

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: Mark D. Oshinskie
Deputy Attorney General
(609) 984-5189

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- MERCER COUNTY
DOCKET NO. MER-L-2933-02

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and ACTING ADMINISTRATOR, NEW JERSEY SPILL COMPENSATION FUND,	:	<u>Civil Action</u>
Plaintiffs,	:	CONSENT JUDGMENT FOR DEFENDANT RICHARD NIEDT
v.	:	
EXXON/MOBIL CORP.; SUNOCO, INC., as SUCCESSOR to SUN REFINING AND MARKETING COMPANY; CONSUMERS OIL; DELAWARE PETROLEUM COMPANY, INC.; ATLANTIC RICHFIELD COMPANY and RICHARD NIEDT,	:	
Defendants.	:	

This matter was opened to the Court by Jeffrey S. Chiesa, Attorney General of New Jersey, Mark Oshinskie, Deputy Attorney General appearing, attorney for Plaintiffs New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, and Nathan M. Edelstein, Esquire appearing, as attorney for Defendant Richard Niedt, and plaintiffs and Niedt having amicably resolved their dispute before trial without any admission of liability:

I. BACKGROUND

A. Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs") initiated this action on September 10, 2002, by filing a Complaint against defendant Richard Niedt (the "Settling Defendant" or "Niedt"), and others, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to 58:10-23.24 ("Spill Act"), which Complaint was amended by way of First Amended Complaint filed on or about October 31, 2003 (collectively "the Complaint").

B. Plaintiffs in their Complaint, seek reimbursement of all cleanup and removal costs they have incurred and will incur, to remediate the site, including damages for any natural

resource of this State that has been, or may be injured by the discharge of hazardous substances at the Site located in Ewing Township, New Jersey, as well as other relief.

C. The Settling Defendant subsequently filed responsive pleadings in which he denies liability and plaintiffs' allegations, and asserts various defenses to the allegations contained in the Plaintiffs' Complaint. Plaintiffs' claims concerning Natural Resource Damages were dismissed with prejudice by Court Order on August 24, 2007.

D. By entering into this Consent Judgment, the Settling Defendant does not admit any liability arising from the transactions or occurrences the Plaintiffs allege in the Complaint or Amended Complaint filed in this action, and nothing in this Consent Judgment is intended to state or imply any liability on the part of the Settling Defendant.

E. The Hillwood Lakes Site is located in a mixed commercial and residential area, and it has beneath it a freshwater aquifer which, before contamination allegedly was detected in 1987, used to provide drinking water to residents of that neighborhood.

F. Plaintiffs allege that at some time prior to April, 1987, "hazardous substances," as defined in N.J.S.A. 58:10-

23.11b., were "discharged" at and from the three gasoline stations at the Hillwood Lakes Site, including the Niedt property, within the meaning of N.J.S.A. 58:10-23.11b and N.J.S.A. 58:10-23.11f.a.(1).

G. Plaintiffs further allege that sampling results and site inspections revealed the presence of various hazardous substances in the ground water, and soils at the Hillwood Lakes Site.

H. On March 8, 1990, plaintiffs issued a Spill Act directive ("Directive") to the Settling Defendant and others pursuant to N.J.S.A. 58:10-23.11f.a.

I. Ground water is a "natural resource" of the State, as defined in N.J.S.A. 58:10-23.11b.

J. Plaintiff DEP has incurred, and will continue to incur, cleanup and removal costs as a result of the alleged discharge of hazardous substances at the Site.

K. Plaintiff Administrator has certified for payment claims made against the Spill Fund concerning the Hillwood Lakes Site.

L. Defendant Niedt denies Plaintiffs' allegations, and their inclusion in this Consent Judgment does not constitute, reflect, or suggest any waiver or admission by Niedt.

