NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiff(s), v. HANDY & HARMAN, HANDY & HARMAN ELECTRONIC MATERIALS CORP.; STEEL PARTNERS HOLDINGS, L.P.; PLESSEY INCORPORATED; CYCLE CHEM., INC f/k/a PERK CHEMICAL CO., INC.; *et al.*, Defendant(s).	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No. BER-L-8605-19 CIVIL ACTION **CONSENT JUDGMENT**

This matter was jointly opened to the Court by the Attorney General of New Jersey Matthew J. Platkin, Deputy Attorney General Thomas P. Lihan, Alfred M. Anthony of Locks Law Firm, LLC, Robert M. Donchez of Florio Perrucci Steinhard & Cappelli LLC, and Richard D. Meadow of The Lanier Law Firm, PC, Special Counsel to the Attorney General, attorneys for plaintiffs New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, and by John M. Agnello and Melissa E. Flax of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and John McGahren of Morgan, Lewis & Bockius LLP, attorneys for defendants Handy & Harman, Handy & Harman Electronic Materials Corp., Steel Partners Holdings, L.P. and Plessey Incorporated and by John P. Beyel of McElroy, Deutsch, Mulvaney &

Carpenter, LLP, attorneys for Cycle Chem, Inc. f/k/a Perk Chemical Co., Inc. The above-listed Parties (defined below) have amicably resolved their dispute before trial:

I. BACKGROUND

A. The Plaintiffs (defined below) initiated this action in 2019 by filing a complaint against the Handy & Harman Defendants (defined below) and Cycle Chem (defined below), in the Superior Court of New Jersey, Bergen County, Docket No. BER-L-8605-19, asserting claims pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 ("Spill Act"), Site Remediation Reform Act, N.J.S.A. 58:10C-1 to 29 ("SRRA"), the Clean Water Act, 33 U.S.C.A. §§1251-1389 ("CWA") and the Water Pollution Control Act, N.J.S.A. 58:10A-1 through 35 ("WPCA") and the common law.

B. The Plaintiffs filed a First Amended Complaint on June 11, 2020 (referred to herein as "Complaint").

C. The Complaint seeks, among other requested relief, Cleanup and Removal Costs (defined below) and Natural Resource Damages (defined below), allegedly incurred by the State as a result of alleged discharges of hazardous substances at and from the 20 Craig Road Facility (defined below) formerly owned and operated by Plessey and HHEM (defined below).

D. The Handy & Harman Defendants and Cycle Chem filed responsive pleadings in which they denied liability, asserted various defenses to the allegations contained in the Complaint, and asserted crossclaims against each other.

E. By entering into this Consent Judgment, the Handy & Harman Defendants and Cycle Chem do not admit any fact, fault, or liability arising from the transactions or occurrences the Plaintiffs' allege in their Complaint or otherwise allege.

F. Plaintiffs allege the following:

(1) That "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the 20 Craig Road Facility within the meaning of N.J.S.A. 58:10-23.11b.

(2) That "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "not satisfactorily stored or contained" at the 20 Craig Road Facility within the meaning of N.J.S.A. 58:10-23.11f.b(2).

(3) That "pollutants," as defined in N.J.S.A. 58:10A-3n., have been "discharged" at the 20 Craig Road Facility within the meaning of N.J.S.A. 58:10A-3e.

(4) That the Handy & Harman Defendants were owners and operators of the 20 Craig Road Facility where trichloroethylene ("TCE") was used in manufacturing operations and discharged into the surrounding environment.

(5) That Cycle Chem was the supplier and transporter of the TCE used at the 20 Craig Road Facility, and the recycler of spent TCE from the property.

(6) That TCE was the primary solvent used for degreasing operations at the 20 Craig Road Facility throughout the life of the plant, from approximately 1966 until 1985.

(7) That the vapor degreasing machines operated by passing parts through TCE vapor, the vapor being created by heating the liquid product above the boiling point. The TCE vapor was held inside the machine by a "cooling jacket" – metal sleeve located above the boiling solvent – which was held at low temperature. This caused the solvent vapor to condense and fall back into the machine. In the summer of 1968, Plessey installed a 215-feet-deep injection well for the disposal of non-contact cooling water from the vapor degreaser(s).

(8) That in the course of the ECRA investigation in 1985, soil borings were completed beneath the location of the ASTs at the 20 Craig Road Facility which indicated TCE

concentrations of up to 25,544 parts per billion ("ppb") at a depth of 18 to 24 inches below grade.

(9) That TCE and associated contaminants were discharged into the soil and groundwater at the 20 Craig Road Facility and have migrated off-site impacting a number of public-water supply wells operated by the Borough of Park Ridge.

(10) That TCE was spilled on the ground within the manufacturing area and percolated through the soil to the underlying aquifers. These include a shallow aquifer in the glacial till (overburden) as well as shallow, intermediate, and deep bedrock aquifers.

(11) That TCE has migrated vertically to lower aquifers and horizontally within these aquifers, moving downgradient of the facility.

(12) That TCE in the non-contact cooling water used in the manufacturing processes was injected directly into the bedrock aquifer at an injection well near the manufacturing area.

(13) That a soil gas survey on the 20 Craig Road Facility in 1990 found that the former TCE storage area and an injection well utilized at the property were sources of TCE discharges into the soil and ground water beneath the property.

(14) That as a result of the contamination at the 20 Craig Road Facility, the Department has created two separate Classification Exception Area/Well Restriction Areas ("CEA/WRA"), which are utilized to restrict the use of ground water in an area.

(15) That the first CEA/WRA applies to an overburden TCE plume that encompasses the majority of the 20 Craig Road Facility, and extends over 600 feet off the property, primarily to the south and south east, to a depth of approximately 60 feet.

(16) That the second CEA/WRA applies to a bedrock TCE plume that encompasses the entire 20 Craig Road Facility, and extends over 8,000 feet off the property to the south to a depth of approximately 700 feet, with a width of approximately 4,000 feet.

G. The Parties vigorously litigated the claims in this case, which included motion practice, party discovery and third-party discovery.

H. During ongoing discovery, the Parties voluntarily participated in a comprehensive mediation process before a retired Federal Judge that ultimately resulted in the amicable resolution of the Parties' dispute, as reflected in this Consent Judgment.

I. The Parties to this Consent Judgment recognize and agree, 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 the implementation of this Consent Judgment will allow the Parties to this Consent Judgment to avoid continued, prolonged, and complicated litigation and potential appeals; and that 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 AND VENUE

1. The Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, WPCA, SRRA and the common law. The Court also has personal jurisdiction over the Parties for the purposes of implementing this Consent Judgment and resolving the underlying Litigation (defined below).

2. The Parties waive all objections and defenses they may have to the jurisdiction of this Court or venue in Bergen 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, the Parties.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Judgment that are defined in the Spill Act, the WPCA, and amendments thereto or in the regulations promulgated under these acts and amendments thereto shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"20 Craig Road Facility" shall mean the former industrial facility and site located at, and including the real property of, 20 Craig Road, Montvale, Bergen County, New Jersey, being known as Block 1902, Lot 11, on the Tax Map of the Borough of Montvale.

"Administrator" shall mean the Administrator of the New Jersey Spill Compensation Fund.

"Commissioner" shall mean the Commissioner of the New Jersey Department of Environmental Protection.

"Consent Judgment" shall mean this Consent Judgment.

"Cycle Chem" shall mean the named defendant in the Litigation, Cycle Chem, Inc. f/k/a Perk Chemical Co., Inc., with a mailing address of 217 South First Street, Elizabeth, New Jersey 07206 and also includes all of Cycle Chem's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal

representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Litigation. Also included is each "Related Entity," which is any of Cycle Chem's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, whether named or unnamed in the Litigation. A Related Entity shall be entitled to the releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. Affiliate(s) means any company, partnership, limited liability company, association, joint venture, or other form of entity (i) in which Cycle Chem owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest, or (ii) which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in Cycle Chem, or (iii) which is owned or controlled by any entity which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in Cycle Chem.

"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, State holiday or Federal holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday,

State holiday or Federal holiday, time shall run until the close of business of the next Working Day.

"DEP" shall mean the New Jersey Department of Environmental Protection, the Commissioner, and the Administrator, including any past, present or future natural resource damages trustee.

"Handy & Harman Defendants" shall mean H&H (defined below), HHEM (defined below), SPLP (defined below) and Plessey (defined below).

"H&H" shall mean the named defendant in the Litigation, Handy & Harman, with a mailing address at 590 Madison Avenue, 32nd Floor, New York, New York 10022 and also includes all of H&H's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Litigation. Also included is each "Related Entity," which is any of H&H's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct or indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries,

successors, trustees, successors and assigns, whether named or unnamed in the Litigation. A Related Entity shall be entitled to the releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. Affiliate(s) means any company, partnership, limited liability company, association, joint venture, or other form of entity (i) in which H&H owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest, or (ii) which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in H&H, or (iii) which is owned or controlled by any entity which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in H&H.

"HHEM" shall mean the named defendant in the Litigation, Handy & Harman Electronic Materials Corp., with a mailing address at 590 Madison Avenue, 32nd Floor, New York, New York 10022, and also includes all of HHEM's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Litigation. Also included is each "Related Entity," which is any of HHEM's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions,

affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, whether named or unnamed in the Litigation. A Related Entity shall be entitled to the releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. Affiliate(s) means any company, partnership, limited liability company, association, joint venture, or other form of entity (i) in which HHEM owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest, or (ii) which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in HHEM, or (iii) which is owned or controlled by any entity which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in HHEM.

