcement of federal, state or local statutes, an international treaty or otherwise, testing, studies, investigation, monitoring, prevention, clean-up or remediation of actual, potential, threatened or alleged Environmental Contamination or any Claim for reimbursement of such costs incurred by any Person relating to or arising out of Environmental Contamination;

(d) Claims for interference with or damage to Native American lands, nuisance, trespass, interference with quiet enjoyment of property, interference with any

right of private occupancy, bad faith, sanctions, punitive or exemplary damages, statutory fines or penalties relating to or arising out of Environmental Contamination;

(e) Claims for costs and expenses incurred in order to comply with any environmental-related statute, regulation, ordinance, treaty, international agreement or government directive relating to or arising out of Environmental Contamination.

"Environmental Contamination" means the actual, alleged, potential or threatened contamination or exposure of, or injury or damage to air, environment, atmosphere, soil, sediments, property (tangible or intangible), water (including without limitation groundwater, surface water, or any other form or body of water) or any natural person, class or group of natural persons, by or arising from the presence, existence, movement, emission, discharge, seepage, release, disposal, dumping, landfilling or escape of irritants, contaminants, pollutants, toxins, vapors, soot, smoke, fumes, acids, alkalis, chemicals, noise, energy, radiation, oil, petroleum, petroleum products or derivatives, asbestos, liquids or gases, waste materials of any type or any other substance, irritant, contaminant or pollutant, or any form of toxic, hazardous or injurious substance or material, including without limitation (a) "hazardous wastes" as defined by the Resource Conservation and Recovery Act of 1976, as amended, (b) "hazardous substances" and

"pollutant(s) or contaminant(s)" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601, etc., (c) "toxic substances" as defined by the Toxic Substances Control Act, as amended, (d) "hazardous materials" as defined by the Hazardous Materials Transportation Act, as amended, (e) substances defined or deemed hazardous under New Jersey statutes and regulations including, without limitation, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., together with amendments thereto, regulations promulgated thereunder and all successor legislation and regulations thereof, as well as words of similar purport or meaning referred to in any other federal, state, county or municipal statute, ordinance, rule or regulation; and (f) and any other substance or material alleged by any Person now or in the future to be (whether before or after its or their presence, existence, movement, emission, discharge, seepage, release, disposal, dumping, landfilling, or escape) detrimental, harmful, injurious, hazardous, noxious, nuisance-causing or toxic.

"Fitchburg" means (i) Fitchburg Insurance Company; (ii) each of its present and future, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; (iii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates of any of the foregoing but only if an entity described in (i) or (ii) above has the power or authority to act on such Person's behalf; (iv) the past, present and future

officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and (v) the predecessors, successors and assigns of any of the foregoing. Notwithstanding the foregoing, "Fitchburg" shall not include any Person that is first acquired by, first acquires, or first merges into Fitchburg (as constituted on the Effective Date) after the Effective Date other than with respect to Claims against such Person under, arising from or relating to insurance policies issued by Fitchburg as constituted on or before the Effective Date.

"Future Cleanup and Removal Costs" means all costs, including direct and indirect costs, that the Plaintiffs incur after the Effective Date of this Consent Judgment to remediate the Site.

"Insurer Defendants" means Allstate, Fitchburg, and Travelers as those entities are each separately defined herein.

"Interest" means interest at the rate established by R. 4:42-11 of the then current edition of the New Jersey Court Rules.

"Khoudary" means Samuel Khoudary, his heirs and assigns.

"Natural Resource Damage Claims," means all claims arising from Natural Resource Damages (as hereinafter defined).

"Natural Resource Damages" means all claims arising from discharges at the Bog Creek Farm Property that occurred prior to the effective date of this Consent Judgment, and that are recoverable by the Plaintiffs as natural resource damages for

injuries to natural resources under the Spill Act, N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 through -9675; or any other state or federal common law, statute, or regulation, and include:

- a. The costs of assessing injury to natural resources and natural resource services, the DEP's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-4.7, attorney's fees, consultants' and experts' fees, other litigation costs, and interest, incurred prior to the Effective Date of this Consent Judgment; and
- b. The payment of compensation for restoration of, the lost value of, injury to, or destruction of natural resources and natural resource services.

Natural Resource Damages do not include:

- a. compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages; or
- b. requirements to clean up any contamination as a result of discharges at the Bog Creek Farm Property.

"Paragraph" means a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.

"Past Cleanup and Removal Costs" means all costs, including direct and indirect costs, the Plaintiffs incurred on or before the Effective Date of this Consent Judgment to remediate the Site.

"Person" means any natural person, class or group of natural persons, corporation, company, partnership, association, trust, or any other entity or organization, including without limitation any federal, provincial, state, county, city or municipal governmental or quasi-governmental body or political subdivision, department, agency or instrumentality thereof.

"Property" means the Bog Creek Farm Property, consisting of approximately 12 acres of real property located on Monmouth County Road 547, also known as Squankum Road and Lakewood-Farmingdale Road, Howell Township, Monmouth County, this property being also known and designated as Block 46, Lot 29 on the Tax Map of Howell Township.

"Released Claims" means those Claims released pursuant to Sections VIII and IX of this Agreement.

