

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
GAETANO ASSOCIATES LP,)
CHARLES A. GAETANO CONSTRUCTION)
CORPORATION)
)
)
)
)
)
)
)
Defendants.)
_____)

CIVIL ACTION NO. 6:19-cv-1162 (TJM/ATB)

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	1
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS	2
V.	PAYMENT OF RESPONSE COSTS	3
VI.	STIPULATED PENALTIES	4
VII.	COVENANT BY PLAINTIFF	5
VIII.	RESERVATION OF RIGHTS.....	5
IX.	COVENANTS BY SETTLING DEFENDANTS	6
X.	EFFECT OF SETTLEMENT; CONTRIBUTION.....	7
XI.	RETENTION OF RECORDS	8
XII.	NOTICES AND SUBMISSIONS	9
XIII.	RETENTION OF JURISDICTION	10
XIV.	INTEGRATION.....	10
XV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	10
XVI.	SIGNATORIES/SERVICE	11
XVII.	FINAL JUDGMENT.....	11

I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint in this matter under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at or from a parcel of property which is located at 2205 Bleecker Street, Town of Frankfort, Herkimer County, New York, and is within the Charlestown Mall Site (the Site as defined below).

B. Gaetano Associates, LP, a New York limited partnership, (Gaetano Associates) owned and operated the Site from April 1, 1979 until March 30, 1995 when the entity was converted into a limited liability company under New York law.

C. Gaetano Associates, LLC, a New York limited liability company, owned and operated on the Site from March 30, 1995 until September 23, 2005, when the legal entity was purchased by a third party.

D. Charles A. Gaetano Construction Corporation, a New York Corporation (Gaetano Construction) leased portions of the Site for its corporate office space from March 1985 to December 2007 from either Gaetano Associates LP or Gaetano Associates, LLC.

E. The United States alleges that Settling Defendants are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred at the Site.

F. Defendants Gaetano Construction and Gaetano Associates, LP (hereinafter Settling Defendants) have entered into this Consent Decree but do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States, Gaetano Construction, and Gaetano Associates (together the Parties) agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and Settling Defendants in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that the terms of this Consent Decree are fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this consent decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA or DOJ on behalf of EPA has paid at or in connection with the Site through September 30, 2018, plus accrued Interest on all such costs that has accrued under 42 U.S.C. § 9607(a) through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean those Parties identified as: Gaetano Associates Limited Partnership, Charles A. Gaetano Construction Corporation, and the individuals and entities listed in Appendix A.

“Site” shall mean the Charlestown Mall Site, which is defined by the metes and bounds in Appendix B, but generally consists of approximately 14.5 acres along the border between Utica and Frankfort, in Oneida and Herkimer Counties, New York, located just east of Turner Street and between Bleecker Street and the East-West Arterial Highway, also known as Route 5, located at 2205 Bleecker Street, Utica, New York.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. **Payment by Settling Defendants for Past Response Costs.** Within 30 days after the Effective Date, Settling Defendants shall pay to EPA a lump sum of \$1.85 million, plus an additional sum for Interest on that amount calculated from December 21, 2018 through the date of payment.

5. Settling Defendants shall make payment by Fedwire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (FLU) of the United States Attorney’s Office for the Northern District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Charles A. Gaetano Construction Corporation
258 Genesee Street
Utica, NY 13502
315-733-4611
bag@gaetanoconst.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XII (Notices and Submissions).

6. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the Charlestown Mall Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of payment, Settling Defendants shall send notice that payment has been made: (a) to EPA in accordance with Section XII (Notices and Submissions); (b) to DOJ by email or by mail in accordance with Section XII (Notices and Submissions); and (c) to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site ID A239, and DJ Number 90-11-3-11061.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. **Interest on Late Payments.** If Settling Defendants fail to make any payment under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. **Stipulated Penalty**

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendants for United States' Past Response Costs) are not paid by the required due dates, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$1,500 per day that the payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment). Such notice shall reference the CDCS number, Site ID A239, and DJ number 90-11-3-11061.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

e. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

f. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

g. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of any stipulated penalties that have accrued under this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. COVENANT BY PLAINTIFF

10. **Covenants for Settling Defendants by United States.** Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Defendants of its obligations under this Consent Decree. This covenant extends only to Settling Defendants and does not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 10 (Covenants for Settling Defendants by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS BY SETTLING DEFENDANTS

12. **Covenants by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections §§ 106(b)(2), 107, 111, 112 or 113, of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

13. Except as provided in Paragraph 15 (Waiver of Claims by Settling Defendants) and 19 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order under any of the reservations in Section VII (Covenants by Plaintiff), other than in Paragraph 11.a (claims for failure to meet a requirement of the Consent Decree), 11.d (criminal liability), but only to the extent Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking under the applicable reservation.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

15. Waiver of Claims by Settling Defendants

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) ***De Minimis/Ability to Pay Waiver.*** For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement or a final settlement based on limited ability to pay with EPA with respect to the Site.

b. Exceptions to Waivers

(1) The waivers under Paragraph 15 shall not apply with respect to any defense, claim, or cause of action Settling Defendants may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

(2) The waiver under Paragraph 15.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued under Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT; CONTRIBUTION

16. Except as provided in Paragraph 15 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, under Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection under Section 113(f)(2).

17. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement under which Settling Defendants have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The matters addressed in this Consent Decree are Past Response Costs.

18. Settling Defendants shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing EPA and DOJ within 10 days after service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling 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, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenants by Plaintiff).

XI. RETENTION OF RECORDS

20. Until 10 years after the Effective Date, Settling Defendants shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

21. At the conclusion of this record retention period, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA and DOJ, and except as provided in Paragraph 22 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

22. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 22.b, and except as provided in Paragraph 22.c.

b. If any of the Settling Defendants asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that it claims to be privileged or

protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record Settling Defendants is required to create or generate under this Consent Decree.

23. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants asserts a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

24. Settling Defendants certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for information regarding the Site under Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the DOJ by email:

eescdcopy.enrd@usdoj.gov
Re: DJ#90-11-3-11061

As to the DOJ by mail:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Washington, D.C. 20044-7611
Re: DJ #90-11-3-11061

As to EPA:

Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: Charlestown Mall Superfund Site Attorney

As to Settling Defendants:

Charles A. Gaetano
1113 Parkway East
Utica, NY 13501

Brian A. Gaetano
258 Genesee Street
Utica, NY 13502
bag@gaetanoconst.com
315-733-4611

XIII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION

27. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consents to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree 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.

XVI. SIGNATORIES/SERVICE

30. Each undersigned representative of Settling Defendants and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

31. Settling Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

32. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVII. FINAL JUDGMENT

33. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Decree regarding the Charlestown Mall Site

FOR THE UNITED STATES OF AMERICA:

07-29-2019
Dated



THOMAS A. MARIANI, JR.

TM Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611




RICHARD S. GREENE IV

Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

GRANT C. JAQUITH
United States Attorney
Northern District of New York

Thomas Spina, Jr.
Assistant United States Attorney
Northern District of New York
100 South Clinton Street
Syracuse, NY 13261-7198

Signature Page for Consent Decree regarding the Charlestown Mall Site


8/15/19

Pat Evangelista
Acting Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency

Signature Page for Consent Decree regarding the Charlestown Mall Site

FOR CHARLES A. GAETANO CONSTRUCTION CORPORATION

12-24-18

Dated



Brian A. Gaetano
President
258 Genesee Street
Utica, NY 13502

Agent Authorized to Accept Service on Behalf of Above-signed Party:

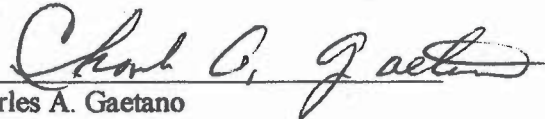
Name: Richard Pertz
Address: 12280 Rt. 365
Remsen, NY 13438
Phone: (315) 723-6949
email: rpertz@gmail.com

Signature Page for Consent Decree regarding the Charlestown Mall Site

FOR GAETANO ASSOCIATES LP.