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the Plaintiffs incur after the Effective Date of this Consent Judgment to remediate the 20 Craig Road Facility, excluding Natural Resource Damages.

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

"Litigation" shall mean the action filed in the Superior Court of New Jersey, captioned New Jersey Department of Environmental Protection; The Commissioner of the New Jersey

Department of Environmental Protection; and The Administrator of the New Jersey Spill Compensation Fund v. Handy & Harman, et al., Docket No. BER-L-8605-19.

"Matters Addressed" shall mean the Handy & Harman Defendants' and Cycle Chem's alleged liabilities addressed in Paragraphs 22, 23 and 24 of this Consent Judgment, summarized as follows: (1) all claims for injuries to natural resources and claims for the reimbursement of funds expended by the New Jersey Spill Compensation Fund based on discharges of contaminants or hazardous substances at or from the 20 Craig Road Facility prior to the Effective Date (defined below) of this Consent Judgment that are the subject of the Litigation; (2) all NRD (defined below) claims that were asserted or could have been asserted in the Litigation, as to any contaminant, hazardous substance, media, and/or theory of liability, arising from any of the Handy & Harman Defendants' and/or Cycle Chem's activities at the 20 Craig Road Facility, including all areas to which any discharged contaminant or hazardous substance has migrated; (3) all claims for reimbursement of amounts paid from the New Jersey Spill Compensation Fund ("Spill Fund") with respect to the contamination of any well(s) owned, operated or utilized by the Borough of Park Ridge, Bergen County, New Jersey, alleged to arise from the discharge of hazardous substances at the 20 Craig Road Facility; (4) all claims for any alleged violation of N.J.S.A. 58:10-23.11e, N.J.S.A. 58:10-23.11u or any other statute, law or regulation based on any failure to report any discharge of any hazardous substance or contaminant at the 20 Craig Road Facility, (5) all claims for any alleged violation of N.J.S.A. 58:10-23.11u, N.J.S.A. 13:1K-13.1 or any other statute, law or regulation for allegedly providing false, incomplete or inaccurate information in any submissions relating to 20 Craig Road Facility given to the DEP by the Handy & Harman Defendants pursuant to the Environmental Cleanup Responsibility Act ("ECRA") or the Industrial Site Recovery Act ("ISRA"); and (6) any other claim for injury to natural resources or expenditures

by the New Jersey Spill Compensation Fund that could have been asserted in the Litigation based upon the discharges of hazardous substances at the 20 Craig Road Facility alleged in the Complaint.

"Natural Resource Damages" and "NRD" shall mean all claims arising from discharges at 20 Craig Road Facility that occurred prior to the Effective Date of this Consent Judgment, and that are recoverable by Plaintiffs as natural resource damages for injuries to natural resources under the Spill Act, N.J.S.A. 58:10-23.11 through –23.24; the WPCA, N.J.S.A. 58:10A-1 through -35; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the CWA, 33 U.S.C.A. §§ 1251 through -1387; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9601 through 9675 ("CERCLA"); the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A.13:1E-100 et seq., or any other state or federal common law, statute, or regulation, and including but not limited to:

a. The costs of assessing injury to natural resources, DEP's Office of Natural Resource Restoration's ("ONRR's") costs and fees, including costs and fees in connection with the Litigation and mediation, attorney's fees, consultants and experts' fees, and other litigation costs and/or Interest, and
b. Compensation for the restoration and/or replacement of, lost value of, loss of use of, injury to, or destruction of natural resources or 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;
b. Requirements to clean up any contamination as a result of discharges at the 20 Craig Road Facility; or

c. HHEM's continuing obligation to pay the Plaintiffs' oversight costs determined pursuant to N.J.A.C. 7: 26C-4.7, incurred after the effective date of this Consent Judgment.

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

"Party" shall mean the Plaintiffs, the Handy & Harman Defendants or Cycle Chem, individually.

"Parties" shall mean the Plaintiffs, the Handy & Harman Defendants and Cycle Chem, collectively.

"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 remediate the 20 Craig Road Facility, excluding Natural Resource Damages, which are not otherwise the subject of an existing agreement or administrative resolution reached with the New Jersey Department of Environmental Protection addressing the reimbursement of or compensation for such costs;

"Person" shall mean any individual, corporation, limited liability company, partnership, association, trust, government, governmental body, government agency, or other private or public instrumentality, entity or organization of any kind, who is not a Party to the Litigation.

"Plaintiffs" shall mean the DEP, the Commissioner, the Administrator, and any successor department, agency or official.

"Plessey" shall mean the named defendant in the Litigation, Plessey Incorporated, with an address of c/o CT Corporation System, 28 Liberty Street, New York, New York 10005 , and also includes all of Plessey's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees,

representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Litigation. Also included is each "Related Entity," which is any of Plessey's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, whether named or unnamed in the Litigation. A Related Entity shall be entitled to the releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. Affiliate(s) means any company, partnership, limited liability company, association, joint venture, or other form of entity (i) in which Plessey owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest, or (ii) which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in Plessey, or (iii) which is owned or controlled by any entity which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in Plessey.

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

"SPLP" shall mean the named defendant in the Litigation, Steel Partners Holdings, L.P., with a mailing address at 590 Madison Avenue, 32nd Floor, New York, New York 10022, and also includes all of SPLP's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Litigation. Also included is each "Related Entity," which is any of SPLP's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, direct and indirect parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, reinsurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, whether named or unnamed in the Litigation. A Related Entity shall be entitled to the releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. "Affiliate(s) means any company, partnership, limited liability company, association, joint venture, or other form of entity (i) in which SPLP owns or controls, directly or indirectly, a fifty

percent (50%) or greater ownership interest, or (ii) which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in SPLP, or (iii) which is owned or controlled by any entity which owns or controls, directly or indirectly, a fifty percent (50%) or greater ownership interest in SPLP.

"State" shall mean the State of New Jersey.

V. PARTIES' OBJECTIVES

5. The Parties' objectives in entering into this Consent Judgment are to settle Plaintiffs' claims in the Litigation and to compensate the citizens of New Jersey for the alleged injuries to natural resources at or emanating from the 20 Craig Road Facility by the Handy & Harman Defendants and Cycle Chem agreeing to the payments they are making pursuant to Paragraphs 7 and 9, and 14 and 16, below and in return for Plaintiffs' agreement to resolve all of their claims for Natural Resource Damages and past costs incurred before the Effective Date of this Consent Judgment, including but not limited to Past Cleanup and Removal Costs, but excluding (i) Future Cleanup and Removal Costs; and (ii) ongoing Annual Remediation Fees and Remedial Action Permit Fees that are required of a party pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C-4.9.

VI. HANDY & HARMAN DEFENDANTS' COMMITMENTS

6. The Handy & Harman Defendants agree that their obligation to Plaintiffs for Future Cleanup and Removal Costs, or Annual Remediation Fees and Remedial Action Permit Fees that are required pursuant to ARRCS, if any, is not addressed in this Consent Judgment. The Handy & Harman Defendants further agree that they will not assert as a defense to any action to recover Future Cleanup and Removal Costs or Annual Remediation Fees and Remedial Action Permit Fees that are required pursuant to ARRCS any contention, regardless of legal theory, that any of

Plaintiffs' Future Cleanup and Removal Costs or Annual Remediation Fees and Remedial Action Permit Fees that are required pursuant to ARRCS were thoroughly litigated, settled, or otherwise resolved, or should have been thoroughly litigated, settled, or otherwise resolved in this case.

7. Within 50 days after receipt by the Handy & Harman Defendants of this Consent Judgment entered by the Court, Handy & Harman Defendants shall pay the Plaintiffs (i) $10,406,664.79 in settlement of Natural Resource Damages. The Plaintiffs will issue an Invoice for the $10,406,664.79 payment to the Handy & Harman Defendants c/o John M. Agnello, Esq., Carella Byrne, 5 Becker Farm Road, Roseland, N.J. 07068, within 10 Days of the Effective Date of this Consent Judgment.

8. The Handy and Harman Defendants shall pay the amount specified in Paragraph 7 above by a New Jersey law firm Attorney Trust Account check made payable to the "Treasurer, State of New Jersey" or by wire transfer pursuant to instructions provided by Plaintiffs. If payment is by Attorney Trust Account check, the Handy and Harman Defendants shall mail or otherwise deliver the payment and the Invoice issued as provided for in Paragraph 7 to the address stated on the Invoice with a copy of the check and Invoice sent to:

Chief
Office of Natural Resource Restoration
Community Investment & Economic Revitalization Program
New Jersey Department of Environmental Protection
Mail Code 501-03
P.O. Box 420
Trenton, New Jersey 08625-0420;

and:

Section Chief
Environmental Enforcement and Environmental Justice Section
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093

Trenton, New Jersey 08625-0093.

9. Within 50 days after receipt by the Handy & Harman Defendants of this Consent Judgment entered by the Court, Handy & Harman Defendants shall pay the Plaintiffs $93,335.21 in settlement of Past Cleanup and Removal Costs. The Plaintiffs will issue an Invoice for the $93,335.21 payment to the Handy & Harman Defendants c/o John M. Agnello, Esq., Carella Byrne, 5 Becker Farm Road, Roseland, N.J. 07068, within 10 Days of the Effective Date of this Consent Judgment.

