

WHEREAS, according to a report by the PPG's technical consultants the performance standards for the Remedy have been met in all areas across the Site except in two identified locations (the "Residual VOC Hotspots"), and continuing the Remedy will not meaningfully reduce soil or groundwater concentrations of VOCs in the Residual VOC Hotspots;

WHEREAS, DEC may conduct further investigation and remediation of the Residual VOC Hotspots (which may include additional locations, if any are identified by DEC), including operating the Remedy, as it deems appropriate, without expense to the PPG or any of its members;

WHEREAS, DEC is undertaking a statewide evaluation of hazardous waste sites, including the Site, to test for "emerging contaminants" 1,4-dioxane and per- and polyfluoroalkyl ("PFAS") substances, which were previously unregulated and have been found in public drinking water supplies in the State of New York, and recent testing indicates the presence of PFAS substances at the Site;

WHEREAS, the Escrow Fund established under art. IX ¶ 6(b), at 25-26, of the Consent Judgment contained, as of October 31, 2018, \$3,886,449.19;

WHEREAS, pursuant to art. IX ¶ 2(a), at 23-24, of the Consent Judgment, the Settling Owner Defendants in anticipation of the eventual sale of the Site pledged \$500,000 to be paid to the Escrow Fund after that sale in accordance with the provisions of art. XXV ¶ 3(a), at 62-63, of the Consent Judgment;

WHEREAS, Thomas S. West, Receiver of Shore Realty Corporation (the "Receiver") has received an offer from Galvin Brothers Inc. ("Galvin") to purchase the Site for \$1.2 million and has proposed that the Site be sold for such amount subject to negotiation of other terms acceptable to the PPG's Executive Committee;

WHEREAS, the State consents to the Receiver's proposal to sell the Site, provided that the Receiver first records an environmental easement;

WHEREAS, on August 14, 2018, the Court invited the PPG to file a motion for termination of the PPG's obligations under the Consent Judgment (Dkt. 1173);

WHEREAS, on October 10, 2018, defendant Phillips 66 Company ("Phillips") filed a motion for itself and on behalf of the PPG for an order finding that the PPG members have satisfied the work obligations under the Consent Judgment and dismissing the case against them as moot (Dkt. 1176);

WHEREAS, the Court has determined that that an order with the terms set forth below is practicable and necessary to resolve the PPG's motion in the best interest of the public;

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

**TERMINATION OF THE PPG'S
OBLIGATIONS UNDER THE CONSENT JUDGMENT**

1. Except as provided here, the obligations of Phillips and the PPG under the Consent Judgment are terminated. If there is any conflict between the provisions of the Consent Judgment and the provisions of this Order, the terms of this Order shall control.

JURISDICTION

2. The Court shall have continuing jurisdiction to enforce the terms of this Order and to resolve any disputes that may arise hereunder.

PARTIES BOUND

3. This Order shall apply to, and be binding upon, the State of New York and Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation and Trustee for State Natural Resources ("State"), including its departments, agencies, and

instrumentalities, and shall apply to and be binding the Receiver and the PPG members, their heirs, agents, successors, representatives, insurers and assigns.

DEFINITIONS

4. Unless otherwise expressly defined herein, terms used in this Order shall have the meaning assigned to them in the Consent Judgment.

5. “Affected Local Government” shall mean, as defined in New York Environmental Conservation Law Article 71, Title 36, every municipality in which land subject to an environmental easement is located.

6. “Current Funding Mechanism” shall mean the allocation of responsibility in place at this time for expenses, disbursements, and costs as set forth in art. IX ¶ 9(c), at 27, of the Consent Judgment, up to the maximum funding obligations for the PPG established in that paragraph and in art. VIII ¶ 4(a), at 21, of the Consent Judgment. Pursuant to that allocation, the State is presently required to fund fifty percent, which amount is paid from the Escrow Fund established and funded under the Consent Judgment; the Non-De Minimis Defendants are required to pay twenty percent, which amount is paid from the Generators Over-Run Fund established under the Consent Judgment; and Settling Owner Defendant Phillips is required to pay thirty percent of such expenses, disbursements, and costs.