12-24-2018

Dated



Charles A. Gaetano
General Partner
1113 Parkway East
Utica, NY 13501

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:	Richard Pertz
Address:	12280 Rt. 365 Remsen, NY 13438
Phone:	(315) 723-6949
email:	rpertz@gmail.com

Appendix A

Other Entities and Individuals Considered "Settling Defendants"

CHARLES A. GAETANO, WILLIAM C. GAETANO , BRIAN A. GAETANO ,CHARLES N. GAETANO, GREGORY GAETANO, MARY J. GAETANO, COLLEN GAETANO; their heirs, successors and assigns

CHARLES GAETANO CONSTRUCTION LLC

Appendix B

"SCHEDULE A"

All that certain piece or parcel of land situate in the city of Utica, County of Oneida and State of New York and in the Town of Frankfort, County of Herkimer and State of New York, bounded and described as follows:

Beginning at a point of intersection of the south line of Dwyer Avenue with the southeasterly line of Turner Street Extension, said point of beginning being located S 45° 33' 40" E, two hundred thirty seven feet (237.00) from the intersection of the south line of Dwyer Avenue with the easterly line of Pixley Ave.

Thence N. 40 deg. 41 min. 20 sec. E. along said Turner Street line twenty seven and forty eight hundredths (27.48) feet to the point in the northeasterly line of land conveyed by Hart & Crouse Corporation to Savage Arms Corporation by deed dated Oct. 31, 1952 and recorded in the Oneida County Clerk's Office in Book of Deeds No. 1383 at page 516; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line nine hundred sixty six and twenty six hundredths (966.26) feet to the easterly corner of the land so conveyed by Hart & Crouse Corporation to Savage Arms Corporation; thence S. 30 deg. 56 min. E. along the southeasterly line of lands so conveyed, five and fifty two hundredths feet (5.52') to a point in the northeasterly line of lands conveyed by New York Central Railroad Company to Savage Arms Corporation by deed dated June 14, 1941 and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 342 at page 106; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line of the last mentioned parcel, one thousand and thirteen and ninety one hundredths (1013.91) feet to a point in the northerly right of way line of the New York Central

(WestShore) Railroad; thence N. 65 deg. 17 min. W. along said northerly right of way line two thousand forty four and no hundredths (2044.0) feet to a point in the southeasterly line of a parcel of land appropriated by the State of New York from Savage Arms Corporation February 20, 1930 as recorded in the Oneida County Clerk's Office in Book of Deeds No. 907 at page 331; thence N. 24 deg. 43 min. E. along the southeasterly line of the land so appropriated, ten and twenty eight hundredths (10.28) feet; thence N. 49 deg. 18 min. 40 sec. W. along the northeasterly line of the land so appropriated, eight (8.0) feet; to a point in the easterly line of Turner Street Extension; running thence northerly along the east line of Turner Street Extension to the point and place of beginning.

Together with a right of way to the grantees their heirs successors and/or assigns over Turner Street Extension from Dwyer Avenue South to the North line of the former New York Central Railroad.

Being part of the same premises conveyed to the party of the first part, Sperry Rand Corporation, by Savage Arms Corporation, by instrument dated December 12, 1956 and recorded in the office of the Oneida County Clerk at Liber 1537 at Page 318 and in the office of the Herkimer County Clerk at Book 506 at Page 196.

Being a part of the premises conveyed to Gaetano Associates-Limited partnership by Warranty Deed recorded in the Oneida County on Jun. 15, 1979 in Book 2082, page 367 and recorded in Herkimer County on Jun. 15, 1967 in Book 665, page 374.

SUBJECT TO ANY AND ALL COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

