

Plaintiffs,

v.

Civil Action No. 06-4018
(consolidated)

HIGGINS DISPOSAL SERVICE,
INC.; LISBETH HIGGINS,
individually; COVINO
INDUSTRIAL DISPOSAL SERVICE,
INC.; MIDCO WASTE SYSTEMS;
and FMC CORPORATION,

Defendants.

CONSENT JUDGMENT

This matter was opened to the Court by Anne Milgram, Attorney General of New Jersey, Mary Ellen Halloran, Deputy Attorney General, appearing, attorney for plaintiffs New Jersey Department of Environmental Protection ("NJDEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"); and Kenneth H. Mack, Esq., and Linda J. Mack, Esq., appearing, attorneys for defendant FMC Corporation ("Settling Defendant"); and the Parties (as defined below) having amicably resolved their dispute before trial:

I. BACKGROUND

A. Plaintiffs initiated this action ("the State Action") on July 24, 2006, by filing a complaint in Superior Court of New Jersey, Law Division, against Settling Defendant and others, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"), and the common law.

B. On August 16, 2006, Plaintiffs filed an Amended Complaint to correct the order in which the defendants were listed in the caption of the Complaint.

C. Plaintiffs, in their Amended Complaint, sought reimbursement of the Past Cleanup and Removal Costs they had incurred, and Future Cleanup and Removal Costs they will incur, to remediate the Higgins Disposal Superfund Site, including but not limited to injuries to any natural resources of this State that were, or may be, injured as a result of the discharge of hazardous substances at the Higgins Disposal Property located in Kingston, Franklin Township, New Jersey, as well as injunctive and other relief with respect thereto.

D. Settling Defendant and other defendants subsequently filed responsive pleadings in which they denied liability and asserted various defenses to the allegations contained in

Plaintiffs' complaint.

E. On August 24, 2006, the State Action was removed to this Court and was consolidated with FMC Corporation v. American Cyanamid, et al., Civil Action No. 01-0476 (DMC) an action filed on January 30, 2001, by Settling Defendant, pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., (the "Spill Act") and common law to recover response costs and cleanup and removal costs for the Higgins Disposal Site that it had incurred and would incur.

F. By entering into this Consent Judgment with Plaintiffs, Settling Defendant does not admit any liability arising from the transactions or occurrences Plaintiffs allege in the Amended Complaint filed in this action.

G. Plaintiffs allege, and Settling Defendant denies, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the Higgins Disposal Property within the meaning of N.J.S.A. 58:10-23.11b.

H. In August 1985, in response to a report of contaminated potable well water, plaintiff NJDEP commenced an investigation at

the Higgins Disposal Site that included soil and ground water sampling at and in the vicinity of the Higgins Disposal Site. Hazardous substances were detected in the soils and ground water at and in the vicinity of the Higgins Disposal Site.

J. In August 1990, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Higgins Disposal Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

K. Beginning in or about 1992, EPA performed a remedial investigation of the Higgins Disposal Site to determine the nature and extent of the contamination.

L. During the course of this investigation, EPA discovered buried wastes at the Higgins Disposal Site. Sampling results from the remedial investigation revealed the presence of various hazardous substances exceeding applicable cleanup standards in the soils and ground water at the Site.

M. In 1997, EPA issued a Record of Decision ("1997 ROD") that provided for the extraction and transport by pipeline of the contaminated ground water at the Higgins Disposal Site to the Higgins Farm Superfund Site, where the ground water would be treated and reinjected into the soils.

N. In March 1998, Settling Defendant and EPA entered into

an ACO pursuant to which Settling Defendant agreed to remove the contaminated soils, buried wastes and other materials from the Higgins Disposal Site.

O. Concurrent with the removal action, pursuant to an EPA Unilateral Administrative Order, Settling Defendant also installed a water supply line to provide an alternate supply of water to impacted residences in the vicinity of the Higgins Disposal Site.

P. In December 2002, in response to new information generated following the issuance of the 1997 ROD, EPA issued an Explanation of Significant Differences for the Higgins Disposal Site, which eliminated the transport and off-site treatment component of the ground water remedy in favor of constructing a groundwater treatment facility on the Higgins Disposal Site.

Q. Meanwhile, on June 20, 2001, EPA filed a cost recovery action in this Court pursuant to Section 106 of CERCLA, 42 U.S.C. §9606, seeking reimbursement of response costs EPA incurred for the Higgins Disposal Site. This action was consolidated with the action filed by Settling Defendant.

R. In 2004, Settling Defendant and EPA entered into a Consent Decree whereby it agreed to design and construct the selected groundwater treatment remedy for the Higgins Disposal

Site.

