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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

THE STATE OF NEW YORK, et al.,

Plaintiff,

- against -

SHORE REALTY CORP., et al.,

(AND RELATED ACTIONS)

- - - - - - - - - - - - - - - - - - X

O R D E R

Civil Action
Nos. CV-84-0864
CV-85-2750

(Weinstein, J.)

WHEREAS the United States is a party defendant in this action;

WHEREAS in accordance with the Consent Judgment filed with this Court, the United States, at the direction of and upon the authority of the Attorney General of the United States, and upon behalf of and at the request of Barbara H. Franklin, as Secretary of Commerce and as Federal Natural Resource Trustee, and Manuel Lujan, as Secretary of the Interior and as Federal Natural Resource Trustee, has agreed to settle its claims for damages to natural resources arising from alleged releases of hazardous substances from the Applied Environmental Service/Shore Realty site located in Glenwood Landing, New York against participating de minimis and non-de minimis defendants ("settling defendants") in the above-captioned action in contemplation of the filing of cross-claims asserting its claims for said natural

resource damages pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607; and

WHEREAS said cross-claims provide that the United States of America, at the direction and upon the authority of the Attorney General of the United States, and upon behalf of and at the request of Barbara H. Franklin, as Secretary of Commerce and as Federal Natural Resource Trustee, and Manuel Lujan, as Secretary of the Interior and as Federal Natural Resource Trustee, hereby cross-claims pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for damages to natural resources of the United States in connection with alleged releases of hazardous substances at the facility known as the Applied Environmental Service/Shore Realty site located in Glenwood Landing, New York, and incorporates by reference as its cross-claims the claims alleged by the State of New York pursuant to Section 107 of CERCLA with respect to damages for natural resources of the United States contained in the pleading in the above-captioned action, against all settling defendants in the above-captioned action with the exception of the federal defendants;

WHEREAS counsel for the State of New York and Liaison counsel have consented to the filing of said cross-claims by the United States;

IT IS HEREBY ORDERED that solely for the purposes of settling said claims against the settling defendants, the cross-

claims of the United States as set forth above be deemed filed as of the date of this Order.

Dated: Brooklyn, New York
6/18, 1992

HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

THE STATE OF NEW YORK, et al.,

Plaintiffs,

- against -

SHORE REALTY CORP., et al.,

Defendants.

(AND RELATED ACTIONS)
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84 Civ. 0864 (JBW)
85 Civ. 2270 (JBW)

CONSENT JUDGMENT

## TABLE OF CONTENTS

## TABLE OF APPENDICES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

THE STATE OF NEW YORK, et al.,

Plaintiff,

- against -

SHORE REALTY CORP., et al.,

Defendants.

(AND RELATED ACTIONS)
----------x

84 Civ. 0864 (JBW)
85 Civ. 2270 (JBW)

CONSENT JUDGMENT

WHEREAS, the Attorney General of the State of New York having filed a first amended complaint (the "Complaint") in this matter pursuant to, inter alia, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Environmental Conservation Law of the State of New York §§ 27-0914 and 17-0501; and the Common Law for equitable relief and damages including the recovery of all response costs which the State alleges it has incurred and will incur under CERCLA and damages to natural resources in connection with alleged releases of hazardous substances at the facility known as the Applied Environmental Services/Shore Realty site located in Glenwood Landing, New York (hereinafter "Site");

WHEREAS, defendants Donald LeoGrande and Shore Realty Corp. having filed a third-party complaint against approximately ninety-five third-party defendants for contribution and/or indemnification;

WHEREAS, the State having filed a complaint against certain owners and operators, Docket No. CV-85-2270, which has been consolidated with this action;

WHEREAS, the State having filed and amended its Complaint to add approximately 120 New Defendants to this action, all pursuant to, inter alia, CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No 99-499, 100 Stat. 1613 ("CERCLA/SARA");

WHEREAS, Third-Party Defendant Phillips Petroleum Company and others having filed a fourth-party complaint against Windsor Fuel Company, Inc., Joseph LeoGrande Sr. and Joseph LeoGrande, Jr. for contribution and/or indemnification, alleging that Windsor and its shareholders controlled Shore Realty Corp.;

WHEREAS, the New Defendants having filed a Third-Party complaint against approximately 58 New Third-Party Defendants for contribution and/or indemnification;

WHEREAS, Fourth-Party Defendants Windsor Fuel Company, Inc. and Joseph LeoGrande, Jr. having filed a Fifth-Party Complaint against certain New and Third-Party Defendants and approximately 500 John Does;

WHEREAS, other parties having filed second-, third-, etc. party complaints, cross-claims and counterclaims;

WHEREAS, the United States of America, at the direction of and upon the authority of the Attorney General of the United States, and upon behalf of and at the request of Barbara H. Franklin as Secretary of Commerce and as Federal Natural Resource

Trustee (Commerce), and Manuel Lujan, as Secretary of the Interior and as Federal Natural Resource Trustee (Interior), has agreed to resolve with the Settling Parties through this Consent Judgment claims for alleged damage to natural resources for which Commerce and Interior are trustees and has cross-claimed in this action; and

WHEREAS, the Court having reviewed this Consent Judgment and finding that it is fair, reasonable and in the public interest; and

WHEREAS, the parties having agreed that settlement of this matter is in the public interest and the Court having determined that such settlement is made in good faith in an effort to avoid expensive and protracted litigation;

NOW THEREFORE, IT IS ORDERED AND ADJUDGED AS FOLLOWS:

## I. JURISDICTION

The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 9613, and 42 U.S.C. § 6972, and it has jurisdiction over the parties to this Judgment. The parties who have consented to entry of this Judgment waive any objection they may have to the jurisdiction of the Court to enforce this Judgment and agree to be bound by the terms hereof.

## II. PARTIES

The parties to this Consent Judgment are:

1. Plaintiffs State of New York and Thomas C. Jorling, as Commissioner of Environmental Conservation and Natural Resource Trustee (the "State");

2. The United States of America, upon the direction of and upon the authority of the Attorney General of the United States, upon behalf of and at the request of Barbara H. Franklin, as Secretary of Commerce and Natural Resource Trustee, and Manuel Lujan, as Secretary of the Interior and Natural Resource Trustee. ("Federal Trustees");

3. The defendant owners/operators joined by reason of allegations made under § 107(a) of CERCLA/SARA, set forth in Appendices X and Y ("Settling Owner Defendants");

4. The de minimis defendant generators set forth in Appendix V attached hereto ("De Minimis Defendants");

5. The non-de minimis defendant generators set forth in Appendix W attached hereto ("Non-De Minimis Defendants").

## III. PURPOSE

The purpose of this Consent Judgment is to settle those claims alleged or which might have been alleged in the Complaint, cross-claims, counterclaims, third-party, fourth-party and fifth-party claims in this action relating to the existence, release or threat of release of hazardous substances at or from the Site, except as specifically reserved herein and except as to claims of the United States which are addressed by Exhibits 1 and 2 to the Consent Judgment, including its response costs. Additionally, the purpose of the Consent Judgment is to serve the public interest by

protecting the public health, welfare, and the environment at the Site and its environs by the implementation of the remedy required herein.

The State, the United States, on behalf of the Federal Trustees, the Settling Generator Defendants and the Settling Owner Defendants expressly acknowledge that this Consent Judgment is being entered into for the reasons articulated above. They agree that in implementing this Consent Judgment they will work to achieve the purposes so set forth. Should any dispute arise concerning this Consent Judgment, the purposes stated herein are to be considered paramount in the resolution of such dispute and any resolution is to be guided accordingly and in accordance with applicable law, including Section 113(j) of CERCLA as provided in Section XXXIII, infra.

The Parties to this Consent Judgment each acknowledge that this Consent Judgment and the Appendices to it are negotiated documents and are to be construed neutrally, fairly, and in accordance with the statements contained in this section.

This Consent Judgment was negotiated and executed by the State, the United States, on behalf of the Federal Trustees, the Settling Owner Defendants, and the Settling Generator Defendants in good faith to avoid expensive and protracted litigation and is a settlement of all claims raised expressly or impliedly by this action, except as otherwise stated in this Consent Judgment, which claims are contested, denied and disputed by the defendants. Accordingly, the provisions, terms and conditions of

this Consent Judgment and any action or submission under or by reason of the provisions, terms and conditions of this Consent Judgment shall not in any action, proceeding or litigation whatsoever, whether or not brought by the State or the United States on behalf of the Federal Trustees, constitute or be construed as an adjudication or finding on any issue of fact or law, or as an admission by any party with respect to any issue or be construed as, or operate as, an admission that the Settling Owner Defendants, the Non-De Minimis Defendants or the De Minimis Defendants have violated any law or regulation or otherwise committed a breach of duty at any time.

## IV. PUBLIC PARTICIPATION

In accordance with the Pre-Closing Order entered in this case, following signature by the United States Assistant Attorney General for the Environment and Natural Resources Division, counsel for the State and the United States shall give public notice of the Consent Judgment for a thirty (30) day period prior to the final approval and entry of this Consent Judgment by the Court. The public will be afforded an opportunity to review and comment upon the Consent Judgment as set forth herein and in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 CFR 50.7. All written comments by the public will be reviewed by the State and the United States, on behalf of the Federal Trustees, and made a part of the record filed with this Consent Judgment prior to its final review by the Court. The United States reserves the right to withdraw or withhold its

consent if the comments regarding the Consent Judgment disclose facts or considerations which indicate that the Consent Judgment is inappropriate, inadequate or improper. Settling Defendants consent to entry of this Consent Judgment without further notice.

## V. DEFINITIONS

Unless otherwise explicitly stated, the definitions provided in CERCLA/SARA shall control the meaning of terms used in this Consent Judgment and its Appendices.

1. "Closing" shall mean that concurrent exchange of certain documents and monies occurring on the thirtieth (30) day after the entry of this Consent Judgment at 11:00 a.m. in the Ceremonial Courtroom, United States Courthouse, Cadman Plaza, Brooklyn, New York or at such other time or location as may be mutually agreed upon by the parties to this Consent Judgment. Should the thirtieth (30th) day after entry of this Consent Judgment fall on a Saturday, Sunday, or federal holiday, then Closing shall take place on the next following business day.

2. "Consent Judgment" shall mean this Final Consent Judgment and all its Appendices.