7. “Environmental Easement” or “EE” shall mean, as defined in Title 6 of the New York Codes, Rules and Regulations § 375-1.2(q), “an interest in real property, created under and subject to the provisions of New York Environmental Conservation Law Article 71, Title 36 and which contains a use restriction and/or a prohibition on the use of land in a manner that is inconsistent with engineering controls.”

8. “Environmental Easement Package” shall collectively mean: (i) Copy(ies) of current deed(s) and supporting title documentation, (ii) A draft Notice to Municipality, with appropriate site-specific provisions, (iii) Legal description of Easement area, electronic copy to be in an electronic text format (i.e., MS Word or Rich Text Format) (iv) Copy of tax map, (v) One full-sized Survey and an electronic Survey submitted as a fully rendered PDF (not scanned), (vi) Proof of Authority to obligate owner of Property as set forth in “Verification of ownership of Property” on the Easement Checklist, (vii) Easement Checklist with certification signed by the Receiver (in his capacity as such, and not as a remedial party), and (viii) Signed transfer tax forms (TP-584 or ACRIS Forms).

9. “Title Requirements” shall mean the requirements set forth at <https://www.dec.ny.gov/chemical/48231.html>, including but not limited to: (1) an updated Title Report (current within 6 months) along with a Certification Page and Schedules A and B (Schedule B must include a copy of each encumbrance that affects title to the property that is the subject of the Environmental Easement such as a copy of the current deed) and (2) a copy of the Tax Map for the Site.

10. “Survey Requirements” shall mean the requirements set forth at <https://www.dec.ny.gov/chemical/48242.html>, including but not limited to, a survey of the area(s) to be addressed by the Environmental Easement, with corresponding metes and bounds description, that meets DEC’s requirements.

11. “Notice to Municipality” shall be a notice describing the Site and all restrictions placed on it under the Site EE, and explaining the State and Local Government’s obligations under Article 71, Section 71-3607 of the New York State Environmental Conservation Law.

12. “Site EE” shall mean the Environmental Easement for the Site in a form substantially similar to that attached hereto as Exhibit A providing access to the Site and restricting the future use of the Site to Commercial or Industrial purposes as defined in 6 NYCRR 375-1.8(g)(2)(iii) and (iv).

13. “Site SMP” shall mean a Site Management Plan, to be developed and approved by DEC without expense to the PPG or any of its members. The controls and requirements of the Site SMP shall be incorporated into and made part of the Site EE. The State, as Grantee of the Site EE, shall take on the responsibilities and obligations of the Site SMP as described in Paragraph 2(B) of the Site EE, as shown in Exhibit A. The State may reallocate the responsibilities and obligation of the Site SMP to a third party, but not to the PPG or its members. The PPG and its members shall not be considered Remedial Parties for purposes of the Site SMP.

TRANSITION OF THE SITE AND REMEDY

14. Pursuant to the Consent Judgment, the PPG conducted sampling and inspection of the Site in October 2018. The PPG shall, as previously required by the Consent Judgment, arrange for the completion of all testing of that sampling and inspection and forward the results to DEC by January 10, 2019, after which the PPG shall have no further obligation to provide quarterly or annual reports under art XV ¶ 1, at 44, of the Consent Judgment. Costs of such testing shall be paid under the Current Funding Mechanism.

15. As of the effective date of this Order, the PPG shall be deemed to have transferred to DEC all necessary and currently utilized components and equipment now existing at the Site for the operation of the Remedy. The PPG shall also promptly furnish DEC with copies of all necessary reports and data pertinent to the operation and maintenance of the Remedy to enable DEC to take over responsibility for such operation and maintenance as provided in the following

paragraph. Costs of such transfer shall be paid under the Current Funding Mechanism. The PPG shall not be responsible for training DEC personnel to operate any components or equipment installed at the Site or for any matter related to the Remedy once such reports and data have been provided. Moreover, DEC hereby assumes responsibility at its sole cost (including through use of the Escrow Fund, if it so chooses) to (i) maintain all components and equipment transferred hereunder and any additional equipment DEC may install at the Site and (ii) properly remove and dispose of all such components and equipment at the conclusion of work DEC may perform after the effective date of this Order to investigate or remediate the Residual VOC Hotspots (which may include additional locations, if any are identified by DEC).

16. DEC may investigate and remediate the Residual VOC Hotspots (which may include additional locations, if any are identified by DEC) as it deems appropriate, including by continuing to operate the Remedy if it so chooses, without expense to the PPG or any of its members. Prior to any distribution of the corpus of the Escrow Fund to the State, DEC's investigation and remediation costs shall be paid from the Escrow Fund with no contribution from the Generator's Over-Run Fund or Settling Owner Defendant Phillips, and the Trustees of the Escrow Fund shall distribute such amounts from the Escrow Fund to DEC to cover such investigation and remediation costs at its request. In the event all remaining or additional interest earned by the Escrow Fund is expended in that effort or in satisfying the State's obligations for its portion of other costs paid or to be paid under the Current Funding Mechanism, Phillips shall have no obligation to make any payment under art. IX ¶ 10(b), at 28-29, of the Consent Judgment. To the extent the State requires any additional funds to investigate or remediate the Residual VOC Hotspots (which may include additional locations, if any are identified by DEC) beyond amounts available in the Escrow Fund, no member of the PPG shall have any additional obligation with

respect to that remediation. After the distribution of the corpus of the Escrow Fund, DEC may use the funds at its sole discretion, and no provision herein shall be interpreted to require otherwise.

17. The Receiver shall provide DEC access to the Site and its environs and all structures and facilities erected thereon, as DEC deems necessary for all purposes for which DEC has lawful authority.

ENVIRONMENTAL EASEMENT

18. The Receiver shall: (1) submit to DEC, within sixty (60) days of the effective date of this Order, a complete Environmental Easement Package; and (2) timely correct any deficiencies that the DEC notes in the submitted Environmental Easement Package. Within thirty (30) days following the submittal of a complete Environmental Easement Package, DEC will prepare and transmit a copy of the Site EE for signature. The Receiver shall thereafter (3) record the Site EE within thirty (30) days of DEC's transmission of the DEC-approved/accepted Environmental Easement; (4) provide DEC proof of recording of the Site EE complete with book and page number or instrument number; and (5) mail the Notice to Municipality with copy of the recorded Site EE to each Affected Local Government and provide a copy of each letter to the DEC. DEC may in its discretion grant such extensions as may be needed if the Receiver is proceeding in good faith to complete these tasks.

RECEIVER EXPENSES

19. The Receiver shall be entitled to reimbursement for appropriate expenses, disbursements, and costs as set forth in art. XXI ¶ 6, at 53-54, of the Consent Judgment, and Phillips shall be entitled to reimbursement of tax payments it previously advanced or made as an accommodation to the PPG and the Receiver, without regard to the \$2,500 annual reimbursement limit in art. XXI ¶ 6, at 54, of the Consent Judgment. Without limitation, those expenses,

disbursements, and costs may include additional payments for property and school taxes, franchise taxes and other costs related to the maintenance of Shore Realty Corporation, counsel fees, appraisal costs, and other expenses to facilitate preparation and filing of the Site EE and ultimate sale of the Site. The expenses, disbursements, and costs addressed in this paragraph shall be paid under the Current Funding Mechanism; provided, however, that nothing in this Order is intended to increase or modify the PPG's maximum funding commitment established in art. VIII ¶ 4(a), at 21, of the Consent Judgment.

SALE OF THE SITE

20. The Site may be sold to Galvin or another third party on terms acceptable to the PPG Executive Committee without further order of this Court at any time after the Receiver performs the tasks related to the Site EE described in paragraph 18 above. If it has not been sold after the passage of one year of the issuance of this Order, the Site shall be appraised and sold by auction to the highest bidder for an amount not less than the appraised value on terms acceptable to the PPG Executive Committee. The costs of any sale shall be paid under the Current Funding Mechanism, as provided in paragraph 19 above.

21. Pursuant to art. XXV ¶ 3(a), at 63-64, of the Consent Judgment, \$500,000 shall be paid into the Escrow Fund upon the sale of the Site and any additional proceeds of the sale shall be applied and distributed as provided in that paragraph and paragraph 4.4.3 of the Glenwood Landing Remedial Trust Agreement, attached as Exhibit "A" to the Consent Judgment; provided, however, that no additional proceeds of the sale of the Site beyond the \$500,000 pledged amount shall be remitted to the Escrow Fund under art. XXV ¶ 3(a)(ii)(A) of the Consent Judgment if the State has used any principal from the Escrow Fund for investigation or remediation of the Site or

in satisfying the State's obligations for its portion of other costs paid or to be paid under the Current Funding Mechanism.

22. Upon sale of the Site, the State will promptly file a satisfaction of judgment with respect to all the PPG members, including Phillips, as provided in art. XXXV of the Consent Judgment. Promptly after remittance of the sale proceeds by the Receiver, together with any amounts Phillips may be obligated to pay to the Escrow Fund as provided in art. XXV ¶ 3(a)(i) of the Consent Judgment, the Generators Over-Run Fund and the Escrow Fund, as well as any excess proceeds from the sale of the Site, shall be distributed according to Section 4.4 of the Glenwood Landing Remedial Trust Agreement. The State's distribution shall be made to the "Commissioner of NYSDEC," and addressed to the following (unless otherwise specified by DEC):

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012

NO EFFECT ON LIABILITY RELEASE AND REOPENER PROVISIONS

23. This Order is not intended to modify or affect, and does not modify or affect, the release from liability and covenant not to sue set forth in art. XXII ¶ 2, at 54-55, of the Consent Judgment, the reopener provision set forth in art. XXII ¶ 2, at 55, of the Consent Judgment, the Covered Matters set forth in art. XXII ¶ 8, at 58-59, of the Consent Judgment, or the provision related to new remediation criteria set forth in art. XXXII, at 68, of the Consent Judgment. Nothing contained herein shall limit, prevent, preclude or estop the State from asserting any claims, actions, suits, causes of action, or demands with respect to any release of 1,4-dioxane, PFAS substances, or any contaminant not covered in the Consent Judgment that DEC may discover at the Site, nor

shall it limit, prevent, preclude or estop the PPG, its members, or third parties from asserting any defenses to such claims, actions, suits, causes of action, or demands.

NOTIFICATIONS

24. Any notification shall be in writing or by electronic mail and shall be deemed properly given if sent to the following (or to such other addresses as the Parties may specify):

As to the State:

Austin Thompson, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
28 Liberty St.
New York, New York 10271
Austin.Thompson@ag.ny.gov

and

Alali Tamuno, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue
Suite 1W
White Plains, NY 10603
Alali.Tamuno@dec.ny.gov

As to the Reciever:

Thomas S. West, Esq.
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The West Firm, PLLC
677 Broadway, 8th Floor
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As to Phillips 66 Company:

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and

James F. Thompson, Esq.
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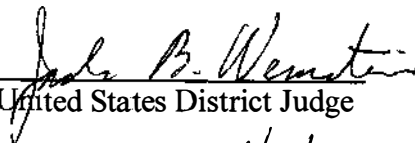
As to the PPG:

Deborah E. LaMond
Chairperson, Executive Committee, Performing Parties Group
Program Manager, Phillips 66 Remediation Management
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Linden, New Jersey 07036
Deborah.Lamond@p66.com

MODIFICATION

25. The State, Phillips, the PPG, and the Receiver may amend or supplement this Order by written consent of the State, Phillips, the PPG, and the Receiver, and approval of the Court.

SO ORDERED:


United States District Judge

1/6/19