"Remediation" means the remediation of the Site in accordance with the Spill Act and the regulations promulgated under the Spill Act, including N.J.A.C. 7:26E.

"Section" means a portion of this Consent Judgment identified by a roman numeral.

"Settling Defendants" means Khoudary, Travelers, Allstate, and Fitchburg.

"Settling Parties" means the DEP and the Administrator and in their capacities as alleged third-party beneficiaries of the Barry Policies and/or subrogees of the Barry Defendants and the Settling Defendants as defined above.

"Site" means the land, air, environment, atmosphere, soil, sediments, property and water (including, but not limited to, groundwater, surface water or any other form or body of water) at, on, around, beneath, from, migrating through or emanating from, or allegedly impacted or affected by Environmental Contamination from the Property and all other areas where any hazardous substance discharged there has become located, and which has been designated as Program Interest No. G000003346.

"Spill Fund" shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i.

"Travelers" means (i) The Travelers Indemnity Company; (ii) each of its present and future, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates; (iii) the past, direct and indirect parents, subsidiaries, partners, joint ventures and affiliates of any of the foregoing but only if an entity described in (i) or (ii) above has the power or authority to act on such Person's behalf; (iv) the past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing but only in their capacity as such; and (v) the predecessors, successors and assigns of any of the foregoing. Notwithstanding

the foregoing, "Travelers" shall not include any Person that is first acquired by, first acquires, or first merges into Travelers (as constituted on the Effective Date) after the Effective Date other than with respect to Claims against such Person under, arising from or relating to insurance policies issued by Travelers as constituted on or before the Effective Date.

VI. SETTLING DEFENDANTS' COMMITMENTS

5. Within 30 days of the Effective Date of this Consent Judgment, the Insurer Defendants shall each separately deliver a check payable to "Treasurer, State of New Jersey" in the amounts set forth below (collectively, hereinafter, the "Insurers' Settlement Amount") to Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 West Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

- a. Travelers: \$200,000
- b. Fitchburg: \$75,000

Plaintiffs acknowledge that on or about February 2, 2009, Allstate paid its \$500,000 share of the Insurers' Settlement Amount to the Treasurer, State of New Jersey. The Parties expressly acknowledge and agree that the obligations of the Insurer Defendants to pay their respective shares of the Insurers' Settlement Amount as set forth above shall be several and not joint and several. In addition, the failure by any Insurer Defendant to pay its respective share of the Insurers' Settlement Amount as set

forth above shall not alter the enforceability and/or effectiveness of this Agreement with respect to any Party that has paid its share of the Insurers' Settlement Amount.

6. (a) Within 30 days of the Effective Date of this Consent Judgment, Khoudary shall deliver a check, issued at the direction of Liberty Mutual or one of its direct or indirect subsidiaries (collectively, "Liberty Mutual Insurance") and payable to "Treasurer, State of New Jersey" in the amount of \$125,000, (hereinafter, the "Khoudary Insurance Settlement Amount"), to Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 West Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

(b) In addition, Khoudary shall pay DEP and the Spill Fund \$100,000 (hereinafter, the "Khoudary Installment Settlement Amount") in equal quarterly payments of \$2,500; the first payment being due 30 days after the Effective Date of this Consent Judgment, and continuing quarterly thereafter, in further reimbursement of DEP and the Spill Fund's Past Cleanup and Removal Costs, Future Cleanup and Removal Costs and Natural Resource Damages. Nothing in this paragraph shall preclude Khoudary from accelerating payments to the DEP and the Spill Fund or paying more than the noted amount in each quarterly installment. The Khoudary Installment Settlement Amount shall be made payable to "Treasurer, State of New Jersey" and sent to Section Chief, Environmental

Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 West Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

7. Khoudary shall be afforded a grace period of 30 days to cure any payment deficiency pursuant to Paragraph 6 (b) above. In the event Khoudary fails to cure any payment deficiencies within the 30 day grace period or fails to make timely payments in accordance with Paragraph 6 (b) on three occasions, Khoudary stipulates that such delinquency will be deemed a breach of the terms of this Consent Judgment and further stipulates to the entering of an enforceable judgment against him in the Superior Court of New Jersey by Plaintiffs for all remaining amounts owed by him including Interest under the terms of this Consent Judgment and any other relief deemed appropriate by a court of competent jurisdiction. In the event of any such breach by Khoudary, Plaintiffs agree to solely pursue Khoudary, and not to pursue any recovery from Khoudary's alleged insurers, Allstate and Liberty Mutual Insurance, or any other Settling Defendant.

8. In the event any Settling Defendant fails to pay monies as described in paragraph 5 and/or 6(a) and (b) above, Plaintiffs may bring a summary action solely against the defaulting Settling Defendant in the Superior Court of New Jersey to recover any amounts not paid by the defaulting Settling Defendant including interest and to seek any additional relief against the defaulting Settling Defendant deemed appropriate by a court of competent

jurisdiction. The Parties expressly agree that the Covenants and Releases set forth in Section VIII of this Consent Judgment will remain effective as to all non-defaulting Settling Defendants.

