

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAQUIDARA CONSTRUCTION, INC.
and PETER V. LAQUIDARA,

Defendants.

CONSENT DECREE

Civil Action _____

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), 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 the Saratoga Radar Station Site, Ketchums Corners, Town of Stillwater, Saratoga County, New York (“the Site”).

B. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants.

C. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section V.

D. The United States and Settling Defendants 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 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 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 consent to and shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND/OBJECTIVES OF THE PARTIES

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, 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. The mutual objectives of the Parties in entering into this Consent Decree are: for the Settling

Defendants and Settling Federal Agencies to make a cash payment to resolve their alleged civil liability for the Site under Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f), as provided in the Covenant Not to Sue by Plaintiff in Section VII, and subject to the Reservations of Rights by United States in Section VIII; and to resolve the claims of the Plaintiff against Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, 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 in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601-9675.
- b. "Consent Decree" shall mean this Consent Decree. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "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 holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Financial Information" shall mean those financial documents identified in Appendix B.
- h. "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.

- I. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- j. "Parties" shall mean the United States and Settling Defendants.
- k. "Plaintiff" shall mean the United States.
- l. "Removal Action" shall mean the response action authorized in an EPA Action Memorandum dated July 29, 2003, and undertaken by EPA at the Site from October 1, 2003 through March 15, 2004, through which EPA found and removed for off-Site disposal hazardous substances released into the environment, or that posed a threat of release, including: 77 electrical transformers containing approximately 2,500 gallons of PCB fluids; PCB-contaminated floor tiles; chemicals associated with a former on-Site waste water treatment plant; more than 7,000 gallons of aged gasoline, diesel fuel, heating oil, and waste oil; and dozens of drums and smaller containers of chemicals and chemical wastes, including construction-related surface coatings, paints, oil, and corrosive cleaning solutions.
- m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- n. "Settling Defendants" shall mean Laquidara Construction, Inc. and Peter V. Laquidara.
- o. "Settling Federal Agencies" shall mean the United States Department of Defense, including but not limited to the Department of the Air Force and Army Corps of Engineers, and the Federal Aviation Administration, which are resolving any claims which have been or could be asserted against them by the Settling Defendants with regard to this Site as provided in this Consent Decree.
- p. "Site" shall mean the Saratoga Radar Station Site, encompassing approximately 43 acres, located on Radar Road in Ketchums Corners, Town of Stillwater, Saratoga County, New York, and identified in the two maps attached hereto as Appendix A.
- q. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, and any federal natural resources trustee.
- r. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. PAYMENT

4. Payment by Settling Defendants to EPA. Settling Defendants shall pay to the EPA Hazardous Substance Superfund the principal sum of \$1,500.00, plus an additional sum for Interest as explained below. Payment shall be made in three yearly installments. Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from November 30, 2008. The first payment of \$500.00 shall be due within 30 days of entry of this Consent Decree. Subsequent payments of \$500.00 shall be due on November 30, 2009 and on November 30, 2010. Settling Defendants may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

4.1 Accelerated Payments. If Settling Defendants fail to make any payment required by Paragraph 4 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

5. Payment by Settling Defendants shall be made by certified check or checks or cashier's check or checks made payable to "U.S. Department of Justice," referencing the name and address of the party(ies) making payment, the EPA Region and Site Spill ID Number 02-TG, DOJ Case Number _____, and the civil action number. Settling Defendants shall send the check(s) to:

Beverly Parody
 Financial Litigation Unit
 U.S. Attorney's Office for Northern District of New York
 P.O. Box 7198
 100 S. Clinton Street
 Syracuse, NY 13261-7198

6. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions), by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
 26 Martin Luther King Drive
 Cincinnati, OH 45268

Such notice shall reference the EPA Region and Site/Spill Identification Number 02-TG, DOJ case number _____, and the civil action number.