3. "Contractor" means the person or persons or company or companies retained by the Performing Parties Group, defined infra, to undertake and implement the Remedy. Each contractor and subcontractor shall be qualified to implement those portions of the Remedy for which it is retained and the retention of each contractor and subcontractor shall be subject to approval by the State, which approval shall not be withheld unreasonably and any

disapproval shall be accompanied by a statement of reasons for such disapproval.

4. "CPI" shall mean the "Consumer Price Index for Urban Wage Earners and Clerical Workers" ("1967=100") specified for "All Items", relating to New York State and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the CPI Adjustment Factor, defined infra, shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the CPI shall cease to be published, then, for the purposes of this provision there shall be substituted for the CPI such other index as the parties hereto shall agree upon, and, if they are unable to agree within ninety days after the CPI ceases to be published, such matter shall be resolved in accordance with the Dispute Resolution provisions of this Consent Judgment.

5. "CPI Adjustment Factor" shall mean, for each year, the percentage equal to the fraction, the numerator of which shall be the CPI on December 1 of the immediately preceding year less the

CPI on December 1, 1991 and the denominator of which shall be the CPI on December 1, 1991.

6. "DEC" shall mean the New York State Department of Environmental Conservation.

7. "Disbursing Agent" shall mean Bankers Trust Company, which shall receive the funds described in paragraphs IX(1) and IX(2), hold such funds in an account to be established in such bank and cause such funds to be distributed in accordance with the provisions of paragraphs IX(6) through IX(8) of this Consent Judgment.

8. "EPA" shall mean the United States Environmental Protection Agency.

9. "Escrow Fund" shall mean the Escrow Fund as established by the Trust Agreement, defined infra, a copy of which is annexed hereto as Appendix A.

10. "Executive Committee" shall mean the Executive Committee of the Performing Parties Group, defined infra.

11. "Federal Trustees" shall mean the Under Secretary of Commerce for Oceans and Atmosphere and the Secretary of the Interior in their capacities as trustees for natural resources on behalf of the United States of America.

12. "Generators' Overrun Fund" shall mean the Generators' Overrun Fund established by the Trust Agreement, defined infra, a copy of which is annexed hereto as Appendix A.

13. "Hazardous Substances" includes those substances referred to as hazardous substances in Section 101(14) of

CERCLA/SARA, 42 U.S.C. § 9601(14), and those substances referred to as hazardous wastes in the New York State Environmental Conservation Law § 27-1301. For purposes of this Consent Judgment, "Hazardous Substances" also includes petroleum and petroleum products.

14. "Land" shall mean the real property, buildings and fixtures located at the Site as defined infra.

15. "Liaison Counsel" shall mean Andrew J. Simons, Esq., Farrell, Fritz, Caemmerer, Cleary, Barnosky & Armentano, P.C., EAB Plaza, West Tower - 14th Floor, Uniondale, New York 11556-0120, (516) 832-1000; Donald W. Stever, Jr., Esq., Sidley & Austin, 875 Third Avenue, New York, New York 10022, (212) 906-2000; and G.S. Peter Bergen, Esq., LeBoeuf, Lamb, Leiby & MacRae, 520 Madison Avenue, New York, New York 10022, (212) 715-8000.

16. "National Contingency Plan" shall be used as that term is defined in Section 105 of CERCLA/SARA, 42 U.S.C. § 9605.

17. "Operations Commencement Date" means the date, as certified in writing by the Contractor, on which the remedial system contemplated by the ROD has operated as contemplated for a period of 45 consecutive days.

18. "Operation and Maintenance" ("O&M") means the requirements for continued operation of the program of remediation, as necessary, in a manner which ensures that the Remedy continues to perform its function as designed to meet the Remediation Criteria set forth in the ROD.

19. "Over-run" shall mean any expenditure of money required to perform the undertakings set forth in Section VIII and paragraph X(3), infra, in excess of the sums in the Trust Fund as defined infra.

20. "Oversight" means the State's, the Federal Trustees' and the EPA's inspection of remedial work and verification of compliance with the requirements set forth in this Consent Judgment, as appropriate.

21. "Participating Settling Owners" shall mean those Settling Owner Defendants identified in Appendix Y.

22. "Performing Parties Group," or "Group," shall mean the members of the Glenwood Landing Superfund Site Group as organized and constituted pursuant to The Glenwood Landing Superfund Site Performing Party Participation Agreement.

23. "Pre-Closing Order" shall mean the Pre-Closing Order entered in this action.

24. "Recalcitrant Generator" shall mean any entity including haulers, transporters, brokers or arrangers, named as a defendant, at any tier, in this litigation that is not an operator of the Site nor an owner of the Site nor a Settling Generator Defendant, as defined in paragraph 32 infra.

25. "Recalcitrant Owners" shall mean those owners and operators named as defendants in this action as owners or operators as those terms are defined in CERCLA which are not Settling Owner Defendants, as defined in paragraph 33 infra.

26. "Record of Decision" or "ROD" means the document jointly issued by the State and the EPA as of June 25, 1991 which provides the Remedy at the Site, a copy of which is annexed hereto as Appendix C.

27. "Remedy" as used in this Consent Judgment means that program for remediation, including design, construction and operation, as detailed in the ROD and as specified in Section VIII of this Consent Judgment.

28. "RI/FS" shall mean the Remedial Investigation and Feasibility Study addressing conditions at the Site as performed by Roux in accordance with the RI/FS Stipulation, all as defined infra.

29. "RI/FS Escrow Agent" shall mean that individual appointed to such post by the RI/FS Stipulation as defined, infra.

30. "RI/FS Stipulation" shall mean the Stipulation entered into and approved by this Court on September 16, 1987.

31. "Roux" shall mean Roux Associates, Inc. of Huntington, N.Y.

32. "Settling Generator Defendants" shall mean the De Minimis Defendants and the Non-De Minimis Defendants as defined in Section II supra.

33. "Settling Owner Defendants" shall mean those defendant owners and operators specified in Appendices X and Y.

34. "Site" shall mean the Applied Environmental Services/Shore Realty site located in Glenwood Landing, Nassau County, New York.

35. "State" shall mean the State of New York and Thomas C. Jorling, as Commissioner of Environmental Conservation and Natural Resource Trustee.

36. "Trust Agreement" shall mean the Glenwood Landing Remedial Trust Agreement, annexed hereto as Appendix A.

37. "Trustees" shall mean the Trustees named in the Trust Agreement.

38. "Trust Fund" shall mean the Trust Fund established by the Trust Agreement, a copy of which is annexed hereto as Appendix A, which will fund the performance of the ROD and certain natural resources damages obligations by the Performing Parties Group to the extent provided in Section VIII and paragraph X(3), infra.

## VI. STATEMENT OF CONDITIONS AT THE SITE

1. The Site is located at One Shore Road, Glenwood Landing, Nassau County, New York. The Site is included as site number 454 on the National Priorities List which is set forth at 40 C.F.R. Part 300, App. B (February 1991). The National Priorities List is a list of sites at which there have been known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States and is promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

2. The Site is approximately 3.2 acres in size and is located on part of a peninsula on the east shore of Hempstead Harbor directly north of Mott's Cove. The Site is surrounded by industrial, commercial, and residential areas. There are no drinking water supply wells within one (1) mile of the Site. Twelve (12) non-public groundwater wells within one (1) mile of the Site are used for industrial, irrigation, and observation purposes. The principal aquifers beneath the Site include the Upper Glacial, Port Washington, and Lloyd aquifers, and these aquifers are used to varying degrees as sources of groundwater. Groundwater beneath the Site discharges to Hempstead Harbor to the west and south.

3. The Site was used for the bulk storage of petroleum products. In or about 1974, part of the Site was sub-leased to Mattiace Petrochemical Company ("Mattiace") which used it for the storage and distribution of chemical solvents. Numerous spills of organic chemicals are reported to have occurred during the period of Mattiace's occupancy of the Site. In or about 1980, the Site was sold to new owners, who in turn leased the Site to Applied Environmental Services ("AES"). AES operated the Site, in part, as a hazardous waste storage facility. Shore Realty Corporation ("Shore Realty") purchased the Site in October 1983 and evicted AES from the Site in January 1984.

4. The State initiated a lawsuit against Shore Realty and its President and shareholder of record, Donald LeoGrande, in February 1984. Shore Realty and Mr. LeoGrande subsequently

brought into the action numerous other entities, including the prior landowners, prior on-site operators, and entities that are alleged to have sent hazardous substances to the Site while it was operated by AES.

5. To date, several response actions have occurred at the Site. Between June and September 1984, Shore Realty removed 255 of 410 drums that were present at the Site, and further drums thereafter. DEC hired a contractor who removed the hazardous substances stored in tanks and other containers from the Site during the period October 1985 through September 1986. In February 1987, a number of entities that allegedly sent chemicals to the Site and certain Owner Defendants jointly retained a consultant, Roux, to perform a remedial investigation and feasibility study ("RI/FS") of the Site. Roux's April 1991 RI/FS report was accepted for the purposes of preparing a proposed remedial plan and for public inspection. The State oversaw the conduct of the RI/FS and EPA has reviewed and commented upon certain documents and data developed during the course of the RI/FS.

## VII. RECORD OF DECISION

In June, 1991, DEC and EPA jointly issued the Record of Decision documenting their selection of a remedial action for the Site. The major components of the remedial action, as set forth in the ROD, include:

(a) active venting, by vacuum extraction, of contaminated unsaturated soils;

(b) collection of contaminated groundwater from a series of shallow groundwater extraction wells and treatment of the collected groundwater by air-stripping;

(c) reinjection of treated groundwater along with nutrients and a chemical source of oxygen to stimulate the growth of indigenous bacteria capable of degrading contaminants in the groundwater and saturated soils; and

(d) treatment (e.g., catalytic oxidation) of contaminant-laden vapors from the vacuum extraction and air-stripping processes before release to the environment.

This ROD was issued upon conclusion of the statutory public comment period following completion of the RI/FS.

The ROD provides, in addition to the selected Remedy, a Site description, a summary of Site characteristics and risks, and a comparative analysis of the remedial alternatives considered.

The ROD presents the selected remedial action consistent with the applicable requirements of federal and State law, including CERCLA/SARA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP").

## VIII. PERFORMANCE OF THE ROD

1. The Performing Parties Group shall be responsible for the design, construction, operation and maintenance of the remedial program for the Site in accordance with and to the extent provided by this Consent Judgment.

