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	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - HUDSON COUNTY DOCKET NO. C-52-12	
ROHIT SHAH, Plaintiff, v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Defendant.	:	<u>Civil Action</u>
	:	CONSENT JUDGMENT
	:	
	:	
	:	
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and the ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Third-Party Plaintiffs, v.	:	
	:	
ROHIT SHAH, in his individual capacity; 304 CENTRAL ENTERPRISES, LLC; and 304 CENTRAL ENTERPRISES II, LLC, Third-Party Defendants.	:	
	:	

This matter was opened to the Court by Chasan, Leyner &
 Lamparello, Maria P. Vallejo, Esquire, appearing, attorney for

plaintiff/third-party defendant Rohit Shah and third-party defendants 304 Central Enterprises, LLC, and 304 Central Enterprises II, LLC; and Jeffrey S. Chiesa, Attorney General of New Jersey, Mary Ellen Halloran, Deputy Attorney General, appearing, attorney for defendant/third-party plaintiff New Jersey Department of Environmental Protection ("DEP") and third-party plaintiff the Administrator of the New Jersey Spill Compensation Fund ("Administrator"); and the parties have amicably resolved their dispute before trial:

I. BACKGROUND

1. The Plaintiff/Third-Party Defendant Rohit Shah initiated this action on March 23, 2012, by filing a Verified Complaint against DEP challenging as a violation of his state and federal constitutional rights the filing of liens by DEP against his property pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"), in connection with cleanup and removal costs incurred by DEP and the Administrator in an emergency response action performed by DEP at Plaintiff's property located at 304 Central Avenue, Jersey City, New Jersey ("the Property").

2. DEP filed an Answer and Counterclaim in response to Plaintiff's Complaint denying that the liens were unlawfully filed and asserting various defenses to the allegations in the Complaint. DEP and the Administrator also filed a Third-Party Complaint

against Plaintiff and the Third-Party Defendants seeking reimbursement under the Spill Act of the costs they have incurred to remediate the Property as well as injunctive and other relief.

3. By entering into this Consent Judgment, the Parties do not admit any liability arising from the transactions or occurrences alleged in the pleadings filed in this action.

4. DEP and the Administrator allege that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the Property within the meaning of N.J.S.A. 58:10-23.11b.

5. On or about November 14 and 15, 2006, DEP conducted an emergency response action in response to a report of discharged perchloroethylene at the Property. Perchloroethylene, also known as tetrachloroethylene, is a hazardous substance as defined in N.J.S.A. 58:10-23.11b.

6. N.J.S.A. 58:10B-1.3.a. requires an owner or operator of an industrial establishment, the discharger of a hazardous substance or a person in any way responsible for a hazardous substance to remediate the discharge of a hazardous substance.

7. Plaintiff and/or the Third-Party Defendants have advised DEP that they intend to perform additional remediation at the Property.

8. DEP and the Administrator have incurred costs as a result of the discharge of hazardous substances at the Property.

9. The costs and damages that DEP and the Administrator have incurred, and will incur, for the Site are "cleanup and removal costs" pursuant to N.J.S.A. 58:10-23.11b.

10. 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 avoid continued, prolonged and complicated litigation and will expedite the remediation of the Site; 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

11. This Court has jurisdiction over the subject matter of this action pursuant to the state law and the Spill Act. 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 underlying litigation.

12. The parties to this Consent Judgment waive all objections and defenses they may have to jurisdiction of this Court, or to

venue in this County. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

13. This Consent Judgment applies to, and is binding upon, the Plaintiff, DEP and the Administrator, and the Third-Party Defendants.

IV. DEFINITIONS

14. 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:

15. "Consent Judgment" shall mean this Consent Judgment.

16. "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.