7. The total amount of each payment to be paid by Settling Defendants pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

7.1. As soon as reasonably practicable after the date of entry of this Consent Decree, and

consistent with Paragraph 7.1.a.iii., the United States, on behalf of Settling Federal Agencies, shall:

a.i. Pay to the EPA Hazardous Substance Superfund \$732,284.42, plus an additional sum for interest on that amount calculated from December 7, 2006 through date of payment.

a.ii. The total amount to be paid by Settling Federal Agencies pursuant to Paragraph 7.1.a.i. shall be deposited in the EPA Hazardous Substance Superfund.

a.iii. If the payment to the EPA Hazardous Substances Superfund required by Paragraph 7.1.a.i. is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

a.iv. In the event that payment required by Paragraph 7.1.a.i. is not made within 30 days of the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

7.2. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 4 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. 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 under Paragraph 4 are not paid by the required date, 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, \$50 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of 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 certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 02-TG, DOJ Case Number _____, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Richard Rice
 EPA Cincinnati Finance Office
 26 W. Martin Luther King Drive
 MS: NWD
 Cincinnati, OH 45268

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 02-TG, DOJ Case Number _____, and the civil action number.

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 herein 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 Defendants 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 Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

13. 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 Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

14. Covenant Not to Sue Settling Defendants by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. This covenant shall take effect upon receipt by EPA of the first payment required by Paragraph 4. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section V (Payment of Response Costs), and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the financial information provided to EPA by Settling Defendants and the financial certification made by Settling Defendants in Paragraph 25(b). If the financial information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 25(b), is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 21 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

14.1. Covenant for Settling Federal Agencies by EPA. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Section VIII (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. This covenant shall take effect upon receipt by EPA of all payments required by Paragraph 7.1. of Section V. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 14 and 14.1. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by the Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. criminal liability;

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

d. liability, based upon Settling Defendants' or Settling Federal Agencies' ownership or operation of the Site, or upon Settling Defendants' or the Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendants and the Settling Federal Agencies; and

e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

15.1. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies: (a) to perform response actions relating to the Site or (b) to reimburse the United States for additional costs of response if:

I. conditions at the Site, previously unknown to EPA, are discovered,
or

ii. information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with other relevant information indicate that the Removal Action is not protective of human health or the environment.

15.2. For purposes of Paragraph 15.1, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree.

IX. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

16. Covenant Not To Sue 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 the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the 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 York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

16.1. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

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. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action (including but not limited to claims or causes of action under Sections 107 and 113 of CERCLA) that they may have for all matters relating to the Site against any person who is a potentially responsible party under CERCLA at the Site. This covenant not to sue and agreement not to assert claims shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. 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. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Settling Federal Agencies are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be provided otherwise by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in

this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants or Settling Federal Agencies coming within the scope of such reservations.

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

22. 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 by Plaintiff set forth in Section VII (Covenants by Plaintiff).

XI. RETENTION OF RECORDS

23. Until 7 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

24. After the conclusion of the 7-year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: a. the title of the record; b. the date of the record; c. the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; d. the name and title of each addressee and recipient; e. a description of the subject of the record; and f. the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege

claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

25. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States regarding the Site, and that they have fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

26. The United States acknowledges that each Settling Federal Agency: a. is subject to all applicable Federal record retention laws, regulations, and policies; and b. has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

27. 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 Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agencies and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice (DJ # _____)
 P.O. Box 7611
 Washington, DC 20044-7611

and

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-09109)
P.O. Box 23986
Washington, DC 20026-3986

As to EPA:

Saratoga Radar Site Attorney
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

As to Settling Defendants:

Peter V. Laquidara
5801 Herons Landing Drive
Viera, FL 32955

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION/APPENDICES

29. 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" contains two maps of the Site; and "Appendix B" contains financial information regarding the Settling Defendants.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

31. 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

32. Each undersigned representative of a Settling Defendant to this Consent Decree and the Chiefs of the Environmental Enforcement Section and the Environmental Defense Section of the United States 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.

33. Each Settling Defendant hereby 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 Defendants in writing that it no longer supports entry of the Consent Decree.

34. Each 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 Defendants hereby agree 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 Defendants 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

35. Upon approval and 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 Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Laquidara Construction, Inc., et al. relating to the Saratoga Radar Station Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: 3/13/9

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

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Laquidara Construction, Inc., et al. relating to the Saratoga Radar Station Site.

FOR THE UNITED STATES OF AMERICA (cont'd)

Date: 3/23/2009

✓
Heather E. Gange
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, DC 20026-3986

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Laquidara Construction, Inc., et al. relating to the Saratoga Radar Station Site.