VII. DISPOSITION OF THE SITE

9. The Plaintiffs and Khoudary agree that the entire Property will become subject to a conservation easement prohibiting any development on the Property. Said easement will be in a form that is attached hereto as Appendix A and negotiated by DEP and Khoudary after entry of this Consent Judgment. The conservation easement shall be filed by Khoudary or his authorized representative with the appropriate officials. Any subsequent alienation of the Property shall be subject to DEP approval. Khoudary shall within 60 days after the entry of this Consent Judgment: a.) submit a draft conservation easement for DEP's review and approval; b.) provide DEP with a survey that is consistent with DEP's Green Acres Program, www.nj.gov/dep/greenacres/survey/pdf/2011_surveyscope.pdf; and c.) submit to DEP for review and approval a current title insurance commitment which shows title to the Property to be free and clear of all prior liens and encumbrances (except when DEP waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Khoudary is unable to obtain a release or subordination of such prior liens or encumbrances).

10. If Khoudary sells the Property, the terms and conditions of the sale of the Property, including the final sale price, shall

be subject to written approval by DEP. DEP may, in its unreviewable discretion, disapprove the sale of the Property if the final sale price is not commensurate with fair market value. Khoudary shall immediately provide DEP with copies of the sale contract 60 days prior to signing.

11. Plaintiffs and Khoudary agree that the gross proceeds of the sale of the Property shall be distributed as follows: to the State of New Jersey, 90 percent of the gross proceeds; to Khoudary, ten percent of the gross proceeds, except that Khoudary's share of the proceeds shall not, in any event, exceed \$50,000. Any amount in excess of \$50,000 shall be paid to Plaintiff DEP.

12. If Khoudary shall cause the Property to be listed for sale by a licensed realtor, Khoudary shall provide notice to DEP of the name and business address of the realtor within five days from the date of the Property's listing. All past, current and future property taxes, as of the date of the closing, as well as all closing costs, realty transfer fees and other charges outstanding against the Property at the time of sale, and any realtor's commission or Khoudary's attorney's fee incurred in connection with the sale of the Property, shall be paid by Khoudary. Khoudary agrees not to mortgage or cause to be mortgaged or grant or cause to be granted any rights, rights of way, easements, restrictions, or other interests in or with respect to the Property prior to its sale.

13. Payment by Khoudary to the State of New Jersey of 90 percent of the gross proceeds from the sale of the Property shall be made at the closing of the sale by requiring, in the contract of sale, that the purchaser or its title company pay 90 percent of the sale price directly to the State of New Jersey by certified cashier's check, or check from an attorney's trust account, made payable to "Treasurer, State of New Jersey," and sent by Priority Mail to Section Chief, Environmental Enforcement Section, Department of Law & Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

14. In the event Khoudary desires to subdivide the Property and sell it as two or more separate parcels, he must first obtain DEP written approval for such subdivision. All of the requirements set forth in this Section shall apply to the sale of each parcel in the event the Property is subdivided.

15. The Spill Fund's lien against the Property shall remain against the Property subsequent to the filing of the conservation easement as described in Paragraph 9 above. In the event of the sale of the Property, the Spill Fund's lien against the Property shall be removed consistent with the provisions of Paragraph 19 below.

VIII. PLAINTIFFS' COVENANTS

Insurer Defendants And/Or The Barry Defendants

16. A. In consideration of the promises contained in this Consent Judgment, and except as otherwise provided in Paragraphs 22 through 23 below, the Plaintiffs hereby fully and finally release and forever discharge, covenant not to sue or to take administrative action against the Insurer Defendants and/or the Barry Defendants with respect to any and all Claims involving, arising from and/or related to Environmental Contamination at, on, around, beneath, from, migrating through or emanating from the Site, including without limitation Past Cleanup and Removal Costs, Future Cleanup and Removal Costs, Natural Resource Damage Claims, and any and all Environmental Contamination Claims asserted (or which could have been asserted) in the Action.

B. In further consideration of the promises contained in this Consent Judgment, and except as otherwise provided in Paragraphs 22 through 23 below, the Plaintiffs hereby fully and finally release and forever discharge, covenant not to sue or to take administrative action against the Insurer Defendants with respect to any and all alleged bad faith, unfair trade practice, or other misconduct, or alleged wrongdoing of any kind by the Insurer Defendants in connection with the insurance policies under which the Barry Defendants and/or Khoudary claim insurance coverage for the Claims released herein or under the statutory or common law,

based upon any act or omission of the Insurer Defendants in the handling or disposition of any request for insurance coverage tendered to the Insurer Defendants by the Barry Defendants, the Plaintiffs, Khoudary or any other Person by or on either's behalf, in connection with any Claim released herein, whether or not such Claim was or could have been asserted by such Person and whether sounding in breach of contract, breach of any duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, actual or constructive breach of fiduciary duty or any other theory relating to any alleged misconduct or wrongdoing of any kind by the Insurer Defendants in connection with the handling or disposition of the Claims for insurance coverage in connection with any Claim released herein.

17. The Insurer Defendants and the Barry Defendants shall have no further obligation, beyond the payment of the Insurers' Settlement Amount, as set forth in Paragraph 5, above, to pay and/or contribute to the cost of Past Cleanup and Removal Costs, Future Cleanup and Removal Costs, Natural Resource Damages, or any other damages incurred with respect to Environmental Contamination at, on, around, beneath, from, migrating through or emanating from the Site. Each Party agrees that the payment of the Insurers' Settlement Amount as set forth in Paragraph 5 is in full and complete satisfaction of each Insurer Defendant's and the Barry Defendants' actual or alleged liability, if any, with respect to Environmental Contamination at, on, around, beneath, from,

migrating through or emanating from the Site and Past Cleanup and Removal Costs, Future Cleanup and Removal Costs and Natural Resource Damages related to same.

