

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
and NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PRO-
TECTION; ACTING ADMINIS-
TRATOR, NEW JERSEY SPILL
COMPENSATION FUND;
and COMMISSIONER, NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTEC-
TION as TRUSTEE for NATURAL
RESOURCES,

Plaintiffs,

v.

PRINCETON GAMMA-TECH,
INC., et al.,

Defendants.

CIVIL ACTION NO. 91-809 (AET)

PARTIAL CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND 1

II. JURISDICTION 4

III. PARTIES BOUND 4

IV. DEFINITIONS 4

V. REIMBURSEMENT OF RESPONSE COSTS 10

VI. ACCESS AND INSTITUTIONAL CONTROLS 12

VII. FAILURE TO COMPLY WITH CONSENT DECREE 16

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS 19

IX. COVENANTS BY SETTLING DEFENDANTS 26

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION 28

XI. ACCESS TO INFORMATION 29

XII. RETENTION OF RECORDS 31

XIII. NOTICES AND SUBMISSIONS 32

XIV. BANKRUPTCY APPROVAL 34

XV. RETENTION OF JURISDICTION 34

XV. APPENDICES 35

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 35

XVII. EFFECTIVE DATE 35

XVIII. SIGNATORIES/SERVICE 36

XIX. FINAL JUDGMENT 36

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), in 1991 filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607. In March 1999, the United States filed an amended complaint.

B. The United States in its complaint and amended complaint seeks: (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Montgomery Township Housing Development Superfund Site and the Rocky Hill Municipal Wellfield Superfund Site (the “Sites”), in Somerset County, New Jersey, together with accrued interest; and (2) a declaration of Settling Defendants’ liability for future response costs.

C. In April 2000, the New Jersey Department of Environmental Protection, the Administrator of the New Jersey Spill Compensation Fund, and the Commissioner of the New Jersey Department of Environmental Protection as Trustee for Natural Resources (the “State”) filed a complaint in intervention in this Court against the defendants alleging that the defendants are liable to the State pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.14, for reimbursement of the costs the State has incurred, and will incur, to remediate the Sites and damages for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Sites.

D. On June 7, 2002, the Court issued a Memorandum and Order finding that Princeton Gamma-Tech, Inc., Fifth Dimension Inc., S & S Investments, George Sands, Jr., and Jeffrey Sands are liable parties under CERCLA with respect to the Sites. The Court's June 7, 2002 Memorandum and Order also dismissed the counterclaims filed against the State by the defendants and found S & S Investments, George Sands, Jr. and Jeffrey Sands liable under the Spill Compensation and Control Act and the New Jersey Uniform Partnership Law, specifically N.J.S.A. 42:1-15b.

E. On February 6, 1998, Defendant Fifth Dimension, Inc. filed a petition in the United States Bankruptcy Court for the District of New Jersey pursuant to Chapter 11 of the Bankruptcy Code. The case was converted to a Chapter 7 on September 30, 1998. On November 23, 1998 the Bankruptcy Court entered a Consent Order Lifting Stay. On August 24, 2001, the Bankruptcy Case was closed.

F. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), in November 1997, EPA notified the United States Department of the Interior and the National Oceanic and Atmospheric Administration of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Sites on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in September 1983.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Sites, the New Jersey Department of Environmental Protection (“NJDEP”) conducted a Remedial Investigation and Feasibility Study (“RI/FS”) for the Sites pursuant to 40 C.F.R. § 300.430 from November 1985 until April 1988.

I. On September 29, 1987, EPA issued the first Record of Decision (“ROD I”) related to the Montgomery Township Housing Development Superfund Site (the “MTHD Site”), on which the State has given its concurrence. ROD I provided that the first operable unit of the remedy should be installation of an alternate water supply for the residents of the Montgomery Township Housing Development. By September 1990, the alternate water supply had been installed and 74 of the 80 residences within the Montgomery Township Housing Development had been connected to the alternate water supply.

J. On June 30, 1988, EPA issued another Record of Decision for each Site (“ROD II”) that documents EPA’s selection of a remedial action for the Sites, on which the State has given its concurrence. Although a separate ROD was issued for each Site, the RODs selected one pump and treat system to treat the contaminant plume underlying both Sites. EPA is currently conducting the remedial design for the remedy selected in ROD II, and EPA will implement the Remedial Action.

K. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest. NOW, THEREFORE, it is hereby 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. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry 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 the State 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.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA and in the Spill Act or in regulations promulgated under the Spill Act shall have the meaning assigned to them in CERCLA or in such regulations and in the Spill Act or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Bankruptcy Case” shall mean the Chapter 7 case styled In re Fifth Dimension, Inc. filed in the United States Bankruptcy Court for the District of New Jersey, Case No. 98-30111/SAS.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Certification of Completion” shall mean EPA’s certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the remedial action has been completed at the Sites in accordance with the requirements of the National Contingency Plan and the RODs.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XVI).

“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.

“DOI” shall mean the United States Department of Interior and any successor departments, agencies or instrumentalities of the United States.

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

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

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

“Federal Natural Resource Damages” shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Sites under the trusteeship of DOI or NOAA, including the reasonable costs of assessing such injury, destruction, or loss.

“Fifth Dimension Insurers” shall mean the following entities and their predecessors, successors and assigns: Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Co. of North America; American Casualty Company of Reading, Pa.; National Insurance Company of Hartford; Continental Casualty Company; and the Travelers Indemnity Company and Travelers Casualty and Surety Company, formerly known as the Aetna Casualty and Surety Company.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will incur for response actions at the Sites after the date of entry of this Consent Decree.

“Interest,” when used in reference to payments to be made to the United States 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.

“Interest” for purposes of the State shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

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

“NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

“NOAA” shall mean the National Oceanic and Atmospheric Administration, and any successor departments or agencies of the United States.

“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, the NJDEP, and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred for response actions at the Sites prior to the date of entry of the Consent Decree.

“Plaintiffs” shall mean the United States, the New Jersey Department of Environmental Protection, the Administrator of the New Jersey Spill Compensation Fund, and the Commissioner of the New Jersey Department of Environmental Protection as Trustee for Natural Resources (these last three collectively called the “State”).

“Remedial Action” shall mean the response actions at the Sites set forth in the Record of Decision issued on September 29, 1987 relating to the Montgomery Township Housing Development Site (“ROD I”) and the Records of Decision issued on June 30, 1988 relating to the Montgomery Township Housing Development Site and the Rocky Hill Municipal Wellfield Site (“ROD II”).

“Sanitary Landfill Fund” shall mean the Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E-105.

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

“Settling Defendants” shall mean those Parties identified in Appendix A.

“Settling Sands Defendants” shall mean S & S Investments, George Sands, Jr., Jeffrey Sands, George Sands, Sr., Estelle Sands and Hilton Realty, Inc.

“Sites” shall mean the Montgomery Township Housing Development Superfund Site and the Rocky Hill Municipal Wellfield Superfund Site, located in Somerset County, New Jersey, in the vicinity of the intersection of U.S. Route 206 and N.J. Route 518, and generally shown on the map attached as Appendix B.

“Spill Act” shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.14.

“Spill Fund” shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i.

“State” shall mean the New Jersey Department of Environmental Protection, the Administrator of the New Jersey Spill Compensation Fund, and the Commissioner of the New Jersey Department of Environmental Protection as Trustee for Natural Resources.

“State Future Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, that the State has incurred, or will incur, after the date of entry of this Consent Decree, to investigate or remediate the Sites.

“State Natural Resource Damages” shall mean the damages, including lost use or value, for any natural resource of the State of New Jersey that has been, or may be, damaged or destroyed by the contamination at the Sites. These damages include the costs the State has incurred, and will incur, to assess the damage to, destruction of, or lost value or use of, any natural resource, and the costs the State has incurred, and will incur, to restore or replace, or oversee the restoration or replacement of, any natural resource.

“State Past Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, the State incurred on or before the date of entry of this Consent Decree to remediate the Sites.