FOR THE UNITED STATES OF AMERICA (cont'd)

Date: _____

Walter E. Mugdan
Director
Emergency & Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Laquidara Construction, Inc., et al. relating to the Saratoga Radar Station Site.

FOR LAQUIDARA CONSTRUCTION, INC.

Date: 2/24/09

By: Peter V. Laquidara

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

Name: _____

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Laquidara Construction, Inc., et al. relating to the Saratoga Radar Station Site.

PETER V. LAQUIDARA

Date: 2/25/09

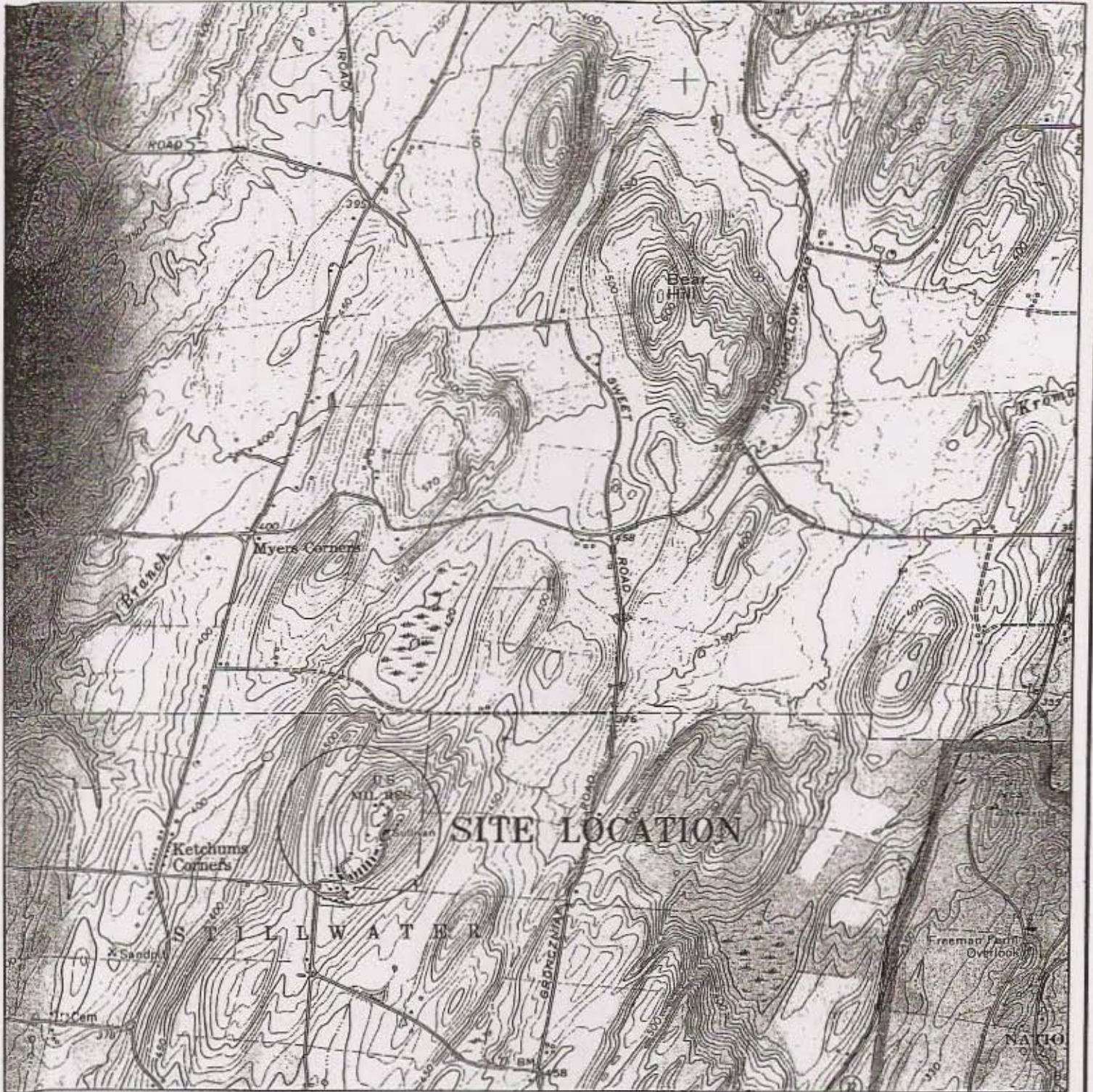
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

APPENDIX A
of Consent Decree regarding
U.S. v. Laquidara Construction, Inc., et al.