10. The Handy and Harman Defendants shall pay the amount specified in Paragraph 9 above by a New Jersey law firm Attorney Trust Account check made payable to the "Treasurer, State of New Jersey" or by wire transfer pursuant to instructions provided by Plaintiffs. If payment is by Attorney Trust Account check, the Handy and Harman Defendants shall mail or otherwise deliver the payment and the Invoice issued as provided for in Paragraph 9 to the address stated on the Invoice with a copy of the check and Invoice sent to:

Assistant Director
Financial Services Element
Contaminated Site Remediation & Redevelopment Program New Jersey Department of Environmental Protection
Mail Code 401-06I
P.O. Box 420
Trenton, New Jersey 08625-0420;

And:

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

11. The Plaintiffs shall place the money paid pursuant to Paragraphs 7 and 9 above in a segregated Interest bearing account within the Natural Resource Damage Constitutionally Dedicated 543 Account (the "Account"). The amount specified in Paragraphs 7 and 9 above shall be paid by wire transfer pursuant to instructions provided by Plaintiffs. Until this Consent Judgment becomes final and non-appealable, the settlement funds in the Account shall earn interest at the rate earned by the Account generally and may not be used by the State of New Jersey for any purpose. In the event this Consent Judgment is overturned, remanded, vacated or modified on appeal such that the Consent Judgment is void and of no effect as provided by Paragraph 40 below, the settlement funds paid by the Handy & Harman Defendants placed into the Account shall be returned immediately and in full to the Handy & Harman Defendants, plus all Interest earned. In the event this Consent Judgment is not appealed, is not modified and becomes final in its entirety as written, except as to ministerial changes, the payments made by the Handy & Harman Defendants pursuant to Paragraphs 7 and 9 shall be released from the Account to the entities to whom the payments were made.

12. In the event that following the entry of this Consent Judgment any appeal of the Consent Judgment is filed, the payments made by the Handy & Harman Defendants pursuant to Paragraphs 7 and 9 shall only be released from the Account to the entities to whom the payments were made 10 Days after this Consent Judgment becomes final and non-appealable in its entirety as written, except for ministerial changes.

13. Once the payments made by the Handy & Harman Defendants pursuant to Paragraphs 7 and 9 are released from the Account to the entities to whom the payments were made: (1) all claims in the Litigation by Plaintiffs against Handy & Harman for NRD and Past Cleanup and Removal Costs are dismissed with prejudice, (2) any claims by Plaintiffs in the Litigation for

Future Cleanup and Removal Costs are dismissed without prejudice, (3) all claims asserted or that could have been asserted in the Litigation by Cycle Chem against the Handy & Harman Defendants are dismissed with prejudice, and (4) Plaintiffs will provide the Handy & Harman Defendants a discharge, in recordable form, of any and all liens and/or amended and revived liens filed by any of the Plaintiffs against the Handy & Harman Defendants pursuant to the Spill Act, including, but not limited to, the lien filed against HHEM on January 20, 2000 and entered as Docketed Judgment No. DJ-011955-00 in the amount of $324,050.36 and the Amended & Revived Lien filed against HHEM on January 13, 2020 in the amount of $348,435.81, captioned *New Jersey Spill Compensation Fund, New Jersey Department of Environmental Protection, Claimants v. Handy & Harman Electronic Materials Corporation, Discharger,* Superior Court of New Jersey, Docket No. DJ-011955-00 *re: NJEMS PI #: G000003577.*

VII. CYCLE CHEM'S COMMITMENTS

14. Within 50 days after receipt by Cycle Chem of this Consent Judgment entered by the Court, Cycle Chem shall pay the Plaintiffs $3,468,888.27 in settlement of Natural Resource Damages. The Plaintiffs will issue an Invoice for the $3,468,888.27 payment to Cycle Chem, c/o of John P. Beyel, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP, 1300 Mount Kemble Avenue, P.O. Box 2075, Morristown, N.J. 07962, within 10 Days of the Effective Date of this Consent Judgment.

15. Cycle Chem shall pay the amount specified in Paragraph 14 above by a New Jersey law firm Attorney Trust Account check made payable to the "Treasurer, State of New Jersey" or by wire transfer pursuant to instructions provided by Plaintiffs. If payment is by Attorney Trust Account check, Cycle Chem shall mail or otherwise deliver the payment and the Invoice issued as

provided for in Paragraph 14 to the address stated on the Invoice with a copy of the check and Invoice sent to:

Chief
Office of Natural Resource Restoration
Community Investment & Economic Revitalization Program
New Jersey Department of Environmental Protection
Mail Code 501-03
P.O. Box 420
Trenton, New Jersey 08625-0420;

and:

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

16. Within 50 days after receipt by Cycle Chem of this Consent Judgment entered by the Court, Cycle Chem shall pay the Plaintiffs $31,111.73 in settlement of Past Cleanup and Removal Costs. The Plaintiffs will issue an Invoice for the $31,111.73 payment to Cycle Chem, c/o of John P. Beyel, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP, 1300 Mount Kemble Avenue, P.O. Box 2075, Morristown, N.J. 07962, within 10 Days of the Effective Date of this Consent Judgment.

17. Cycle Chem shall pay the amount specified in Paragraph 16 above by a New Jersey law firm Attorney Trust Account check made payable to the "Treasurer, State of New Jersey" or by wire transfer pursuant to instructions provided by Plaintiffs. If payment is by Attorney Trust Account check, Cycle Chem shall mail or otherwise deliver the payment and the Invoice issued as provided for in Paragraph 16 to the address stated on the Invoice with a copy of the check and Invoice sent to:

Assistant Director
Financial Services Element
Contaminated Site Remediation & Redevelopment Program
New Jersey Department of Environmental Protection
Mail Code 401-06I
P.O. Box 420
Trenton, New Jersey 08625-0420;

and:

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

18. The Plaintiffs shall place the money paid pursuant to Paragraphs 14 and 16 above in a segregated Interest-bearing account within the Natural Resource Damage Constitutionally Dedicated 543 Account (the "Account"). The amount specified in Paragraphs 14 and 16 above shall be paid by wire transfer pursuant to instructions provided by Plaintiffs. Until this Consent Judgment becomes final and non-appealable, the settlement funds in the Account shall earn interest at the rate earned by the Account generally and may not be used by the State of New Jersey for any purpose. In the event this Consent Judgment is overturned, remanded, vacated or modified on appeal such that the Consent Judgment is void and of no effect as provided by Paragraph 40 below, the settlement funds paid by Cycle Chem placed into the Account shall be returned immediately and in full to Cycle Chem, plus all Interest earned. In the event this Consent Judgment is not appealed, is not modified and becomes final in its entirety as written, except as to ministerial changes, the payments made by Cycle Chem pursuant to Paragraphs 14 and 16 shall be released from the Account to the entities to whom the payments were made.

19. In the event that following the entry of this Consent Judgment any appeal of the Consent Judgment is filed, the payments made by Cycle Chem Defendants pursuant to Paragraphs 14 and 16 shall only be released from the Account to the entities to whom the payments were made 10 Days after this Consent Judgment becomes final and non-appealable in its entirety as written, except for ministerial changes.

20. Once the payments made by Cycle Chem pursuant to Paragraphs 14 and 16 are released from the Account to the entities to whom the payments were made: (1) all claims in the Litigation by Plaintiffs against Cycle Chem for NRD and Past Cleanup and Removal Costs are dismissed with prejudice, (2) any claims by Plaintiffs in the Litigation for Future Cleanup and Removal Costs are dismissed without prejudice, (3) all claims asserted or that could have been asserted in the Litigation by the Handy & Harman Defendants against Cycle Chem are dismissed with prejudice, and (4) Plaintiffs will provide Cycle Chem a discharge, in recordable form, of any and all liens and/or amended and revived liens filed by any of the Plaintiffs against Cycle Chem pursuant to the Spill Act.

VIII. SEVERAL LIABILITY

21. The Handy & Harman Defendants and Cycle Chem shall have individual liability for the payments to be made by each of them as provided for in Paragraphs 7 and 9 above and 14 and 16 above. In the event the Handy & Harman Defendants and Cycle Chem fail to make their required payments, the State's remedy for a violation of this Consent Judgment shall be against the Handy & Harman Defendants for the amounts due under Paragraphs 7 and 9, and against Cycle Chem for the amounts due under Paragraphs 14 and 16. In the event that either the Handy & Harman Defendants or Cycle Chem fail to make their required payments, the State's remedy for a violation of this Consent Judgment shall only be against the defaulting Party for the settlement

amount due from the defaulting Party pursuant to Paragraphs 7 and 9 and/or Paragraphs 14 and 16.

IX. PLAINTIFFS' COVENANT & RELEASE

22. In consideration of the payments the Handy & Harman Defendants and Cycle Chem are making pursuant to Paragraphs 7 and 9, and 14 and 16 above, and except as otherwise provided in Paragraph 26 below, the Plaintiffs fully and forever release and covenant not to sue or take other judicial or administrative action against the Handy & Harman Defendants and Cycle Chem for all claims or causes of action for Natural Resource Damages and Past Cleanup and Removal Costs Plaintiffs may have, now or in the future, as to any substance or other material, media, and/or theory of liability, arising from alleged discharges of hazardous substances at or migrating from the 20 Craig Road Facility prior to the Effective Date, including all areas to which any discharged substance or other material allegedly has migrated including, but not limited to, all claims asserted by Plaintiffs or that could have been asserted by Plaintiffs in the Litigation relating to the 20 Craig Road Facility. Plaintiffs reserve all rights they have under the law as to Natural Resource Damages relative to discharges by the Handy & Harman Defendants and Cycle Chem at other locations, and the Handy & Harman Defendants and Cycle Chem reserve all rights and defenses they may have to any claims by Plaintiffs with respect to such other locations, including, but not limited to, the ability to argue that the claims have already been released through settlement or otherwise resolved. The release and covenant not to sue set forth in this Paragraph does not apply to claims for Future Cleanup and Removal Costs, or Annual Remediation Fees and Remedial Action Permit Fees that are required pursuant to ARRCS, which shall be governed by the representations and limitations set forth in Paragraph 6 above.