“United States” shall mean the United States of America including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payments of Response Costs to the United States.

a. Within 10 days of the effective date of this Consent Decree, Settling Sands Defendants and Fifth Dimension, Inc. shall pay to the United States \$1,842,500 in reimbursement of Past and Future Response Costs. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Numbers 02-90 and 02-64, and DOJ Case Number 90-11-2-290. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The obligations of Settling Defendants named in this Subparagraph to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more of the Settling Defendants named in this Subparagraph to make the payments required under this Consent Decree, the remaining Settling Defendants named in this Subparagraph shall be responsible for such payments.

b. At the time of payment, Settling Defendants shall send notice that payment has been made in accordance with Section XIII (Notices and Submissions) and to Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866.

c. Of the total amount to be paid by Settling Defendants pursuant to Subparagraphs 4.a., 50% shall be deposited in the Montgomery Township Housing Development Superfund Site Special Account and 50% shall be deposited in the Rocky Hill Municipal Wellfield Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. In the event that payment required by Paragraph 4. is not made within ten (10) days of the date of entry of this Consent Decree, 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 date such payment was due and accruing through the date of the payment. In addition, if any payment required from any Settling Defendant under Paragraph 4.a. of this Decree are not made when due, EPA may file and perfect a lien pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), on any real property located within the Sites which is owned by the Settling Defendant(s) who fail to make such payment(s) required by this Decree.

5. Payment of Cleanup and Removal Costs to the State of New Jersey.

a. Within 10 days of the effective date of this Consent Decree, Settling Sands Defendants and Fifth Dimension, Inc. shall pay to the State \$907,500 in the form of a certified or cashier's check made payable to the "Treasurer, State of New Jersey," in reimbursement of State Past Cleanup and Removal Costs, State Future Cleanup and Removal Costs and State Natural Resource Damages. Settling Sands Defendants, and Fifth Dimension, Inc. shall mail or otherwise deliver the certified or cashier's check and payment invoice to the Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety,

Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093. The obligations of the Settling Defendants named in this paragraph to pay this amount owed to the State in the prescribed form and manner pursuant to this Subparagraph are joint and several, without regard to fault. In the event of insolvency or other failure by one or more of the Settling Defendants named in this Subparagraph to make the payment required under this Consent Decree, the remaining Settling Defendants named in this Subparagraph shall be responsible for such payment.

b. In the event that payment required by Paragraph 5.a. is not made within ten (10) days of the date of entry of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules, commencing on the date such payment was due and accruing through the date of the payment. In addition, if any payment required from any Settling Defendant under Paragraph 5.a. of this Consent Decree is not made when due, NJDEP may file a lien pursuant to the Spill Act, specifically N.J.S.A. 58:10-23.11 f.f., on the revenues and all real and personal property of the Settling Defendant(s) who fails to make the required payment in the prescribed form and manner required by this Consent Decree.

VI. ACCESS/INSTITUTIONAL CONTROLS

6. If the Sites, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Sites, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing upon the date of Settling Defendants' signatures on this Consent Decree, provide the United States and its representatives, including EPA and its contractors, the State of New Jersey and its representatives, including the NJDEP and its contractors, and any persons or entities authorized by the United States or the State of New Jersey, access at all times to the Sites and any property owned or controlled by the Settling Defendants to which access is determined by EPA or the NJDEP to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Sites, including but not limited to:

i. Monitoring, investigation, removal, remedial or other activities at the Sites;

ii. Activities related to the design, implementation, construction and performance of remediation of the groundwater, including but not limited to, installation of monitoring and/or extraction wells, trenches, piping, and/or sewer connections on the Sites;

iii. Placement, replacement, modification, operation and maintenance of a groundwater extraction, treatment and discharge system to treat contaminated groundwater and which will remain at the Sites or property owned or controlled by Settling Defendants until such time as the EPA and the NJDEP have determined that the groundwater remediation is complete;

iv. Conducting groundwater monitoring well sampling and maintenance;

v. Verifying any data or information obtained by or submitted to the United States or the NJDEP;