17. "Natural Resource Damages" shall mean all claims arising from discharges at the Property that occurred prior to the effective date of this Consent Judgment and that are recoverable by

DEP as natural resource damages for injury to natural resources under the Spill Act; the Water Pollution Control Act; the Oil Pollution Act, 33 U.S.C.A. § § 1251 to -1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 to -9675, or any other state or federal common law, statute or regulation, and include:

- a. the costs of assessing injury to natural resources and natural resource services, DEP's Office of Natural Resource Restoration's oversight costs determined pursuant to N.J.A.C. 7:26C-9.3, attorney's fees, consultants and experts' fees, other litigation costs, and interest, incurred prior to the effective date of this Consent Judgment; and
- b. compensation for restoration of, the lost value of, injury to, or destruction of natural resources and natural resource services.

18. "Paragraph" shall mean a portion of this Consent Judgment identified by an arabic numeral.

19. "Parties" shall mean Plaintiff, DEP and the Administrator, and the Third-Party Defendants.

20. "Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, that DEP and the Administrator

incurred on or before the effective date of this Consent Judgment, to remediate the Site.

21. "Plaintiff" shall mean Rohit Shah.

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

23. "Site" shall mean the Property, consisting of real property located at 304 Central Avenue, Jersey City, Hudson County, New Jersey, this property being also known and designated as Block 753, Lot 2B.99, on the Tax Map of Jersey City (the "Property"), and all other areas where any hazardous substance discharged there has become located, which DEP has designated as Site Remediation Program Interest No. 006177.

24. "Third-Party Defendants" shall mean 304 Central Enterprises, LLC, and 304 Central Enterprises II, LLC.

V. PARTIES' OBJECTIVES

25. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by the Plaintiff and/or the Third-Party Defendants agreeing to remediate the Site, to reimburse DEP and the Administrator for their Past Cleanup and Removal Costs for the Site, and to withdraw the Spill Act liens filed on Plaintiff's property in return for the Plaintiff, DEP and the Administrator agreeing to resolve all of their claims against each other and

against the Third-Party Defendants as stated in the Complaint, the Third-Party Complaint and this Consent Judgment.

VI. THE PARTIES' COMMITMENTS

26. Within 30 days of the effective date of this Consent Judgment, Plaintiff and/or the Third-Party Defendants shall pay DEP \$40,000 in reimbursement of DEP's and the Administrator's Past Cleanup and Removal Costs for the Site.

27. The amount specified in Paragraph 26, above, shall be paid by certified check made payable to the "Treasurer, State of New Jersey." The check shall be mailed or otherwise delivered to: Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

28. Within 30 days of DEP's receipt of the payment required in Paragraph 26, above, DEP and the Administrator will file a Warrant of Satisfaction with the Clerk of the Superior Court for the liens (Docketed Judgment No. DJ-304829-11) filed against Plaintiff's property, with a copy of the filed Warrant to be promptly forwarded to Plaintiff's counsel.

29. Plaintiff and/or the Third-Party Defendants also agree to conduct all remediation required at the Site in accordance with the Administrative Requirements for Remediation of Contaminated Sites, N.J.A.C. 7:26C.

30. The obligation to pay the amount owed to DEP and the Administrator pursuant to Paragraphs 26 and 27, above, and the obligation to remediate the Site are joint and several, without regard to fault. In the event of insolvency or other failure by either Plaintiff to perform these obligations, then one or both of the Third-Party Defendants shall satisfy these obligations.

VII. COVENANT & DISMISSAL OF COMPLAINT

31. In consideration of the payment to be made by Plaintiff pursuant to Paragraphs 26 and 27, above, and the remediation to be undertaken by Plaintiff and/or the Third-Party Defendants pursuant to Paragraph 28, above, and except as otherwise provided in Paragraphs 36 and 37, below, DEP and the Administrator covenant not to further sue or to take administrative action against the Plaintiff and the Third-Party Defendants for reimbursement of the Past Cleanup and Removal Costs that DEP and the Administrator have incurred for the Site.

32. In consideration of the promise by DEP and the Administrator to withdraw the liens filed against Plaintiff's property as provided in Paragraph 28, above, and in consideration of the DEP's and the Administrator's agreement to accept from Plaintiff, as part of this settlement, less than the full amount of DEP's and the Administrator's Past Cleanup and Removal Costs for

this Site, Plaintiff shall promptly dismiss, with prejudice, the Complaint against DEP, without further application to the Court.