Khoudary

18. In consideration of the promises contained in this Consent Judgment, and except as otherwise provided in Paragraphs 22 through 23 below, the Plaintiffs hereby fully release and forever discharge, covenant not to sue or to take administrative action against Khoudary and AICO for Past Cleanup and Removal Costs, Future Cleanup and Removal Costs and Natural Resource Damages, including but not limited to any and all Environmental Contamination Claims asserted (or which could have been asserted) in the Action.

19. In the event the Property is sold consistent with Paragraphs 10 through 14 above, and except as otherwise provided in Paragraphs 22 through 23 below, Plaintiff Administrator covenants to file a Warrant of Satisfaction with the Clerk of the Superior Court for the first priority lien (Docketed Judgment No. DJ-312495-95) filed against the Property within 30 days after the receipt of the payment referenced in Paragraph 13 above.

20. The covenants and release contained in Paragraph 18 above shall take effect as to Khoudary upon Plaintiffs' receipt of the first payment Khoudary is required to make pursuant to Paragraph 6 above, and will remain in effect so long as Khoudary makes the

remaining payments pursuant to the terms contained in this Consent Judgment.

21. The covenants and releases contained in Paragraphs 16 through 18 above extend only to the Settling Defendants, and not to any other person.

IX. PLAINTIFFS' RESERVATIONS

22. Notwithstanding any other provision of this Consent Judgment, Plaintiffs retain all authority, and reserve all rights, to undertake any remediation authorized by law concerning the Site.

23. Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendants concerning all other matters not covered by this Consent Judgment, and shall specifically include the following:

- a. Claims against any Insurer Defendant that has failed to pay its share of the Insurers' Settlement Amount as set forth in Paragraph 5 above;
- b. Claims against Khoudary for: (i) his failure to effect issuance of the Khoudary Insurance Settlement Amount as set forth in Paragraph 6(a) above; or (ii) his failure to pay the Khoudary Installment Settlement Amount set forth in Paragraph 6 (b) above (except that Plaintiffs agree and covenant not to seek any recovery from Khoudary's alleged insurers, Allstate and Liberty Mutual Insurance, or any other

Settling Defendant) and/or dispose of the Property as set forth in Section VII above;

- c. liability arising from Khoudary's past, present and/or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- d. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by Khoudary at the Property, other than as ordered or approved by Plaintiff DEP; and
- e. criminal liability of Khoudary involving, arising from and/or related to Environmental Contamination at the Site.

X. SETTLING DEFENDANTS' COVENANTS

24. Subject to Paragraph 25 below, the Settling Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendants, in writing, that they no longer support entry of the Consent Judgment.

25. The Settling Defendants further covenant not to sue or assert any Claim or cause of action against the State of New Jersey, including any department, agency or instrumentality of the State of New Jersey, concerning the Claims released herein. This covenant shall include the following:

- a. any direct or indirect Claim for reimbursement from the Spill Fund or the Sanitary Landfill Contingency Fund, involving, arising from and/or related to Environmental Contamination at the Site; and
- b. Any Claim or cause of action concerning the remediation of Environmental Contamination at the Site, including DEP's selection, performance or oversight of the remediation, or DEP's approval of the plans for the remediation.

26. In consideration for the mutual obligations created by this Consent Judgment, and subject to the reservations set forth herein, the Settling Defendants hereby mutually covenant not to sue, and fully and forever surrender, release, acquit and discharge each other from all Claims involving, arising from or in any way related to Environmental Contamination at, on, around, beneath, from, migrating through or emanating from the Site.

XI. NO FINDINGS OR ADMISSIONS OF LIABILITY

27. (a) This Consent Judgment is the result of a compromised settlement of disputed Claims between the Parties, certain of which are at issue in the Action described at Paragraphs A-F and V-AA above. Accordingly, this Consent Judgment, and the settlement amounts paid hereunder, are not, and shall not be construed to be, an admission or concession of liability, non-liability, responsibility or wrongdoing by any Party to this Consent Judgment. The Parties further agree that neither this Consent Judgment, nor

any part thereof, shall constitute or be construed as a finding, admission, or acknowledgement of any liability, fault or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation, or policy giving rise to any Claims. This Consent Judgment does not constitute, and shall not be construed to reflect, the adoption of any insurance coverage position by any Party, nor will it have any bearing upon or relevance to the interpretation or meaning of any policies of insurance, or any of the terms, definitions, conditions or exclusions contained in any policy of insurance. Nothing in this Consent Judgment shall be deemed to constitute a waiver of, or an estoppel from asserting, any right or Claim or defense pursuant to any policy of insurance, other than the Claims herein released.

(b) This Consent Judgment is not, and shall not be construed to be, reflective or adoptive of any particular position, analysis or interpretation as to the facts or nature of any Claim.

