

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

----- X	
UNITED STATES OF AMERICA	:
	:
Plaintiff,	:
	:
v.	:
	:
MAHOGANY COMPANY OF MAYS LANDING,	:
INC.	:
	:
Defendant.	:
----- X	

Civil Action No. 1:19-cv-18481

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States” or “Plaintiff”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Superior Barrel and Drum Site (“Site”) located in Elk Township, Gloucester County, New Jersey.

B. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred at the Site.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant 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 Defendant and its 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 Defendant 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 meanings 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:

“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, the 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 U.S. 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 U.S. 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.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Insurance Information” shall mean those insurance documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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>.

“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 the Settling Defendant.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through July 1, 2019, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 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 Defendant” shall mean Mahogany Company of Mays Landing, Inc.

“Site” shall mean the Superior Barrel and Drum Site, encompassing approximately 5.5 acres, located at 798-830 Jacob Harris Lane, in Elk Township, Gloucester County, New Jersey, and is designated Block 30, Lot 4 on the official tax map of Elk Township.

“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 Defendant for Past Response Costs.** Settling Defendant shall pay to EPA the principal amount of \$375,000. Payment of the principal amount shall be made in five installments. The first installment payment of \$75,000 is due within 30 days after the Effective Date and, if timely paid, shall include no Interest. The subsequent installment payments of \$75,000, plus Interest as specified below, are due on each anniversary of the Effective Date. In addition to the payment of \$75,000 towards the principal amount, each installment payment shall also include an additional sum for Interest accrued on the previously unpaid portion of the principal amount calculated from the date of the prior payment until the date of the installment payment. The United States shall send a calculation of the Interest due for each payment to Settling Defendant at least 7 days prior to the due date of each installment payment. Settling Defendant may pay any installment payment prior to the due date, but must contact the United States in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

5. Settling Defendant shall make payments by Fedwire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of New Jersey 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:

George M. Aaron, CEO
Mahogany Company of Mays Landing
P.O. Box 99
Mays Landing, NJ 08330
Phone: (609) 476-6401
Email: gma@mahoganycompany.com

on behalf of Settling Defendant. Settling Defendant 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 of each payment to be paid pursuant to Paragraph 4 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of each payment, Settling Defendant 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/Spill ID Number A23K, and DJ Number 90-11-3-11831/2.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. **Interest on Payments and Accelerated Payments.** If Settling Defendant fails to make any payment required by Paragraph 4 (Payment of Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and if the first payment is not timely made, Interest shall accrue from the Effective Date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

9. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendant for Past Response Costs) are not paid by the required date, Settling Defendant 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, \$500 per violation per day that such 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 Defendant shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant 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.

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

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

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

VII. COVENANTS BY PLAINTIFF

13. **Covenants for Settling Defendant 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 Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section V (Payment of Response Costs), and any Interest or stipulated penalties due thereon under Section VI (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 28. These covenants extend only to Settling Defendant and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 13 (Covenants for Settling Defendant by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant 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.

15. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 28, is false or, in any material respect, inaccurate.

IX. COVENANTS BY SETTLING DEFENDANT

16. **Covenants by Settling Defendant.** Settling Defendant covenants not to sue and agrees 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 the 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 Jersey, 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 pursuant to 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.

17. 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).

18. **Waiver of Claims by Settling Defendant.**

a. Settling Defendant agrees 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 it may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Defendant 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) **Past Response Costs Waiver.** For Past Response Costs against any other person who is a potentially responsible party under CERCLA at the Site.

b. Exceptions to Waivers

(1) The waivers under this Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that Settling Defendant 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 Defendant.

(2) The waiver under Paragraph 18.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 pursuant to 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

19. Except as provided in Paragraph 18 (Waiver of Claims by Settling Defendant), 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 Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to 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, pursuant to 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 pursuant to Section 113(f)(2).

20. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, 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.

21. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

22. Settling Defendant 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 Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant 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.

23. 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 Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, 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 by Plaintiff set forth in Section VII.