- vi. Conducting investigations and response activities relating to contamination at or near the Sites;
 - vii. Obtaining samples;
 - viii. Assessing the need for or planning and implementing additional response actions at or near the Sites;
 - ix. Assessing Settling Defendants' compliance with the provisions of this Consent Decree;
 - x. Determining whether the Sites or other property are being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
 - xii. The restoration or replacement, or oversight of the restoration or replacement of, any natural resource of the State of New Jersey damaged or destroyed by the contamination at the Sites.
- b. commencing upon the date of Settling Defendants' signatures on this Consent Decree, refrain from using the Sites, or such other property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented at the Sites. Such restrictions include but are not limited to restrictions on the use of groundwater at the Sites or disturbances to the surface or subsurface at the Sites that would interfere with the performance of the remedial measures to be implemented, or be detrimental to public health or the environment. Settling Defendants shall notify EPA and the NJDEP

(pursuant to Section XIII), and receive approval from EPA (in consultation with the NJDEP) before Settling Defendants or their successors and assigns conduct any operation that could adversely affect the integrity or protectiveness of any containment system, extraction system, treatment system, monitoring system, or other remedial measures implemented at the Sites.

c. upon request by EPA, execute and record in the Somerset County Clerk's Office, State of New Jersey, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any remedial measure at the Sites including, but not limited to, those activities listed in sub-Paragraph 6.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in sub-Paragraph 6.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to the United States, on behalf of EPA, and its representatives, and the NJDEP and its representatives. Settling Defendants shall, within forty-five (45) days of EPA's request, submit to EPA for review and approval with respect to such property:

- (1) A draft easement, in substantially the form attached hereto as Appendix C, that is enforceable under the laws of the State of New Jersey, free and clear of all prior liens and encumbrances (except as approved by EPA and the NJDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

- (2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of receipt of EPA's written approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Somerset County Clerk's Office, State of New Jersey. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

7. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, the Spill Act and any other applicable statute or regulations.

8. From the effective date of this Consent Decree, the access provided for herein shall govern any and all access and occupancy of the Sites. Any and all prior verbal or written agreements or correspondence made by EPA or the NJDEP pertaining to access or occupancy of the Sites are superseded by this Consent Decree.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

9. Interest on Late Payment. In the event that any payments required by Section V (Reimbursement of Response Costs) or Section VII, Paragraph 10 (Stipulated Penalty) are not

received when due, Interest shall accrue on the unpaid balance from the date such payments were due through the date of payment.

10. a. Stipulated Penalty. If any Settling Defendant fails to pay the amounts due under Section V (Reimbursement of Response Costs) within the time period required by this Consent Decree, or any Settling Defendant fails to comply with the obligations set forth in Section VI (Access and Institutional Controls), such Settling Defendant(s) shall be in violation of this Consent Decree and shall pay to EPA and the NJDEP as a stipulated penalty, in addition to the Interest due pursuant to Paragraph 9, the following amounts per violation per day:

<u>Penalty to United States Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 7 th days
\$2,000	8 th day and beyond
 <u>Penalty to State Per Violation Per Day</u>	 <u>Period of Noncompliance</u>
\$1,000	1 st through 7 th days
\$2,000	8 th day and beyond

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the NJDEP. All payments to the United States under this Paragraph shall be identified as “stipulated penalties” and shall be remitted via Electronic Funds Transfer (“EFT”), along with the following information, to EPA’s Account with Mellon Bank, Pittsburgh, Pennsylvania, as follows:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment:
- iv. Mellon Bank Routing Number:
- v. Name of Party making payment
- vi. EPA Case Number:
- vii. Site Spill Identifier Nos.

The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site names and Site/Spill ID Numbers (Montgomery Township Housing Development Superfund Site, 02-90, and Rocky Hill Municipal Wellfield Superfund Site, 02-64), EPA Region II and EPA Case Number 02-1990-0181. At the time of each payment made pursuant to this Section, copies of check(s) submitted and any accompanying transmittal letter(s) shall be sent to the United States as provided in Section XIII (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, NY 10007-1866.

All payments to the State under this Paragraph shall be identified as “stipulated penalties” and payment shall be made by a certified or cashier’s check made payable to the “Treasurer, State of New Jersey.” The certified or cashier’s check shall be mailed or otherwise delivered to the Section Chief, Cost Recovery and Natural Resource Damages Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the NJDEP 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 or the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States or the State brings an action to enforce this Consent Decree, the Settling Defendant(s) against whom such action is brought shall reimburse the United States and/or the State for all costs of such action, including but not limited to costs of attorney time.