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

28. 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. The preceding sentence shall not be construed to waive or nullify any rights that any Person not released by this Consent Judgment may have under applicable law.

29. Each Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that each Settling Defendant may have concerning

any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

30. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to the Settling Defendants from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendants are entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment.

31. On _____, DEP, in accordance with N.J.S.A. 58:10-23.11e2, published notice of this Consent Judgment in the New Jersey Register, and on Plaintiff DEP's website and also arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom Plaintiff DEP had notice as of the date the Plaintiff published notice of the proposed settlement in this matter in the New Jersey Register.

32. The Plaintiff DEP will submit this Consent Judgment to the Court for entry pursuant to Paragraph 55 below unless, as a result of the notice of this Consent Judgment pursuant to Paragraph 31 above, the Plaintiff DEP receives information that discloses facts or considerations that indicates to it, in its sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

33. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs under Paragraphs 22 and 23 of this Consent Judgment for injunctive relief, recovery of costs or damages, or other appropriate relief concerning the Site, to the extent such Claims have not been released by this Consent Judgment, the Settling Defendants shall not assert or maintain, any defense or Claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, entire controversy doctrine, or other defenses based upon any contention that the Claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in this civil action; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment.

XIII. REPRESENTATIONS AND WARRANTIES

34. The Parties expressly acknowledge that the following representations and warranties set forth herein are material terms of this Consent Judgment, which shall survive the execution, entry and performance of this Consent Judgment.

A. Allstate represents and warrants as follows:

i. Allstate is fully authorized to enter into this Consent Judgment;

ii. Allstate is duly organized and validly existing in good standing under the laws of one of the States of the United States of America;

iii. Allstate has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Consent Judgment and that no further corporate or other internal approval is necessary;

iv. The making and performance of this Consent Judgment will not violate any provision of law or of Allstate's articles of incorporation, charters or by-laws;

v. Allstate knows the entire contents of this Consent Judgment, and expressly acknowledges that the terms hereof are contractual, binding covenants and not merely recitals;

vi. Allstate has signed this Consent Judgment of its own free act; and

vii. In entering into this Consent Judgment, Allstate has obtained the advice of legal counsel.

B. Fitchburg represents and warrants as follows:

i. Fitchburg is fully authorized to enter into this Consent Judgment;

ii. Fitchburg is duly organized and validly existing in good standing under the laws of one of the States of the United States of America;

iii. Fitchburg has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Consent Judgment and that no further corporate or other internal approval is necessary;

iv. The making and performance of this Consent Judgment will not violate any provision of law or of Fitchburg's articles of incorporation, charters or by-laws;

v. Fitchburg knows the entire contents of this Consent Judgment, and expressly acknowledges that the terms hereof are contractual, binding covenants and not merely recitals;

vi. Fitchburg has signed this Consent Judgment of its own free act; and

vii. In entering into this Consent Judgment, Fitchburg has obtained the advice of legal counsel.

C. Khoudary represents and warrants as follows:

i. Khoudary is fully authorized to enter into this Consent Judgment;

ii. Khoudary has taken all necessary legal actions to duly approve the making and performance of this Consent Judgment;

iii. The making and performance of this Consent Judgment will not violate any provision of law;

iv. Khoudary knows the entire contents of this Consent Judgment, and expressly acknowledges that the terms hereof are contractual, binding covenants and not merely recitals;

v. Khoudary has signed this Consent Judgment of his own free act; and

vi. In entering into this Consent Judgment, Khoudary has obtained the advice of legal counsel.

D. Travelers represents and warrants as follows:

i. Travelers is fully authorized to enter into this Consent Judgment;

ii. Travelers is duly organized and validly existing in good standing under the laws of one of the States of the United States of America;

iii. Travelers has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Consent Judgment and that no further corporate or other internal approval is necessary;

iv. The making and performance of this Consent Judgment will not violate any provision of law or of Travelers articles of incorporation, charters or by-laws;

v. The person executing this Consent Judgment on behalf of Travelers has signed this Consent Judgment of his/her own free act; and

vi. In entering into this Consent Judgment, Travelers has obtained the advice of legal counsel.

35. The Plaintiffs each represent and warrant that they are not presently aware of any bodily injury Claim arising out of the Site that has been submitted to the Plaintiffs for payment and do not anticipate using any portion of the Insurers' Settlement Amount, Khoudary Settlement Amount and/or Khoudary Installment Settlement Amount to pay any past, present or future Claim for bodily injury arising out of the Site.

36. The Parties each represent and warrant that, as of the Effective Date, they have not assigned all or a portion of any past, present or future Claim(s) that any Party had, has or may have, against any other Party or any third parties under any insurance policy, or any other Claim that the Party purports to release hereunder, to any other Person and further acknowledges that any such assignment would be null, void and without legal effect.

XIV. NO CONSTRUCTION AGAINST ANY PARTY

37. As represented and warranted in Section XIII, above, no Party shall be entitled to the benefit of any rule of interpretation favoring any Party, including interpretation against a Party as drafter or on any other basis, as the Parties have had ample opportunity to contribute to this document, have been fully and independently advised by their own counsel, and deny any reliance upon any act, omission, representation or statement by the other as any inducement to execute this Consent Judgment.