2. The Performing Parties Group shall take all steps promptly and reasonably necessary to implement the remedial

program described in the ROD, which in summary provides the following:

a. A biotreatability pilot study to determine the type and amount of nutrient and oxygen additives needed to stimulate the growth of indigenous bacteria capable of biodegrading site contaminants.

b. A remedial design program to verify the components of the conceptual design and provide the details necessary for the construction, implementation, and monitoring of the remedial program.

c. Consistent with the remedial design, installation and operation of a soil venting (vapor extraction) system consisting of:

(i) installation of a cover system on the ground surface over the area to be vented to prevent short-circuiting of air into the venting system and reduce the infiltration of precipitation into site soils;

(ii) installation of an adequate number of vacuum extraction wells and trenches to remove contaminants from the soils in accordance with the remedial goals;

(iii) piping, pumps, and other appurtenances to extract contaminated vapors from the treatment zone; and

(iv) air pollution controls to limit air emissions to levels acceptable to the DEC and EPA.

d. Consistent with the remedial design, installation and operation of a groundwater collection and treatment system consisting of:

(i) collection wells, well-points, or trenches capable of intercepting contaminated groundwater before entering Hempstead Harbor or Mott's Cove;

(ii) collection wells under the existing tank farm to collect contaminated groundwater;

(iii) pipes, pumps, and other appurtenances to collect groundwater to a treatment area;

(iv) treatment of groundwater by air stripping (or equivalent process) to levels acceptable to the DEC and EPA;

(v) air pollution controls to limit air emissions to levels acceptable to the DEC and EPA; and

(vi) reinjection/infiltration of treated water fortified with nutrients and an oxygen source to stimulate the biotreatment of contaminated saturated soils and groundwater.

e. Consistent with the remedial design, a biotreatment program designed to reduce to the extent practicable in conjunction with the other

process options employed, contaminants in the saturated soils and groundwater.

f. A monitoring program designed to determine and monitor the levels of contaminants in the saturated soils and groundwater and any other medium as may be appropriate to the operation of the remedial system.

3. The objective of the remedial program outlined above is to implement the ROD, to achieve a Remedy protective of human health and the environment, and to achieve to the extent technically feasible the performance standards summarized in the ROD:

a. Soil - (i) Reduce the concentrations of benzene and methylene chloride so that the presence of these chemicals at the Site does not present an added risk of cancer of more than one in one million under the most conservative exposure scenario or otherwise pose a threat to public health; and

(ii) Reduce the concentrations of organic contaminants in soils so that contaminants do not leach from soil and contaminate groundwater to levels above standards.

b. Groundwater - Reduce the concentrations of contaminants in groundwater to levels equal to or less than State groundwater standards.

c. Sediments - Remediate sediments by treating the source of contaminants to the sediments, site soils and groundwater at the Site.

d. Air - Eliminate the exceedances of ambient air standards over the mudflats adjacent to the Site.

e. Surface Water - Eliminate the sheen on surface waters to comply with applicable surface water standards.

When monitoring indicates that the continued operation of the Remedy is no longer producing further significant reductions in the concentrations of contaminants in soils and groundwater, the DEC and the EPA will evaluate in accordance with the NCP whether discontinuance of the Remedy is warranted. The criteria for discontinuation will include an evaluation of the operation conditions and parameters as well as a statistical determination that the Remedy has attained the feasible limit of contaminant reduction and that further reductions would be impracticable.

4. The Performing Parties Group shall continue the operation and maintenance of the remedial program described in

the ROD until the performance standards have been achieved, subject to the following limitations.

a. In the event the performance standards have not been achieved six years from the Operations Commencement Date, the Performing Parties Group shall nevertheless be relieved of any and all further responsibility and liability for the implementation of the remedial program described in the ROD, provided only that $1.75 million, as adjusted by the CPI Adjustment Factor, over and above the sums in the Trust Fund, has been expended in the remediation effort.

b. In the event the performance standards have not been achieved six years from the Operations Commencement Date and $1.75 million, as adjusted by the CPI Adjustment Factor over and above the sums in the Trust Fund has not been expended in the remediation effort, the Performing Parties Group shall continue to implement the remedial program described in the ROD until such sum has been expended, or until the performance standards have been achieved, whichever first occurs. Upon the expenditure of $1.75 million, as adjusted by the CPI Adjustment Factor, over and above sums in the Trust Fund, the Performing Parties Group shall be relieved of any and all further responsibility and liability for the implementation of the remedial program described in the ROD.

5. In the event the performance standards have not been achieved at the point at which the Performing Parties Group is relieved of any further responsibility and liability for the

implementation of the remedial program described in the ROD pursuant to paragraphs 4.a or 4.b, above, the State shall be responsible for the completion of the remedial program described in the ROD until the performance standards as specified in paragraph 3 above are achieved.

6. The Performing Parties Group's obligation to implement a remedial program to achieve the performance standards is limited to the program described in the ROD. The Performing Parties Group, in consultation and subject to the approval of the State, may elect to implement a remedial technology other than the preferred remedial alternative described in the ROD; however, it shall be under no obligation to undertake any such remedial technology not included in the preferred remedial alternative described in the ROD, and set forth in paragraph 3 above, and subject only to the reopener provision set forth in paragraph XXII(2).

7. The Performing Parties Group shall submit to the State the name of the Contractor proposed to be selected by the Group for preparation of the remedial design, together with a brief statement of the Contractor's qualifications to prepare the remedial design, no later than fifteen (15) days after the Closing.

## IX. FINANCIAL OBLIGATIONS

1. By the dates prior to Closing specified herein, the Settling Generator Defendants shall pay to the Disbursing Agent a total sum which is calculated by adding Four Million Six Hundred

Twenty Thousand dollars ($4,620,000), plus Five Hundred Eighty Three Thousand Three Hundred Thirty-three dollars ($583,333), plus eighty percent (80%) of the total final costs of the RI/FS, plus sixty percent (60%) of the oversight costs of the EPA, plus sixty percent (60%) of those amounts for natural resource damages pursuant to Section X infra, and by subtracting from that sum the total amount previously paid by Settling Generator Defendants to fund the RI/FS as provided in the RI/FS Stipulation.

2. By the dates before Closing specified in Appendices X and Y, the Settling Owner Defendants shall pay to the Disbursing Agent a total sum which is calculated by adding Three Million Eighty Thousand dollars ($3,080,000) plus twenty percent (20%) of the total final costs of the RI/FS, plus forty percent (40%) of the oversight costs of the EPA, plus forty percent (40%) of those amounts for natural resource damages pursuant to Section X infra, and by subtracting from that sum the amount provided in subparagraph (a) below and the total amount previously paid by the Settling Owner Defendants to fund the RI/FS as provided for in the RI/FS Stipulation.

a. Up to Five Hundred Thousand dollars ($500,000) of the amount the Settling Owner Defendants are to pay can be paid by them, at their discretion, by a pledge of the estimated value of the Land, which is anticipated to be sold, the proceeds from which sale are to be applied in accordance with the provisions of Section XXV hereof. The shares of Shore Realty Corp. shall be

held by the Receiver, as defined in Section XXI hereof, to facilitate sale of the Site to a future purchaser.

3. The amount of the total settlement to be paid by each De Minimis Defendant shall be as set forth in Appendix D annexed hereto.

a. A De Minimis Defendant shall pay in hand to the Disbursing Agent its settlement amount as set forth in Appendix D fourteen (14) days before Closing.

b. The amount set forth in Appendix D for a De Minimis Defendant shall credit on a dollar for dollar basis, payments made by that Defendant to fund the RI/FS.

4. The approximate amounts of the total settlement to be paid by each Non-De Minimis Defendant based on certain variable assumptions are as set forth in Appendix E. The precise amount of the total settlement to be paid by a Non-De Minimis Defendant shall be determined after the level of participation has been ascertained, which determination shall be made and notification given within thirty-five (35) days of the Date of Entry in the Pre-Closing Order all as described in the Pre-Closing Order. As soon as practical after the determination has been made, Liaison Counsel shall give notice to each Non-De Minimis Defendant of the total amount it is obligated to pay.

a. A Non-De Minimis Defendant shall pay in hand to the Disbursing Agent its settlement amount fourteen (14) days before Closing.

b. The amount paid by a Non-De Minimis Defendant shall credit, on a dollar for dollar basis, payments made by the Defendant to fund the RI/FS.

5. In addition to its payment of the amounts described in the preceding paragraphs, each Settling Generator Defendant, as a condition to participating in this Consent Judgment, shall, by the days before Closing specified in paragraphs 3 and 4 above, pay its allocated share of common defense and administrative fees as such fees are set forth in Appendix F annexed hereto. Such fees shall be paid to the appropriate person[s] from each such functional defendant group.

6. The Disbursing Agent shall remit the funds received pursuant to paragraphs 1 and 2, supra, to the Trustees to be applied as follows:

(a) Four Million Five Hundred Thousand dollars ($4.5 million), together with any amount remaining after the payments made pursuant to subparagraphs (b) and (c) below and paragraphs 7 and 8 of this Section, to the Trustees to establish the Trust Fund as specified in the Trust Agreement. The Trust Fund shall be used in the first instance by the Performing Parties Group to meet its obligations in accordance with Section VIII, supra, and the contingent obligation in paragraph X(3), infra.

(b) Three Million Two Hundred Thousand dollars ($3.2 million) less such amounts as the Settling Owner Defendants have not paid in cash but by pledge as described above in paragraph 2.a. to the Trustees to establish the Escrow Fund as specified in

the Trust Agreement. Upon termination of the Escrow Fund upon termination and satisfaction of this Consent Judgment, the monies then in such Fund shall be used to reimburse the State in part for its prior removal costs.

(c) Five Hundred Eighty-Three Thousand Three Hundred Thirty-three dollars ($583,333) to the Trustees to establish the Generators' Over-Run Fund as specified in the Trust Agreement.

7. The Disbursing Agent, upon receipt of the amounts described in paragraphs 1 and 2 of this Section IX shall also pay promptly after closing $175,000 to the EPA to reimburse it for its oversight costs and $124,000 to the Federal Trustees as provided by Section X hereof.

8. The Disbursing Agent, upon receipt of the amounts described in paragraphs 1 and 2 of this Section IX, shall pay promptly after closing any unpaid amount properly owed to Roux for the performance of the RI/FS after the payments made to Roux as described in sub-paragraph 8.a, infra, have been made.

a. Prior to Closing, the RI/FS Escrow Agent shall pay to Roux all monies in his possession to satisfy, to the greatest extent possible, in whole or in part, any outstanding obligation properly payable to Roux.

9. While it is anticipated that the Trust Fund will have sufficient funds to permit the Performing Parties Group to meet its obligations under Section VIII, supra, and paragraph X(3), infra, the State, the Settling Owner Defendants and the Non-De

Minimis Defendants have agreed to the following concerning any Over-run.

a. For each of the first Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three dollars ($583,333) expended because of an Over-run, the State shall pay twenty percent (20%), the Non-De Minimis Defendants fifty percent (50%) and the Settling Owner Defendants not released under paragraph XXII(3) thirty percent (30%).

b. For each of the next Five Hundred Eighty-three Thousand Three Hundred Thirty-Three dollars ($583,333) expended because of an Over-run (i.e., dollars $583,334 through $1,166,666) the State shall pay thirty percent (30%), the Non-De Minimis Defendants shall pay thirty percent (30%) and the Settling Owner Defendants not released under paragraph XXII(3) shall pay forty percent (40%).

c. For each of the next Five Hundred Eighty-three Thousand Three Hundred Thirty-three dollars ($583,333) expended because of an Over-run (i.e., dollars $1,166,667 through $1,750,000) the State shall pay fifty percent (50%), the Non-De Minimis Defendants shall pay twenty percent (20%) and the Settling Owner Defendants not released under paragraph XXII(3) shall pay thirty percent (30%).

d. For each dollar expended because of an Over-run after the expenditure of One Million Seven Hundred Fifty Thousand dollars ($1.75 million) and before the sixth anniversary of the Operations Commencement Date, the State, the Non-De Minimis

Generators and the Settling Owner Defendants not released under paragraph XXII(3) shall each pay one-third (1/3).

e. The dollars set forth above in subparagraphs a. through d. of this paragraph are expressed in 1991 dollars. The actual dollars to be expended to meet the obligations imposed by such paragraphs shall be adjusted in accordance with the CPI Adjustment Factor.

f. The sums in the Generators' Over-run Fund may be used by the Non-De Minimis Defendants to meet some or all of their obligations under this paragraph.

10. The State shall meet its obligations as set forth above in paragraphs 9.a through 9.d as follows:

a. The State's obligations under paragraphs 9.a through 9.d above, initially shall be satisfied by using interest earned by the Escrow Fund.

b. In the event that all interest earned by the Escrow Fund is expended pursuant to sub-paragraph 10.a above, the Settling Owner Defendants not released under paragraph XXII(3) shall advance, on behalf of the State, a sum not to exceed the additional interest which would have been earned by the Escrow Fund had the Settling Owner Defendants at Closing paid the Three Million Eighty Thousand dollars ($3,080,000) described in paragraph 2 above instead of the lesser amount, if any, such Settling Owner Defendants actually did pay as permitted under paragraph 2.a of this Section. Such Settling Owner Defendants' obligation under this paragraph 10.a shall be limited to the

lesser of (a) the difference between the State's interest earned on the Escrow Fund and the amounts necessary for the State to meet its obligations under paragraphs 9.a through 9.d of this Section or (b) an amount equal to the additional interest which would have been earned had the full Three Million Eighty Thousand ($3,080,000) been paid.

c. If the State remains obligated to make payments under paragraphs 9.a through 9.d above after it has expended all monies available to it under subparagraphs (a) and (b), of this paragraph 10, it shall use for such purposes, one-half (1/2) of the total sums recovered in excess of Three Hundred Fifty Thousand dollars ($350,000) from Recalcitrant Generators.

d. If the State remains obligated to make payments under paragraphs 9.a through 9.d, after it has expended all monies available to it under subparagraphs 10.a through 10.c, supra, monies in the Escrow Fund, other than interest, shall be used for such purpose.

## X. NATURAL RESOURCES DAMAGES CLAIMS

1. The Performing Parties Group ("Group") shall perform a Site restoration project along the western and southern shores of the Site, at locations described in Appendix G. As part of such project, the Group shall prepare the described locations for planting, and plant juvenile plugs of species of vegetation, such as Spartina alternifora, Spartina patens and/or Distichlis spicata, as appropriate, in the locations shown on Appendix G. The planting shall be performed in the first

appropriate season of the year after the State and the Federal Trustees (collectively, the "Natural Resources Trustees"), after consultation with the Group, determine that based on Site inspections and sampling carried out under paragraph IX(6) of the ROD, discharges to the shoreline and mud flats adjacent to the Site have been sufficiently abated by the remedial program to ensure that the mud flats and shoreline are in satisfactory condition to allow for the success of such planting. The number and location of plantings shall be limited to those portions of the areas described in Appendix G which, as determined by the Natural Resources Trustees, are of a tidal elevation and soil type that is conducive to survival and reproduction of such plant species. The Group shall not be required to alter the elevation of the mud flats by dredging, depositing fill material or other similar means. The Group will, however, be required to use proper planting techniques, including but not limited to, raking and grading. Continued planting after the initial planting shall be done at such other times as may be necessary to successfully establish such planting; provided however, the Group shall not be required to perform such continued planting after five (5) years from the initial planting or if the cost of continued planting exceeds $25,000, whichever first occurs. The initial planting and any necessary continued planting shall be of sufficient quantity and quality as to ensure that the planted areas will be self-maintainable and can support marine life indigenous to Hempstead Harbor and Motts Cove marsh areas similar to those

created by this restoration project, as determined by the State and the United States, on behalf of the Federal Trustees. In the event that planting has not occurred prior to the relieving of the Group under paragraphs VIII(4) and (5) of this Consent Judgment, the Group shall place into an escrow account the amount of $50,000, if no planting has occurred. If the initial planting has been completed, the amount of $25,000, less any amount already expended by the Group for continued planting, shall be placed in an escrow account to be solely used by the State and the Federal Trustees for planting. Any amounts in the escrow account which are not expended upon the expiration of five years from the initial planting shall revert to the Group.

2. In order to maximize the effectiveness and accuracy of the above referenced determination by the Natural Resources Trustees that discharges from the Site have been sufficiently abated by the remedial program and that the mud flats are in satisfactory condition to allow for successful planting, the Natural Resources Trustees shall participate in the development and implementation of the monitoring program called for under paragraph IX(6) of the ROD. At a minimum, monitoring shall include the collection of necessary biological data and may incorporate to an appropriate extent, results from ongoing Federal and State regional monitoring programs.

3. If during the course or at the conclusion of the remediation, and subject to the provisions of paragraph VIII(4), of this Consent Judgment as to the Group, and paragraph VIII(5)

of this Consent Judgment as to the State, it is determined by the EPA and DEC, after consultation with the Natural Resources Trustees, that the entire Site bulkhead shown on Appendix G, or any part of the bulkhead, continues to be a source for the release of hazardous substances which were the subject of the ROD, such that the performance standards of the ROD are not being met, the appropriate party(ies), in accordance with paragraphs VIII(4) and (5) of this Consent Judgment, shall take all actions necessary to ensure to the satisfaction of EPA and DEC, after consultations with the Federal Trustees, that the bulkhead no longer serves as a source for the release of hazardous substances which were the subject of the ROD. Such actions may include, but are not limited to, renovation of the bulkhead, replacement of the bulkhead, or removal of the bulkhead along with shoreline reconstruction which preserves and/or enhances the biological and physical integrity of the shoreline and mud flats.

4. Settling Generator Defendants and Settling Owner Defendants ("Settling Defendants") shall pay the United States, on behalf of the Federal Trustees, immediately upon the entry of this Consent Judgment, the sum of $60,000, as natural resources damages, for use by the Federal Trustees for the design and implementation of a post-planting monitoring program to determine the functional success of the wetlands restoration referenced in paragraph 1 above. The Federal Trustees will consult with the State Trustee with respect to the monitoring program.

DAA's share $60,000

5. Settling Defendants shall pay to the United States, on behalf of the Federal Trustees, in accordance with the Pre-Closing Order upon the entry of this Consent Judgment, the sum of $50,000, for the past injury to, destruction of and loss of natural resources, to be used by the Federal Trustees in accordance with the requirements of section 107(f) of CERCLA/SARA, 42 U.S.C. § 9607(f) to restore, replace or acquire the equivalent of the affected natural resources. The Federal Trustees will consult with the State Trustee with respect to the Federal Trustees' restoration, replacement or acquisition efforts which shall occur in New York State.

6. Settling Defendants shall pay the sum of $14,000 to the United States, on behalf of the Federal Trustees upon the entry of this Consent Judgment, in accordance with the Pre-Closing Order, for past natural resource damage assessment costs incurred by the Federal Trustees in connection with the Site and for the future costs of oversight and participation with respect to the remedy at the Site, and for oversight of the post-planting monitoring program at the Site.

7. In consideration for the payments to be made and the obligations assumed by the De Minimis Defendants listed on Appendix V under paragraphs 4, 5 and 6 above, the United States, on behalf of each Federal Trustee, covenants not to take any other civil or administrative action against any De Minimis Defendants listed on Appendix V with respect to Natural Resource Damage Matters as defined in paragraph 9 below, and fully

discharge and release all De Minimis Defendants listed on Appendix V from all claims involving Natural Resource Damage Matters as defined in paragraph 9 below. These covenants not to sue shall take effect upon receipt by the United States of all the payments required in paragraphs 4, 5 and 6 above. These covenants not to sue are conditioned upon the complete and satisfactory performances by De Minimis Defendants of their obligations under this Consent Judgment. These covenants not to sue extend only to the De Minimis Defendants and their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees and agents and do not extend to any De Minimis Defendant which has not paid its allocated share of the amounts to be paid in paragraphs 4, 5 and 6 above or to any other person.

8. In consideration of the payments to be made and the obligations assumed by the Non-De Minimis Defendants (listed on Appendix W) and the Settling Owner Defendants (specified in Appendices X and Y) under paragraphs 1, 3, 4, 5 and 6 above, the United States, on behalf of each Federal Trustee, covenants not to sue or take any civil or administrative action against the Non-De Minimis Defendants listed on Appendix W and the Settling Owner Defendants (specified in Appendices X and Y) and their present and former parents and subsidiaries, officials, officers, directors, shareholders, agents and employees relating to Natural Resource Damage Matters as defined in paragraph 9 below, based on available documentation known to either of the Federal Trustees

on the date of publication of this Consent Judgment in the Federal Register, as set forth in the Pre-Closing Order. These releases and covenants not to sue do not extend to Recalcitrant Generators, Recalcitrant Owners, any other party or person not participating in this Consent Judgment, and any party or person who has committed to participation in this Consent Judgment but has failed to make timely payment hereunder and in accordance with the Pre-Closing Order. The Federal Trustees explicitly acknowledge that on the date of publication of this Consent Judgment, the following documents relating to conditions at or near the site were available:

a. ROD

b. RI/FS

c. 1986 Nassau County Department of Health Report of Assessment of Water Quality in Hempstead Harbor.

d. September 6, 1990 letter from State of New York to Judge Jack B. Weinstein regarding Natural Resources damages.