M. The Parties to this Consent Judgment recognize, and this Court by entering this Consent Judgment finds, that the Parties to this Consent Judgment have negotiated this Consent Judgment in good faith; that by entering into this Consent Judgment the Plaintiffs are agreeing to dismiss with prejudice the Complaint and Amended Complaint, and will not seek Natural Resource Damages from Defendant, Niedt, for the Site as a result of the Order dated August 24, 2007, referenced in paragraph C above; that plaintiffs are settling with finality their claims against Niedt; that Niedt is agreeing to pay certain Past Cleanup and Removal Costs and Future Cleanup and Removal Costs if any, but will not pay Natural Resource Damages for the Site as a result of the Order dated August 24, 2007, referenced in paragraph C above; that the implementation of this Consent Judgment will allow the Parties to this Consent Judgment to avoid continued, prolonged and complicated litigation; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties, 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. This Court also has personal jurisdiction over the Parties, solely for the purposes of this Consent Judgment and the underlying litigation.

2. The Parties to this Consent Judgment waive all objections and defenses they may have to jurisdiction of the Court, or to venue in this County. The Parties shall not challenge the court's jurisdiction to enforce this consent judgment.

III. PARTIES BOUND

3. This Consent Judgment applies to, and is binding upon, Plaintiff DEP, Plaintiff Administrator, the Settling Defendant, and their successors and assigns.

IV. 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. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply solely for purposes of this Consent Judgment.

"Administrator" shall mean the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. 58:10-23.11j.

"Consent Judgment" shall mean this Consent Judgment and any appendices identified in Section XVIII.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean 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" shall mean the New Jersey Department of Environmental Protection and any successor department or agency of the State.

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the Plaintiffs will incur as a result of discharges, if any, that occur after the Effective Date of this Consent Judgment in connection with operations or activities at the Niedt Property.

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

"Natural Resource Damages" shall mean all claims arising from discharges at the Niedt 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 ground water and/or any other natural resources of the State of New Jersey and/or ground water services under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 to 2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 to 1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 to -9675 or any other state or federal common law, statute, or regulation, and also include:

- a. The costs of assessing injury to ground water and/or any other natural resources of the State of New Jersey, groundwater services, plaintiff 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; and
- b. Compensation for restoration of, the lost value of, injury to, the replacement value of, or destruction of ground water and/or any other natural resource of the State of New Jersey, and groundwater services.

Natural Resource Damages do not include compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages.

"Niedt Property" shall mean the Niedt station property at 2098 Pennington Road, on the southeast corner of Route 31 and Upper Ferry Road, Ewing Township, Mercer County, New Jersey, this property being also known and designated as Block 221, Lot 74, on the tax map of Ewing Township.

"Paragraph" shall mean a portion of this Consent Judgment identified by an arabic numeral or an upper case letter.

"Parties" shall mean Plaintiff DEP, Plaintiff Administrator and the Settling Defendant, Niedt.

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

"Remediation" in this Consent Judgment is defined at N.J.S.A. 58:10-23.11b (definition of "Remediation").

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

"Settling Defendant" or "Niedt" shall mean defendant Richard U. Niedt, and any heirs, successors, assigns, trustee in

bankruptcy, or receiver appointed pursuant to a proceeding in law or equity.

"Site" or "Hillwood Lakes Site" shall mean the Niedt Property at 2098 Pennington Road, at the southeast corner of Route 31 and Upper Ferry Road, Ewing Township, Mercer County, New Jersey, this property being also known and designated as Block 221, Lot 74, on the Tax Map of Ewing Township (the "Niedt property"), the two adjacent stations, and any adjacent areas where soil or ground water allegedly have been contaminated, allegedly consisting of approximately 43 acres of real property, all other areas where any hazardous substance discharged at the stations has become located and/or any other areas which Plaintiff DEP has referred to in this case and/or designated as Site Remediation Program Interest No. 025348.

V. PARTIES' OBJECTIVES

5. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment, by the Settling Defendant agreeing to reimburse Plaintiffs for their alleged Past Cleanup and Removal Costs and Future Cleanup and Removal Costs, if any, in return for Plaintiffs agreeing to resolve their claims against the Settling Defendant concerning the Niedt Property and the Hillwood Lakes Site.

VI. SETTLING DEFENDANT'S COMMITMENTS

6. Within 30 days of this Consent Judgment being entered by the Court, the Settling Defendant shall pay the Plaintiffs \$230,000.00 in reimbursement of plaintiff DEP and the Spill Fund's Past Cleanup and Removal Costs.