23. In further consideration of the payments that the Handy & Harman Defendants and Cycle Chem are making pursuant Paragraphs 7, 9, 14 and 16 above, the Plaintiffs fully and forever release and covenant not to sue or take other judicial or administrative action against the Handy & Harman Defendants and/or Cycle Chem with respect to any claims, damages, costs, civil administrative or other penalties, attorneys' fees, interest or any other monetary amounts or form of relief arising from, relating to or based upon any claim for (a) reimbursement of amounts paid from the Spill Fund based on any actual or alleged contamination at or emanating from the 20 Craig Road Facility including but not limited to any amounts set forth in any lien filed by any of the Plaintiffs pursuant to the Spill Act, specifically N.J.S.A. 58:10-23.11f; (b) any alleged violation of N.J.S.A. 58:10-23.11e, N.J.S.A. 58:10-23.11u or any other statute, law or regulation, based on any failure to report any discharge of any hazardous substance or contaminant at the 20 Craig Road Facility, or (c) any alleged violation of N.J.S.A. 58:10-23.11u, N.J.S.A. 13:1K-13.1 or any other statute, law or regulation, for allegedly providing false information and/or allegedly failing to provide full, complete, accurate and truthful information in or in connection with any submissions relating to the 20 Craig Road Facility given to the DEP at any time by the Handy & Harman Defendants pursuant to ECRA or ISRA.

24. Subject to Paragraphs 14 and 16 above, Plaintiffs fully and forever release with prejudice, covenant not to sue or take other judicial administrative action against Cycle Chem for any and all claims based upon HHEM and/or any of the other Handy & Harman Defendants' failure(s) to comply with the Administrative Consent Order executed by the DEP on December 19, 1986 under ECRA Case #E85718 or any other administrative consent order, permit, authorization, order, law, rule or regulation in connection with the completion of the investigation and remediation relating to contamination at, under, beneath or emanating from the 20 Craig Road

Facility. It is understood by and between Plaintiffs and Cycle Chem that Cycle Chem shall have no further liability to Plaintiffs with regard to the 20 Craig Road Facility, including but not limited to any past or present investigation or remediation, as well as all of the claims outlined in Article VI.

25. The covenants and releases contained in Paragraphs 22, 23 and 24 above extends only to the Handy & Harman Defendants and Cycle Chem and not to any other person and shall take effect upon Plaintiffs receiving the payments that the Handy & Harman Defendants and Cycle Chem are required to make pursuant to Paragraphs 7 and 9, and 14 and 16, above, in full.

X. PLAINTIFFS' RESERVATIONS

26. The covenants and releases contained in Paragraphs 22, 23 and 24 above do not pertain to any matters other than those expressly stated. Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Handy & Harman Defendants and Cycle Chem concerning all other matters that are not expressly released, including the following:

a. Claims based on the Handy & Harman Defendants' or Cycle Chem's failure to satisfy any term or provision of this Consent Judgment;

b. Liability arising from Handy & Harman Defendants' or Cycle Chem's past, present, or future discharge or unsatisfactory storage or containment of any hazardous substance at other locations outside the 20 Craig Road Facility;

c. Liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Handy and Harman Defendants and Cycle Chem at the 20 Craig Road Facility;

d. Liability for Future Cleanup and Removal Costs, if any;

e. Criminal liability;

f. Liability occurring after the Effective Date for any violation by the Handy & Harman Defendants of federal or state law in connection with the remediation of the 20 Craig Road Facility during or after the remediation.

XI. HANDY & HARMAN DEFENDANTS' AND CYCLE CHEM'S COVENANTS

27. The Handy & Harman Defendants and Cycle Chem further covenant, subject to Paragraph 29 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 Natural Resource Damages covered in this Consent Judgment. This covenant shall include any direct or indirect claim for reimbursement from the Spill Fund.

28. The Handy & Harman Defendants and Cycle Chem each covenant not to sue or assert any claim or cause of action against the State concerning the Matters Addressed, with the exception of the enforcement of the terms of this Consent Judgment and as provided in Paragraph 29 below.

29. The Handy & Harman Defendants' and Cycle Chem's covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraphs 27 and 28 above do not apply where the Plaintiffs or the State sue or take administrative or other action against the Handy & Harman Defendants and/or Cycle Chem pursuant to Paragraph 26 above.

XII. HANDY & HARMAN DEFENDANTS' AND CYCLE CHEM'S RESERVATIONS

30. The Handy & Harman Defendants and Cycle Chem expressly reserve all rights, including, but not limited to, any right to contribution and indemnification, and all defenses, claims, demands, and causes of action that the Handy & Harman Defendants and/or Cycle Chem may have concerning any matter, transaction, or occurrence whether or not arising out of the subject matter of the Complaint, against any Person. Further, the Plaintiffs agree they will not

oppose any motion or application by the Handy & Harman Defendants and/or Cycle Chem in any subsequent action in which the Handy & Harman Defendant and/or Cycle Chem seek contribution protection that this Consent Judgment provides.

XIII. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION

31. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any Person other than the Parties.

32. When entered, this Consent Judgment shall 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) and will resolve the liability of the Handy & Harman Defendants and Cycle Chem to Plaintiffs for the purpose of providing protection to the Handy & Harman Defendants and Cycle Chem from contribution actions under the Spill Act, the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A–1 et seq., the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 to -5.8, CERCLA or any other statute, regulation or common law principle that provides contribution rights against the Handy & Harman Defendants and/or Cycle Chem with regard to the subject matter of the Complaint, matters related to the 20 Craig Road Facility or the Matters Addressed.

33. The Parties agree, and by entering this Consent Judgment this Court finds, the Handy & Harman Defendants and Cycle Chem are entitled, upon fully satisfying their payment obligations under this Consent Judgment, to protection from contribution actions to the fullest extent possible pursuant to the Spill Act, N.J.S.A. 58:10-23.llf.a. (2)(b) and Section 113(f)(2) of CERCLA, 42 U.S.C.A. §9613(f)(2), and any other statute, regulation or common law principle that would provide contribution protection to the Handy & Harman Defendants and Cycle Chem from contribution claims against the Handy & Harman Defendants and/or Cycle Chem by any Person under the Spill Act, Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 et seq., the

Comparative Negligence Act, N.J.S.A. 2A:15-5.1-5.8, CERCLA, or any other statute, regulation, or common law principle that provides contribution rights against the Handy & Harman Defendants and/or Cycle Chem with regard to the subject matter of the Complaint, matters related to the 20 Craig Road Facility or the Matters Addressed .

XIV. PUBLIC NOTICE

34. In order for the Handy & Harman Defendants and Cycle Chem to obtain protection under N.J.S.A. 58:10-23.11.f.a.(2)(b) from contribution claims concerning Natural Resource Damages and the Matters Addressed covered by this Consent Judgment, on May 15, 2023, Plaintiffs published notice of this Consent Judgment in the New Jersey Register indicating that a copy of this Consent Judgment was available on DEP's website in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

a. The caption of this case;

b. The name and location of the 20 Craig Road Facility;

c. The name of the Defendants;

d. A summary of the terms of this Consent Judgment; and

e. That the Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 49 below unless, as a result of the notice of this Consent Judgment pursuant to this Paragraph and Paragraph 49 below, 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.

35. Within 21 Days of Plaintiffs' publication of notice in the New Jersey Register, the Handy & Harman Defendants and Cycle Chem, on behalf of the Plaintiffs and 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 for Natural Resource Damages, if any, of whom the Plaintiffs had notice prior to the submission date for the Plaintiffs to publish notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 34 above. Plaintiffs will provide the Handy & Harman Defendants and Cycle Chem with the names and addresses of any other potentially responsible parties.

36. In further fulfillment of N.J.S.A. 58:10-23.11e2, the Parties have also provided written notice of this Consent Judgment to other potentially responsible parties by:

a. The Handy & Harman Defendants and/or Cycle Chem, within 21 Days of Plaintiffs' publication of notice in the New Jersey Register in substantially the same form as the notice in the New Jersey Register, publishing notice in the following newspapers:

(i) The Times of Trenton;

(ii) The Jersey Journal;

(iii) Bergen Record;

(iv) Courier News

(v) New Jersey Herald;

(vi) Daily Record; and

(vii) Star Ledger.

b. Plaintiffs distributing a copy of the New Jersey Register Notice via the websites of the Contaminated Site Remediation & Redevelopment Program (CSRRP) and ONRR, which the public can access at http://nj.gov/dep/srp/legal/ and http://nj.gov/dep/nrr/settlements/index.html, respectively. This notice is deemed compliant with the notice requirement of N.J.S.A. 58:10-23.11e2.

XV. GENERAL PROVISIONS

37. 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.

38. HHEM agrees to continue to undertake its remediation obligations associated with institutional controls present at the 20 Craig Road Facility in accordance with the Spill Act, Industrial Site Recovery Act, N.J.S.A. 13:1K-8 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and their implementing regulations.