XV. GENERAL PROVISIONS

38. Site Access. In addition to plaintiff DEP's statutory and regulatory authority to enter and inspect the Property, Khoudary shall allow Plaintiff DEP and its authorized representatives access to all areas of the Property to:

- a. remediate the Site;
- b. monitor Khoudary's compliance with this Consent Judgment; and

- c. perform any remedial investigation or remedial action that this Consent Judgment requires, or Plaintiff DEP otherwise orders, which Khoudary is unwilling and/or unable to perform.

39. Khoudary shall ensure that any sale or transfer of the Property is conditioned upon Plaintiff DEP and its authorized representatives having continuing access for the purposes stated in Paragraph 38 above.

40. Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State of New Jersey and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendants by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

41. No payment owed or made pursuant to this Consent Judgment is intended to constitute a debt, damage claim, penalty or other Claim that may be limited or discharged in a bankruptcy proceeding.

XVI. ACCESS TO INFORMATION

42. Upon receipt of a written request by DEP or the Administrator upon any Settling Defendant, that Settling Defendant shall submit or make available to DEP or the Administrator, all relevant, non-privileged information the Settling Defendant has concerning the Site, including technical records and contractual documents.

43. The Settling Defendant may assert a claim of confidentiality or privilege for any information requested by DEP or the Administrator pursuant to this Consent Judgment. Each Settling Defendant, however, agrees not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

XVII. RETENTION OF RECORDS

44. Each Settling Defendant shall, for a period of seven years after the effective date of this Consent Judgment, preserve all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendants' possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys, concerning the Site, despite any document retention policy to the contrary.

45. After the seven year period specified in Paragraph 44 above, any Settling Defendant may request of Plaintiff DEP, in writing that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receiving written approval from Plaintiff DEP, the Settling Defendant may discard only those documents the Plaintiffs do not require the Settling Defendant to preserve for a longer period.

XVIII. NOTICES AND SUBMISSIONS

46. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they 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.

As to:

Plaintiff DEP & Administrator
Section Chief
Environmental Enforcement Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
609-633-8713

As to:

Defendant, The Travelers Indemnity Company
General Counsel
Environmental Litigation Group
Travelers
One Tower Square
Hartford, Connecticut 06183

And

Daren S. McNally, Esq.
Clyde & Co US LLP
200 Campus Drive
Suite 300
Florham Park, New Jersey 07932

As to:

Defendant/Third-Party Plaintiff Khoudary
Herbert B. Bennett, Esq.
Sokol, Behot & Fiorenzo
Counsellors at Law
229 Nassau Street
Princeton, New Jersey 08542-4601

As to:

Third-Party Defendant Allstate
Mark Conlon
Allstate NJ Insurance Company
P.O. Box 671
Lambertville, New Jersey 08530

As to:
Third-Party Defendant Fitchburg
Dawn Parmaggiani
Norfolk & Dedham Insurance Co.
222 Ames Street
Dedham, Massachusetts 02026

And

Fredric P. Gallin, Esq.
Methfessel & Werbel, PC
2025 Lincoln Highway
Suite 200
Edison, New Jersey 08818

All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

47. The Settling Defendants shall not construe any informal advice, guidance, suggestions, or comments by Plaintiffs, or by Persons acting for them, as relieving the Settling Defendants of their obligations to obtain written approvals or modifications as required by this Consent Judgment.

XIX. RETENTION OF JURISDICTION

48. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties only in connection with this Consent Judgment for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary

or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the Parties.

XX. MODIFICATION

49. This Consent Judgment represents the entire integrated agreement between the Plaintiffs, on the one hand, and the Settling Defendants, on the other hand, involving, arising from and/or relating to Environmental Contamination at, on, around, beneath, from, migrating through or emanating from the Site, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

50. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties in writing. This provision may not be orally waived.

51. All notices or other documents which any Settling Defendant is required to submit to the Plaintiffs under this Consent Judgment shall, upon approval or modification by the Plaintiffs, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

52. In the event Plaintiffs approve or modify a portion of a notice or other document any Settling Party is required to submit under this Consent Judgment, the approved or modified portion shall be enforceable under this Consent Judgment.

53. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XXI. ENTRY OF THIS CONSENT JUDGMENT

54. The Plaintiffs and the Settling Defendants consent to the entry of this Consent Judgment.

55. Upon conclusion of the public comment period specified in Paragraph 31 above, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

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

XXII. SIGNATORIES/SERVICE

57. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such Party.

58. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

XXIII. APPENDIX

59. The following appendix is attached to and incorporated into this Consent Judgment:

"Appendix A" is the DEP's form of conservation
easement.

SO ORDERED this day of , 2014.

Honorable Jamie S. Perri, J.S.C.

NEW JERSEY SPILL COMPENSATION
FUND

By: _____
Anthony J. Farro
Administrator
New Jersey Spill Compensation
Fund

Dated:

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Rich Boornazian
Assistant Commissioner
Natural & Historic Resources

Dated:

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Kevin F. Kratina,
Assistant Director
Enforcement and Information
Support Element
Site Remediation Program

Dated:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: _____
Louis G. Karagias
Deputy Attorney General

Dated:

Sokol, Behot & Fiorenzo
Counsellors at Law
Attorneys for Samuel Khoudary

By: _____
Herbert B. Bennett, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Samuel
Khoudary.