7. The Settling Defendant shall pay the amount specified in Paragraph 6 above by check made payable to the "Treasurer, State of New Jersey." The Settling Defendant shall mail or otherwise deliver the payment to the Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

VII. PLAINTIFFS' COVENANTS

8. In consideration of the payment the Settling Defendant is making pursuant to Paragraphs 6 and 7, Plaintiffs covenant and agree not to and this Consent Judgment hereby provides that Plaintiffs shall not sue or take administrative action against the Settling Defendant and/or his heirs, assigns or successors for: (i) payment and/or reimbursement of Past Clean-Up & Removal Costs, or any other damages or attorney's fees or costs the Plaintiffs allegedly have incurred or may incur in the future, penalties, and/or for injunctive relief, arising out of and/or relating to

discharges at the Niedt Property and/or the Hillwood Lakes Site prior to the Effective Date of this Consent Judgment; and/or (ii) any matters, conditions, claims, damages, and/or causes of action that are hereafter discovered by, or come to be known to, Plaintiffs and that result from, relate to and/or arise from discharges that have occurred prior to the Effective Date of this Consent Judgment.

9. Plaintiffs further agree and covenant, and this Consent Judgment hereby provides, that neither the Settling Defendant nor his heirs, assigns and/or successors will have to do any work at or beneath the Niedt Property and/or the Hillwood Lakes Site due to, as a result of, and/or arising out of and/or relating to any discharges that occurred prior to the Effective Date of this Consent Judgment at the Niedt Property.

10. In further consideration of the payment the Settling Defendant is making pursuant to Paragraphs 6 and 7 above, and except as otherwise provided in Section VIII below, the Plaintiffs agree not to seek Natural Resource Damages for the Site as a result of the Order dated August 24, 2007 referenced in paragraph C above and fully and forever release, covenant not to sue, and agree not to otherwise take administrative action against the Settling Defendant and/or any of his heirs, assigns and/or

successors for any and all of the Plaintiffs' causes of actions for any cleanup and removal costs.

11. In further consideration of the payment the Settling Defendant is making pursuant to Paragraphs 6 and 7 above, the Plaintiffs shall promptly dismiss, with prejudice, the Complaint and Amended Complaint against the Settling Defendant, without further application to the Court.

12. The covenants contained in Paragraphs 8 to 11 above shall take effect upon Plaintiff DEP receiving the payment the Settling Defendant is required to make pursuant to Paragraph 6 above, in full, and in the prescribed time and manner.

13. The covenants contained in Paragraphs 8 to 11 above are conditioned upon the Settling Defendant's satisfactory performance of his payment obligation of \$230,000.00 under paragraph 6 of this Consent Judgment.

VIII. PLAINTIFFS' RESERVATIONS

14. Notwithstanding any other provision of this Consent Judgment, Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel the Settling Defendant to remediate a discharge that occurs at the Niedt Property after the Effective Date of this Consent Judgment and/or to reimburse Plaintiffs for any additional

costs and damages including NRDs incurred as a result of a discharge at the Niedt Property that occurs after the Effective Date of this Consent Judgment.

15. Subject to the provisions of this Consent Judgment, plaintiffs DEP and Administrator retain all authority, and reserve all rights, to undertake any remediation authorized by law concerning the Hillwood Lakes Site, except that any remediation of the Hillwood Lakes Site undertaken in response to a discharge at the Niedt Property and/or Site that occurred before the Effective Date of this Consent Judgment shall be without cost to Niedt or his heirs, assigns and successors.

16. Plaintiffs DEP and Administrator reserve, and this Consent Judgment is without prejudice to, plaintiffs' claims, if any hereafter arise, based on Settling Defendant's failure to satisfy any term or provision of this Consent Judgment or Settling Defendant's liability for any discharge that occurs at the Niedt Property after the Effective Date of this Consent Judgment. Nothing in this Consent Judgment is intended to constitute a waiver of claims, if any, under State or Federal law due to a discharge at the Niedt Site that occurs after the Effective Date of this Consent Judgment.

17. The reservations contained in Paragraphs 14 through 16 above do not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendant concerning all other matters, if any, including the following:

- a. claims, if any, based on the Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;
- b. liability, if any, arising from the Settling Defendant's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance, if any, outside the Site;
- c. liability, if any, for any future (occurring after the Effective Date of this Consent Judgment) discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendant at the Niedt Property other than as ordered or approved by plaintiff DEP;
- d. criminal liability, if any;
- e. liability, if any, for any violation by the Settling Defendant of federal or state law that occurs after the Effective Date of this Consent

Judgment and after remediation of the Hillwood Lakes Site.

