

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil No. 1:16-cv-11152
J.S.B. INDUSTRIES, INC.;)	
JOHN P. ANDERSON, AS TRUSTEE OF)	
130 CRESCENT AVE. REALTY TRUST;)	
and)	
JMG ANDOVER STREET REALTY, LLC,)	
)	
Defendants.)	

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action, concurrently with this Consent Decree, alleging that Defendants, J.S.B. Industries, Inc. (“JSB”) and John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust (the “Trust”) violated: (1) the chemical accident prevention provisions of Section 112(r)(1) (the “General Duty Clause”) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1); (2) the notice requirements of Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9603; and (3) the chemical inventory reporting requirements of Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11021 and 11022, with respect to their baked goods production, storage, and distribution facility located at 130 Crescent Avenue, in Chelsea, Massachusetts (the “Chelsea Facility”). The Complaint also alleges that Defendants, JSB and JMG Andover Street Realty, LLC (“JMG”) violated the chemical inventory reporting requirements of Sections 311 and 312 of EPCRA with respect to their baked goods production, storage, and distribution facility located at 309 Andover Street, in Lawrence, Massachusetts (the “Lawrence Facility”).

The Complaint alleges that Defendants JSB and the Trust (collectively, “the Chelsea Defendants”) owned and/or operated the Chelsea Facility since 2000 and that, from approximately August 2006 until March 2012, they violated Section 112(r)(1) of the CAA by failing in their general duty to: (1) identify hazards, using appropriate hazard assessment techniques, which may result from the accidental release of anhydrous ammonia at or from the Chelsea Facility; (2) design and maintain the Chelsea Facility as a safe facility taking such steps as are necessary to prevent a release of an extremely hazardous substance, in accordance with applicable industry standards; and (3) minimize the consequences of an accidental release of an extremely hazardous substance at or from the Chelsea Facility, in accordance with applicable industry standards.

The Complaint also alleges that the Chelsea Defendants violated the chemical inventory reporting requirements of Sections 311 and 312 of EPCRA by: (1) failing to submit a Material Safety Data Sheet (“MSDS” or “Tier II” form) for ammonia and sulfuric acid, or a list of hazardous chemicals including ammonia and sulfuric acid, to the appropriate Local Emergency Planning Committee (“LEPC”), State Emergency Response Commission (“SERC”), and fire department with jurisdiction over the Chelsea Facility, within three months after the Chelsea Defendants were required to prepare or have available such form; and (2) failing to timely submit Inventory Forms to the appropriate LEPC, SERC, and fire department for reporting years 2001 through 2012.

The Complaint further alleges that the Chelsea Defendants violated Section 103 of CERCLA by failing to promptly notify the National Response Center of the release, on April 1, 2009, of approximately 2,000 pounds of anhydrous ammonia from the Chelsea Facility.

On July 6, 2011, EPA issued a Notice of Violation and Administrative Order (“Order”) to JSB Industries, Inc. alleging that the Chelsea Defendants were operating their ammonia-based refrigeration system at the Chelsea Facility in violation of the General Duty Clause. The Order required the Chelsea Defendants to correct the violations by conducting a process hazard analysis, improving ammonia detection and alarm capability, developing adequate emergency

response procedures, installing proper signage and labeling, and correcting certain electrical hazards.

In or around March 2012, the Chelsea Defendants removed the ammonia-based refrigeration system at the Chelsea Facility and replaced it with a nitrogen-based system.

The Complaint alleges that Defendants JSB and JMG (collectively, the “Lawrence Defendants”) owned and/or operated the Lawrence Facility since February 2011 and violated the chemical inventory reporting requirements of Sections 311 and 312 of EPCRA by: (1) failing to submit an MSDS (or Tier II form) for sulfuric acid, or a list of hazardous chemicals including sulfuric acid, to the appropriate LEPC, SERC, and fire department with jurisdiction over the Lawrence Facility, within three months after the Lawrence Defendants were required to prepare or have available such MSDS (or Tier II form); and (2) failing to timely submit Inventory Forms to the appropriate LEPC, SERC, and fire department for reporting years 2011 and 2012.

Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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 and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c) and 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391 (b)-(c) and 1395(a), because each Defendant resides within this judicial district, the violations alleged in the Complaint are alleged to have occurred within this judicial district, and the civil penalties sought have accrued in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court’s jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to CAA Section 112(r)(1), 42 U.S.C. §§ 7412(r)(1), EPCRA Sections 311 and 312, 42 U.S.C. §§ 11021 and 11022, and CERCLA Section 103, 42 U.S.C. § 9603.

3. The United States has given notice of the Complaint in this action to the Commonwealth of Massachusetts pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of either the Chelsea Facility or the Lawrence Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of the obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, the Chelsea Defendants and/or the Lawrence Defendants, as applicable, shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1, the United States Attorney for the District of Massachusetts, and the United States Department of Justice, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of either the Chelsea Facility or the Lawrence Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, EPCRA, CERCLA, or in regulations promulgated pursuant to these statutes shall have the meanings assigned to them in such statute or regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Chelsea Facility” shall mean the Chelsea Defendants’ baked goods production, storage, and distribution facility located at 130 Crescent Avenue, in Chelsea, Massachusetts.

“Chelsea Defendants” shall mean J.S.B. Industries, Inc. and John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust.

“Complaint” shall mean the complaint filed by the United States in this action.

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

“Day” shall mean a calendar day unless expressly stated to be a business 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 business day.

“Defendants” shall mean J.S.B. Industries, Inc., John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust, and JMG Andover Street Realty, LLC.

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

“Effective Date” shall have the definition provided in Section XV.

“JSB Facilities” shall mean both the Chelsea Facility and the Lawrence Facility.

“Lawrence Defendants” shall mean J.S.B. Industries, Inc. and JMG Andover Street Realty, LLC.

“Lawrence Facility” shall mean the Lawrence Defendants’ baked goods production, storage, and distribution facility located at 309 Andover Street, in Lawrence, Massachusetts.

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

“Parties” shall mean the United States and Defendants.

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

“SEP Recipients” shall mean the City of Chelsea, Massachusetts Fire Department and the City of Lawrence, Massachusetts Fire Department.

“State” shall mean the Commonwealth of Massachusetts.

“United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$156,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Massachusetts after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

John P. Anderson
130 Crescent Avenue
Chelsea, MA 02150
(617) 846-1565
jackanderson@muffintown.com

as representatives of Defendants. Defendants may change the individual(s) to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

At the time of payment, Defendants shall send notice that payment has been made: (1) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (2) to the United States and EPA via email or regular mail in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. JSB Industries, Inc. et al.* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-10997.

11. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating their federal income tax.

V. COMPLIANCE REQUIREMENTS

12. Defendants shall comply with applicable statutory, regulatory, and other legal requirements regarding the production, storage, and distribution of baked goods at or from the Chelsea Facility and the Lawrence Facility, including without limitation:

a. the chemical accident prevention provisions of the General Duty Clause in Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1);

b. the notice requirements of Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603; and

c. the chemical inventory reporting requirements of Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11021 and 11022.

13. Certification.

a. By signing this Consent Decree, each of the Chelsea Defendants certifies to EPA that the Chelsea Facility is operating in compliance with the chemical accident prevention provisions of the General Duty Clause of the CAA, the notice requirements of Section 103 of CERCLA, and the chemical inventory reporting requirements of EPCRA, as applicable.

b. By signing this Consent Decree, each of the Lawrence Defendants certifies to EPA that the Lawrence Facility is operating in compliance with the chemical inventory reporting requirements of EPCRA, as applicable.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

14. Defendants shall implement the Supplemental Environmental Project (“SEP”) described in Appendix A, in accordance with the provisions of Paragraphs 14 through 23 and Appendix A. The SEP shall be completed within 120 Days after the Effective Date by Defendants, in accordance with the schedule set forth in this Consent Decree and Appendix A. The SEP shall involve the purchase of emergency response equipment for the Chelsea Fire Department and the Lawrence Fire Department (the SEP Recipients), which serve the communities surrounding where the JSB Facilities are located.

15. Defendants are responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means: (a) purchasing the required equipment within 120 Days of the Effective Date of this Consent Decree; (b) ensuring that the equipment is timely delivered to the SEP Recipients; (c) ensuring that the equipment is in working order according to manufacturer instructions at the time of its delivery to the SEP Recipients; and (d) paying the costs of the purchase and delivery of the required equipment in accordance with Section VI and Appendix A of this Decree.

16. With regard to the SEP, Defendants certify the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that, in good faith, Defendants estimate that the cost to implement the SEP is approximately \$119,000;

b. that, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendants have not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendants will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) no Defendant is a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in this Section VI and Appendix A; and (ii) Defendants have inquired of the SEP Recipients (*i.e.*, the Chelsea and Lawrence Fire Departments) whether either is a party to an open federal financial assistance

transaction that is funding or could fund the same activity as the SEP and has been informed by the SEP Recipients that neither is a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance with a performance period that has not yet expired.

17. SEP Completion Report.

a. Within 30 Days after the date set for completion of the SEP, Defendants shall submit a SEP Completion Report to the United States, in accordance with Section XIV (Notices). To the extent Defendants complete the SEP implementation on or before the due date, Defendants shall submit their SEP Completion Report within 30 days after the date of actual SEP completion.

b. The SEP Completion Report shall contain the following information:

- (1) a detailed description of the SEP as implemented;
- (2) a description of any problems encountered in completing the SEP and the solutions thereto;
- (3) an itemized list of all eligible SEP costs expended, with supporting documentation enclosed, including without limitation true and accurate copies of all receipts, invoices and cancelled checks;
- (4) a written certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- (5) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

18. EPA may, in its sole discretion, require information in addition to that described in the preceding paragraph, in order to evaluate Defendants’ Completion Report.

19. After receiving the SEP Completion Report, the United States shall notify Defendants whether or not Defendants have satisfactorily completed the SEP. If Defendants have not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section VIII.

20. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

21. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 26.

22. Any public statement, oral or written, in print, film, or other media, made by any of Defendants making reference to the SEP under this Decree shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action, United States v. JSB Industries, Inc. et al., taken on behalf of the U.S. Environmental Protection Agency under federal law, including the Clean Air Act, the Emergency Planning and Community-Right-to-Know Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.”

23. For federal income tax purposes, each Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VII. REPORTING REQUIREMENTS

24. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting any Defendant’s performance under this Decree, or the performance or operation of one or both of the Facilities, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after any Defendant first knew of the violation or event.

25. All reports submitted under this Decree shall be to the persons designated in Section XIV (Notices).

26. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

27. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

28. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CAA, EPCRA, CERCLA or the applicable implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

29. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

30. Defendants shall be liable jointly and severally for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any implementation plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

31. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due is not paid by the required date, Defendants shall pay a stipulated penalty of \$500 per Day for each Day that such payment is late.

32. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII:

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

33. SEP Compliance.

a. If Defendants fail to satisfactorily complete the SEP by the deadline set forth in Section VI and Appendix A of this Consent Decree, Defendants shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP, as follows:

<u>Penalty Per Violation Per day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

b. If Defendants fail to implement the SEP, or halt or abandon work on the SEP, Defendants shall pay a stipulated penalty of \$200,000. The penalty under this subparagraph shall accrue as of the date specified for completing the SEP.

34. Except as provided in Paragraph 33.b, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until

the violation ceases. Stipulated penalties shall accrue simultaneously for each separate violation of this Consent Decree.

35. Defendants shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

36. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 34, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

38. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

40. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete performance of the requirements of this Consent Decree.

41. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any

statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

42. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, any entity controlled by Defendants, or of Defendants’ contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to EPA in accordance with Section XIV (Notices), within 72 hours of when Defendants first knew that the event might cause a delay. Within 7 Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a force majeure event if Defendants intend to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants’ contractors knew or should have known.

44. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

45. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

46. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA’s notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance

of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 42 and 43. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

50. The United States shall serve its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

51. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

53. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 49 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 49, Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

55. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

56. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants with splits of any samples taken by EPA.

57. Until 5 years after the termination of this Consent Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

58. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

59. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

60. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

61. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree.

62. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the

rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

63. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendants' violations, 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 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, except with respect to claims that have been specifically resolved pursuant to Paragraph 61.

64. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. §§ 7401 to 7671q, EPCRA, 42 U.S.C. §§ 11001 to 11050, or CERCLA, 42 U.S.C. §§ 9601 to 9675(c), or with any other provisions of federal, State, or local laws, regulations, or permits.

65. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

66. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

67. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES

68. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-10997

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-10997

As to EPA by email: Martinez.hugh@epa.gov
Re: *U.S. v. JSB Industries, Inc. et al.*

As to EPA by mail: Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
(Mail Code OES 04-3)
Boston, MA 02109-3912

As to Defendants: John P. Anderson
J.S.B. Industries, Inc.
130 Crescent Avenue
Chelsea, MA 02150

69. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

70. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

71. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

72. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

73. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

74. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 53, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

75. After Defendants have completed the requirements of Section VI (Supplemental Environmental Project), and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

76. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

77. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section X. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

78. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

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

80. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to

all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

81. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this 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.

XXII. FINAL JUDGMENT

82. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and 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.

XXIII. APPENDICES

83. The following Appendix is attached to and part of this Consent Decree:


“Appendix A” is the SEP Scope of Work.

Dated and entered this ___ day of _____, 2016

UNITED STATES DISTRICT JUDGE


FOR THE UNITED STATES OF AMERICA:

6/20/16
Date



ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

6/20/16
Date



DAVID L. WEIGERT
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Environment and Natural Resources Division
U.S. Department of Justice
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david.weigert@usdoj.gov

CARMEN M. ORTIZ
United States Attorney

GEORGE BUNKER HENDERSON III
Assistant United States Attorney
1 Courthouse Way
John Joseph Moakley Courthouse
Boston, MA 02210

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

05/03/2016
Date

Susan Studlien
SUSAN STUDLIEN
Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

5-2-16
Date

Hugh W. Martinez
HUGH W. MARTINEZ
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

FOR JSB INDUSTRIES, INC.:

4/26/16
Date



JOHN P. ANDERSON, President

FOR JOHN P. ANDERSON, TRUSTEE, 130 CRESCENT AVE. REALTY TRUST:

4/27/16
Date



JOHN P. ANDERSON, Trustee

FOR JMG ANDOVER STREET REALTY, LLC:

4/27/16
Date



JOHN P. ANDERSON, Manager

Appendix A – Scope of Work for Supplemental Environmental Project

U.S. v. JSB Industries, Inc. et al., Civil No. _____

J.S.B. Industries, Inc. (“JSB”), John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust (the “Trust”), and JMG Andover Street Realty, LLC (“JMG”) shall perform this Supplemental Environmental Project (“SEP”) as a component of their settlement with EPA. Additionally, JSB, the Trust, and JMG (collectively, “Defendants”) shall complete the SEP, as described in the Decree and in this Appendix A, which is intended to secure significant environmental and public health protection and benefits. Defendants have selected the City of Lawrence Fire Department and the City of Chelsea Fire Department as the “SEP Recipients.” The SEP requires purchasing equipment for the SEP Recipients that will enhance their ability to respond to and prepare for emergencies involving hazardous chemicals in the community.

I. BACKGROUND

J.S.B. Industries, Inc. operates a wholesale bakery and distribution business out of two facilities in the Commonwealth of Massachusetts where the company produces and freezes baked goods for retailers and food service providers. JSB operates one facility at 130 Crescent Avenue, in Chelsea, MA (the “Chelsea Facility”) and another facility at 309 Andover Street, in Lawrence, MA (the “Lawrence Facility”). The Trust owns the Chelsea Facility. JMG owns the Lawrence Facility. Both the Chelsea Facility and the Lawrence Facility (collectively, the “Facilities”) are located in densely populated urban areas and are in close proximity to many residences and other businesses.

The City of Chelsea is located in a densely populated urban area of Suffolk County, across the Mystic River from the City of Boston. Chelsea encompasses an area of about 2.21 square miles (mi²), with a total population of about 35,500 individuals, according to the 2010 United States Census. Approximately 75% of the City’s population is considered minority and about 50% is low-income.

The City of Lawrence is located in a densely populated urban area of Essex County, on the Merrimack River about 25 miles north of Boston. Lawrence encompasses an area of approximately 6.93 mi², with a total population of about 76,200 people, according to the 2010 United States Census. Approximately 80% of Lawrence’s population is minority and about 57% is low-income.

EPA Region 1 considers Chelsea and Lawrence to be potential environmental justice (“EJ”) areas of concern, based upon various environmental, public health, and demographic factors.

The Chelsea and Lawrence Fire Departments are among the busiest fire departments in the United States. Their missions are complicated by urban settings and financial limitations. The equipment to be provided through this SEP was identified in consultation with the Chelsea and Lawrence Fire Departments, based on their own assessment of their most critical unmet

needs for responding to emergency releases of hazardous chemicals and protecting public health and safety and the environment.

II. SCOPE OF WORK

Pursuant to this SEP, Defendants shall purchase and deliver to the SEP Recipients emergency response equipment, as specified below. The equipment shall be in new condition, not used, refurbished or rebuilt. Defendants shall complete these purchases and deliveries within 120 Days of the effective date of the Consent Decree. Defendants shall confirm that each piece of SEP equipment is in good working order, in accordance with manufacturer specifications and instructions, at the time of its delivery to the applicable SEP Recipient.

List of Emergency Response Equipment

	Item Quantity and Description	Est. Cost	Recipient
1	1 EDRAULIC C2 S 700E2 Cutter Package (includes tool, charger, and two EXL extended run-time batteries)	\$11,330	Chelsea
2	1 EDRAULIC SP 300E2 Spreader Package (includes tool, charger, and two EXL extended run-time batteries)	\$11,930	Chelsea
3	1 Hurst R421E2 RAM Package (includes tool, charger, and two EXL extended run-time batteries)	\$8,673	Chelsea
4	3 EDRAULIC2 110V E2 Power Supply w/ Plug - 110V Power Adapter for endless run time on prolonged incidents	\$2,085	Chelsea
5	1 Horizontal Mounting Bracket S700E2	\$216	Chelsea
6	1 Horizontal Mounting Bracket SP 300E2	\$254	Chelsea
7	1 R411E RAM Bracket – Horizontal	\$216	Chelsea
8	5 Altair 5 gas multi-gas meters	\$12,625	Lawrence
9	2 Galaxy test and bump station	\$7,990	Lawrence
10	1 Edraulic Hurst SC 357E2 Combi Tool	\$12,950	Lawrence
11	2 Tempest explosion-proof Positive Pressure Ventilation (PPV) equipment	\$4,972	Lawrence
12	1 Ramfan Manhole Entry Kit, Ex-Prf, 8-in., 1/4 HP, 230V	\$1,296	Lawrence
13	4 Stearns Rapid Rescue Surface Suits (1 Medium, 3 X-Large)	\$2,784	Lawrence
14	4 NRS Workboot Wetshoe, Item 30037.01 (1- size 9, 1-size 10, and 2- size 11)	\$639	Lawrence
15	3 Firetuff Chain Saw Kits	\$1,824	Lawrence
16	2 Tele-Lite 2000W Generators with 1000W Light	\$4,258	Lawrence
17	1 Milwaukee 18V cordless band saw kit (Model # 2729-22)	\$468	Lawrence
18	1 Milwaukee 4 1/2" Angle Grinder (V28 TM Grinder (0725-20))	\$189	Lawrence
19	1 Junkin: Floatation Stretcher Collar	\$395	Lawrence
20	2 Sterling Rope EscapeTech (Part # F075AN0, 200 ft)	\$580	Lawrence

21	7 Stanley Forcible Entry Tool (1 Piece, 30" length, Mfr. # 55-122)	\$1,154	Lawrence
22	5 New York Roof Hooks	\$840	Lawrence
23	3 Akron Brass 50' Cord Sets with L5-20 Twist Lock Plugs and Connectors (143Y350: Yellow 50ft. 14-3 300V, with L5-20 20 amp/125 Twist Lock Plug and Connector)	\$534	Lawrence
24	9 Akron Brass 1' (0.3 m) Pigtail with L5-20 Plug and L5-30 Connector (PG-21Y)	\$315	Lawrence
25	1 Westward Snap Ring Pliers Set (Model # 4YP48)	\$25	Lawrence
26	2 Pellerin Milnor Corporation 30022 T6X 60 lb. Gear Washer with heavy-duty steel base (NFPA 1851 compliant).	\$23,192	Lawrence
27	4 PIG Oil & Debris Containment Booms (www.newpig.com) – 100' L x 18" H (Item # BOM301)	\$6,880	Lawrence
28	3 PIG Portable Spill Containment Pool (Item # PAK927)	\$399	Lawrence

The equipment described above will help equip local emergency response personnel to more effectively respond to accidental releases of hazardous chemicals and reduce risks to public health and safety, and the environment. The equipment to be purchased will help facilitate responses to emergency releases of chemicals regulated under the Clean Air Act, EPCRA, and CERCLA.

The cutter, spreader, RAM, and multi-tool packages, power supplies, and mounting brackets will increase the SEP Recipients' ability to rescue and protect people at risk from releases of hazardous chemicals who are trapped in, for example, structures or vehicles. The manhole entry kit will allow access and entry into confined spaces, such as tanks, crawl spaces, sewers, and utility areas, to reduce the risks from hazardous chemical releases. Gas meters and test and bump stations will increase SEP Recipients' capabilities for monitoring and detecting hazardous or otherwise unsafe atmospheric conditions, while PPV equipment provides the means to move large volumes of air to ensure safe conditions. Surface suits, flotation collars, and work boots will enhance cold rescue capabilities, including in water. The gear washer will facilitate proper cleaning, maintenance, and performance of emergency protective gear. Containment booms will increase the SEP Recipients' ability to isolate and remove oil, debris, and other contaminants from surface waters. Containment pools will enhance first responders' ability to contain oil and other contaminants. Other SEP equipment will help ensure sufficient lighting, access, and extraction capabilities in emergency situations.

Reference in the SEP provisions of this Consent Decree (including Appendix A) to any product, technology, brand or manufacturer is not intended and shall not be construed as an approval or endorsement thereof by EPA or any other agency of the United States. The involvement of any third party in the implementation of the SEP is not intended and shall not be construed as an approval or endorsement by EPA or any other agency of the United States of such third party or of any product or service offered or provided by such third party.