Name: _____

Title: _____

Address:

Telephone No.: _____

Clyde & Co US LLP
Attorneys for The
Travelers Indemnity Company

By: _____
Daren S. McNally, Esq.

Dated:

Person Authorized to Accept Service on behalf of
The Travelers Indemnity Company:

Name: _____

Title: _____

Address:

Telephone No.: _____

Lynch & Lynch
Attorneys for the Allstate
Insurance Company

By: _____
Edmund S. Lynch, Esq.

Dated:

Person Authorized to Accept Service on behalf of the
Allstate Insurance Company:

Name: _____

Title: _____

Address:

Telephone No.: _____

Methfessel & Werbel, P.C.
Attorneys for Fitchburg Mutual
Insurance Company

By: _____
Fredric P. Gallin, Esq.

Dated:

Person Authorized to Accept Service on behalf of
Fitchburg Mutual Insurance Company:

Name: _____

Title: _____

Address:

Telephone No.: _____

APPENDIX A

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Easement"), made this _____ day of _____, 200_, is between _____ ("Grantor"), having a principal place of business at _____ and the New Jersey Department of Environmental Protection having its principal place of business at 401 East State Street, Trenton, New Jersey 08625 ("Grantee").

Witnesseth:

Whereas, Grantor is the sole owner in fee simple of real property that consists of approximately ___ acres of land, designated as Block _____, Lot _____ on the tax maps of the [Township, Borough, or City] of _____, County of _____, State of New Jersey, and more particularly described in a metes and bounds description of the property attached to and made a part here of as Schedule A (the "Property"); and

Whereas, the Property has resource qualities that provide natural resource services to the benefit of the general public by providing, among other such services, watershed protection, water quality protection, aquifer recharge potential, scenic vistas, a variety of wildlife habitat ("Conservation Values"); and

Whereas, the qualities of the Property are further documented in an inventory of the Property dated _____, and attached hereto as Schedule B ("Present Condition Report"), which consists of reports, maps, photographs, and other documentation that the Grantor hereby represents provides an accurate representation of the Property at the time of this grant and which is intended to serve as baseline information for monitoring compliance with the terms of this grant; and

Whereas, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

Whereas, this Easement is entered into in accordance with the New Jersey Conservation and Historic Preservation Restriction Act, N.J.A.C. 13:8B-1 et seq., and shall be binding upon the Grantor its successors and assigns and upon the Grantee, its successors and assigns.

NOW THEREFORE, the Grantor does hereby convey to the Grantee, a conservation easement in perpetuity, pursuant to the laws of New Jersey, for the exclusive purpose of assuring that the Conservation Values will be conserved and maintained forever and that uses of the Property that are inconsistent with the Conservation Values are prohibited and will be prevented or corrected.

I. **Purpose.** It is the purpose of this Easement to assure that the Conservation Values of the Property will be retained forever; to prevent any use of the Property that will impair or interfere with the Conservation Values; and to encourage stewardship that is consistent with the

terms of this Easement and provide for long term protection of the Conservation Values of the Property.

II. Prohibited Acts. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited unless Grantor obtains the prior written consent of the Grantee to perform such activity or use. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. Subdivision and Development. Any new development or subdivision of the Property is expressly prohibited.

B. Structures. Construction on the Property of new structures, temporary or permanent is specifically prohibited. Construction on the Property of billboards and cellular phone towers, golf courses, airstrips, solar fields and helicopter pads are expressly prohibited.

C. Mining. No topsoil, sand, gravel, loam, rock, or other minerals shall be deposited on, excavated, dredged, or removed from, the Property.

D. Roads, Driveways and Impervious Cover. No portion of the Property shall be covered with concrete, asphalt, oiled stone, or any other impervious paving material. No new roads or driveways may be constructed on the property.

E. Trash. No dumping or placing of trash or solid waste shall be permitted on the Property.

F. Natural resource protection. No activity shall be permitted on the Property that would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation.

III. Rights of Grantor. The ownership rights of the Grantor extend to Grantor's personal representatives, heirs, successors, and assigns, and include, but are not limited to, the right to sell or otherwise transfer the Property.

IV. Right of First Refusal. Grantor and its successors and assigns agree to give the Grantee a Right of First Refusal to purchase the Property, which right shall be of perpetual duration. The conditions of this Right shall be such that whenever the Grantor receives a written offer from a person or persons to purchase all or any part of the Property, and Grantor accepts the offer subject to this Right of First Refusal, the Grantor shall notify the Grantee via certified mail of the offer. Grantee may elect to purchase the Property at the offered price and upon such other terms and conditions not less favorable to the Grantor than those contained in the conditionally accepted offer. Grantee shall have 90 calendar days to elect to purchase the Property and will notify the Grantor by certified mail of such an election. The Right of First Refusal shall apply to all offers for interests in the Property.

V. Rights of Grantee. To accomplish the conservation purposes of this Easement the following rights are conveyed to the Grantee:

A. Enforcement. Grantee has the right to preserve and protect the Conservation Values of the Property.

B. Inspection. Grantee and its agents shall be permitted access to, and have the right to enter upon, the Property for the purposes of inspection in order to enforce and assure compliance with the terms and conditions of this Easement.