33. The Parties agree that each Party shall bear its own costs and attorneys' fees and that no Party shall submit any application to the Court for recovery of costs and attorneys' fees for this matter.

34. The covenant contained in Paragraph 31, above, shall take effect upon the receipt, pursuant to Paragraphs 26 and 27, above, of the payment Plaintiff is required to make in full and in the prescribed time and manner.

35. The covenant contained in Paragraph 31, above, is further conditioned upon Plaintiff's and/or Third-Party Defendants' satisfactory performance of their other obligation under this Consent Judgment, and extends only to the Plaintiff and/or the Third-Party Defendants, whoever is conducting the remediation at the Site, and not to any other person.

VIII. DEP'S & THE ADMINISTRATOR'S RESERVATIONS

36. Notwithstanding any other provision of this Consent Judgment, DEP and the Administrator retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Site, or to direct the Plaintiff and the Third-Party Defendants to undertake any remediation authorized by law concerning the Site.

37. The covenant contained in Paragraph 31, above, does not pertain to any matters other than those expressly stated. DEP and the Administrator reserve, and this Consent Judgment is without prejudice to, all rights against Plaintiff and the Third-Party Defendants concerning all other matters, including the following:

- a. claims based on Plaintiff's and/or the Third-Party Defendants' failure to satisfy any term or provision of this Consent Judgment;
- b. liability arising from Plaintiff's and/or the Third-Party Defendants' 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 Plaintiff and either Third-Party Defendant at the Property, other than as otherwise ordered or approved by DEP;
- d. criminal liability;
- e. liability for any violation by Plaintiff and/or either Third-Party 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;

g. liability for any future cleanup and removal costs that DEP and the Administrator will incur for the Site in the event that the Plaintiff and/or the Third-Party Defendants fail to complete the remediation of the Site;

h. liability for any Natural Resource Damages DEP has or will incur for the Site.

IX. OTHER COVENANTS

38. The Parties covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless any Party notifies the other Parties, in writing, that it or they no longer support entry of the Consent Judgment.

39. Plaintiff and/or either Third-Party Defendant covenant 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 Site, including plaintiff DEP's selection, performance or oversight of the remediation.

40. 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

41. Nothing contained in this Consent Judgment shall constitute an admission by any Party, or a finding by any Party, of any wrongdoing or liability on the part of any Party to this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

42. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

43. Plaintiff and the Third-Party Defendants expressly reserve all rights, including any right to contribution, defenses, claims, demands, and causes of action that Plaintiff or either Third-Party Defendant may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

44. 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 Plaintiff and the Third-Party Defendants from contribution actions. The Parties agree, and by entering this Consent Judgment this Court finds, that Plaintiff and the Third-Party Defendants are entitled, upon fully satisfying their obligations under this Consent Judgment, to protection from contribution actions or claims for matters addressed in this Consent Judgment.

45. In order for Plaintiff and the Third-Party Defendants 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, DEP published notice of this Consent Judgment in the New Jersey Register and on DEP's website on **[to be filled in]** , 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 Property;
- c. the names of the Parties; and
- d. A summary of the terms of this Consent Judgment.

46. Following the expiration of a 30-day comment period pursuant to N.J.S.A. 58:10-23.113.2, DEP and the Administrator will submit this Consent Judgment to the Court for entry pursuant to Paragraph 62, below, unless, as a result of the notice of this Consent Judgment pursuant to Paragraph 45, above, DEP and the Administrator receive information that disclose facts or

considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

47. In any subsequent administrative or judicial proceeding initiated by DEP and the Third-Party Defendants for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Site, Plaintiff and the Third-Party Defendants 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 raised 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.