S. Construction of the groundwater treatment system at the Higgins Disposal Site has been completed and Settling Defendant is performing the operation and maintenance of the Higgins Disposal Site treatment system.

T. Plaintiff NJDEP has incurred, and may continue to incur, costs as a result of the discharge of hazardous substances at the Higgins Disposal Site.

U. Plaintiff Administrator has certified for payment valid claims made against the Spill Fund concerning the Higgins Disposal Site and may continue to approve other appropriations for the Higgins Disposal Site.

V. In their Amended Complaint, the Plaintiffs alleged that they have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource and natural resource service of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Higgins Disposal Site.

W. The Plaintiffs have alleged that the costs and damages they have incurred, and will incur, for the Higgins Disposal Site are "cleanup and removal costs" pursuant to N.J.S.A. 58:10-23.11b.

X. On September 29, 2010, this Court entered an Order dismissing with prejudice all of Plaintiffs' claims for injuries to natural resources of the State of New Jersey, all as more particularly set forth in their Amended Complaint, on Settling Defendant's motion for summary judgment and Plaintiffs have agreed not to file an appeal from this dismissal with prejudice. The Plaintiffs' claims for other cleanup and removal costs for the Higgins Disposal Site were not addressed in Settling Defendant's motion.

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

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby ORDERED and ADJUDGED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1367.

This Court also has personal jurisdiction over the Parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the State Action.

2. The Parties to this Consent Judgment waive all objections and defenses they may have to jurisdiction of this Court, or to venue in this District in connection with the entry hereof. The Parties shall not challenge the Court's jurisdiction to enter and enforce this Consent Judgment.

III. PARTIES BOUND

3. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendant.

IV. DEFINITIONS

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

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

"Day" shall mean a calendar day unless expressly stated

to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

"Effective Date" shall mean the date on which this Consent Judgment is entered by the Court.

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that the Plaintiffs may incur to remediate the Higgins Disposal Site after entry of this Consent Judgment.

"Higgins Disposal Site" or "the Site" shall mean the Higgins Disposal Property, consisting of approximately 38 acres of real property located on Laurel Avenue, Kingston, Franklin Township, Somerset County, New Jersey, this property being also known and designated as Block 5.02, Lots 171 and 171Q, on the Tax Map of Franklin Township (the "Higgins Disposal Property" or "the Property"), and all other areas where any hazardous substance discharged at the Property has become located (collectively, "the Site" or "the Higgins Disposal Site"), which plaintiff NJDEP has designated as Site Remediation Program Interest No. 010657.

"Paragraph" shall mean a portion of this Consent

Judgment identified by an arabic numeral or an upper case letter.

"Party" or "Parties" shall mean plaintiff NJDEP, plaintiff Administrator, and the Settling Defendant.

"Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that the Plaintiffs incurred on or before entry of this Consent Decree Judgment to remediate the Site.

"Plaintiffs" shall mean plaintiffs NJDEP, Administrator, and any successor department, agency or official.

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

"Settling Defendant" shall mean defendant FMC Corporation. Settling Defendant shall also include FMC's officers, directors, employees, shareholders, predecessors, parents, successors, subsidiaries, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity ("Related Entity"), but only to the extent that the alleged liability of any Related Entity for the Higgins Disposal Site is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Higgins Disposal Site arose independently of its status and capacity as a Related Entity of

Settling Defendant.

V. PARTIES' OBJECTIVES

5. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by Settling Defendant agreeing to reimburse the Plaintiffs for their unreimbursed Past Cleanup and Removal Costs, and in return for the Plaintiffs agreeing to resolve their claims for Past and Future Cleanup and Removal Costs against Settling Defendant concerning the Site as stated in the Amended Complaint and this Consent Judgment.

VI. SETTLING DEFENDANT'S COMMITMENTS

6. Within 30 days after the Effective Date of this Consent Judgment, Settling Defendant shall pay the Plaintiffs \$26,858.51 in reimbursement of the Plaintiffs' unreimbursed Past Cleanup and Removal Costs.

7. The Settling Defendant shall pay the amount specified in Paragraph 6, above, by check made payable to the "Treasurer, State of New Jersey." The Settling Defendant shall mail or otherwise deliver the payment and payment invoice to:

Section Chief
Cost Recovery & Natural Resource Damages Section
Department of Law & Public Safety
Division of Law

Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625

or by wire transfer in accordance with written instructions to be provided by the Plaintiffs at the time of entry of this Consent Judgment.