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

13. Notwithstanding any other provision of this Section, the United States or the State 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.

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

14. a. As to the United States

In consideration of the payments that will be made by the Settling Sands Defendants and Fifth Dimension, Inc. under the terms of this Consent Decree, and except as specifically

provided in Paragraphs 15, 16, 18, and 19 of this Section, the United States covenants not to sue or to take administrative action against Settling Sands Defendants and Fifth Dimension, Inc. pursuant to Sections 106 and 107(a) of CERCLA including for Federal Natural Resource Damages relating to the Sites. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 4.a. of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued pursuant to Paragraph 10 of Section VII (Failure to Comply with Consent Decree). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action as defined in Paragraph 3 of this Consent Decree. These covenants not to sue are conditioned upon the satisfactory performance by Settling Sands Defendants and Fifth Dimension, Inc. of all of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Sands Defendants and Fifth Dimension, Inc. and do not extend to any other person.

Subject to Fifth Dimension, Inc.'s full compliance with all of its obligations under this Consent Decree, the United States agrees that its claims in the Bankruptcy Case are satisfied, and, subject to the reservations of rights in Paragraphs 15, 16, 18, and 19 the United States will not assert any claims against the Fifth Dimension Insurers in connection with the claims which are the subject of the above covenants not to sue under applicable federal or state law or direct action statute that would permit claimants against an insured to bring claims directly against an insurer.

b. As to the State of New Jersey.

In consideration of the payments that will be made by the Settling Sands Defendants and Fifth Dimension, Inc. under the terms of this Consent Decree, and except as specifically provided in Paragraphs 15, 16, and 19 of this Section, the State covenants not to sue or to take administrative action against Settling Sands Defendants and Fifth Dimension, Inc. relating to the Sites pursuant to Section 107(a) of CERCLA and the Spill Act, specifically N.J.S.A. 58:10-23.11g.c.(1) and -23.11u.b.(4). Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the State of the payments required by Paragraph 5.a. of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued pursuant to Paragraph 10 of Section VII (Failure to Comply with Consent Decree). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action as defined in Paragraph 3 of this Consent Decree. These covenants not to sue are conditioned upon the satisfactory performance by Settling Sands Defendants and Fifth Dimension, Inc. of all of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Sands Defendants and Fifth Dimension, Inc. and do not extend to any other person.

Subject to Fifth Dimension, Inc.'s full compliance with all of its obligations under this Consent Decree, the State agrees that its claims in the Bankruptcy Case are satisfied, and, subject to the reservations of rights in Paragraphs 15, 16 and 19, the State will not assert any claims against the Fifth Dimension Insurers in connection with the claims which are the subject of the above covenants not to sue under applicable federal or state law or direct action statute that would permit claimants against an insured to bring claims directly against an insurer.

15. Plaintiffs' Pre-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right under their respective legal authorities, as applicable, to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants: (a) to perform further response actions relating to the Sites, (b) to reimburse the United States or the State for additional costs of response, or (c) to reimburse the State for additional State Natural Resource Damages if, prior to Certification of Completion of the Remedial Action:

- (i). conditions at the Sites, previously unknown to EPA, are discovered, or
- (ii). information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, after a reasonable opportunity for review and comment by NJDEP, that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action set forth in the RODs is not protective of human health or the environment.

16. Plaintiffs' Post-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right under their respective legal authorities, as applicable, to institute proceedings in this action or in a new

action, or to issue an administrative order seeking to compel Settling Defendants: (a) to perform further response actions relating to the Sites, (b) to reimburse the United States or the State for additional costs of response, or (c) to reimburse the State for additional State Natural Resource Damages, if, subsequent to Certification of Completion of the Remedial Action:

- (i). conditions at the Sites, previously unknown to EPA, are discovered, or
- (ii). information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, after a reasonable opportunity for review and comment by NJDEP, that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

17. For purposes of Paragraph 15., the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Re-Evaluation of the June 1988 Records of Decision (“Re-Evaluation”) was signed and set forth in the Records of Decision for the Sites, the Re-Evaluation, and the administrative records supporting the Records of Decision and the Re-Evaluation. For purposes of Paragraph 16., the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Records of Decision, the Re-Evaluation, the administrative records

supporting the Records of Decision and the Re-Evaluation, and the post-ROD administrative record.