VI. Responsibilities of Grantor and Grantee not affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligations of the Grantor as owner of the Property. This shall apply to:

A. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.

B. Upkeep and Maintenance. The Grantor, as owner of the Property, shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. Nothing in this Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which it had no control.

C. Liability and Indemnification. Grantor shall hold harmless, indemnify, and defend Grantee and its, employees, agents, and contractors, and their successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, or claims, including, without limitation, attorneys fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to, or occurring on or about, the Property, regardless of cause, unless due solely to the negligence of any of the indemnified parties. Grantor's agreement to hold harmless and indemnify Grantee shall not affect any statutory protections available to the Grantor under the Landowner's Liability Act, N.J.S.A 2A:42A-2, et seq.

VII. Remedies. The Grantee shall have the right to prevent and correct violations of the terms of this Easement. Enforcement of the terms of this Easement shall be at the discretion of the Grantee and any failure on behalf by the Grantee to exercise its rights hereunder shall not be deemed or construed to be a waiver of the Grantee of those rights. This shall be true regardless of the number of violations of the terms of this Easement by the Grantor that occur or the length of time it remains unenforced. If the Grantee finds what it believes is a violation of the terms of this Easement, it may without limitation as to other available legal recourse, at its discretion take any of the following action:

A. Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee may give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation in accordance with a plan approved by the Grantee.

B. Injunctive Relief. If Grantor fails to cure the violation within 45 days after receipt of notice from the Grantee, or under circumstances where the violation cannot reasonably be cured with a 45-day period, fails to begin curing such violation, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin ex parte the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such injury. The Grantor acknowledges that any actual or threatened failure to comply or cure will cause irreparable harm to the Grantee and that money damages will not provide an adequate remedy.

C. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantors' liability, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

D. Costs of Enforcement. In any case where a court finds that a violation has occurred, costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the Easement shall be borne by the Grantor.

VIII. Development Rights. Grantor hereby grants to Grantee all development rights or credits that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield on the Property or any other property.

IX. Grantor's Warranties.

A. Title. Grantor warrants good and sufficient title to the Property, free from all encumbrances and hereby promises to defend the same against all claims that may be made against it. Grantor warrants the Property to be free from all mortgages, liens, encumbrances, restrictions, covenants, and conditions.

B. Hazardous Substances. Grantor warrants no actual knowledge of the presence on the Property of a hazardous substance, as that term is defined at N.J.S.A. 58:10-23.11b. Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands,

penalties, and damages, arising from or connected with any discharge of hazardous substances or violation of federal, state, or local environmental laws.

X. Amendment of Easement. This easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Easement and with the laws of the State of New Jersey and any regulations promulgated pursuant to those laws.

XI. Interpretation. This Easement shall be interpreted under the laws of the State of New Jersey, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

XII. Perpetual Duration. This Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

XIII. Notices. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee at the following addresses, unless a party has been notified of a change of address:

To Grantor:
[insert legal address]

To Grantee:
New Jersey Dept. of Environmental Protection
C/o
Administrator
Office of Natural Resource Restoration
PO Box 404
501 East State Street
Trenton, NJ 08625

XIV. Throughout this Easement, the singular shall include the plural, and the masculine shall include the feminine unless the text indicates otherwise.

SCHEDULE A – METES AND BOUNDS DESCRIPTION OF THE PROPERTY

Metes and bounds description of the property based upon a survey prepared in accordance with New Jersey Green Acres, Minimum Specifications for Land Surveys and Property Descriptions,” which is available at: <http://www.state.nj.us/dep/greenacres>;

SCHEDULE B – DESCRIPTION OF THE PROPERTY

1. Property location information, including:

- (I) Street address, municipality and county; and
- (i) Municipal tax block and lot numbers;

2. Property ownership information:

- (i) Name and address of each owner of the property;
- (ii) Description of any existing legal easements or other encumbrances, including how each easement or encumbrance will, or will not, inhibit implementation of or compliance with the compensatory restoration remedial action work plan the Department has approved;

3. Property description information, including:

- (i) Size, in acres;
- (ii) A preliminary assessment report for the property prepared pursuant to N.J.A.C. 7:26E-3.13, including, without limitation, an aerial photographic history of the property;
- (iii) Land use history of the property and within a 1,000 feet radius of the property, including a map and a written description and location of any past or present utility, building, road, or other improvement on the property;
- (iv) Contemporary digital photographs of the property;
- (v) Geographical information system maps compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>, that;
 - (A) Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary), scaled at one inch to 200 feet or less, and clean, clear, and legible;
 - (B) Include a bar scale, a north arrow, a legend, the applicable Site Remediation Program Interest name and Site Remediation Program Interest number, the outline of the municipal tax blocks and lots on which the property is located, physical structures on the property, including buildings, roads, parking lots, pavement, and other improvements, surface water and wetlands

located within the boundaries of the property and within one-half mile of the property, streets and roads, and their names, all ground water recharge rates for the property, known contaminated sites within one-half mile of the property, open space, public property, other preserved property within one-half mile of the property, and the date prepared;

(C) A description of the land use on the proposed property and in the surrounding area;
and

(D) A topographic map that shows the location of the land proposed for transfer and or preservation.