XI. RETENTION OF RECORDS

24. Until 10 years after the Effective Date, Settling Defendant 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 if Settling Defendant is potentially liable as an owner or operator of the Site, it 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.

25. At the conclusion of the record retention period, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 26 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

26. Privileged and Protected Claims

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 26.b, and except as provided in Paragraph 26.c.

b. If Settling Defendant 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 Defendant shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendant 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 Defendant's favor.

c. Settling Defendant 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 that Settling Defendants are required to create or generate pursuant to this Consent Decree.

27. **Business Confidential Claims.** Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section (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 Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent

Decree for which Settling Defendant asserts a business confidentiality claim. Records that Settling Defendant claims 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 Defendant 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 Defendant.

28. Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

- a. 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 or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;
- b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendant executes this Consent Decree; and
- c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XII. NOTICES AND SUBMISSIONS

29. 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 DOJ by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-11831/2

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11831/2

As to EPA: Kathryn DeLuca
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
deluca.kathryn@epa.gov

As to Settling Defendant: Natalie DeStefano, Esq.
Mahogany Company of Mays Landing
P.O. Box 99
Mays Landing, NJ 08330
Phone: (609) 576-3307
Email: ndestefano@mahoganycompany.com

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION/APPENDICES

31. This Consent Decree and its appendices constitute 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. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a list of the financial documents submitted to EPA by Settling Defendant; and "Appendix B" is a list of the insurance documents submitted to EPA by Settling Defendant.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. 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 Defendant consents to the entry of this Consent Decree without further notice.

33. 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

34. Each undersigned representative of Settling Defendant and the Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 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.

35. Settling Defendant agrees 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 Defendant in writing that it no longer supports entry of the Consent Decree.

36. Settling Defendant 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 Defendant 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. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVII. FINAL JUDGMENT

37. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

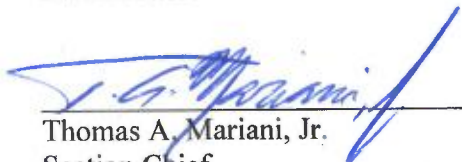
SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

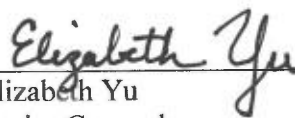
Signature Page for Consent Decree Regarding Superior Barrel and Drum Site

**FOR THE UNITED STATES OF
AMERICA:**

09-26-2019
Dated



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



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Newark, New Jersey 07102

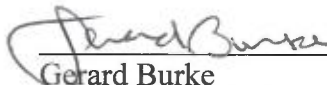
Signature Page for Consent Decree Regarding Superior Barrel and Drum Site



Pat Evangelista
Acting Director
Superfund & Emergency Management
Division
U.S. Environmental Protection Agency
Region 2
290 Broadway, 19th Floor
New York, NY 10007



Kathryn DeLuca
Assistant Regional Counsel
U.S. Environmental Protection Agency
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290 Broadway, 17th Floor
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Gerard Burke
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007

Signature Page for Consent Decree Regarding Superior Barrel and Drum Site

**FOR THE SETTLING DEFENDANT,
MAHOGANY COMPANY OF MAYS
LANDING, INC.:**

8/12/19
Dated

George M. Aaron
Name (print): George M. Aaron
Title: CEO
Address: P.O. Box 99 5274 Cedarwood Blvd,
Mays Landing, NJ. 08330

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

Name: Daniel Flynn
Title: Counsel, Greenbaum Rowe Smith & Davis LLP
Address: 75 Livingston Ave., Roseland, NJ 07068-3701
Phone: 732.476.2678
email: DFlynn@Greenbaumlaw.com