18. Reservations Concerning Federal Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of DOI and NOAA, reserves the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Federal Natural Resource Damages, based on (a) conditions with respect to the Site, unknown to DOI or NOAA as of October 1, 2003, that result in release(s) of hazardous substance(s) that contribute to injury to, destruction of, or loss of Federal Natural Resources, or (b) information received after October 1, 2003, which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to DOI or NOAA as of October 1, 2003.

19. Plaintiffs' General Reservations of Rights.

a. As to the United States.

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 the United States' Covenant Not to Sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

i. liability for failure by Settling Defendants to meet a requirement of this Consent Decree;

- ii. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites;
 - iii. liability for future disposal, of a hazardous substance, pollutant, or contaminant at the Sites;
 - iv. criminal liability; and
 - v. liability for violations of federal or state law which occur during or after implementation of the Remedial Action.
- b. As to the State.

The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the State's Covenant Not to Sue. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendants with respect to:

- i. liability for failure by Settling Defendants to meet a requirement of this Consent Decree;
- ii. liability arising from the past, present, or future disposal, release, discharge, threat of release or unsatisfactory storage or containment of a hazardous substance, pollutant, or contaminant outside of the Sites;

- iii. liability for future disposal, discharge or unsatisfactory storage or containment of a hazardous substance, pollutant, or contaminant at the Sites;
- iv. criminal liability;
- v. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- vi. liability for any claim filed on or after the effective date of this Consent Decree against the Spill Fund or the Sanitary Landfill Fund concerning the Sites.

IX. COVENANTS BY SETTLING DEFENDANTS

20. Covenant Not to Sue. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Sites or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;
- b. any claims against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613 relating to the Sites;

c. any claims arising out of response actions at or in connection with the Sites, 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, as amended, or at common law;

d. any direct or indirect claim for reimbursement from the Spill Fund or the Sanitary Landfill Fund concerning the Sites; or

e. any claims or causes of action under federal, state or local law concerning the Sites against the United States or the State, including any department, agency or instrumentality of the United States or the State.

Except as provided in Paragraph 26 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Section VIII (Covenants not to Sue by Plaintiffs), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute 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).

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

22. Except as provided in Paragraphs 14.a. and 14.b., 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 preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs and Federal Natural Resource Damages and State Past Cleanup and Removal Costs, State Future Cleanup and Removal Costs and State Natural Resource Damages relating to the Sites. The "matters addressed" in this Consent Decree do not include those response costs, response actions, cleanup and removal costs, or remedial actions as to which the United States and the State have reserved their rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

24. 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, DOJ and the NJDEP in writing no later than 60 days prior to the initiation of such suit or claim.

25. 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, DOJ and the NJDEP in writing within 20 days of service of the complaint upon it. In addition, each Settling Defendant shall notify EPA, DOJ and the NJDEP 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.

26. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response or cleanup and removal costs, Federal Natural Resource Damages or other relief relating to the Sites, 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, the entire controversy doctrine or other defenses based upon any contention that the claims raised by the United States or the State 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 VIII (Covenants Not to Sue by Plaintiffs).

XI. ACCESS TO INFORMATION

27. Settling Defendants, except for Fifth Dimension, Inc., shall provide to EPA and the NJDEP, upon request, copies of all records, reports, or information (hereinafter referred to as

“records”) within their possession or control or that of their contractors or agents relating to activities at the Sites, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

28. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiffs under this Consent Decree 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). Records determined to be confidential by EPA 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 and the NJDEP, or if EPA has notified Settling Defendants that the documents or information 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.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XII. RETENTION OF RECORDS

30. Until ten years after the entry of this Consent Decree, each Settling Defendant, except for Fifth Dimension, Inc., shall preserve and retain all 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 Sites or the liability of any person under CERCLA or the Spill Act with respect to the Sites, regardless of any corporate retention policy to the contrary.

31. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants, except for Fifth Dimension, Inc., shall notify EPA, DOJ, and the NJDEP at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, DOJ or the NJDEP, Settling Defendants shall deliver any such records or documents to EPA or the NJDEP. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

32. Each Settling Defendant, except for Fifth Dimension, Inc., hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA and the NJDEP, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Sites, or to the ownership, possession, generation, treatment, transportation, storage, disposal or discharge of a hazardous substance, pollutant or contaminant at or in connection with the Sites;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports or information relating to its potential liability regarding the Sites, since notification of potential liability or the filing of a suit against the Settling Defendant by the United States or the State regarding the Sites; and

c. fully complied with any and all EPA or NJDEP requests for information regarding the Sites pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and the Spill Act.

XIII. NOTICES AND SUBMISSIONS

33. 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. Written notice as specified herein shall constitute

complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, DOJ, the State, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-290)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

ATTN: Montgomery Township/Rocky Hill Superfund Site Attorney
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel
New Jersey Superfund Branch
290 Broadway, 17th Floor
New York, New York 10007-1866

As to the NJDEP or the State:

Section Chief
Cost Recovery and Natural Resource Damages Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
609-984-4863

Assistant Director
Division of Remediation Management and Response
Department of Environmental Protection
P.O. Box 413
401 East State Street
Trenton, NJ 08625

As to Settling Sands Defendants:

Louis Giansante, Esq.
Louis Giansante & Associates
23 East Main Street
Moorestown, NJ 08057

As to Settling Defendant Fifth Dimension, Inc.:

Paul H. Schneider, Esq.
Giordano, Halleran & Ciesla
125 Half Mile Road
P.O. Box 190
Middletown, New Jersey 07748

XIV. BANKRUPTCY APPROVAL

34. This Consent Decree is subject to Court approval pursuant to Bankruptcy Rule 9019 and shall be effective only upon entry of a final order by the Court approving this Consent Decree and the Confidential Settlement Agreement and Release. This Consent Decree is contingent upon approval of the Confidential Settlement Agreement and Release by the Court.

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

36. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the list of Settling Defendants;

"Appendix B" is a map of the Montgomery Township Housing Development and the Rocky Hill Municipal Wellfield Superfund Sites.

"Appendix C" is the Environmental Protection Easement and Declaration of Restrictive Covenants.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. 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 and the State reserve the right to withdraw or withhold their consent if the comments regarding this 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.

38. 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.

XVIII. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which the Court Order approving the entry of the Consent Decree and the Confidential Settlement Agreement and Release becomes final and non-appealable.

XIX. SIGNATORIES/SERVICE

40. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, the Assistant Commissioner for Site Remediation, New Jersey Department of Environmental Protection, the Assistant Commissioner for Natural and Historic Resources, New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund, 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.

41. 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 or the State has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

42. 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.

XX. FINAL JUDGMENT

43. 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.

44. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State 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 Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2009.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR THE UNITED STATES OF AMERICA

Date: _____

JOHN C. CRUDEN
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Date: 4/3/09 _____

SUSAN M. AKERS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
(202) 514-4831

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

IRENE DOWDY
Assistant United States Attorney
District of New Jersey
420 East State Street
Trenton, New Jersey 08608

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR U.S. ENVIRONMENTAL
PROTECTION AGENCY

Date: _____

1/29/2009

WALTER MUGDÁN
Director
Emergency and Remedial Response
Division
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

Date: _____

1/12/09

AMELIA WAGNER
Assistant Regional Counsel
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR ~~THE~~ STATE OF NEW JERSEY

Date: _____

6/18/09

IRÈNE KROPP
Assistant Commissioner
Site Remediation
New Jersey Department of Environmental
Protection
401 E. State Street, P.O. Box 028
Trenton, New Jersey 08625

Date: _____

6/24/09

AMY CRADY
Assistant Commissioner
Natural and Historic Resources
501 E. State Street
Station Plaza 5, P.O. Box 404
Trenton, New Jersey 08625

~~NEW JERSEY SPILL~~ COMPENSATION FUND

Date: 6/18/09

ANTHONY J. FARRO, Administrator
New Jersey Spill Compensation Fund

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Date: 6/29/09

By: _____

LOUIS G. KARAGIAS
Deputy Attorney General
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR SETTLING SANDS DEFENDANTS

JEFFREY SANDS

GEORGE SANDS, JR.