XIII. GENERAL PROVISIONS

48. Site Access. In addition to DEP's statutory and regulatory authority to enter and inspect the Property, Plaintiff and the Third-Party Defendants shall allow DEP and its authorized representatives access to all areas of the Property to:

- a. monitor Plaintiff's/Third-Party Defendants' compliance with this Consent Judgment;
- b. perform any remedial investigation or remedial action that this Consent Judgment requires, or DEP otherwise orders, which Plaintiff and the Third-Party Defendants are unwilling and unable to perform; and

c. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource of this State injured by the discharge of hazardous substances at the Property.

49. Plaintiff and the Third-Party Defendants shall ensure that any sale or transfer of the Property is conditioned upon DEP and its authorized representatives having continuing access for the purposes stated in Paragraph 48, above.

50. DEP and the Administrator 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 Plaintiff and the Third-Party Defendants by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XIV. ACCESS TO INFORMATION

51. Upon receipt of a written request by DEP or the Administrator, Plaintiff and the Third-Party Defendants shall submit or make available to the DEP or the Administrator all information Plaintiff and the Third-Party Defendants have concerning the Site, including technical records and contractual documents.

52. Plaintiff and Third-Party Defendants may assert a claim of confidentiality or privilege for any information submitted to

DEP and the Administrator pursuant to this Consent Judgment. Plaintiff and the Third-Party Defendants, however, agree not to assert any privilege or confidentiality claim concerning data related to Site conditions, sampling, or monitoring.

XV. RETENTION OF RECORDS

53. Plaintiff and the Third-Party Defendants shall preserve during the pendency of this Consent Judgment and for a minimum of seven (7) years after its effective date, all data and information, including technical records, potential evidentiary documentation and contractual documents, in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys, which in any way concern the Site, despite any document retention policy to the contrary.

54. After the seven-year period specified in Paragraph 53, above, Plaintiff and the Third-Party Defendants may request of DEP, in writing, that they 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 DEP, Plaintiff and the Third-Party Defendants may discard only those documents DEP and the Administrator do not require to be preserved for a longer period.

XVI. NOTICES AND SUBMISSIONS

55. 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 DEP & 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 Plaintiff/Third-Party Defendants:

Maria P. Vallejo, Esq.
Chasan Leyner & Lamparallo
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094-3621
(201) 348-6000

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

XVII. EFFECTIVE DATE

57. 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

58. 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, or to resolve disputes, including any appeal from an administrative determination of a dispute between the parties.

XX. MODIFICATION

59. This Consent Judgment represents the entire integrated agreement between the Parties concerning the Site, and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided.

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

XXI. ENTRY OF THIS CONSENT DECREE

61. The Parties consent to the entry of this Consent Judgment without further notice.

62. Upon conclusion of the public comment period specified in Paragraph 46, above, Plaintiff shall promptly submit this Consent Decree to the Court for entry.

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

XXII. SIGNATORIES/SERVICE

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

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

66. Plaintiff and the Third-Party Defendants shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on his or its behalf with respect to all matters arising under or relating to this Consent Judgment. Plaintiff and the Third-Party Defendants agree to accept service in this manner, and

to waive the formal service requirements set forth in R. 4:4-4,
including service of a summons.

SO ORDERED this day of , 2013 .

Hector R. Velazquez, J.S.C.

CHASAN LEYNER & LAMPARELLO

Attorneys for Plaintiff Rohit
Shah and Third-Party Defendants
304 Central Enterprises, LLC,
and 304 Central Enterprises II,
LLC

By: _____
Maria P. Vallejo, Esq.

Dated:

Person Authorized to Accept Service on Behalf of Rohit Shah, 304
Central Enterprises, LLC, and 304 Central Enterprises II, LLC.

Name: _____

Title: _____

Address: _____

Telephone No.: _____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
David Sweeney
Assistant Commissioner
Site Remediation

Dated:

NEW JERSEY SPILL COMPENSATION FUND

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

Dated:

JEFFREY S. CHIESA, ATTORNEY GENERAL
OF NEW JERSEY
Attorney for DEP and the
Administrator of the New Jersey
Spill Compensation Fund

By: _____
Mary Ellen Halloran
Deputy Attorney General

Date: