SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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DENISE M. SHEEHAN, Commissioner of the New York State Department of Environmental Conservation, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION and STATE OF NEW YORK,

Plaintiffs,

-against-

LAWRENCE AVIATION INDUSTRIES, INC. and GERALD COHEN,

Defendants.

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Index No. 03-10241
(Emerson, J.)

CONSENT JUDGMENT

WHEREAS, plaintiffs State of New York, Erin M. Crotty, Commissioner of the New York State Department of Environmental Conservation (DEC) and the DEC (collectively the State or Plaintiffs), commenced this action by filing a Verified Complaint on May 12, 2003, alleging violations of New York State Navigation Law (Navigation Law) §§ 172,173, 175, and 192 and various New York State Environmental Conservation Laws (ECL) and regulations promulgated thereunder, including the State Industrial Hazardous Waste Management Law and regulations (ECL Article 27, Title 9 and 6 NYCRR Parts 372 and 373), the State Hazardous Substances Bulk Storage Law and regulations (ECL Article 27, Title 9 and 6 NCYRR Parts 598 and 599), the State Air Pollution Control Law and regulations (ECL Article 19 and 6 NYCRR Parts 201, 212 and 227), and the common law of public nuisance by defendants Lawrence Aviation Industries, Inc., Sheep Pasture Road, Port Jefferson, New York 11776 and Gerald Cohen, 38 Bridle Path, St. James, New York 11780 (collectively LAI or Defendants) in connection with the operation of the LAI titanium processing plant on Sheep Pasture Road, Port Jefferson Station, New York (the Plant), and seeking a judgment, among other things, (i)

assessing civil penalties for Defendants' violations, (ii) enjoining Defendants from further violation of the specified laws and from maintaining a public nuisance, and (iii) enjoining Defendants to remediate the environmental violations at and around the Plant identified in the Complaint;

WHEREAS, Plaintiffs moved by Order to Show Cause dated May 12, 2003, with a temporary restraining order, for a preliminary injunction pursuant to CPLR Article 63(i) enjoining Defendants from operating the Plant until Defendants come into full compliance with the applicable requirements of the State Industrial Hazardous Waste Management Law and regulations, including 6 NYCRR Parts 372 and 373; the State Hazardous Substances Bulk Storage Law and regulations, including 6 NCYRR Parts 598 and 599; the State Air Pollution Control Law and regulations, including 6 NYCRR Parts 201, 212 and 227; and the State Navigation Law, Article 12, (ii) enjoining Defendants from selling, transferring or otherwise alienating the Plant or the Plant site property without approval of the Court, and (iii) requiring Defendants to post a bond or other financial guarantee, in an amount to be determined by the Court, to ensure the performance of the interim remedial measures necessary to eliminate the threats to human health and the environment posed by the Defendants' violations of law concerning the proper storage, handling and disposal of hazardous wastes and hazardous substances in and around the Plant, (iv) enjoining Defendants from denying DEC personnel access to the Plant and the Plant site without the need for a search warrant to ensure compliance with the foregoing injunctive relief, and the Court having granted the preliminary injunction by decision and order dated July 16, 2003 (the Preliminary Injunction);

WHEREAS, Plaintiffs moved, on November 18, 2005, for: (a) summary judgment on liability; (b) contempt predicated on Defendants' alleged violations of the Preliminary Injunction and a subsequently-issued temporary restraining order; and (c) for modification of the Preliminary Injunction to (i) preliminarily enjoin Defendants to correct all outstanding violations within six months, (ii) prohibit the operation of the Plant until all outstanding violations have been corrected, and (iii) prohibit the sale of the Plant until all outstanding violations have been corrected (the November 18, 2005 Summary Judgment Motion), which motion has not been resolved;

WHEREAS, Defendants do not contest liability for the ECL violations upon which Plaintiffs have moved for summary judgment as to liability;

WHEREAS, starting in August 1997 and continuing through April 2000, the DEC, as lead agency, pursuant to ECL Article 27, Title 13, conducted a remedial investigation of the LAI Plant site and surrounding areas and took other actions to address hazardous substance contamination that DEC attributed to Defendants' historic activities, including, but not limited to, installing groundwater monitoring wells, taking soil samples, extending water lines and connecting homes to these lines, and incurred total costs of $524,624, which Plaintiffs seek to recover from Defendants (the LAI Cost Recovery Claims), and DEC continued thereafter to monitor and comment on the remedial investigation, which was taken over by the United States Environmental Protection Agency (EPA) as lead agency;

WHEREAS, beginning in or around February 2004, EPA implemented a "removal action" to characterize, stabilize and lawfully dispose of hazardous substances stored at the Site, which removal action was substantially completed by April 2005, resulting in the removal from

the Site of much of the hazardous wastes that were the subject of the hazardous waste violations alleged by the State in this action, and remediating some of the conditions leading to Plaintiffs' claims for injunctive relief; and

WHEREAS, Defendants waive all jurisdictional defenses and consent to the jurisdiction of this Court for purposes of entering and enforcing this Consent Judgment;

IT IS HEREBY STIPULATED, ORDERED AND DECREED that:

1. Defendants admit that on at least one occasion each of them committed a violation of each of: (1) Navigation Law §173, by discharging petroleum, failing to report a petroleum discharge to DEC, and/or failing to immediately contain a petroleum discharge; (2) ECL Article 27, Title 9, by violating regulations concerning the storage, handling, disposal and containment of hazardous waste; and (3) ECL Article 19, by failing to have air emission sources duly permitted, failing to comply with air emissions permit requirements and/or failing to maintain air pollution control equipment.

2. It is the express understanding and agreement of the parties that, upon execution of this Consent Judgment by their respective authorized counsel, and when "So Ordered" by the Court, this Consent Judgment shall be and have the force of an order of the Court, and may be enforced as such by all parties.

PENALTY AND COST RECOVERY PAYMENTS

3. Defendants agree to entry of judgment against them in the amount of $1,024,624. That amount is comprised of $500,000 in penalties in full settlement of Plaintiffs' penalty claims in this action, and $524,624, in full satisfaction of DEC's LAI Cost Recovery Claims for remedial and investigation costs incurred by the State as of the date of this Consent Judgment.

REMEDIAL REQUIREMENTS

4. Unless already completed prior to the Effective Date of this Consent Judgment, Defendants shall undertake and complete the following remedial actions (Remedial Action Items or Items) to correct the violations of the ECL, Navigation Law and environmental regulations set forth in the Complaint that remain uncorrected. Defendants shall complete each Remedial Action Item within six months of the Effective Date of this Consent Judgment (the Completion Date), except that the Completion Date for a particular Remedial Action Item shall, upon the written request of Defendants, be extended for the number of days it takes Plaintiffs to review, comment on, or approve the work required to plan or complete the Item, and by any delay caused by the unavailability of any DEC personnel whose presence during the required work Plaintiffs deem necessary, provided Defendants provide Plaintiffs with 48 hours of advance notice of when the work will occur. The parties may agree, in writing, to extend the Completion Date for particular Remedial Action Items for good cause shown by Defendants. Plaintiffs' approval of any such extension request will not be unreasonably withheld, so long as Defendants or their consultant(s) have been and are working diligently and in good faith to complete the various Remedial Action Items

A. Petroleum Cleanup Remedial Action Items

1. Petroleum-Contaminated Soils

5. Defendants must excavate and lawfully dispose of all petroleum and petroleum-contaminated soils, with complete removal to be verified through testing, from the following areas: (1) soil beneath and around the diesel generator area; (2) soil adjacent to the large aboveground diesel storage tank; and (3) soil located on the opposite side of the access road from

the diesel generator. Completeness of contaminated soil removal shall be determined by application of DEC TAGM 4046 criteria. Additionally: (1) the various machine pits and containment areas/systems throughout the complex and the containment area for the large diesel tank must be emptied and cleaned and then properly maintained; (2) any open containers of petroleum must be properly staged and properly disposed of; and (3) any areas throughout the complex that have any petroleum staining must be cleaned up, including inside the electric substations where previous inspections identified the presence of transformer oil staining.

6. LAI must provide to DEC copies of the completed waste manifests to prove proper disposal. DEC will conduct follow-up inspections to verify compliance. DEC will require end-point sampling by a qualified professional, with the samples analyzed by a New York State Certified Laboratory, where soil has been excavated or where it is apparent that contamination has penetrated impervious surfaces (*i.e.*, concrete). Samples must be run utilizing EPA Methods 8021 and 8270, including MTBE testing. Based on the contaminated or potentially contaminated material stored and/or generated during the cleanup process, additional sampling criteria such as PCB or TAL Metal analysis may be required. Existing State Petroleum spill numbers 03-25255, 03-25024, and 03-25019 will remain "open" until all petroleum cleanup requirements are fulfilled.

2. <u>Petroleum Storage Tanks</u>

7. A. LAI must remove the underground tank in the vicinity of Buildings 10X and G that has been partially exposed, and excavate and lawfully expose of any petroleum-contaminated soil below, adjacent to or otherwise traceable to the tank, and seal all outlets from this tank.

B. The 2000-gallon underground tank located at Building M (Electro-Melt Facility) that remains in service must be removed, in the presence of a DEC representative, or tightness tested with an accepted testing method by a qualified contractor in accordance with 6 NYCRR Part 613.5. The test results must be submitted to DEC for review. DEC will determine additional appropriate actions based on the test results. If the tank meets applicable standards for tightness and LAI proposes to keep it in service, the tank must meet the requirements of 6 NYCRR Parts 612 through 613 and must comply with Article 12 of the Suffolk County Health Department Sanitary Code.

C. LAI must remove the fluids from, and then clean the residue from, the secondary containment for Tank 18, the 5,000-gallon oil tank near the diesel generators near Building 10X.

D. LAI must clean out, and then clean the residue from, the secondary containment around the 275-gallon tank in the propane building, which contains oil and water, and lawfully dispose of the fluids that are removed. LAI must provide copies of the completed waste manifests to DEC to prove proper disposal.

B. <u>Air Emission Clean Up Remedial Action Items</u>

8. LAI must remove and lawfully dispose of the air contaminant residue from the fabric filter baghouses of the Rotoblast operation in the Drop Hammer area (identified in a previously-issued DEC air permit as Emission Point No. 00051).

9. LAI must clean up the cyclone type dust collector for the Pangborn Rotoblast located in Building F, including the contaminants on the ground, where the baghouse from the Rotoblast was disconnected (identified in the previously issued DEC permit as Emission Point No. 00975).

10. LAI shall drain and lawfully dispose of any diesel fuel, oil or other petroleum product contained in the remaining Caterpillar diesel generator located outside of Building 10X. After DEC confirms that the generator has been fully drained, it shall have the option of placing seals or evidence tape anywhere on the unit. If DEC does so, it shall be a violation of this Consent Judgment to break any seal or tape without prior written approval by DEC. Defendants shall not engage in repair of, or operate, the generator without prior written approval by DEC**.**

C. Swarf Disposal

11. All titanium scrap, or "swarf," shall be removed from the Site and lawfully disposed of by Defendants or EPA, in accordance with EPA's letter to Defendants dated May 24, 2006, or as otherwise agreed to in writing by EPA.

D. Procedures For Determining When Remedial Action Items Are Complete

12. Defendants shall notify DEC, in writing, when they believe a Remedial Action Item has been completed. DEC shall thereafter inspect the Plant site to determine whether the Remedial Action Item has been completed, with reasonable promptness, and issue a written determination (Determination of Completeness) either concurring that the Item has been completed, or, if DEC determines that a Remedial Action Item has not been satisfactorily completed, specifying what needs to be done to complete the Item, and giving Defendants 30 days to cure. DEC's Determination of Completeness shall be binding unless Defendants challenge the Determination pursuant to Paragraphs 43 - 47 below and meet their burden of demonstrating that the determination was arbitrary and capricious. If DEC determines that the Remedial Action Item has in fact been completed, or if DEC determines that the Item has not been completed, but its determination is subsequently reversed in accordance with Paragraphs 43

- 47 below, then the date on which Defendants notify DEC shall be considered the date on which the Remedial Action Item has been completed. If DEC determines that the Remedial Action Item has not been completed, and DEC's determination is not reversed, then Defendants' notification of DEC that the action has been completed shall not extend Defendants' time to complete the Remedial Action Item, except to the extent any decision issued pursuant to Paragraphs 44 or 46 below allows.

13. Defendants shall notify DEC, in writing, when they believe all Remedial Action Items have been completed. Within 20 days of receiving such notification, DEC shall provide a Determination of Completeness either verifying completion of all Remedial Action Items, or, alternatively, specifying why all Remedial Action Items have not been completed (and giving the requisite 30 days to cure, to the extent that there are fewer than 30 days left before the deadline to complete all Remedial Action Items).

14. If Plaintiffs seek to establish that Defendants have violated this Consent Judgment by failing to complete any Remedial Action Item by the Completion Date, then Plaintiffs shall serve a written notice of violation on Defendants.

15. Defendants shall notify Plaintiffs in writing within one week of any decision to permanently cease operating the LAI Plant as a titanium processing facility or otherwise significantly change operations at the Plant.

REQUIREMENTS FOR FUTURE OPERATION OF THE PLANT

16. Subject to the definitions and exceptions in Paragraphs 38 - 40 below, in addition to compliance with all applicable laws or regulations not specifically addressed herein, any future

operation of the Plant must adhere to the following operational requirements (Operational Requirements):

A. Chemical Bulk Storage Tanks

17. Before any chemical bulk storage tank can be placed back in service or the tanks can be filled with product, all requirements set forth in the applicable portions of 6 NYCRR Parts 595 through the 599 governing the bulk storage of hazardous substances must be complied with, and compliance verified by DEC. These requirements include, but are not limited to, repair and/or replacement of the tank secondary containment systems; installation of a transfer station containment system; replacement and/or repairs to the existing storage tank(s) and related product piping; 5-year reinspections; repair of overfill alarms; installation of tank gauges; and the development and approval of a Spill Prevention Report.

18. If any chemical bulk storage tank is not going to be placed back in service, Defendants must properly remove it from service in accordance with 6 NYCRR Part 598.10, "Closure and Change of Service," within 90 days of the determination to remove it from service.

B. Air Emission Sources

1. Equipment Repair and Maintenance

19. Defendants shall maintain all equipment in accordance with 6 NYCRR Part 200.7, “Maintenance of equipment,” including, but not limited to, repairing holes in the walls and sparking electrical wires.

2. Air Permitting

20. Before lawful operation of the Plant may be resumed, Defendants must apply for and obtain from DEC an Air Pollution Title V Permit, or such other air emission permit(s),

registration(s) or approval(s) as DEC deems necessary, in accordance with 6 NYCRR Part 201, or decommission the Plant in accordance with Paragraph 23 below. The permit application shall include a NOx Reasonably Available Control Technology Plan in accordance with 6 NYCRR Part 227-2 and must identify all active and inactive air emission points for inclusion in the air permit, including, but not limited to: (1) five emission points on the north face of Building G (also known as the 4-High Building) near the titanium rolling mill; (2) two emission points located on the roof of Building 10X, where LAI has a second titanium rolling mill; (3) two emission points in the roof above the Drop Hammer area of the Plant, where there are two oil or gas fired boilers, manufactured by Cleaver Brook and York-Shipley respectively; (4) the industrial heat processing heat unit (drying oven) in the Drop Hammer building it uses fuel, as opposed to electricity; (5) the acid scrubber in Building (Emission Point 00043 - Acid Scrubber); (6) the stack connected to a common lateral exhaust system covering the tanks in Building 30, where the three titanium processing tanks are located (Emission Point 00022); (7) the baghouse from the Pangborn Rotoblast located in Building F (Emission Point No. 00975); (9) the gas or oil-fired boiler manufactured by Superior Combustion Industries located in Building F; (10) the oil-fired boiler manufactured by York-Shipley located in Building M; and (11) the Submerged Combustion Evaporator (Emission Point 00050).

3. <u>Air Pollution Control Devices</u>

21. Before lawful operation of the Plant may be resumed, Defendants must reinstall all air pollution control devices such as acid gas scrubbers, baghouses and NOx controls, in accordance with the permit, or as required by applicable regulations, or decommission the Plant in accordance with Paragraph 23 below. Necessary repairs required before lawful operation of

the Plant may resume include, but are not limited to: (1) the acid scrubber installed on two exhaust stacks in Building 30 (Emission Point 00043 - Acid Scrubber) must be reconnected; (2) the stack connected to a common lateral exhaust system covering the three titanium processing tanks in Building 30 (Emission Point 00022) must be reconnected; (3) the baghouse from the Pangborn Rotoblast located in Building F (Emission Point No. 00975) must be reconnected and made operable; (4) the Submerged Combustion Evaporator (Emission Point 00050), with the discharge pipes of the Evaporator Vessels in open-ended position, must be repaired.

4. Record-keeping

22. Unless all air emission sources are decommissioned in accordance with Paragraph 23 below, Defendants shall maintain all required records in conformance with 6 NYCRR Part 201, 6NYCRR Part 227, 6 NYCRR Part 231-2 and any other applicable federal and State regulations, including, for each source of air pollution, records of hours of operation and total fuel usage. For any source permitted as a major source, Defendants shall prepare an annual emission statement in accordance with 6 NYCRR Part 202-2 to demonstrate continuous compliance with all applicable regulations and air permit conditions.

5. Decommissioning

23. Alternatively to bringing any source of air emissions into compliance with permit, maintenance and other applicable requirements, Defendants may either: (a) permanently discontinue the air emission source by dismantling and removing it from the Site, and cleaning up any residual contaminants remaining after removal; or (b) notify DEC in writing that the particular air emission source will not be activated, will be disconnected from its power source, and, unless written notice is given by Defendants to DEC, not reconnected to a power source or

reactivated. If Defendants choose the second option, then Defendants shall take such steps as DEC shall direct to prevent any further release of contaminants from the decommissioned source, including, but not limited to, cleaning up any dust or other contaminants and removing any petroleum or other fuel.

C. Hazardous Wastes

24. LAI must maintain the integrity of containers and tanks holding hazardous wastes, in accordance with applicable DEC regulations. Materials in containers showing signs of compromised integrity, such as rust or other corrosion, or denting preventing the sealing of lids, shall be repackaged.

25. Containers holding hazardous wastes must be labeled with their contents, the words "Hazardous Waste," and accumulation start dates, in accordance with applicable DEC regulations.

26. Containers holding hazardous waste must be closed when not in use, in accordance with applicable DEC regulations.

27. The secondary containment systems for hazardous waste containers and tanks must be maintained in a dry state, in accordance with applicable DEC regulations. Hazardous waste determinations must be made for any liquids removed from secondary containment systems in accordance with 6 NYCRR § 372.2(a)(2), and the liquids disposed of legally and in accordance with 6 NYCRR Parts 372 and 373, and documentation of such disposal provided to DEC.

28. Subject to the definitions in Paragraphs 38 - 40, before lawful operation of the Plant may be resumed, Defendants must update the Plant's facility closure plan to address all storage areas where wastes have been held for more than 90-days, all tanks used to store hazardous

wastes, and all locations where hazardous waste releases have been identified, through sampling or otherwise.

29. Defendants shall submit an approvable closure plan to DEC, which will be subject to public notice and must be approved by DEC before lawful operation of the Plant can commence.

30. Any areas identified in the closure plan that will not be used for hazardous waste storage must be closed according to the terms of the approved closure plan.

31. All titanium scrap, or swarf, shall be stored in its current containers as directed by EPA, provided such containers are sealed and impervious and the swarf shall be stored wet. If the scrap or swarf is transferred to other containers, the new containers must be sealed and impervious, and the materials inside must be stored wet.

32. Before lawful operation of the Plant may be resumed, Defendants shall develop and implement a training program, as described in 6 NYCRR Part 373-3, to educate their employees about the hazardous waste generated and stored on-site and all related operations. The written training program shall include waste management procedures, including information on the contingency plan, relevant to the positions in which personnel are employed. A copy of the written plan shall be submitted to DEC.

33. The Plant shall update its contingency plan and submit it to the appropriate agencies as required by 6 NYCRR Part 373. A copy of the plan shall be submitted to DEC.

34. All documentation related to the generation, storage, and disposal of hazardous waste must be maintained on-site in an easily accessible location.

35. Hazardous materials shall only be stored in tanks that have secondary containment systems, leak detection systems, and written assessments in accordance with 6 NYCRR Part 373-3.10(c)(1).

36. Tanks containing hazardous materials shall be inspected, once each operating day, to detect corrosion or the release of waste. These inspections shall be documented.

D. Brookhaven Fire Marshal's Requirements

37. Before lawful operation of the Plant may be resumed, Defendants shall bring it into compliance with all requirements set forth in the stipulation and order dated June 19, 2003 between LAI and Gerald Cohen and the Town of Brookhaven. Defendants shall obtain and provide to DEC written certification by the Brookhaven Fire Marshal or his or her representative that the requirements have been met, or, for purposes of the specific task or tasks that Defendants propose to undertake, the Fire Marshal does not object to Defendants or such other person or persons as Defendants may authorize undertaking the specified task of tasks.

OPERATION OF THE PLANT DEFINED

38. For purposes of this Consent Judgment, "operate the Plant," "operation of the Plant," "operations at the Plant" or similar phrases shall refer to: operating any diesel generator; utilizing any electrically-powered device for cutting, sheering, bending, grinding, rolling, pressing, molding, shaping, chemically bathing, heating or otherwise processing titanium or any other metal; chemically treating titanium or any other metal; operating any gas-fired kiln; and engaging in any other manufacturing or fabrication process utilizing hazardous substances, as that term is defined at 42 U.S.C. § 9601(14).

39. For purposes of this Consent Judgment, if Defendants need to operate any component of the titanium manufacturing process as part of the permitting process or to otherwise comply with the requirements hereof, prior to complying with all prerequisites for lawful operation set forth in this Consent Judgment, then Defendants shall make a written request to DEC explaining why such operation is necessary. DEC shall determine whether it concurs, and if it does, specify such conditions as it deems necessary to properly oversee activation of the component, including, but not limited to, time and duration of permissible activation and DEC presence.

40. For purposes of this Consent Judgment, the use of the Plant, or any part of the Plant, for storage, the processing of solid waste that is not hazardous waste, or such other uses as do not involve operating any diesel generator; utilizing any electrically-powered device for cutting, sheering, bending, grinding, rolling, pressing, molding, shaping, chemically bathing, heating or otherwise processing titanium or any other metal; chemically treating titanium or any other metal; operating any gas-fired kiln; and engaging in any other manufacturing or fabrication process utilizing hazardous substances, as that term is defined at 42 U.S.C. § 9601(14), shall not be considered "operating" the Plant for purposes of this Consent Judgment. Nothing herein shall preclude the use of the Plant, or any part of the Plant, from being used for storage, the processing of solid waste that is not hazardous waste, or such other uses as do not constitute "operating" the Plant, provided that Defendants or such other party as may seek to engage in such activity obtains all legally required permits or approvals, and obtains written confirmation from the Town of Brookhaven Fire Marshal that the proposed use is allowed under the Town Fire Code.

STIPULATED MINIMUM PENALTIES

41. In addition to all other available remedies, including contempt and injunctive relief, Defendants shall be liable to Plaintiffs for stipulated penalties for violation of this Consent Judgment, as follows:

A. If Defendants fail to complete the Remedial Action Items by the Completion Date for each item, then Defendants shall be jointly and severally liable for a stipulated penalty in the amount of $500 per day.

B. If Defendants commence operations at the Plant before each of the requirements enumerated in Paragraphs 16 - 37 have been complied with, then Defendants shall be jointly and severally liable for a stipulated penalty in the amount of $1,000 per day of operation.

C. If Defendants violate any Operational Requirement, then they shall be jointly and severally liable for a stipulated penalty in the amount of $500 per violation.

D. Any other violation of this Consent Judgment shall subject Defendants to a penalty of $500 per violation.

42. To obtain stipulated penalties for any violation of the terms of this Consent Judgment, Plaintiffs shall give Defendants notice of any such violation by issuing them a notice of violation (NOV), which shall include a period of 30 days to cure the violation. Any stipulated penalty assessed by Plaintiffs shall be due and payable after Defendants' time to invoke dispute resolution under Paragraph 43 expires. Any NOV of this Consent Judgment issued by Plaintiffs shall specify the date by which Defendants must challenge the violation or waive the right to challenge it, which shall factor in the 30-day cure period and the time period within which

Defendants must bring such a challenge in accordance with Paragraph 43 below. Interest shall accrue on any stipulated penalty not paid when due, in accordance with New York State Finance Law and other laws applicable to debts to the State. Commencement of a timely challenge by LAI shall preclude Plaintiffs from entering judgment on the subject violation pending a resolution of that challenge in accordance with the dispute resolution provisions in Paragraphs 43 - 47 below, including exhaustion or waiver of appeals. If Defendants do not timely challenge an NOV hereunder, Defendants consent to Plaintiffs' entering a judgment in the amount specified in the NOV, with interest, without further notice.

DISPUTE RESOLUTION

43. Defendants shall have the right to challenge any NOV or Determination of Completeness issued by Plaintiffs under this Consent Judgment, including the amount of any penalty assessed. In any such challenge, the burden shall be on Defendants to demonstrate that the NOV or determination was arbitrary and capricious. To commence such a challenge, Defendants shall, within 20 days of receipt of the NOV or determination, serve a written statement with supporting affidavits setting forth Defendants' position (Challenge Statement). If Defendants fail to commence a challenge within 20 days of receipt, they shall waive the right to challenge the determination or NOV and the assessment of any penalties associated therewith. Upon receipt of a Challenge, DEC staff shall send a copy of it to the Chief DEC Administrative Law Judge (ALJ). Plaintiffs shall have 20 working days from receipt of the Challenge to serve a written response, with supporting affidavits (Response Statement). Simultaneously with serving its Response Statement, Plaintiffs shall send a copy to the Chief ALJ, together with proof of service on the Defendants.

44. The ALJ to whom the matter is assigned shall decide whether Defendants have demonstrated that the NOV or determination was arbitrary and capricious, based on the Challenge and Response Statements. There shall be no hearing. The ALJ may, in his or her discretion, request no more than one supplemental submission from each of the parties to assist him or her in deciding the challenge. Upon determining the merits of the challenge, the ALJ will prepare a written decision, which shall explain the basis for the decision. This decision shall be considered final as if issued by the DEC Commissioner, and subject to challenge in an Article 78 proceeding. Defendants must commence any such Article 78 proceeding within 30 days of service upon them of the decision.

45. The parties may agree, in writing, to extend the date for serving a Challenge Statement or serving a Response Statement. The parties may stipulate at any time prior to the ALJ's decision on any matter relevant to the challenge, including its withdrawal.

46. If a challenged DEC Determination of Completeness is upheld by the ALJ, then Defendants' time to complete the subject Remedial Action Item shall not be extended, except to the extent the ALJ, or in any Article 78 proceeding, the court, directs, based on whether the challenge was brought in good faith, Defendants' overall progress at the site, and such other equitable factors as the ALJ or court shall deem relevant.

47. In any administrative or court proceeding brought pursuant to the dispute resolution provisions of this Consent Judgment, personal service of the petition or other papers (or, if the Court deems an informal conference appropriate, such letter or oral communication as the Court shall deem appropriate) commencing the proceeding on:

Craig Elgut
Acting Regional Attorney
New York State Department of Environmental Conservation, Region 1
SUNY Building 40
Stony Brook, New York 11790

and on

AAG Andrew J. Gershon
Office of the New York State Attorney General, Environmental Protection Bureau
120 Broadway
New York, NY 10271

shall be deemed valid service.

DURATION OF THIS CONSENT JUDGMENT

48. Except for the provisions set forth in Paragraph 3 above regarding a money judgment in the amount of $1,024,624, the terms of this Consent Judgment shall remain in force and effect for 18 months from the date Plaintiffs certify in writing that all of the Remedial Action Items have been completed, or, absent such a certification, 18 months from the date all Remedial Action Items are determined to have been completed pursuant to Paragraph 44 above. The money judgment provisions set forth in Paragraph 3 shall remain in force and effect until the judgment, and any interest due thereon, is fully satisfied in accordance with the CPLR and other applicable law. Defendants' obligation to pay any stipulated penalties assessed hereunder, or judgments entered thereon, including interest, shall continue until fully satisfied.

49. Defendants agree to remain subject to the jurisdiction of this Court for the sole purpose of enforcement of, and disputes concerning, the requirements of this Consent Judgment.

SALES OF REAL PROPERTY, CAPITAL ASSETS OR THE PLANT

50. Defendants are enjoined from selling, transferring or otherwise alienating the Plant, any capital asset thereof, or the real property on which the Plant is located without approval of the Court, excluding any existing lease.

51. Defendants shall inform Plaintiffs, in writing, at least 30 days prior to selling or leasing any part of the Plant, the real property on which the Plant is located, or any capital asset component of the Plant. Upon request, Defendants shall provide Plaintiffs with copies of all finalized sale or lease documents. "Finalized sale or lease documents" shall mean the documents effectuating the sale or lease transaction, such as a lease, contract of sale, title documents, that are in final form ready for execution as agreed by the parties. Plaintiffs agree to keep confidential any financial information contained in the finalized sale or lease documents, such as the amount of money to be paid, the timing of payment, or terms of guaranty, provided pursuant to this paragraph that Defendants request be kept confidential (Information Designated Confidential), so long as Defendants themselves do not disclose it to any third parties other than those directly involved in the sale, transfer or alienation, including, but not limited to, brokers and title companies. Plaintiffs may include Information Designated Confidential in any court filing made under seal. If Plaintiffs are required by law to disclose any Information Designated Confidential, Plaintiffs shall provide notice to Defendants prior to making such disclosure, to the extent legally possible.

GENERAL PROVISIONS

52. In addition to all other rights of access provided by law, Plaintiffs, their employees and agents shall be granted immediate access to the Plant and site during normal business hours

and/or when any employee or agent of Defendants or of any entity owned or controlled by Defendants is there, for the purposes of inspecting and determining compliance with this Consent Judgment and with the ECL. Such access shall include the right to take photographs of such conditions and practices and to take samples of soil, groundwater, surface waters (including waters that have collected or pooled on-site), and any chemicals or compounds.

53. Nothing contained herein shall waive or bar of the rights of Plaintiffs to prosecute violations of the ECL, Navigation Law or other laws by Defendants, except that with respect to violations that were enumerated in the Complaint or November 18, 2005 Summary Judgment Motion herein, or any other violation that occurred prior to the Effective Date of this Consent Judgment, Plaintiffs shall not be entitled to seek financial penalties additional to those provided for herein. Plaintiffs reserve their rights to prosecute any additional violations not enumerated in the Complaint, November 18, 2005 Summary Judgment Motion and/or in this Consent Judgment.

54. The failure to enforce any alleged violation of any term of this Consent Judgment by any party shall not constitute or be deemed or construed to constitute any waiver of such violation or any other violation, except that the daily penalties enumerated herein shall not commence accruing until written notice is provided to Defendants and the 30-day cure period for the violation has expired. No amendment to, change of or suspension or waiver of this Consent Judgment shall be binding or of any force or effect unless and until signed by all parties or their authorized counsel and "So Ordered" by the Court.