JEFFREY SANDS
[TITLE] *managing member*
FOR S AND S INVESTMENTS, LLC

~~GEORGE SANDS, SR.~~ Jeffrey H. Sands as
Executor of the Estate of George H. Sands, Sr.

ESTELLE SANDS

[NAME] Jeffrey SANDS
[TITLE] *managing member*
FOR HILTON REALTY Co, LLC

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR SETTLING SANDS DEFENDANTS

JEFFREY SANDS

GEORGE SANDS, JR.

JEFFREY SANDS
[TITLE]
FOR S AND S INVESTMENTS

GEORGE SANDS, SR.

ESTELLE SANDS

[NAME]
[TITLE]
FOR HILTON REALTY

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and New Jersey Department of Environmental Protection; Acting Administrator, New Jersey Spill Compensation Fund; and Commissioner, New Jersey Department of Environmental Protection as Trustee for Natural Resources v. Princeton Gamma-Tech, Inc., et al., relating to the Montgomery Township Housing Development and Rocky Hill Municipal Well Superfund Sites.

FOR FIFTH DIMENSION, INC.

[Name]

[Title]

[Address]

APPENDIX A
List of Settling Defendants

George Sands, Jr.
Jeffrey Sands
S & S Investments
George Sands, Sr.
Estelle Sands
Hilton Realty, Inc.
Fifth Dimension, Inc.

Appendix B

Appendix C

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 19____, by and between _____, ("Grantor"), having an address of _____, and, _____ ("Grantees"), having addresses of _____.

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the county of _____, State of _____, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the _____ Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on _____, 19____; and

4. WHEREAS, in a Record of Decision dated _____, 19____ (the "ROD"), the EPA Region ____ Regional Administrator, **with the concurrence of the New Jersey Department of Environmental Protection ("NJDEP")**, selected a "remedial action" for the Site, which provides, in part, for the following actions:

and

5. WHEREAS, with the exception of _____
_____, the remedial action has been implemented at the Site; and

6. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. **Grant:** Grantor, on behalf of itself, its successors and assigns, in consideration of [the terms of the Consent Decree in the case of ____ v. ____, etc.], does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. **Purpose:** It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. **Restrictions on use:** The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

11. **Modification of restrictions:** The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantees. If requested by the Grantor, such writing will be executed by Grantees in recordable form.

12. **Environmental Protection Easement:** Grantor hereby grants to the Grantees an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing the response actions in the ROD, including but not limited to _____;
- b) Verifying any data or information submitted to EPA or the NJDEP;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantees, in their sole discretion, determine[] i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. Nothing in this document shall limit or otherwise affect EPA's or NJDEP's rights of entry and access or EPA's or NJDEP's authority to take response actions under CERCLA, the NCP, the Spill Act or other federal and state laws.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 19___, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 19___, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantees with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. The state agency having administrative jurisdiction over the interests acquired by the State of New Jersey by this instrument is the NJDEP.

18. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the Spill Act. Enforcement of the terms of this instrument shall be at the discretion of the Grantees, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantees under this instrument.

19. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

21. Covenants: Grantor hereby covenants to and with the United States and the NJDEP and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit D attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

22. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantees:

23. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policies and purposes of CERCLA and the Spill Act. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and the State of New Jersey and their assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 19__.

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this __ day of ____, 19__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of _____

My Commission Expires: _____.

This easement is accepted this _____ day of _____, 19__.

UNITED STATES OF AMERICA
the persons and/or entities named at the beginning of this document, identified as "Grantor" and
their personal representatives, heirs, successors, and assigns.

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: _____

**New Jersey Department of Environmental
Protection**

By: _____

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	identification of proposed uses and construction plans, for the Property
	Exhibit C	-	identification of existing uses of the Property
	Exhibit D	-	list of permitted title encumbrances