**FIGURE 1
SITE LOCATION MAP
SARATOGA AIR FORCE RADAR STATION
STILLWATER, NY**

US ENVIRONMENTAL PROTECTION AGENCY

REMOVAL SUPPORT TEAM
CONTRACT # 68-W-00-113

EDITED BY: V. HENSPERGER

EPA OSC: P. KAHN

SITE PROJECT MANAGER: P. POTVIN

FILE: D:\DWG\SARATOGA



**Weston Solutions Inc.
FEDERAL PROGRAMS DIVISION**

IN ASSOCIATION WITH SCIENTIFIC ENVIRONMENTAL ASSOCIATES, INC.
AND RESOURCE APPLICATIONS, INC.,
AND INNOVATIVE TECHNOLOGICAL SOLUTIONS INC.

TOWN

AG AG001 FD FD033

9
9.30A

1.03A(C)

15.111
107.06A(C)

5.112
20A

FOR REMAINDER
SEE 207.00
MATCH LINE
MATCH LINE
PART OF
206.00-1-15.111

12.2
25x25
38.4
70
12.11
12.12

12.4
43.85A

13.1

90.46A(C)

12.3
29A
165(S)

UNITED STATES 1550(S) WATER
RADAR CASEMENT
ROAD ROAD

12.5
3.79A

19
200
150
200

1050(S)
BRIGHOUSE
ROAD
8961

100x180
2

3.11
127.78A

N 1,521,000
E 709,000

88

HENRY
ROAD
170.00
394.64
79
251.90
80
391.3A
1.36A

1.2

1.3

POMEROY APPRAISAL ASSOCIATES, INC.

APPENDIX B
of Consent Decree regarding
U.S. v. Laquidara Construction, Inc., et al.

LIST OF FINANCIAL INFORMATION REGARDING LAQUIDARA CONSTRUCTION, INC. AND PETER V. LAQUIDARA PROVIDED TO AND REVIEWED BY EPA:

1. Pay statements of January-March 2007 for Peter V. Laquidara from Canaveral Port Authority, Cape Canaveral, Florida.
2. 2000-2006 Federal tax returns (Form 1040) of Mr. and Mrs. Peter V. Laquidara.
3. 2002-2004 Federal corporate tax returns (Form 1120) for Laquidara Construction, Inc.
4. 2002-2004 Federal corporate tax returns (Form 1120) for Laquidara, Inc.
5. Letter dated May 3, 2006 from FirstCity Servicing Corporation to Peter V. Laquidara regarding status of the debt of Fourth Branch Associates and Laquidara Construction, Inc. to WAMCO 31, Ltd.
6. Financial Statement of Corporate Debtor form dated March 6, 2006, completed by Peter V. Laquidara, Secretary, on behalf of Laquidara Construction, Inc.
7. Financial Statement of Corporate Debtor form [date missing], completed by Peter V. Laquidara, President, on behalf of Laquidara, Inc. [last page of this form, on which the date is given, is missing]
8. Individual Ability To Pay Claim form dated March 20, 2007, completed by Peter V. Laquidara on behalf of himself and his wife.
9. Fax dated July 6, 2007, from Peter V. Laquidara to EPA regarding "anticipated expenses" of Mr. and Mrs. Laquidara.
10. Letter of Transmittal dated July 6, 2007 from Peter V. Laquidara to EPA enclosing letter concerning one-time payment by First Unum Life Insurance Company and the 2004, 2005, and 2006 Federal tax returns of Mr. Laquidara and his wife.
11. Memorandum dated July 30, 2007 from Industrial Economics, Inc. to EPA entitled "Ability-to-Pay Analysis of [Mr. and Mrs.] Laquidara, Saratoga Radar Station Superfund Site, SSID# 02-TG."
12. Memorandum dated August 3, 2007 from Industrial Economics, Inc. to EPA entitled "Ability-to-Pay Analysis of Laquidara, Inc. and Laquidara Construction, Inc., Saratoga Radar Station Superfund Site, SSID# 02-TG."