IX. SETTLING DEFENDANT'S COVENANTS

18. The Settling Defendant covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless Plaintiffs notify the Settling Defendant, in writing, prior to entry of this Consent Judgment, that they no longer support entry of the Consent Judgment.

19. The Settling Defendant further covenants, subject to Paragraph 19(b) below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Hillwood Lakes Site, other than as necessary to seek enforcement of any rights or benefits accorded Niedt under this Consent Judgment. This covenant shall include the following:

- a. any direct or indirect claim for reimbursement from the Spill Fund concerning the Hillwood Lakes Site for any discharge that has occurred prior to the Effective Date of this Consent Judgment; and
- b. any claim or cause of action concerning the remediation of the Hillwood Lakes Site including

Plaintiff DEP's selection, performance or oversight of the remediation, or Plaintiff DEP's approval of the plans for the remediation, other than as necessary to compel enforcement of obligations of co-defendants, with regard to the Site.

20. The Settling Defendant's covenants not to sue or to assert any claim or cause of action against the State pursuant to Paragraphs 19(a)-(b) above do not apply where the Plaintiffs sue or take administrative action against the Settling Defendant pursuant to Paragraphs 14-17 above.

X. SETTLING DEFENDANT'S RESERVATIONS

21. The Settling Defendant reserves, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the Tort Claims Act, N.J.S.A. 59:1-1 through 12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 through 13-10; the New Jersey Constitution, N.J. Const. art. VII, section 2, paragraph 2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his office or employment under circumstances where the State, if a

private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including a contractor, who is not a State employee as that term is defined by N.J.S.A. 59:1-3; nor shall any such claim concern the Site, including plaintiff DEP's selection and performance of the remediation, except as provided for in Paragraph 19(b) of this Consent Judgment. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

22. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k or N.J.A.C. 7:1J.

XI. FINDINGS & ADMISSIONS OF LIABILITY

23. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendant with respect to any matter, allegation, claim or finding whether known or unknown. Nothing contained in this Consent Judgment shall be considered a finding by the Court and/or by Plaintiffs of any wrongdoing or liability on the Settling Defendant's part for anything that has occurred up until the Effective Date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

24. Except as otherwise stated herein, 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 a signatory to this Consent Judgment may have under applicable law.

25. The Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that the Settling Defendant may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

26. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of the Spill Act and Federal laws, including but not limited to 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 full protection to the Settling Defendant from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendant is entitled, upon fully satisfying his payment obligation under paragraph 6 of this Consent Judgment, to protection to the greatest extent possible from contribution actions or claims for

matters addressed in this Consent Judgment and/or the Complaint, including without limitation all cleanup and removal costs.

27. The Plaintiffs agree further and this Consent Judgment provides that compliance with Paragraphs 6 and 7 above constitutes the Settling Defendant's full and fair share of Past Cleanup and Removal Costs and/or Future Clean-Up and Removal Costs.

28. The Department agrees that it will not oppose any motion or application by Niedt in any subsequent action in which Niedt seeks the contribution protection that this Consent Judgment is intended to and hereby provides.

29. The Department agrees that it will require, in any future settlement that it reaches with any other person regarding Past Cleanup and Removal Costs and/or Future Clean-Up and Removal Costs and/or Natural Resource Damages, a provision that such person will not seek and thereby waives all rights of contribution from the Settling Defendant for liability for Past Cleanup and Removal Costs and/or Future Clean-Up and Removal Costs.

30. The Parties agree, and by entering this Consent Judgment this Court finds, the Settling Defendant is entitled, as of the Effective Date of this Consent Judgment, to full protection from contribution actions or claims for matters addressed in this Consent Judgment and/or raised in the Complaint. For the purposes

of this Consent Judgment, "matters addressed" shall mean those matters contained in this Consent Judgment, and/or the Complaint, including without limitation the Hillwood Lakes Site and Niedt Property.