9. Natural Resource Damage Matters means any civil judicial or administrative liability of Settling Defendants to the United States for damages for injury to, destruction of, or loss of natural resources, under the jurisdiction of the Federal Trustees, at the Site, including costs of assessment, under Section 107(a)(4)(C) of CERCLA/SARA, 42 U.S.C. § 9607(a)(4)(C),

resulting from releases of Hazardous Substances at the site, which Hazardous Substances are addressed by the ROD.

10. Notwithstanding any other provision of this Consent Judgment, the United States, on behalf of the Federal Trustees reserves the right to institute proceedings against Non-De Minimis Defendants and Settling Owner Defendants, in this action or in a new action seeking recovery of natural resource damages, including the cost of assessment, based on (1) conditions with respect to the Site, unknown to the United States at the date of publication of this Consent Judgment, that result in releases of hazardous substances that contribute to an injury to, destruction of, or loss of natural resources, or (2) information received after the date of publication of the Consent Judgment which, together with any other relevant information, indicates that there is injury to, destruction of, or loss of natural resources at the Site of a type that was unknown to the United States at the date of publication of this Consent Judgment.

11. The covenants not to sue set forth in paragraphs 7 and 8 above do not apply to matters other than those expressly specified as Natural Resource Damages Matters. The United States reserves all rights against the Settling Defendants with respect to all other matters. In addition, the following are specifically identified as matters that are not Natural Resource Damages Matters:

a. claims asserted against the De Minimis Defendants based on any alleged failure by them to satisfy the De Minimis Defendant obligations authorized in the Consent Judgment.

b. claims asserted against the Non-De Minimis Defendants and Settling Owner Defendants based on any alleged failure by the Non-De Minimis Defendants and the Settling Owner Defendants to satisfy a requirement of the Consent Judgment;

c. claims for criminal liability;

d. claims asserted against the Non-De Minimis Defendants and Settling Owner Defendants based on any alleged liability of the Non-De Minimis Defendants and Settling Owner Defendants, arising from the past, present or future disposal of hazardous substances attributable to performance of the ROD and disposed outside of the Site or future disposal of Hazardous Substances not in accordance with the implementation of the ROD in a lawful manner; and

e. claims based on liability of the Settling Defendants which arise from the releases of hazardous substances, pollutants or contaminants to the environment which are unrelated to those which are the subject of this Consent Judgment.

**Payment Terms**

12. Any payments made pursuant to this Consent Judgment shall be made by wire transfer payable to:

Department of Justice

to be made in accordance with the instructions to be provided by the Financial Litigation Unit of the Office of the United States Attorney for the Eastern District of New York.

13. Settling Defendants shall cause copies of the confirmation transfer and of any transmittal letter accompanying it to be sent to : Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; Deputy Bureau Chief, Environmental Protection Bureau, Office of the Attorney General, 120 Broadway, 26th Floor, New York, NY 10271, Chief Environmental Attorney, Office of the United States Attorney, Eastern District of New York, 1 Pierrepont Plaza, 11th Floor, Brooklyn, New York 11201; Regional Attorney, NOAA Office of General Counsel, One Blackburn Drive - Suite 205, Gloucester, MA 01930; Regional Solicitor, U.S. Department of the Interior, Northeast Region, One Gateway Center - Suite 612, Newton Corner, MA 02158.

**Miscellaneous**

14. Nothing in this Consent Judgment shall be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

15. Commencing upon the date of lodging of this Consent Judgment, the Settling Defendants agree to provide the United States and its representatives, including EPA, the Federal Trustees, and their contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Judgment to the extent

access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Judgment including, but not limited to:

a. Monitoring;

b. Verifying any data or information submitted to the United States;

c. conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, and

g. Assessing Settling Defendants' compliance with this Consent Judgment.

A. Notwithstanding any provision of this Consent Judgment, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

## XI. CONSISTENCY WITH THE LAWS OF THE STATE OF NEW YORK AND FEDERAL LAW

The obligations of the parties under this Consent Judgment are consistent with the laws of the State of New York and the United States. The parties hereto agree that, in any civil, judicial, or administrative proceeding instituted by any person

or entity against any such parties arising from activities at the Site, they will acknowledge the appropriateness of the ROD and that the activities described in the ROD are consistent with the National Contingency Plan.

## XII. REVIEW AND APPROVAL PROCEDURE

Whenever implementation of the ROD calls for the development or submittal of plans to the State or if either the Performing Parties Group or the State pursuant to this Consent Judgment proposes modification or alteration to any plan to be developed and implemented pursuant to this Consent Judgment, such plans shall first be reviewed by the designated recipients of the parties hereto, as appropriate, and according to the following procedure:

1. A copy of each proposed plan or modification to a plan shall be mailed to:

a. United States Environmental Protection Agency
Region II
Office of Regional Counsel
New York/Caribbean Superfund Branch
26 Federal Plaza - Room 437
New York, New York 10278
AES Site Attorney

b. United States Environmental Protection Agency
Region II
Emergency and Remedial Response Division
New York/Caribbean Superfund Branch
26 Federal Plaza
New York, New York 10278
Attn: AES Site Project Manager

c. New York State Department of Law
Gordon J. Johnson, Esq.
Deputy Bureau Chief
Environmental Protection Bureau
120 Broadway
New York, N.Y. 10271
Re: Shore Realty Remediation

d. Michael J. O'Toole, Jr.
Director, Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
50 Wolf Rd. - Room 212
Albany, N.Y. 12233-7016

e. Anthony Candela
Regional Hazardous Waste Remediation Engineer
New York State Department
of Environmental Conservation
SUNY - Building 40
Stony Brook, New York 11794

f. (Name)
Chair, Technical Committee
Glenwood Landing Performing Parties Group
(Address)

g. (Name)
Chair, Executive Committee
Glenwood Landing Performing Parties Group
(Address)

Any person or agency listed above may designate in writing an alternate person to receive such plan. Informational copies shall also be mailed to:

a. NOAA
Office of General Counsel
One Blackburn Drive
Suite 205
Gloucester, MA 01930

b. Anne Secord
U.S. Fish and Wildlife Service
100 Grange Place
Room 202
Cortland, NY 13045

2. After receiving a proposal for a plan or modification to a plan, the receiving party, shall promptly respond to said proposal as soon as practicable and normally within 30 days. If that party considers the proposal acceptable, it shall mail written notice of approval within 30 days after receipt of the proposal. The plan shall become effective on the date the approval is received by the proposing party from each of the other representatives listed above and shall thereafter be implemented by the Performing Parties Group. Failure to respond within thirty (30) days shall be deemed an acceptance of the plan or modification.

3. If the receiving party, does not consider the proposal acceptable, it shall mail a written notification of disapproval within 30 days after receipt of the proposal which shall include its particular objections and may include suggested modifications. If each of the representatives listed above cannot thereafter agree on the proposed plan within a reasonable time of the date of mailing of such notice of disapproval, then the proponent of the proposal may petition this Court for a resolution of the dispute pursuant Section XXXIII.

4. Periods of review specified herein shall not be binding upon any non-signatory receiving party to this Consent Judgment but shall be those periods pursuant to a Superfund Memorandum of Agreement between such receiving parties, if any.

## XIII. PROPERTY ACCESS

1. To the extent that the work to install and construct the remedial plan under the ROD will take place off site and to accomplish the actions required under Section X hereof, the State will assist, consistent with its legal authority, the Performing Parties Group and the Federal Trustees in obtaining access to the off-site property. To the extent that access to any off-site property requires the payment of a fee to the owner or tenant of the offsite property, the State, the Federal Trustees and the Performing Parties Group shall confer in an effort to avoid or minimize such fee.

2. The Receiver shall provide access to the Site and its environs and all structures and facilities erected thereon, as necessary, to fulfill the remedial goals, programs and plan described herein.

3. The State and the Federal Trustees shall have access to the Site and its environs at all times in order to observe and monitor the progress of the work, to take samples and to conduct surveys or investigations relating to any air, soil and groundwater at, beneath, or near the Site.

4. Nothing herein limits or otherwise affects any right of entry to the Site by the State or the Federal Trustees or the EPA pursuant to applicable laws, regulations, or permits.

XIV. [INTENTIONALLY OMITTED]

XV. REPORTS AND DATA

1. The Performing Parties Group shall provide the State, the EPA, the Federal Trustees and the U.S. Attorney's office with a quarterly report (on the calendar quarter) and an annual report detailing the implementation and operation of the Remedy prescribed in the ROD. Such reports shall continue until the Consent Judgment has been satisfied in accordance with Section XXXII infra.

2. The Performing Parties Group shall provide all validated data generated under this Consent Judgment to the State within a reasonable time, normally within 15 days, after the Performing Parties Group or its consultant(s) obtain such data, unless the State waives in writing its right to all or some of such data and concurrently with the transmission of such data, the Performing Parties Group shall provide notice to the EPA, the Federal Trustees and the U.S. Attorney's office that such data has been provided.

3. The State Project Coordinator, the Federal Trustees and the EPA shall have access to technical data generated under this Consent Judgment, whether or not validated.

XVI. AUTHORIZATIONS

1. The Performing Parties Group shall use its best efforts, and the State shall cooperate, consistent with its legal authority, to allow the Performing Parties Group or its Contractors to obtain on a timely basis such easements, rights of

way, rights of entry, approvals, or other authorizations required to be obtained from any federal, State, or local government entity, or any corporation, partnership, association, or private person which are necessary to carry out any of the Performing Parties Group's obligations pursuant to this Consent Judgment. The Performing Parties Group shall promptly notify the State, the Federal Trustees and the EPA in the event of the Performing Parties Group's inability to obtain appropriate authorizations on a timely basis.

2. In the event that the Performing Parties Group is unable to obtain the authorizations required to perform its obligations under this Consent Judgment, the State shall, consistent with its legal authority, assist in obtaining, as appropriate, all such authorizations which the Performing Parties Group is unable to obtain. If, despite the Performing Parties Group's best efforts, it does not obtain the aforementioned authorizations on a timely basis, the time for performance of any obligations pursuant to this Consent Judgment which is necessarily dependent upon such authorizations shall be extended as appropriate. If, despite the Performing Parties Group's best efforts, such authorizations cannot be obtained despite an enlargement of time, the parties will meet to seek agreement as to how this Consent Judgment and its schedules can be modified or altered consistent with the remedial goals of the ROD. If agreement cannot be reached, it will be resolved pursuant to the Dispute Resolution provisions of Section XXXIII.

## XVII. DELAY OF PERFORMANCE

1. "Force Majeure" for the purpose of this Consent Judgment is defined as an event arising from causes entirely beyond the control of the Performing Parties Group which cannot be overcome by the Group's diligence and which (1) delays any performance required under this Consent Judgment or (2) makes substantial performance of the obligations imposed by this Consent Judgment legally impossible.

2. If a delay occurs or the Performing Parties Group anticipates a delay in performance of its obligations under this Consent Judgment due to a "force majeure" event, it shall promptly notify the State (and the Federal Trustees with respect to performance under Section X), in writing, of the nature, cause and anticipated length of the delay and all steps which the Performing Parties Group has taken or will take, with a schedule for implementation, to avoid or minimize the delay. If the State (or the Federal Trustees, if appropriate) agrees that the delay was attributable to a "force majeure" event, the parties may stipulate to a reasonable extension. If they do not agree that the delay was caused by a "force majeure" event, or if regardless of the cause of the delay, they are unable to agree on a stipulated extension of time to be granted, the State (or the Federal Trustees, if appropriate) shall so notify the Performing Parties Group in writing. In that event, the Performing Parties Group may petition the court for relief pursuant to Section

XXXIII infra. The burden of demonstrating the occurrence of a "force majeure" event will be on the Performing Parties Group.

3. The granting or agreement to a "force majeure" delay of a requirement or obligation under this Consent Judgment does not ipso facto relieve the Performing Parties Group of any other obligations or requirements under this Consent Judgment.

## XVIII. RETENTION OF RECORDS

Until completion of its obligations under Section VIII of this Consent Judgment and satisfaction of this Consent Judgment, the Performing Parties Group shall preserve, and shall instruct all Contractors and anyone else acting at the Site on its behalf to preserve (in the form of originals or exact copies), all sampling and analytical data and related reports; as-built drawings; engineering specifications and contract documents and operation and maintenance records and logs relating to the implementation, performance and monitoring of the remedial program, including, but not limited to, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing and correspondence. Throughout the implementation of this Consent Judgment, the aforementioned documents shall be available to the State, EPA and the Federal Trustees. Upon the completion of the remedial program, all such records, documents, and information shall be made available to the State Project Coordinator, as established by Section XIX herein, the EPA and the Federal Trustees. If the State Project Coordinator, and the Federal Trustees decline to take possession of any such document

within a reasonable time, the Performing Parties Group may (but is not required to) dispose of such records upon ninety (90) days written notice to all participants in the Performing Parties Group and to the State, EPA and the Federal Trustees. As such documents may be relevant to subsequent site reviews pursuant to CERCLA/SARA § 121(c) and necessary for EPA to determine whether to initiate deletion of the Site from the National Priorities List, EPA's failure to take possession of such documents does not constitute a waiver of EPA's rights to such documents or an acknowledgment by EPA that such disposal is proper. Settling Defendants shall also make available to EPA and the Federal Trustees, for purposes of investigation, information gathering or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the remedial action.

## XIX. PROJECT COORDINATOR

1. By Closing, the State, the Federal Trustees and the Performing Parties Group shall each designate Project Coordinators to monitor the progress of the work in developing, implementing, operating, maintaining and, if appropriate, terminating the remedial program and to coordinate communication. The State Project Coordinator shall have the authority to ensure that all aspects of the ROD are performed in accordance with all applicable statutes, regulations, and this Consent Judgment. The State Project Coordinator shall also have the authority to require a cessation of the performance of the remedial program or

any other activity at the Site that, in the Coordinator's opinion, may present or contribute to an endangerment to public health, welfare or the environment or cause or threaten to cause the release of hazardous substances from the Site. In the event the State Coordinator suspends the remedial program or any other activity at the Site, the State, the Federal Trustees and the Performing Parties Group may stipulate to an extension of the schedule as appropriate. In the event the State, the Federal Trustees and the Performing Parties Group cannot agree, the matter is to be resolved in accordance with Section XXXIII.

2. The Project Coordinators do not have the authority to modify in any way the terms of this Consent Judgment, including the ROD or any design or construction plans. The absence of the State Project Coordinator from the Site shall not be cause for stoppage of the work. The State, the Federal Trustees and the Performing Parties Group have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven calendar days prior to the change.

3. The Performing Parties Group's Project Coordinator may assign other representatives, including other Contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

4. The State Project Coordinator and the Federal Trustees Project Coordinator may assign other representatives, including other State or federal employees or contractors, to serve as a

Site representative for oversight of performance of daily operations.

## XX. ENFORCEMENT OF CONSENT JUDGMENT

If any of the parties to this Consent Judgment considers that any other party has failed to comply with the terms and conditions hereof, the party alleging noncompliance may seek appropriate relief from the Court pursuant to Section XXXIII infra.

## XXI. RECEIVER

1. To hold the Site during implementation of the ROD and to sell the Site at an appropriate time, G.S. Peter Bergen, Esq. is appointed as receiver who, as Receiver:

a. Shall have the complete power and authority of the sole shareholder, director and officer of the Shore Realty Corp., and as such shall assume sole ownership, title, and possession of all of the Shore Realty Corp.'s shares of stock, together with all of its minute books, records, books of account, and as such shall control all of the real property and personal property of Shore Realty Corp. with the power to transfer, grant, sell, convey and encumber such real property, subject to the approval of the Court after prior notice to the State, the Federal Trustees and the Performing Parties Group and the provisions of this Consent Judgment.

b. Shall maintain the Shore Realty Corp. in good standing as a New York Business Corporation until such time as

the Site is sold or is otherwise disposed of, and thereafter shall wind up said corporation's affairs and dissolve it.

c. Shall pay disbursements, fees, franchise taxes, other taxes and related costs necessary and appropriate for maintaining and dissolving Shore Realty Corp., and for selling the Site as provided above, except that real estate taxes and penalties related thereto and judgments, if any, levied in the past, present, or future on the Site may, at the discretion of the Receiver, remain and accrue as liens on the Site property. The Receiver may negotiate with the appropriate taxing authorities as to past, present and future real estate taxes, penalties and judgment liens on the Site, and may, but shall not be obligated to, pay such real estate taxes, penalties, judgment liens, assessed on the Site at present or in the future as he and the Performing Parties Group may jointly find to be appropriate from time to time, consistent with the purpose of the Consent Judgment.

d. Shall be a person rendering care, assistance, or advice in accordance with the NCP, within the meaning of CERCLA/SARA Section 107(d), 42 U.S.C. § 9607(d).

e. Shall be indemnified and held harmless by the Non-De Minimis Defendants and Owner Defendants not released by paragraph XXII(3) from all claims whatsoever and however arising, including attorneys fees, reasonable expenses and costs related thereto, including without limitation claims for costs and

damages under CERCLA/SARA and comparable provisions of state law and common law, as a result of service as Receiver.

f. Shall be authorized to retain counsel, but shall not commence any action without leave of Court.

2. Twenty-five days before the Closing, Owner Defendant Donald LeoGrande as President and Shareholder of Shore Realty Corp., shall turn over complete control of Shore Realty Corp., including surrendering possession of all of its properly transferred shares of stock, by-laws, minutes, accounts, bank accounts, records, files, and executed resignation forms for all the Shore Realty Corp.'s officers and directors, together with all of the real and personal property of Shore Realty Corp., to the Receiver. All outstanding corporate franchise taxes accrued prior to the Closing shall have been paid by Shore Realty Corp., and Shore Realty Corp. shall give evidence of its continued corporate existence in good standing to the Receiver in a form satisfactory to said Receiver. Donald LeoGrande shall cooperate with the Receiver and the parties hereto to carry out the provisions of this Section, and such duty to cooperate, including execution of deeds, affidavits, or other appropriate documents needed to assist the Receiver in the performance of his or her duties, shall survive the Closing and shall continue until the Receiver is discharged by the Court.

3. Each of the Shore Realty Owners specified in Appendix X, and their officers, directors, heirs, successors and assigns, hereby jointly and severally indemnifies and holds harmless the

Receiver, the Performing Parties Group, and the Trustees from any and all liabilities and claims of any nature whatsoever, including attorneys fees and costs, attributable to or arising out of any and all actions of Shore Realty Corp. taken prior to the time that control of Shore Realty Corp. is turned over to the Receiver pursuant to paragraph 2, even though such liabilities or claims may become known or be asserted thereafter, other than: (1) liabilities, obligations, or claims discharged pursuant to paragraph XXII(3); (2) claims or liens for unpaid real estate taxes (including interest and penalties thereon) on the Site; and (3) a judgment lien in the amount of $10,000 and interest thereon entered against Shore Realty Corp. by the County of Nassau on November 11, 1986 in the matter having Index No. 25385/85 (Nassau County). This indemnity shall survive the Closing.

4. The Receiver is appointed pursuant to the Court's pendant jurisdiction under CPLR Article 64. The receivership shall continue until further order of the Court. The Receiver's oath and undertaking are waived.

5. The Receiver shall report and account to the Court, on notice to those named in Section XXIX, not less than annually, and more frequently as appropriate.

6. The Receiver shall be entitled to reimbursement from the Trust Fund for appropriate expenses, disbursements and costs, including those related to maintenance of Shore Realty Corp., franchise taxes, real estate taxes, other taxes, counsel fees, insurance premiums and related out-of-pocket costs, in an amount

not to exceed $2,500 per year unless authorized by further order of the Court.

XXII. RELEASES AND COVENANTS NOT TO SUE BY THE STATE

1. For the purpose of the following releases and covenants not to sue in this Section XXII and for the purpose of Section XXIII relating to contribution protection, the term "Settling Defendants" shall mean the Settling Generator Defendants and Settling Owner Defendants. For the purpose of the following releases and covenants not to sue, the term "State" shall include all of its departments, agencies, officers, administrators and their representatives.