39. 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.

40. All Sections, Paragraphs and provisions of this Consent Judgment (except headings and section titles) are integral to the Consent Judgment, and any Court Order entered after entry of this Consent Judgment that does not approve this Consent Judgment in its entirety or attempts to modify this Consent Judgment, except as to ministerial changes, shall cause this Consent Judgment to be void and of no effect, and all monies paid by the Handy & Harman Defendants and Cycle Chem shall be returned, unless otherwise agreed to in writing by the Parties.

41. This Consent Judgment shall be governed and interpreted under the laws of the State of New Jersey.

42. This Consent Judgment shall not be used as evidence in any other litigation or future proceedings other than in a proceeding to enforce the terms hereof, any proceeding involving the contribution protection provided by this Consent Judgment, any contribution action brought by the Handy & Harman Defendants and/or Cycle Chem, or in any insurance coverage

action brought by the Handy & Harman Defendants and/or Cycle Chem seeking coverage for the claims asserted in the Complaint, the settlement embodied in this Consent Judgment and/or related attorneys' fees, expert fees, costs and expenses.

XVI. NOTICES

43. Except as otherwise provided in this Consent Judgment, whenever written notice is required to be submitted by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs:

Chief
Office of Natural Resource Restoration
Community Investment & Economic Revitalization Program
New Jersey Department of Environmental Protection
Mail Code 501-03
P.O. Box 420
Trenton, New Jersey 08625-0420

And

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

As to the Handy & Harman Defendants:

As to H&H, HHEM and SPLP:

Maria Reda
Vice President, Deputy General Counsel & Secretary
Steel Partners
590 Madison Avenue, 32nd Floor
New York, New York 10022
MReda@steelpartners.com

And

John M. Agnello, Esq.
Carella, Byrne, Cecchi,
Olstein, Brody & Agnello
5 Becker Farm Road, 2nd Floor
Roseland, New Jersey 07068
jagnello@carellabyrne.com

As to Plessey:

John M. Agnello, Esq.
Carella, Byrne, Cecchi,
Olstein, Brody & Agnello
5 Becker Farm Road, 2nd Floor
Roseland, New Jersey 07068
jagnello@carellabyrne.com

As to Cycle Chem:

John P. Beyel, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, NJ 07962-2075
jbeyel@mdmc-law.com

XVII. EFFECTIVE DATE

44. Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XVIII. RETENTION OF JURISDICTION

45. 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.

XIX. MODIFICATION

46. This Consent Judgment represents the entire integrated agreement between Plaintiffs and the Handy & Harman Defendants and Cycle Chem concerning the Litigation and supersedes all prior negotiations, representations, or agreements, either written or oral.

47. This Consent Judgment may only be modified by written agreement between the Parties with approval by the Court.

XX. ENTRY OF THIS CONSENT JUDGMENT

48. The Handy & Harman Defendants and Cycle Chem consent to the entry of this Consent Judgment without further notice.

49. Upon conclusion of Plaintiffs' evaluation of any public comments received as a result of the notice described in Paragraphs 34, 35 and 36 above, if Plaintiffs determine there is still good reason to enter into this Consent Judgment, they shall promptly submit this Consent Judgment to the Court for entry. In the event Plaintiffs determine that the Consent Judgment should not be submitted to the Court for entry, Plaintiffs shall promptly notify counsel of record for the Handy & Harman Defendants and Cycle Chem by email of that determination.

50. 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 or any Person.

XXI. NO FINDINGS OR ADMISSIONS OF LIABILITY

51. Nothing contained in this Consent Judgment shall be considered an admission by any of the Handy & Harman Defendants or Cycle Chem, or a finding by this Court, of any wrongdoing or liability on the part of the Handy & Harman Defendants or Cycle Chem.

52. Provided the Handy & Harman Defendants and Cycle Chem make the payments to Plaintiffs pursuant to Paragraphs 7 and 9 and Paragraphs 14 and 16 above, this Consent Judgment: (a) shall not be docketed with the Clerk of the Superior Court, (b) is not intended to and shall not be a lien against any real property in New Jersey currently owned by the Handy & Harman Defendants or Cycle Chem, and (c) shall not be a lien against any real property in New Jersey owned by the Handy & Harman Defendants or Cycle Chem at any time in the future. If either the Handy & Harman Defendants or Cycle Chem fail to make the payment required of them under Sections VI and VII, and the Plaintiffs elect to docket the Consent Judgment with the Clerk of the Superior Court, the Plaintiffs will provide the non-defaulting Party with a Warrant to Satisfy Judgment in recordable form acceptable to counsel for the non-defaulting Party within 30 Days of the docketing of the Consent Judgment.

53. Each Party shall bear its own costs and expenses in the Litigation including all claims for costs or assessments, attorneys' fees, consultant or expert fees, interest or other Litigation expenses.

XXII. JOINT DRAFTING

54. The Parties agree that this Consent Judgment was negotiated fairly between the Parties at arm's length and that the final terms of this Consent Judgment shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Consent Judgment therefore should not be construed against any Party on the grounds that such Party drafted, or was more responsible for drafting, the provision(s).

XXIII. SIGNATORIES/SERVICE

55. Each undersigned representative of a Party 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.

56. 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.

57. Scanned (PDF) signature pages of this Agreement will have the same force and effect as original "ink" signature pages.

SO ORDERED this 10th day of May, 2024

HON. MARY F. THURBER, J.S.C.

THE COURT'S WRITTEN STATEMENT OF REASONS IS ATTACHED AND INCORPORATED.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION CONSENTS TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

By:_____
David Haymes,
Assistant Commissioner,
Contaminated Site Remediation and
Redevelopment Program

Dated: November 20, 2023

By:_____
Shawn ~~M. LaP~~ourette, Commissioner
New Jersey Department
of Environmental Protection

Dated: 11/20/2023

NEW JERSEY SPILL COMPENSATION FUND CONSENTS TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

By:_____
David E. Haymes, Administrator
New Jersey Spill Compensation Fund

Dated: November 20, 2023

By:_____
Thomas Lihan,
Deputy Attorney General

Dated:_____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION CONSENTS TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

By:_____
David Haymes,
Acting Assistant Commissioner,
Contaminated Site Remediation and Redevelopment Program

Dated:_____

By:_____
Shawn M. LaTourette, Commissioner
New Jersey Department
of Environmental Protection

Dated:_____

NEW JERSEY SPILL COMPENSATION FUND CONSENTS TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

By:_____
David E. Haymes, Administrator
New Jersey Spill Compensation Fund

By: */s/ Thomas Lihan*
Thomas Lihan,
Deputy Attorney General

Dated: 11/21/2023

HANDY & HARMAN, HANDY & HARMAN ELECTRONIC MATERIALS CORP., STEEL PARTNERS HOLDINGS, L.P. AND PLESSEY INCORPORATED CONSENT TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

By: */s/ John M. Agnello*
JOHN M. AGNELLO

Dated: November 20, 2023

MORGAN, LEWIS & BOCKIUS LLP

By: s/ John McGahren
JOHN McGAHREN

Dated: 11/20/2023

Attorneys for Handy & Harman, Handy & Harman Electronic Materials Corp., Steel Partners Holdings, L.P. and Plessey Incorporated

HANDY & HARMAN

By: _____
Signature

By: Richard J. Majos
Print Name

Title: Vice President of Environment, Health & Safety, Steel Partners

Dated: 11/21/23

HANDY & HARMAN ELECTRONIC MATERIALS CORP.

By: _____
Signature

By: Richard J. Majos
Print Name

Title: Vice President of Environment, Health & Safety, Steel Partners

Dated: 11/21/23

STEEL PARTNERS HOLDINGS, L.P.

By: _____
Signature

By: Richard J. Majos
Print Name

Title: Vice President of Environment, Health & Safety, Steel Partners

Dated: 11/21/23

PLESSEY INCORPORATED

By: Patricia A. Hoffman
Signature

By: Patricia A. Hoffman
Print Name

Title: Director & Secretary

Dated: November 22, 2023

CYCLE CHEM, INC. f/k/a PERK CHEMICAL CO., INC. CONSENTS TO THE FORM AND ENTRY OF THIS CONSENT JUDGMENT

By: John B. Nickerson
(Signature)

John B. Nickerson
(Print Name)

Title: Vice President and Asst. Secretary

Dated: 11/27/2023

McELROY, DEITSCH, MULVANEY & CARPENTER, LLP

By: */s/ John P. Beyel*
JOHN P. BEYEL

Dated: 11/20/2023

Attorneys for Cycle Chem f/k/a Perk Chemical Co., Inc.

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,

Plaintiff(s),

v.

HANDY & HARMAN; HANDY & HARMAN ELECTRONIC MATERIALS CORP.; STEEL PARTNERS HOLDINGS, L.P.; PLESSEY INCORPORATED; CYCLE CHEM., INC f/k/a PERK CHEMICAL CO., INC.; JOHN DOES 1-100 (fictitious entities); and ABC CORPORATIONS 1-100 (fictitious entities),

Defendant(s).

SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY: LAW DIVISION, CIVIL PART

DOCKET NO. L-8605-19

DECISION ON MAY 10, 2024

Decided: May 10, 2024

Thomas Lihan, attorney for New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund, plaintiffs (Matthew Platkin, Attorney General of New Jersey).

Alfred M. Anthony, co-counsel for plaintiffs, Special Counsel to the Attorney General (Locks Law Firm).