31. In order for the Settling Defendant to obtain protection under state and federal law from contribution claims and actions concerning the matters addressed in this Consent Judgment and/or the Complaint, the Plaintiffs provided written notice of this Consent Judgment to the other defendants in this case and other potentially responsible parties by publishing notice of this Consent Judgment in the NJ Register and on plaintiff DEP's website on _____ in accordance with N.J.S.A. 50:10-23.11.e.2. Such notice included the following information: a. the caption of this case; b. the name and location of the Property; c. the name of the Settling Defendant; and d. a summary of the terms of this Consent Judgment.

32. The Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with paragraph 31 above.

33. The Plaintiffs will submit this Consent Judgment to the Court for entry unless, as a result of the notice of the Consent Judgment pursuant to Paragraph 31 above, the Plaintiffs receive information that discloses facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

XII. GENERAL PROVISIONS

34. The 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 and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendant by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

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.

XIV. ACCESS TO INFORMATION

35. Upon receipt of a written request by the Plaintiffs, the Settling Defendant shall submit or make available to Plaintiffs all technical records and contractual documents relevant to the claims made in Civil Action No. MER-L-2933-02 that the Settling Defendant has concerning the Hillwood Lakes Site.

36. The Settling Defendant may assert a claim of confidentiality or privilege for any information submitted to Plaintiff DEP or Plaintiff Administrator pursuant to this Consent Judgment. The Settling Defendant, however, agrees not to assert any privilege or confidentiality claim to preclude production of sampling data related to the Hillwood Lakes Site conditions, sampling, or monitoring.

XIV. RETENTION OF RECORDS

37. The Settling Defendant shall preserve for 7 years after the Effective Date of this Consent Judgment all data and information, that is, technical records and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Hillwood Lakes Site, despite any document retention policy to the contrary.

XV. NOTICES AND SUBMISSIONS

38. 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 Plaintiffs 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
609-984-4863

As to Defendant Niedt:

Richard U. Niedt
110 Alexander Street
Trenton, New Jersey, 08638-1504

and

Nathan M. Edelstein, Esquire
c/o SZAFERMAN, LAKIND, BLUMSTEIN & BLADER, P.C.
101 Grovers Mill Road, Suite 200
Lawrenceville, New Jersey 08648-4706

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

40. The Settling Defendant shall not construe any informal advice, guidance, suggestions, or comments by the Plaintiffs or by persons acting for them, as relieving the Settling Defendant of its obligation to obtain written approvals or modifications, if any, as required by this Consent Judgment.

XVI. EFFECTIVE DATE

41. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment has been signed and filed by the Court.

XVII. RETENTION OF JURISDICTION

42. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties 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 of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes.

XVIII. APPENDICES

43. The following appendices are attached to and incorporated into this Consent Judgment:

a. None.

XIX. MODIFICATION

44. This Consent Judgment represents the entire integrated agreement between the Plaintiffs and the Settling Defendant concerning this case and Hillwood Lakes Site, and supersedes all prior negotiations, representations or agreements, either written or oral unless otherwise specifically provided.

45. This Consent Judgment, and any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

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

XX. ENTRY OF THIS CONSENT JUDGMENT

47. The Settling Defendant consents to the entry of this Consent Judgment without further notice.

48. Upon conclusion of the 30 day public comment period as provided in N.J.S.A. 58:10-23.11e.3, the Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

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

XXI. SIGNATORIES/SERVICE

50. Each undersigned representative of a Party to this Consent Judgment 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 to this Consent Judgment.

51. 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.

52. Settling Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating

to this Consent Judgment. The Settling Defendant agrees to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this day of , 20 .

Hon. Douglas H. Hurd, J.S.C.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Kevin Kratina, Assistant Director
Enforcement & Information Support
Element

Dated:

NEW JERSEY SPILL COMPENSATION FUND

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

Dated:

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

By: _____
Richard Boornazian
Assistant Commissioner, Natural &
Historic Resources

Dated:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Mark Oshinskie
Deputy Attorney General

Dated:

By: _____
Richard U. Niedt

Dated:

By: _____
Nathan M. Edelstein, Esquire
Attorney for Richard Niedt

Dated:

Person Authorized to Accept Service on Behalf of Richard U. Niedt:

Mr. Richard U. Niedt
110 Alexander Drive
Ewing, New Jersey 08638