2. State and Non-De Minimis Defendants and Certain Settling Owner Defendants. In consideration of the actions that will be taken and the payments that will be made under the terms of this Consent Judgment by the Non-De Minimis Defendants and those Settling Owner Defendants identified in Appendix Y ("Participating Settling Owners"), the State hereby releases from liability and covenants not to sue such Non-De Minimis Defendants and Participating Settling Owners and their present and former parents and subsidiaries, officials, officers, directors, agents, employees and shareholders for Covered Matters. With respect to all such liability, these releases and covenants not to sue shall be effective as of the date of entry of this Consent Judgment. These releases and covenants not to sue are conditioned upon complete and satisfactory performance by the Non-De Minimis Defendants and the Participating Settling Owners of their

obligations under this Consent Judgment. The Non-De Minimis Defendants and the Participating Settling Owners shall be released absolutely by the State from all past and future costs and damages upon satisfaction of the ROD requirements or, if that has not occurred, upon the later of six (6) years from the Operations Commencement Date or the expenditure of the $1.75 million, adjusted by the CPI Adjustment Factor, above the amounts initially contributed to the Trust Fund described in Section IX, subject only to a reopener in accordance with CERCLA/SARA Section 122(f)(b)(A), 42 U.S.C. § 9622(f)(b)(A) allowing the State the right to sue concerning liability arising out of pre-existing conditions at the Site related to past on-site activities which are unknown to the State as of the date of entry of this Consent Judgment and discovered after entry of this Consent Judgment.

3. State and Settling Owner Defendants. The Settling Owner Defendants other than the Participating Settling Owners, and all of their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees, and agents, conditioned upon satisfaction of all obligations imposed upon them set forth in Appendix X and otherwise imposed by this Consent Judgment, are and shall be fully discharged and absolutely and unconditionally released by the State, effective as of the date of entry of this Consent Judgment, from any claim or civil liability which arises out of or relates to, or may in the future arise out of or relate to, any release or threat of release of hazardous substances from the Site whether or not

addressed by the ROD and the implementation of the remedial program and whether or not known to the State at the time of the execution of this Consent Judgment.

(a) The Shore Realty Owners, as defined in Appendix X, are and shall be fully discharged and released from all liability or obligations set forth in the Stipulation and Order by and between the Attorneys for the State of New York and the Attorneys for the Shore Realty Corp. and Donald LeoGrande dated July 31, 1987 in an action pending in the United States District Court for the Eastern District of New York entitled State of New York v. Shore Realty, et al., Index No. 84 Civ. 0864 (HB). Payment of the monies and transfer of the property shall be in lieu of any obligations which may have been agreed upon, including payment of contempt fines pursuant to said Stipulation.

4. State and De Minimis Defendants. The State has agreed to a De Minimis settlement as provided for in Section 122(g) of CERCLA/SARA, pursuant to which the De Minimis Defendants, including their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees and agents are being fully released from this matter upon their payment of specified sums pursuant to Section IX in such proportions as they and the Non-De Minimis Defendants have agreed among themselves. By this Consent Judgment, the State fully and completely releases all De Minimis Defendants and their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees and agents from any civil

liability arising in any way from the Site or the remediation of the Site.

5. The United States and Settling Defendants. The EPA has entered into administrative settlement agreements with certain De Minimis and Non-De Minimis Defendants and Settling Owner Defendants pursuant to Sections 122(g)(4) and 122(h)(1) of CERCLA/SARA, 42 U.S.C. §§ 9622(g)(4) and 9622(h)(1), which are attached hereto as Exhibit 1 and Exhibit 2, respectively.

6. Release Inter Se. The Settling Defendants hereby release and covenant not to sue each other or each other's present and former parents and subsidiaries, officials, officers, directors, shareholders, employees or agents, except as expressly provided in this Consent Judgment, with respect to any past, present or future civil claim, counterclaim, or cross claim concerning any costs, expenses, liabilities or damages of any nature or description, past, present or future, arising out of or relating to the past, present or future release or threat of release, disposal, or the presence on the Site of, hazardous substances addressed by the ROD. The following claims are excluded from the release inter se:

(a) Claims based on liability of the Non-De Minimis Defendants and Participating Owner Defendants arising from the disposal of waste materials attributable to performance of the ROD and disposed outside of the Site or future disposal of waste materials not in accordance with the implementation of the ROD in a lawful manner; and

(b) Claims based on liability of the Non-De Minimis Defendants and Participating Settling Owners based on any obligations at law or in equity which arise from releases of hazardous substances, pollutants or contaminants to the environment which are unrelated to those which are the subject of this Consent Judgment, unless such releases are identified and made subject to this Consent Judgment by a modification hereof.

7. Settling Defendants hereby release and covenant not to sue or assert any claims or causes of action against the State or the United States with respect to the Site or this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, any other provisions of law, any claim against the State or the United States under Section 107 or 113 of CERCLA/SARA, 42 U.S.C. §§ 9607 or 9613, related to the Site, or any claims arising out of response activities at the Site. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR § 300.700(d).

8. Covered Matters. Covered Matters shall include any and all claims, express or implied, for civil liability to the State of New York arising under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) and under Section 7003 of RCRA, 42

U.S.C. § 6973, and under any other federal or state law, including the common law, for costs, expenses, liabilities or damages of any nature or description, past, present or future, including natural resources damages, arising out of or relating to the past, present or future release or threat of release, or the presence on the Site of hazardous substances. The following claims are not Covered Matters:

(a) Claims based on liability of the Non-De Minimis Defendants and Participating Owner Defendants arising from the disposal of waste materials attributable to performance of the ROD and disposed outside of the Site or future disposal of waste materials not in accordance with the implementation of the ROD in a lawful manner; and

(b) Claims based on liability of the Non-De Minimis Defendants and Participating Settling Owners based on any obligations at law or in equity which arise from releases of hazardous substances, pollutants or contaminants to the environment which are unrelated to those which are the subject of this Consent Judgment, unless such releases are identified and made subject to this Consent Judgment by a modification hereof.

## XXIII. CONTRIBUTION PROTECTION

1. Each of the Settling Defendants shall be deemed to have resolved its liability to the State of New York for Covered Matters as defined in paragraph XXII(8) and to the United States, upon behalf of the Federal Trustees, for Natural Resources Damage Matter, as defined in Section X, supra. With regard to claims

for contribution for matters addressed in this Consent Judgment, the parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions as is provided by CERCLA/SARA Section 113(f), 42 U.S.C. § 9613(f).

2. Settling Defendants expressly retain and reserve the right to assert claims against other Settling Defendants with respect to any agreements relating to the performance of their obligations under this Consent Judgment.

3. Nothing in this Consent Judgment shall be construed to create any rights in or grant any cause of action to any person not a party to this Consent Judgment. Except as provided herein, each of the Parties expressly reserves any and all rights (including any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrences relating in any way to the Site against any person not a party hereto.

XXIV. CONTINUING LIABILITY OF NON-SETTLING PARTIES

1. Any parties to this action who do not participate as parties to this Consent Judgment remain potentially liable in accordance with law for all alleged damages and any other requested relief. Such non-settling parties shall be pursued in good faith by the State with assistance from other settling parties pursuant to agreement among them. It is expressly determined that by its participation in this Consent Judgment the State, as against the non-settling parties, has not waived or compromised in any respect any lawful damage claim which it may

have against any non-settling party, including but not limited to interest on the amount of its removal costs previously incurred, oversight costs, and natural resources damages.

2. As to the proceeds which the State may realize from pursuit of its claims against any Recalcitrant Generator, of the first $350,000 recovered therefrom, one-half shall be paid to the Non-De Minimis Defendants and one-half to the State. Thereafter, of all sums in excess of $350,000 recovered from the Recalcitrant Generators, one-half shall be paid to the Non-De Minimis Defendants and one-half to the State. Settling Owner Defendants not released by paragraph XXII(3) have the exclusive right to seek contribution and to retain the proceeds recovered from any non-settling owner or operator or persons not parties to this action potentially liable under CERCLA/SARA who are potentially liable as a customer of Mattiace Petrochemical's Facility in Glen Cove, New York.

XXV. SALE OF LAND AND DISPOSITION OF PROCEEDS OF SALE OF LAND

1. The Site shall be sold at the conclusion of the remediation, or earlier, at such time as the Receiver shall determine, subject to the approval of the Court on notice to the State and to the Executive Committee.

2. In the event that the Receiver does not, or is unable to, sell the Land within twelve (12) years of the Operations Commencement Date, or such sooner date as the State and the Receiver may agree upon, such event hereafter being "No-Sale," the value of the Land shall be determined by an appraisal to be

made by a competent real estate appraiser agreed upon by the Receiver and the State. In the event of "No Sale", the Receiver shall record a lien on the Land in the amount of such appraisal or $500,000, whichever amount is greater, in favor of Owner Defendants not released by paragraph XXII(3), in order to protect such Owner Defendants' interest, which such lien shall not constitute an indicia of ownership or operation of the Site, and which such lien shall not subject such Owner Defendants to future CERCLA liability as an owner or operator of the Site. In no event shall arranging or soliciting for the sale of the Land constitute participation in the management of the Site, and actions taken by such Owner Defendants or the Receiver in that respect shall not be used as evidence to demonstrate management, ownership or operation of the Site. In the event of "No Sale", the Receiver, subject to Court approval, shall take such measures as are appropriate with respect to disposition of the unsold Land including the possibility of abandonment thereof as provided by Section 1200 of the New York Abandoned Property Law. In the event of "No-Sale", for purposes of paragraph 3 of this Section, the net proceeds of sale of the Land shall be deemed to be $1 (one dollar), and the Land shall be deemed to have been sold by the Receiver who shall be discharged upon completion of the appropriate measures determined above.

3. The net proceeds of the sale of the land shall be remitted by the Receiver to the Trustees and be utilized as follows:

(a) In the event the Settling Owner Defendants not released by paragraph XXII(3) have elected to pledge any amount up to $500,000 of their obligation to fund the Settlement under Section IX, above, in reliance on the anticipated proceeds from the sale of the land, such net proceeds or part thereof, shall be paid as provided below into the Escrow Fund to satisfy that pledge.

(i) If the proceeds remitted to the Trust Fund by the Receiver are insufficient to satisfy the pledge of the Settling Owner Defendants, Settling Owner Defendants not subject to paragraph XXII(3) shall remit payment to the Escrow Fund in an amount necessary to satisfy the insufficiency in the sale proceeds.