VII. PLAINTIFFS' COVENANT

8. In consideration of the payment being made pursuant to Paragraph 6, above, and except as otherwise provided in Section VIII, below, Plaintiffs covenant not to sue, or to take administrative action against Settling Defendant for reimbursement of the Past Cleanup and Removal Costs and Future Cleanup and Removal Costs Plaintiffs have incurred, and will incur, for the Site.

9. The covenant contained in Paragraph 8, above, shall take effect upon Plaintiffs receiving the payment pursuant to Paragraph 6, above, in full, and in the prescribed time and manner.

10. In further consideration of the payment pursuant to Paragraph 6, above, Plaintiffs shall promptly dismiss with prejudice all of their claims in the Amended Complaint against Settling Defendant and other Defendants by filing the Stipulation

of Dismissal with Prejudice, attached hereto as Exhibit B.

VIII. PLAINTIFFS' RESERVATIONS

11. Plaintiffs' Pre-certification Reservations

Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action to compel Settling Defendant to reimburse the Plaintiffs for any additional costs, if, prior to Certification of Completion of the Remedial Action for the Higgins Disposal Site:

- i. conditions at the Site, previously unknown to EPA, are discovered; or
- ii. information, previously unknown to EPA, is received, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate to EPA that the Remedial Action for the Higgins Disposal Site is not protective of human health and safety, or the environment, and as a result EPA incurs costs and institutes proceedings to recover those costs against Settling Defendant, under EPA's Consent Decree with Settling Defendant.

12. Plaintiffs' Post-certification Reservations

Notwithstanding any other provision of this Consent Judgment, Plaintiffs reserve, and this Consent Judgment is without prejudice to, Plaintiffs' right to sue or take administrative action to compel Settling Defendant to reimburse Plaintiffs for any additional costs if, subsequent to Certification of Completion of the Remedial Action for the Higgins Disposal Site:

- i. conditions at the Site, previously unknown to EPA, are discovered; or
- ii. information, previously unknown to EPA, is received, in whole or in part; and

these previously unknown conditions or information, together with any other relevant information, indicate to EPA that the Remedial Action for the Higgins Disposal Site is not protective of human health and safety, or the environment, and as a result EPA incurs costs and institutes proceedings to recover those costs against Settling Defendant under EPA's Consent Decrees with Settling Defendant.

13. The covenant contained in Section VII, above, does not pertain to any matters other than those expressly stated. Plaintiffs reserve, and this Consent Judgment is without

prejudice to, all rights against Settling Defendant concerning all other matters, including the following:

- a. claims based on Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;
- b. liability arising from Settling Defendant's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by Settling Defendant at the Higgins Disposal Property, other than as ordered or approved by EPA or plaintiff NJDEP;
- d. criminal liability;
- e. liability for any violation by Settling Defendant of federal or state law that occurs during or after the remediation of the Site;
- f. liability for any claim pending or filed on or after the effective date of this Consent Judgment against the Spill Fund concerning the Site.

IX. SETTLING DEFENDANT'S COVENANTS

14. Settling Defendant covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any

provision of this Consent Judgment, unless Plaintiffs notify Settling Defendant, in writing, that they no longer support entry of the Consent Judgment.

15. Settling Defendant further covenants, subject to Paragraph 16, below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site. This covenant shall include the following:

a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Site; and

b. any claim or cause of action concerning the remediation of the Higgins Disposal Site, including plaintiff NJDEP's selection, performance or oversight of the remediation, or plaintiff NJDEP's approval of the plans for the remediation.

16. Settling Defendant's covenants not to sue or to assert any claim or cause of action against the State pursuant to Paragraphs 14 and 15, above, do not apply where Plaintiffs sue or take administrative action against Settling Defendant pursuant to Section VIII, above.

X. SETTLING DEFENDANT'S RESERVATIONS

17. Settling Defendant reserves, and this Consent Judgment

is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee in relation to the Higgins Disposal Site while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall it include any such claim concerning the Site, including plaintiff NJDEP's selection of the remediation or plaintiff NJDEP's oversight or approval of Settling Defendant's plans or activities, relating to the remediation. The foregoing applies only to claims that Settling Defendant may bring pursuant to any statute other than the Spill Act and for which the waiver of sovereign immunity is found in a statute other than the Spill Act.