Robert M. Donchez, co-counsel for plaintiffs (Florio Perrucci Steinhardt Cappelli & Tipton, LLC).

Richard D. Meadow, co-counsel for plaintiffs (The Lanier Law Firm, P.C.).

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MARY F. THURBER, J.S.C.

This case comes before the court on the motion of plaintiffs, New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the NJDEP, and the Administrator of the New Jersey Spill Compensation Fund (collectively, the "Plaintiffs" or the "State"), to approve a consent judgment ("Settlement") between the State and defendants, Handy & Harman ("Harman"), Handy & Harman Electronic Materials Corp. ("HHEM"), Steel Partners Holdings, L.P., Plessey Incorporated (collectively, the "Handy & Harman Defendants"), and Cycle Chem, Inc f/k/a Perk Chemical Co., Inc. ("Cycle Chem") (all collectively, the "Defendants"). The parties jointly seek to have the court approve the Settlement as

fair, reasonable, in the public interest, and consistent with the goals of New Jersey's Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24. The Borough of Montvale ("Montvale"), as *amicus curiae*, asks the court to modify language of the Settlement. The court grants Plaintiffs' motion and denies Montvale's request.

I

The lawsuit being settled alleges Defendants polluted the area in and around 20 Craig Road, Montvale, New Jersey ("Site"), by "discharge[ing]"[1] of "hazardous substances,"[2] primarily trichloroethylene ("TCE")[3], causing damage to groundwater and surface water. The $14 million dollar Settlement requires Defendants to pay

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[1] "Discharge" is defined by the Spill Act as:

> [A]ny intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State . . . .
>
> [N.J.S.A. 58:10-23.11b]

[2] "Hazardous substances" are defined by the Spill Act as:

> [T]he "environmental hazardous substances" on the environmental hazardous substance list adopted by the department . . .; such elements and compounds . . . which are defined as such by the department . . . and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to [various federal environmental laws].
>
> [N.J.S.A. 58:10-23.11b]

[3] The amended complaint, filed June 11, 2020, alleges the hazardous substances, which pose serious health risks, also include: perchloroethylene a/k/a tetrachloroethylene ("PCE"); cis-1,2-dischloroethylene ("cis-1,2-DCE"); vinyl chloride ("VC"); 1,1-dichoroethylene ("1,1 DCE"); 1,1,1-trichloroethane ("1,1,1-TCA"); 1,1,2,2-tetrachloroethane; 1,2-dichloroethane; bromoethane; and methylene chloride.

Plaintiffs Natural Resource Damages ("NRDs")—that is, monetary compensation to restore and replace the impaired or eliminated use of natural resources, here, groundwater and surface water.

The Site, originally operated as a farm, has operated as a metal stamping facility for electronic components since 1966. The complaint alleges that from 1966 to 1984, title to the Site went through the hands of Montvale Custom Specialty Co., Inc., Alloys Unlimited, Inc., Montvale Custom Tool, Inc., Plessey Incorporated, HHEM, 20 Craig Road Associates, and Steel Partners Holdings, L.P. At all relevant times, Cycle Chem supplied chemical solvents to the Site and was responsible for removing same from the Site.

The process of metal stamping used at the Site involved machinery and hazardous chemicals. The relevant part of the metal stamping process here is the degreasing process: this involves the use of TCE. The Handy and Harman Defendants admit they stored liquid TCE for the degreasing process in two (roughly) 500-gallon above-ground storage tanks ("ASTs") on the Site. Degreasing required the Defendants to pump the liquid TCE from the ASTs into a "vapor degreaser." Here, the liquid TCE is heated and evaporated into a gas—it is this TCE vapor that degreases the stamped metal. The result of the degreasing process is both a final metal stamped product and TCE waste. Defendants stored the TCE waste in 55-gallon drums on the Site.

The complaint alleges a subsurface investigation of the Site's soil, pursuant to the Environmental Cleanup Responsibility Act ("ECRA") n/k/a Industrial Site Recovery Act, N.J.S.A. §§ 13:1K-6 to -14, in connection with the 1984 transfer of the Site from defendant Plessey Inc. to defendant Harman, found TCE under the Site's ASTs in concentrations up to 25,544 parts per billion. Further, after two excavations of the soil, the soil still contained TCE concentrations—up to 2,582 parts per billion after the first excavation, and up to 770 parts per billion remaining after the second excavation. Plaintiffs allege the TCE, along with contaminating the soil, migrated into groundwater beneath the Site. The complaint states groundwater testing under the Site showed TCE concentrations up to 11,000 parts per billion—well beyond NJDEP's Ground Water Quality Criterion of 1 part per billion. N.J.A.C. 7:9C, App'x, Table 1. Plaintiffs allege a soil gas survey in 1990 causally linked the TCE in the soil and groundwater under the Site to the Site's storage and disposal of TCE. Defendants also admit they contaminated the Site's groundwater with TCE around 1984 or 1985, when a Cycle Chem delivery truck spilled a significant quantity of TCE on the Site.

According to Plaintiffs, TCE groundwater contamination spread beyond the Site, going to depths of up to 700 feet and horizontal distances up to 8,000 feet, including into Bear Brook and Mill Brook (natural streams that feed into the Woodcliff Lake Reservoir and the Pascack Brook, respectively). In response to this,

NJDEP restricted the use of groundwater in and around the Site; this led to the closure of publicly-used municipal drinking wells and the installation of filtration systems to same. The complaint notes the Spill Act Fund has spent over $348,435 related to this TCE contamination in the Borough of Park Ridge, and that HHEM has spent over $17 million dollars in its TCE contamination investigatory and remedial efforts.[4]

In 2019, Plaintiffs filed a complaint against Defendants asserting common-law claims and statutory claims pursuant to the Spill Act, the Site Remediation Reform Act, N.J.S.A 58:10C-1 to 29, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to 35, and the Clean Water Act, 33 U.S.C. §§ 1251–1389. In 2020, Plaintiffs amended their complaint to specify their allegations as to Cycle Chem's involvement in the discharges of hazardous substances at the Site. Defendants filed responsive pleadings, and in 2021 the parties exchanged confidential expert reports and met with a mediator over four months. The parties reached a global settlement agreement in principle in 2022. In 2023, the parties memorialized their settlement in a written agreement subject to court approval.

[4] Investigatory and remedial efforts include: investigating impacted water wells and neighboring properties; removal of impacted soils; geophysical surveys and soil gas surveys; removal of a septic tank; installation of monitoring wells; implementation of a two-phase vapor extraction system; and enhanced pump and treat (pumping the contaminated groundwater to the surface for treatment).

The Settlement provides approximately $14 million dollars in NRDs to restore resources and to compensate for Defendants' hazardous discharges on the Site. On May 15, 2023, NJDEP published notice of the Settlement on its website and in the New Jersey Register pursuant to N.J.S.A. § 58:10-23.11e2. The notice advised of a 60-day public comment period. NJDEP published the same information in newspapers circulated around Bergen County and New Jersey. Montvale submitted timely comments about the Settlement, and NJDEP responded.

Montvale, as *amicus curiae*, objects to paragraphs 11 and 18 of the Settlement.[5] These paragraphs provide: "The Plaintiffs shall place the money paid pursuant to Paragraphs [7 and 9 as to the Handy and Harman defendants, 16 and 18 as to Cycle Chem, totaling $14 million] above in a segregated interest-bearing account within the Natural Resource Damage Constitutionally Dedicated 543 Account (the "Account")."

The monies will be held in this account and may not be used for any purpose until the judgment becomes final and non-appealable. "In the event this Consent Judgment is not appealed, is not modified and becomes final in its entirety as written, except as to ministerial changes, the payments made by [Defendants] pursuant to Paragraphs [7 and 9 as to the Handy and Harman defendants, 16 and 18 as to Cycle

[5] These objections were raised by Montvale in its motion to intervene filed on November 6, 2023. Both Plaintiffs and Defendants opposed the motion. On January 5, 2023, the court held oral argument on the motion, denied same, and put its decision on the record.

Chem, totaling $14 million] shall be released from the Account to the entities to whom the payments were made."

Montvale relies on Article VIII, § 2, paragraph 9, of the New Jersey Constitution ("Constitutional Provision"). This mandates "all settlement[] . . . awards relating to natural resource damages collected by the State in connection with claims based on environmental contamination" be "credited annually to [the Special Fund]." Montvale interprets this to mean the $14 million dollars in NRDs deposited in NJDEP's Account must be fully credited to the Special Fund, and that "credited" means deposited. Accordingly, Montvale argues Plaintiffs are to deposit all the Settlement funds into a Special Fund designated and controlled by the Legislature.

The Constitutional Provision permits "up to 10 percent of the moneys appropriated [from the Special Fund]" to be "expended for administrative costs of the State or its departments, agencies, or authorities." According to Montvale, this means any legal fees and administrative costs incurred in the Settlement process must be taken from the Special Fund, not from any "release" prior to the deposit of NRDs into the Special Fund. Montvale argues the Settlement's "release" provision may result in up to forty-three (43%) of the Settlement's NRDs going to NJDEP's administrative costs and Outside Counsel's legal fees—far more than the Constitutional Provision's ten percent (10%) cap of costs and fees.

Montvale mounts its constitutional challenge to the Settlement because Montvale believes it may not fully benefit from the Settlement if almost half of the NRDs are released for costs and fees before the NRDs are used for restoration expenses in "first priority" impacted communities like Montvale. Montvale claims the Settlement, as it stands, will significantly impair Montvale's efforts and resources to address the natural resource damage done by Defendants. Montvale notes NJDEP's administrative costs and Outside Counsel's legal fees may still be allowable in excess of 10 percent, but only if the Director of Budget and Accounting and the Attorney General determine so under the 2024 Appropriations Act.