(ii) If, after satisfaction of the pledge referred to above, proceeds from the sale of the land remain available, such proceeds shall be utilized in accordance with the following priorities:

(A) First, to the extent available, if the State used any principal from the Escrow Fund to pay its share of the $1.75 million (as adjusted by the CPI Adjustment Factor) remedial cost overruns described in paragraph IX(9), above, a sum shall be credited to the Escrow Fund sufficient to reimburse the State for such expenditures.

(B) Second, to the extent available, if one or more Settling Owner Defendants not released by paragraph XXII(3) was required to pay interest to the State on the amount

pledged to the Escrow Fund on the basis of the anticipated sale of the land in order for the State to pay its share of the $1.75 million (as adjusted by the CPI Adjustment Factor) under paragraph IX(10), above, such Owners shall be reimbursed from the Escrow Fund for such expenditures.

(C) Third, to the extent available, an amount shall be credited to the Escrow Fund equivalent to the interest that would have been earned on the amount pledged to the Escrow Fund on the basis of the anticipated sale of the land had such amount been held in the Escrow Fund for a period no greater than six (6) years from the creation of the Escrow Fund.

(D) Fourth, to the extent available, sale proceeds in excess of those required to meet the obligations of subparagraphs 3(a)(ii)(A) through 3(a)(ii)(C) shall be credited the Trust Fund and may be used for any and all Trust Fund purposes.

(b) To the extent that the Settling Owner Defendants not released by paragraph XXII(3) do not pledge any amount up to $500,000 of their obligation to fund the Settlement under Section IX, above, in reliance on the anticipated proceeds from the sale of the land, but pay cash in lieu thereof, such Settling Owner Defendants shall be entitled to be reimbursed from the proceeds from the sale of the land to the extent of the amount of such cash payment (in a principal amount of up to $500,000) with interest thereon at a rate or rates equivalent to that earned by the Escrow Fund during the same period, to the extent that

proceeds from the sale of the land may be available. If, after such reimbursement plus interest, additional land sale proceeds are available, such surplus shall be (1) credited to the Escrow Fund to repay the State for any use of principal from the Escrow Fund which it was obligated to use to make payments pursuant to paragraph IX(10), and (2) to the extent available, credited to the Trust Fund for any and all Trust Fund purposes.

## XXVI. COSTS AND PAYMENTS

Except as otherwise provided in this Consent Judgment, the parties agree that they will bear their respective costs and disbursements.

## XXVII. MODIFICATION

Subsequent to the release of the De Minimis Defendants or Settling Owner Defendants released by paragraph XXII(3) herein, modification of this Consent Judgment shall require the written consent of each Member in good standing of the Performing Parties Group, the State and the United States, on behalf of the Federal Trustees, provided that the Consent Judgment may not be modified so as to in any way affect a De Minimis Defendant or Settling Owner Defendant released pursuant to paragraph XXII(3) without the written consent of such Defendant. All modifications will be subject to the approval of the Court and will be effective as of the date of such approval.

## XXVIII. ADMISSION OF DATA

In the event that the Court is called upon to resolve a dispute concerning implementation or interpretation of this Consent Judgment, the parties hereto waive any evidentiary objection to the admissibility into evidence of data gathered, generated, handled or evaluated pursuant to and in accordance with this Consent Judgment. Any party may object to a specific item of evidence if the objecting party demonstrates that such item of evidence was not gathered, generated, handled or evaluated in accordance with the sampling and analytical procedures established pursuant to the ROD and such items shall not be considered by the Court unless the Court determines, after demonstration by the party relying on the evidence, that it is of a nature reasonably relied upon by experts within the field.

## XXIX. NOTICE REQUIREMENTS

The original or copy of all communications, other than plans within the meaning of Section XII, between and among the parties hereto shall be sent to at least the following persons or their written designees:

Gordon J. Johnson, Esq.
Deputy Bureau Chief
New York State Department of Law
120 Broadway, 26th Floor
New York, New York 10271

G. S. Peter Bergen, Esq.
LeBoeuf, Lamb, Leiby & MacRae
520 Madison Avenue
New York, New York 10022

Andrew J. Simons, Esq.
Farrell, Fritz, Caemmerer, Cleary,
Barnosky & Armentano, P.C.,
EAB Plaza, West Tower - 14th Floor
Uniondale, New York 11556

Donald W. Stever, Esq.
Sidley & Austin
875 Third Avenue
New York, New York 10022

Deborah B. Zwany, Esq.
United States Attorney
Eastern District of New York
1 Pierrepont Plaza - 11th Floor
Brooklyn, New York 11201

Mark Barash, Esq.
Department of Interior
Regional Solicitor
Northeast Region
One Gateway Center
Suite 612
Newton Corner, MA 02158

Anton Giedt, Esq.
NOAA - Regional Attorney
Office of General Counsel
One Blackburn Drive
Suite 205
Gloucester, MA 01930

After final release and dismissal of the De Minimis and Settling Owner Defendants released pursuant to paragraph XXII(3), notifications as per this Section need no longer be sent to any representative of such De Minimis or Owner Defendants.

## XXX. APPENDICES

Appendices annexed hereto are an integral part of this Consent Judgment and are hereby incorporated by reference as if they were set forth herein verbatim.

## XXXI. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter and the parties hereto under this Consent Judgment for its duration for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate its terms or for any further relief as the interest of justice may require. Nothing in this Consent Judgment shall be deemed to prohibit the continuation or otherwise relieve this Court of jurisdiction over any action or claim by the State, the United States, on behalf of thethe Federal Trustees, and/or the Non-De Minimis or Settling Owner Defendant not released by paragraph XXII(3) herein. Settling Defendants may proceed against any non-settling party in accordance with Section XXIV hereof.

## XXXII. NEW REMEDIATION CRITERIA

In the event that a new standard for a particular chemical constituent is promulgated by the State or federal government which standard may appear to be only "applicable" or "relevant and appropriate" pursuant to Section 121(d)(2)(A) of CERCLA/SARA with respect to the Site and such standard is more stringent than the Remediation Criteria set forth in the ROD, the Remediation Criteria contained in the ROD shall obtain as provided by NCP, 40 CFR § 300.430(f)(1)(ii)(B).

## XXXIII. DISPUTE RESOLUTION

In the event that the Performing Parties Group, the State and the Federal Trustees cannot resolve any dispute arising under

this Consent Judgment or from the implementation or modification of this Consent Judgment, then the interpretation advanced by the State and the Federal Trustees shall be considered binding unless the Performing Parties Group petitions for the resolution of the dispute pursuant to the provisions of this Section.

Any dispute that arises with respect to the meaning or application of this Consent Judgment or any action, plan, schedule or modification under this Consent Judgment, shall in the first instance be the subject of informal negotiations. Such period of informal negotiations shall not extend beyond 30 days, unless the parties agree otherwise.

At the termination of unsuccessful informal negotiations, should the Performing Parties Group choose not to follow the State's or the Federal Trustees' position, it shall file with the Court a petition which shall describe the nature of the dispute and include a proposal for its resolution. The filing of a petition asking the Court to resolve a dispute shall not of itself postpone the deadlines for the Performing Parties Group to meet obligations under this Consent Judgment with respect to the disputed issue.

The State and the United States, on behalf of the Federal Trustees, shall have thirty (30) days or such other time as the Court may direct to respond to the petition and submit a proposal for resolving the dispute. Should the matter in dispute involve any issue other than one regarding the adequacy of the Performing Parties Group's performance under paragraphs VIII(1), (2) and (3)

of this Consent Judgment, this Court's scope of review shall be in accordance with Section III of this Consent Judgment. Should the issue in dispute concern the adequacy of the Performing Parties Group's performance under paragraphs VIII(1), (2) and (3), the Performing Parties Group shall have the burden of demonstrating that its proposal is consistent with the National Contingency Plan and will protect public health, welfare and the environment from the release or threat of release of hazardous substances at the Site, and as to any such dispute, the standard of review provided by § 113(j) of CERCLA/SARA shall apply as to the State's and the United States', on behalf of the Federal Trustees, proposal.

## XXXIV. INDEMNIFICATIONS

1. Except as otherwise provided in this Consent Judgment, the Performing Parties Group shall indemnify and hold the State and Federal Trustees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from actions by the Performing Parties Group in the course of the fulfillment or attempted fulfillment of this Consent Judgment.

2. Settling Owner Defendants listed in Appendix Y hereby indemnify and hold harmless Settling Owner Defendants listed in Appendix X from all civil claims and liability, including attorneys fees, asserted by:

(a) The United States, on behalf of the Federal Trustees, under Section X arising out of or

relating to natural resources damages in connection with the site, and

(b) The United States, on behalf of the EPA, arising out of or resulting from or under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9707(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, for recovery of "Past Response Costs" and "Future Response Costs," as these terms are defined in the Administrative Order on Consent, Index No. II CERCLA-122-20201, paragraph 3(d) and (f).

3. Notice of any claim arising under subparagraphs 2(a) or 2(b) above, whether asserted in this action, a separate action, or administratively, shall be provided by Settling Owners Defendants listed in Appendix X within 30 days to Settling Owner Defendants listed in Appendix Y.

## XXXV. TERMINATION AND SATISFACTION

This Consent Judgment shall be deemed satisfied when all of the obligations of the parties hereto have been fully complied with. At such time as the parties hereto agree that such obligations have been fully complied with the State shall so notify the Performing Parties Group in writing, subject to the provisions of Section XXIV regarding non-settling parties, and shall file a satisfaction of judgment with respect to such parties whose obligations have been satisfied. If the parties cannot agree regarding such satisfaction and termination, the

matter may be submitted to the Court and resolved pursuant to Section XXXIII.

## XXXVI. MISCELLANEOUS

1. This document may be executed in counterparts. Each counterpart may serve as a duplicate original.

2. Nothing in this Consent Judgment shall be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

## XXXVII. EFFECTIVE DATE

This Consent Judgment is effective upon the date of its entry by this Court.

SO ORDERED

_____
Jack B. Weinstein
United States District Judge

Dated:

STATE OF NEW YORK, et al.

v.

SHORE REALTY CORP., et al.
84 Civ. 0864
85 Civ. 2270
(JBW)

CONSENT JUDGMENT

COUNTERPART SIGNATURE PAGE

SETTLING PARTY: _____

ADDRESS: _____

_____

_____

BY: _____

TITLE: _____

DATE: _____