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

XI. FINDINGS & ADMISSIONS OF LIABILITY

19. Nothing contained in this Consent Judgment shall be considered an admission by Settling Defendant, or a finding by Plaintiffs, of any wrongdoing or liability on the Settling Defendant's part for anything Plaintiffs have actual knowledge of having occurred at the Site as of the effective date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

20. 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 set forth herein and the Stipulation of Dismissal appended hereto, to be filed hereunder. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

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

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

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

23. In order for Settling Defendant to obtain protection under N.J.S.A. 58:10-23.11.f.b. from contribution claims concerning the matters addressed in this Consent Judgment, the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on plaintiff NJDEP's website on [to be inserted], 2011, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Higgins Disposal Property;
- c. the name of the Settling Defendant; and
- d. a summary of the terms of this Consent Judgment.

24. Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom Plaintiffs had notice as of the date Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 23.

25. At the conclusion of a 30-day public comment period following publication of notice in the New Jersey Register, Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 47, below, unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 23 and 24, above, Plaintiffs receive information that disclose facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is not in the public interest.

26. Plaintiffs agree that they will not seek to reopen or appeal from the Court's decision and September 29, 2010 Order.

27. In any subsequent administrative or judicial proceeding initiated by Plaintiffs pursuant to Section VIII for injunctive relief, recovery of cleanup and removal costs, or other appropriate relief concerning the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel,

issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment.

28. Paragraph 27 shall not apply to, and shall not prevent the assertion, or affect the validity, of any defense or avoidance of Settling Defendant based, in whole or in part, upon this Court's decision and September 29, 2010 Order in this Action which dismissed with prejudice Plaintiffs' claims for injuries to natural resources at the Higgins Disposal Site.

XIII. GENERAL PROVISIONS

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

XIV. ACCESS TO INFORMATION

30. Upon receipt of a written request by one or more of the

Plaintiffs, Settling Defendant shall submit or make available to Plaintiffs all information Settling Defendant has concerning the Site, including technical records and contractual documents.

31. Settling Defendant may assert a claim of confidentiality or privilege for any information submitted to Plaintiffs pursuant to this Consent Judgment. Settling Defendant, however, agrees not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

XV. RETENTION OF RECORDS

32. Settling Defendant shall preserve during the pendency of this Consent Judgment and for five (5) years after its effective date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

33. After the five-year period specified in Paragraph 32, above, any Settling Defendant may request of plaintiff NJDEP, in writing, that it be allowed to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and

title of the sender and receiver and a statement of contents. Upon receiving written approval from plaintiff NJDEP, Settling Defendant may discard only those documents the Plaintiffs do not require Settling Defendant to preserve for a longer period.

XVI. NOTICES AND SUBMISSIONS

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

As to Plaintiffs NJDEP & Administrator:

Section Chief
Cost Recovery and Natural Resource Damages Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, New Jersey 08625-0093
(609) 984-4863

As to FMC Corporation:

John F. Stillmun, Esq.
Assistant General Counsel
FMC Corporation
1735 Market Street
Philadelphia, PA 19103

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

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

XVII. EFFECTIVE DATE

37. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XVIII. RETENTION OF JURISDICTION

38. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms.

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

XIX. APPENDICES

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

a. "Appendix A" is a map showing the location of the Higgins Disposal Site;

b. "Appendix B" is a Stipulation of Dismissal with Prejudice.

XX. MODIFICATIONS

41. This Consent Judgment, including the appendices identified in Section XIX, represents the entire integrated agreement between the Plaintiffs and the Settling Defendant concerning the Site, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

42. Any notices or other documents specified in this Consent Judgment may only be modified by agreement of the Parties. All such modifications shall be made in writing.

43. All notices or other documents Settling Defendant is

required to submit to the Plaintiffs under this Consent Judgment shall, upon approval or modification by the Plaintiffs, be enforceable under this Consent Judgment. All such approvals or modifications shall be in writing.

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

45. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment that are made pursuant to this Section XX.

XXI. ENTRY OF THIS CONSENT JUDGMENT

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

47. Upon conclusion of the public comment period specified in Paragraph 25, above, Plaintiffs shall promptly submit this Consent Judgment to the Court for entry.

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

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Ronald T. Corcory
Assistant Director
Enforcement & Assignment Element

Dated:

NEW JERSEY SPILL COMPENSATION FUND

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

Dated:

PAULA T. DOW, ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: _____
Mary Ellen Halloran
Deputy Attorney General

Dated:

FMC CORPORATION

By: _____
Linda Mack
Fox Rothschild LLP
Attorneys for FMC Corporation

Dated:

Person Authorized to Accept Service on Behalf of FMC Corporation.

Name: John F. Stillmun, Esq.
Title: Assistant General Counsel
Address: FMC Corporation
1735 Market Street,
19th Floor
Philadelphia, PA 19103
Telephone No.: 215-299-6989