The parties request the court to approve the settlement as fair, reasonable, in the public interest, consistent with the goals of the Spill Act, and within the legal authority of NJDEP. Montvale does not object, but rather seeks to add constitutional, statutory, and judicial oversight language to the Settlement and delete its "release" language.

II

Approval Standard

A consent judgment may be approved by the court if it is fair, reasonable, in the public interest, consistent with the goals of the Spill Act, and within the legal authority of the public entity involved in the consent judgment. See N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 304 (App. Div. 2018). The

Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 to 9675, has been called the "federal analogue to the Spill Act." In re MTBE Prods. Liab. Litig., 33 F. Supp. 3d 259, 264 (S.D.N.Y. 2014) (citations omitted). Accordingly, "[w]hen a court reviews a settlement that involves a Spill Act claim, it should look to the federal caselaw involving CERCLA for guidance." Id. (citations omitted). See also New Jersey Dep't of Environmental Protection v. Exxon Mobil Corp., 453 N.J. Super. 588, 615 (Law Div. 2015), aff'd, 453 N.J. Super. 272 (App. Div. 2018) (discussing CERCLA standard of review, noting the parties all agreed the court should adopt this standard, and stating, "For the reasons stated below, however, the court will adopt this standard: Spill Act consent judgments, whether approved judicially or administratively, should be fair, reasonable, faithful to the objectives of the Spill Act, and in the public interest.") As noted by Judge Hogan and approved by the Appellate Division, reviewing settlements applying the CERCLA settlement review standard is "harmonious" with general New Jersey settlement law." Id. at 622.

Fairness

In New Jersey, there is "no court rule or other Supreme Court guidance as to the parameters of . . . a fairness hearing." Warner Co. v. Sutton, 274 N.J. Super. 464, 480 (App. Div. 1994). In Exxon, the court noted a fairness hearing "must conclude that the settlement does not exceed the legal authority of the public entity." 453 N.J.

Super. at 276. In Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 370 (Law Div. 1984), the court outlined fairness considerations in approving a proposed settlement:

> The hearing on the proposed settlement is not a plenary trial and the court's approval of the settlement is not an adjudication of the merits of the case. Rather, it is the court's responsibility to determine, based upon the relative strengths and weaknesses of the parties' positions, whether the settlement is "fair and reasonable," that is, whether it adequately protects the interests of the persons on whose behalf the action was brought.
>
> [(emphasis added).]

Federal precedent is instructive for a court's fairness analysis. The court's fairness analysis "is a pragmatic one, not requiring precise calculation." United States v. Charter Int'l Oil Co., 83 F.3d 510, 521 (1st Cir. 1996). "In evaluating the fairness of a consent decree, a court should assess both procedural and substantive considerations." In re Tutu Water Wells CERCLA Litig., 326 F.3d 201, 207 (3d Cir. 2003). Procedural fairness "requires that settlement negotiations take place at arm's length," and "[a] court should 'look to the negotiation process and attempt to gauge its candor, openness and bargaining balance.'" Id. (quoting United States v. Cannons Eng'g Corp., 899 F.2d 79, 86 (1st Cir. 1990)).

Substantive fairness "requires that the terms of the consent decree are based on 'comparative fault' and apportion liability 'according to rational estimates of the harm each party has caused.'" In re Tutu Water Wells CERCLA Litig., 326 F.3d at

207 (quoting United States v. SEPTA, 235 F.3d 817, 823 (3d Cir. 2000)). "The court must 'compare the proportion of total projected costs to be paid by the settlors with the proportion of liability attributable to them, and then to factor into the equation any reasonable discounts for litigation risks, time savings, and the like that may be justified.'" In re MTBE Prods. Liab. Litig., 33 F. Supp. 3d at 265 (quoting United States v. Montrose Chem. Corp., 50 F.3d 741, 747 (9th Cir. 1995)). "As long as the measure of comparative fault on which the settlement terms are based is not arbitrary, capricious, and devoid of a rational basis, the district court should uphold it." In re MTBE Prods. Liab. Litig., 33 F. Supp. 3d at 265. In Exxon, the New Jersey Appellate Division upheld a trial court's review of an NJDEP proposed settlement as "substantively fair" and not "arbitrary, capricious, and unreasonable" because the trial court considered the history of litigation, prior settlement demands and offers, NRD estimates and arguments against such estimates, trial testimony, and NJDEP's decision to prosecute the Spill Act claim.

Reasonableness

The court's reasonableness analysis is likewise a pragmatic one. Charter Int'l Oil Co., 83 F.3d at 521. The court will look at "the relative strength of the parties' litigating positions," "the risks and delays inherent in continuing the litigation," and "whether the compensation to the public for response costs is satisfactory." United States v. Kramer, 19 F. Supp. 2d 273, 287–288 (D.N.J. 1998).

Public Interest

Protection of the public interest is a key consideration in assessing whether a settlement is fair, reasonable, and adequate. Exxon, 453 N.J. Super. at 662, aff'd, 453 N.J. Super. 272 (App. Div. 2018) (citations omitted). The court must consider the purpose of the legislation and the public interests it is intended to protect and further.

Spill Act Goals

The purpose of the Spill Act is to "provide monies for a swift and sure response to environmental contamination." Marsh v. N.J. Dep't of Envtl. Prot., 152 N.J. 137, 144 (1997). The Spill Act declares that "New Jersey's lands and waters are a unique and delicately balanced resource," the protection of which "promotes health, safety, and welfare of the people." N.J.S.A. 58:10-23.11a. The Spill Act further declares that the "discharge of . . . hazardous substances . . . constitutes a threat to the economy and environment of this State." N.J.S.A. 58:10-23.11a. Thus, the State, as "trustee, for the benefit of its citizens," by enacting the Spill Act provided "liability for damage sustained within this State as a result of any discharge of said substances." N.J.S.A. 58:10-23.11a. The Act is intended "to provide a fund for swift and adequate compensation" Id.; see also N.J.S.A. 58:10-23.11u(a)(1), (b)(4) ("Whenever . . . the department determines that a person is in violation of a provision of [the Spill Act or its regulations] . . . the department may commence a

civil action in Superior Court for . . . the cost of restoration and replacement . . . of any natural resource damaged or destroyed by the discharge.")

New Jersey Constitution

Article VIII (titled "Taxation and Finance"), § 2, paragraph 9 of New Jersey's Constitution states:

> There shall be credited annually to a special account in the General Fund an amount equivalent to the revenue annually derived from all settlements and judicial and administrative awards relating to natural resource damages collected by the State in connection with claims based on environmental contamination.
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> * * *
>
> The amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, for paying for costs incurred by the State to repair, restore, or replace damaged or lost natural resources of the State, or permanently protect the natural resources of the State, or for paying the legal or other costs incurred by the State to pursue settlements and judicial and administrative awards relating to natural resource damages. The first priority for the use of any moneys by the State to repair, restore, or replace damaged or lost natural resources of the State, or permanently protect the natural resources of the State, pursuant to this paragraph shall be in the immediate area in which the damage to the natural resources occurred in connection with the claim for which the moneys were recovered. If no reasonable project is available to satisfy the first priority for the use of the moneys, or there are moneys available after satisfying the first priority for their use, the second priority for the use of any moneys by the State to repair, restore, or replace damaged or lost natural resources of the State, or permanently protect the natural resources of the

> State, pursuant to this paragraph shall be in the same water region in which the damage to the natural resources occurred in connection with the claim for which the moneys were recovered. If no reasonable project is available to satisfy the first or second priority for the use of the moneys, or there are moneys available after satisfying the first or second priority for their use, the moneys may be used by the State to repair, restore, or replace damaged or lost natural resources of the State, or permanently protect the natural resources of the State, pursuant to this paragraph without geographic constraints. Up to 10 percent of the moneys appropriated pursuant to this paragraph may be expended for administrative costs of the State or its departments, agencies, or authorities for the purposes authorized in this paragraph.

2024 Appropriations Act

The 2024 Appropriations Act, P.L.2023, Ch. 74, Assembly No. 5669, explains how legal fees and administrative costs are appropriated from the Special Fund when the State pursues NRD settlements:

> Notwithstanding the provisions of any law or regulation to the contrary, there are hereby appropriated from the Natural Resource Damages - Constitutional Dedication account such amounts as are required, as determined by the Director of the Division of Budget and Accounting, in consultation with the Attorney General, and consistent with the requirements of the constitutional dedication pursuant to Article VIII, Section II, paragraph 9 of the State Constitution, to pay the legal or other costs incurred by the State to pursue settlements and judicial administrative awards relating to natural resource damages.
>
> [P.L.2023, Ch. 74, Assembly No. 5669, p.90]

III

The parties argue the Settlement is fair because it is well within the authority of NJDEP. See Twp. of Howell v. Waste Disposal, Inc., 207 N.J. Super. 80, 95–96 (App. Div. 1986). The court agrees. The Twp. of Howell court stated it is "clear that it is the [NJDEP] which is entrusted initially with the right to determine the primary course of action to be taken against persons who damage or threaten the environment. In order to be effective, it must normally be free to determine what solution will best resolve a problem on a state or regional basis given its expertise." Thus, NJDEP has the authority to enter settlements with "persons [i.e., Defendants] who damage . . . the environment." Id.