55. Nothing herein shall be construed as an approval of any activity by any state, local

or federal agency not party to this Consent Judgment. Plaintiffs shall work with Defendants and EPA to obtain EPA's permission for Defendants to implement the Remedial Action Items, to the extent EPA requests that particular Remedial Action Items not proceed absent its approval.

56. Plaintiffs shall serve any NOV or determination hereunder by certified United States mail, return receipt requested, or by recognized overnight mail service which provides proof of delivery, upon:

Gerald Cohen
Lawrence Aviation Industries, Inc.
Sheep Pasture Road
Port Jefferson, NY 11776

and

Gerald Cohen
38 Bridle Path
St. James, New York 11780

with a copies to:

Frederick Eisenbud, Esq.
Lamb & Barnosky, LLP
534 Broadhollow Road
P.O. Box 9034
Melville, New York 11747-9034

Either (a) a signed acknowledgment of receipt by or on behalf of any one of the recipients, or (b) proof of delivery by an overnight service to any one of the recipients, whether or not signed on behalf of the recipient, shall be conclusive proof of receipt by Defendants. Defendants reserve the right to designate, in writing, other individuals, addresses or counsel of record for purposes of valid service of NOVs or determinations, although service in the manner described above upon Mr. Cohen or any new designee at any one location shall remain conclusive proof of receipt.

57. For purposes of establishing the date by which certain actions or tasks must be completed based upon issuance of a NOV or determination, the date from which Defendants' time is calculated shall be the day following the date of actual receipt of the NOV, or determination by the means of service specified in the immediately preceding paragraph.

58. Any technical submission required to be made to Plaintiffs hereunder shall be made to:

Nicholas Acampora
Spill Response Section Supervisor
New York State Department of Environmental Conservation, Region 1
SUNY Building 40
Stony Brook, New York 11790

with a copy to:

AAG Andrew J. Gershon
Office of the New York State Attorney General, Environmental Protection Bureau
120 Broadway
New York, NY 10271

Plaintiffs reserve the right to designate alternative or additional persons to whom technical submissions should be submitted.

59. This Consent Judgment shall be binding upon the parties and their respective employees, principals, agents, heirs, successors, assigns, lessees, or the employees, principals, agents, heirs, successors, assigns, or lessees, of any company or entity owned or controlled by Defendants.

60. The "Effective Date" of this Consent Judgment is the date it is "So Ordered" by the Court.

61. The caption of this action is hereby amended by the substitution of Denise M. Sheehan for plaintiff Erin M. Crotty, as Commissioner of the New York State Department of

Environmental Conservation.

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Plaintiffs

By: _____
Andrew J. Gershon
Assistant Attorney General

Date: 11/30/06
Environmental Protection Bureau
120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8474

LAMB & BARNOSKY, LLP
Attorneys for the Defendants

By: _____
Frederick Eisenbud

Date: 11/29/06
535 Broadhollow Road
P.O. Box 9034
Melville, New York 11747-9034

Lawrence Aviation Industries, Inc.

By: _____
Gerald Cohen, President
Lawrence Aviation Industries, Inc.
Sheep Pasture Road
Port Jefferson, NY 11776

Date: 11/28/06

Gerald Cohen, Individually

_____
38 Bridle Path
St. James, New York 11780

Date: 11/28/06

SO ORDERED: _____
Justice, Supreme Court

DATE: _____

Environmental Conservation.

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Plaintiffs

By: Andrew J. Gershon
Andrew J. Gershon
Assistant Attorney General

Date: 11/30/06
Environmental Protection Bureau
120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8474

LAMB & BARNOSKY, LLP
Attorneys for the Defendants

By: Frederick Eisenbud
Frederick Eisenbud

Date: 11/29/06
535 Broadhollow Road
P.O. Box 9034
Melville, New York 11747-9034

Lawrence Aviation Industries, Inc.

By: Gerald Cohen
Gerald Cohen, President
Lawrence Aviation Industries, Inc.
Sheep Pasture Road
Port Jefferson, NY 11776

Date: 11/28/06

Gerald Cohen, Individually

Gerald Cohen
38 Bridle Path
St. James, New York 11780

Date: 11/28/06

SO ORDERED: ELIZABETH H. EMERSON
Justice, Supreme Court

DATE: December 20, 2006

FILED
JAN 10 2007
JOSEPH A. PASCALE
CLERK OF SUFFOLK COUNTY