Appendix A

List of the financial documents submitted to EPA by Settling Defendant

1. June 5, 2017, Initial Ability to Pay Submission to EPA
 - a. Mahogany, Position Paper Regarding Financial Condition and Ability to Pay, dated May 11, 2017
 - b. Mahogany 2011 Federal Income Tax Return
 - c. Mahogany 2012 Federal Income Tax Return
 - d. Mahogany 2013 Federal Income Tax Return
 - e. Mahogany 2014 Federal Income Tax Return
 - f. Mahogany Financial Statement for period January - April 2017
 - g. Mahogany Financial Statement as of January 31, 2017
 - h. Mahogany Financial Statement as of February 28, 2017
 - i. Mahogany Financial Statement as of March 31, 2017
 - j. Mahogany Financial Statement as of April 30, 2017
 - k. Mahogany's 2016 Federal Summary Depreciation Schedule, dated December 31, 2016
 - l. Mahogany Financial Statements for the Years Ended December 31, 2015 and 2014
 - m. Mahogany Financial Statements December 31, 2014 and 2013
 - n. Mahogany Financial Statements December 31, 2012 and 2011
 - o. Mahogany Financial Statements December 31, 2011 and 2010
2. June 21, 2017, Email from Natalie DeStefano, Mahogany, to EPA
3. June 20, 2018, Email from Daniel Flynn, representing Mahogany, to EPA with an update on Mahogany's response to a fire at one of its warehouses
4. July 3, 2018, Supplemental Ability to Pay Submission to EPA, including Supplemental Financial Information for "Ability to Pay" Analysis, Mahogany, as of June 19, 2018
5. August 1, 2018, Call with EPA, substantive information provided by Mahogany, reflected in notes dated August 3, 2018 and updated by Mahogany on August 8, 2018
6. August 15, 2018, Supplemental Ability to Pay Submission to EPA
 - a. Summary of Aug-01-2018 Conference Call
 - b. Exhibit 1A: Projected Balance Sheet
 - c. Exhibit 1B: Projected Statement of Income and Retained Earnings
 - d. Exhibit 1B: Owner Responsibilities
 - e. Exhibit 1C: Projected Statement of Cash Flows
 - f. Exhibit 2A: Financial Statements for 2016-2017
 - g. Exhibit 2B: In-House Balance Sheet Dated June 19, 2018
 - h. Exhibit 2B: In-House Profit & Loss Dated June 19, 2018
 - i. Exhibit 2B: In-House Cash Flows Dated June 19, 2018
 - j. Exhibit 2B: Shareholder Loan Balance Dated June 19, 2018
7. September 4, 2018, Supplemental Ability to Pay Submission to EPA
 - a. September 4, 2018 Email from Daniel Flynn, representing Mahogany, to EPA
 - b. Promissory Notes in various amounts between borrower Mahogany and various officers of Mahogany with various dates
8. October 18, 2018, Supplemental Ability to Pay Submission to EPA
 - a. Projected Statement of Cash Flows-Shareholder Loans for 2018-2022

Appendix A

- b. Mahogany 2016 Federal Income Tax Return, complete with all schedules and attachments
 - c. Mahogany 2017 Federal Income Tax Return, complete with all schedules and attachments
9. November 5, 2018, Email from Daniel Flynn, representing Mahogany, to EPA, attaching an invoice
10. March 4, 2019, Supplemental Ability to Pay Submission to EPA
 - a. March 4, 2019, Email from Daniel Flynn, representing Mahogany, to EPA
 - b. Mahogany, Owner Salaries Detail
 - c. Mahogany, 2017 Owner/Non-Owner Salary Percentage
11. March 14, 2019, Email from Daniel Flynn, representing Mahogany, to EPA
12. March 29, 2019, Supplemental Ability to Pay Submission to EPA
 - a. March 29, 2019, Email from Daniel Flynn, representing Mahogany, to EPA
 - b. Mahogany, Current In-House Financial Statements, Actual as of December 31, 2018

Appendix B

List of the insurance documents submitted to EPA by Settling Defendant

April 11, 2019, Email from Daniel Flynn, representing Mahogany, to EPA, and attached documents:

May 12, 2015, Letter from Harleystville Insurance Company to David Farer, representing Mahogany

June 12, 2014, Letter from David Farer to Harleystville

March 24, 2014 Letter from Harleystville to David Farer

March 20, 2014 Letter from David Farer to Harleystville

Peerless Insurance Company Policy, issued to Mahogany on June 17, 2013

Peerless Commercial General Liability Coverage Form

Peerless Insurance Policy List