The parties assert the Settlement is procedurally fair because it is the product of an arms-length transaction with mediation, negotiations, an exchange of experts, and a public notice and comment period. The court agrees. This Settlement was prepared by sophisticated parties who were represented by capable counsel. Further, the parties voluntarily entered extensive mediation negotiations, exchanged confidential expert reports, and NJDEP responded to all public comments—all of this indicates "candor, openness and bargaining balance" in the formation of this Settlement. In re Tutu Water Wells CERCLA Litig., 326 F.3d at 207 (quoting Cannons Eng'g Corp., 899 F.2d at 86).

The parties contend the Settlement is substantively fair because it is based on NJDEP's expertise in evaluating and estimating NRD amounts, Defendants' share of potential liability, other NRD settlements, and the risks and expenses of continued litigation. The court agrees.

Here, NJDEP performed a Resource Equivalency Analysis ("REA") to estimate potential damages to the relevant natural resources and Defendants' share liability (in the event such liability needed to be proven). This REA analysis, developed by the National Oceanic and Atmospheric Administration ("NOAA") as a methodology to be used in settlements and assessments, calculates the potential damages to a natural resource by using the cost of restoring that natural resource and the spatial and temporal extent of its damage. NJDEP performed its REA using various assumptions and inputs: the approximate start date of the Site's groundwater contamination; the surface area of the bedrock under the Site; the annual groundwater recharge rate in the Site's geographical area; annual groundwater flux from 1990 to 2045; a discount rate of three percent (3%); discounted amounts of contaminated groundwater; and dry well projects offsetting the damage to the relevant groundwater. Defendants disputed NJDEP's assumptions, inputs, and calculated damages in its REA. For example, Defendants contend, among other things, that first and foremost REA is not applicable to groundwater cases. Further, Defendants disputed NJDEP's REA inputs, namely the groundwater contamination

start date, the 3% discount rate, the duration estimates as to impacted groundwater calculations, any baseline contamination of groundwater, and the impracticality of dry well projects. All of this goes to the risks and expenses of continued litigation on this matter. It is foreseeable that NJDEP's recovery could be reduced or eliminated if the case proceeds to trial, as damage and liability calculations are disputed. Not approving this Settlement means more litigation expenses, risking an adequate NRD recovery, and potentially years of delay in getting impacted communities the NRDs they need now.

The parties argue the Settlement is reasonable for the same reasons NJDEP argues the Settlement is fair: the uncertainty, length, and risks "inherent in continuing litigation" could limit or eliminate NJDEP's recovery (and therefore impacted communities' benefits) given the parties' adverse litigation positions; the potential cost of restoring the relevant natural resources was calculated using other NRD settlements and regulated methodologies; and the voluntary nature of the Settlement. Kramer, 19 F. Supp. 2d at 287 (citations omitted). These reasons, along with "pragmatic" considerations of swiftly getting impacted communities the funding and resources they need to begin restoring the groundwater and surface water, persuade this court that the Settlement is reasonable. Charter Int'l Oil Co., 83 F.3d at 521.

As to the Settlement's consistency with the Spill Act's goals, the parties assert the Settlement provides certainty and $14 million dollars in compensation for the relevant damaged natural resources and restoration projects. The court agrees. The Settlement provides a "sure response to environmental contamination" by avoiding potentially years of further litigation and a reduced or eliminated recovery amount for NJDEP. Marsh, 152 N.J. at 144. Further, the Settlement provides "monies for a swift" response to Defendants alleged groundwater and surface water contamination. Id. This Settlement "promotes health, safety, and welfare of the people" by compensating for Defendants' discharge of "hazardous substances." N.J.S.A. 58:10-23.11a.

The court concludes the Settlement is in the public interest, largely for the same reasons the court concluded the Settlement was fair and reasonable. New Jersey has a strong public policy favoring settlement. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) ("'Settlement of litigation ranks high in our public policy.'") (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472 (App. Div. 1961); E.I. du Pont de Nemours and Co. v. State, Dept. of Environmental Protection and Energy, 283 N.J. Super. 331, 351 (App. Div. 1995) (stating "the settlement of potential litigation ranks high as a matter of public policy" and "courts generally favor consent judgments.") (citations omitted). Given New Jersey's strong public policy favoring settlement,

appropriate settlements serve that public interest, just as any settlement serves important interests of the affected parties.

Moreover, public policy favoring settlements is especially strong when "a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement." Cannons Eng'g Corp., 899 F.2d at 84. NJDEP has been charged by the Legislature with the duty of "facilitat[ing] and coordinat[ing] activities and functions designed to clean up contaminated sites in the State." N.J.S.A. 58:10-23.11a. NJDEP is the government agency charged with protecting the State's natural resources and seeking remediation and compensation for damages caused by harm to those resources. See N.J.S.A. 13:1D-9 ("The department [NJDEP] shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State."). NJDEP's determination that this settlement is in the public interest is entitled to deference. Exxon, 453 N.J. Super. at 302 ("[T]he choice to settle litigation rests largely within an agency's discretion, and we generally defer to that choice so long as it is responsive to the purpose and function of the agency.") (citations and quotations marks omitted).

Additionally, one of the several benefits the courts extol about settlements is that they bring an earlier end to litigation and more immediate availability of the

remedy and relief pursued. This is particularly valuable in the context of this NRD claim, when the environmental impact and harm have been of long duration. The immediate transfer of funds is a significant factor when considering whether a proposed consent judgment furthers the public interest as expressed in the Spill Act. Exxon, 453 N.J. Super at 661, aff'd, 453 N.J. Super. 272 (App. Div. 2018). The Settlement here serves the public interest beyond simply ending this litigation. The Settlement for this NRD case will permit the State to begin the environmental restoration process that will address environmental harms that have long persisted.

Montvale does not contest the Settlement's fairness, reasonableness, public interest, advancement of Spill Act goals, or NJDEP's legal authority to enter into the Settlement. Instead, Montvale proposes to modify the language of the Settlement.

Montvale first deletes the "release" language from the Settlement and then proposes language directing NRD payments from NJDEP's Account to be credited to the "Natural Resource Damages – Constitutional Dedication special account [i.e., the Special Fund]" Additionally, Montvale includes judicial oversight language related to notice of when NRD payments are credited to the Special Fund, requests to and responses from the Director of the Division of Budget and Accounting, and applications for court approved counsel fees. Montvale contends the modified language does not prejudice any party: Defendants maintain their Settlement rights and obligations; NJDEP continues to manage the proceeds of the Settlement;

Outside Counsel remain entitled to seek fees above 10% of the Settlement (provided such excessive fees are appropriated from non-Settlement State funds); and Montvale secures notice of the crediting and flow of Settlement funds.

The Appellate Division in Exxon discussed, among other things, the court's role in directing how NRDs from a Spill Act settlement are distributed. In Exxon, non-party environmental groups argued the proposed settlement violated the Spill Act and CERCLA because it did not "direct all recovered funds to be used for the remediation and restoration of natural resources." Exxon, 453 N.J. Super. at 277. In other words, the environmental groups wanted the proposed settlement to "specifically limit redirection of the settlement funds"—they wanted all funds to go toward the Spill Act Fund and restoration efforts. Id. In response, NJDEP argued the Spill Act "does not compel" the deposit of settlement funds into the Spill Act Fund. Exxon, 453 N.J. Super. at 278. NJDEP cited other environmental statutes that had language specifically directing settlement funds into a particular account, and noted the Spill Act contains no such language.

The Appellate Division agreed with NJDEP, concluding "[t]he Judiciary has no authority for any role in the budgetary process." Id. (citing Burgos v. State, 222 N.J. 175, 207 (2015)). Further, while acknowledging the environmental groups' "laudable goal" of directing all settlement funds toward environmental restoration, the court concluded it had no authority to "wade into budgetary waters" and

"prohibit[] the transfer of the settlement proceeds or limit[] their use" Exxon, 453 N.J. Super. at 278–79. In a footnote, the court noted Article VIII, § 2, paragraph 9, of the New Jersey Constitution "prospectively addresses" the environmental groups' concerns as to the distribution of the settlement's funds. Exxon, 453 N.J. Super. at 279, n.7. The court then quoted the entire constitutional provision, but provided no guidance as to how a court can or should use or include said provision in its settlement approval analysis.

Montvale, a non-party, mounts a constitutional challenge against what it believes NJDEP might do with the Settlement funds in the future. This does not concern whether the Settlement should be approved as fair, reasonable, in the public interest, and consistent with the Spill Act. Further, Montvale's argument is based on an assumption that NJDEP will violate the constitution, as understood by Montvale, by releasing more than ten percent (10%) of the Settlement's NRDs to itself and Outside Counsel prior to depositing the Settlement monies into the Special Fund. Montvale's constitutional challenge is premature and not relevant to this court's settlement approval analysis.

Montvale is not without avenues to pursue its concerns. Montvale may file a complaint raising the claims it sought to raise in this action, naming all the necessary parties, and giving the proper court the opportunity to address standing and merits issues based on an appropriate record. In fact, after the last oral argument, Montvale

submitted for this court's consideration a copy of a complaint filed in Salem County seeking a Writ of Mandamus against the New Jersey Attorney General's Office and the NJDEP compelling them to comply with the Constitutional Amendment and 2024 Appropriations Act Montvale asserted here, with respect to NRD settlements. This court acknowledges Montvale's constitutional concerns, but ultimately rejects Montvale's objections to approving the Settlement as irrelevant and premature in this case at this time.

The court grants Plaintiffs' motion.