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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

Index No. CV-83-5371

PUREX INDUSTRIES INC. and  
PUREX CORPORATION,

Defendants.

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COUNTY OF NASSAU and the  
TOWN OF HEMPSTEAD,

Plaintiffs,

-against-

Index No. CV-83-5363

PUREX INDUSTRIES INC. and  
PUREX CORPORATION,

Defendants.

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STIPULATION AND CONSENT  
JUDGMENT APPROVING  
SETTLEMENT AGREEMENT

The undersigned, having agreed and stipulated that consent judgments incorporating a settlement agreement containing the following terms and conditions can be entered in these federal actions, which actions are more fully described below, and the Court having reviewed such terms and having found them adequate to resolve the issues raised in these actions and to constitute appropriate programs to effectively protect the public health and environment and the Court being fully

advised in the premises and having subject matter jurisdiction herein pursuant to 28 U.S.C. §1331, NOW, THEREFORE, IT IS ORDERED AND ADJUDGED AS FOLLOWS:

#### INTRODUCTION

1. The parties to this agreement are:
  - (a) Plaintiff, State of New York, on behalf of the People of the State of New York (hereinafter the "State").
  - (b) Plaintiff, County of Nassau, a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York (hereinafter the "County").
  - (c) Plaintiff, Town of Hempstead, a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York (hereinafter the "Town").
  - (d) The State, County and Town when referred to collectively will hereinafter be denoted as the "government parties".
  - (e) Defendant Purex Industries Inc., a corporation organized and existing under the laws of the State of Delaware.
  - (f) Defendant Purex Corporation, a corporation organized and existing under the laws of California.
  - (g) Purex Industries Inc. and Purex Corporation when referred to collectively will hereinafter be denoted as "Purex".

2. The County owns a certain parcel of real estate (hereinafter the "Property") located immediately south of Commercial Avenue, in the Town of Hempstead, Nassau County, New York, as is shown in Appendix E. The Property was previously owned by Purex and its predecessors in interest. In 1976 title to the Property passed to the County.

3. (a) On May 20, 1981, the State of New York served a complaint against Purex Industries, Inc., and Purex Corporation entitled State of New York v. Purex Industries, Inc. and Purex Corporation, index number 9041-81 in the Supreme Court of the State of New York, County of Nassau.

(b) On August 17, 1981 the County of Nassau served a complaint against Purex Industries, Inc., and Purex Corporation entitled The County of Nassau v. Purex Industries, Inc. and, Purex Corporation, index number 7526-1983 in the Supreme Court of the State of New York, County of Nassau.

(c) On August 23, 1982, the Town of Hempstead served a complaint against Purex Industries, Inc. and, Purex Corporation, entitled The Town of Hempstead v. Purex Industries, Inc. and Purex Corporation, index number 21113-1982 in the Supreme Court of the State of New York, County of Nassau.

(d) On December 9, 1983 the State of New York filed a civil action against Purex Industries, Inc. and Purex Corporation entitled State of New York v. Purex Industries Inc. and Purex Corporation, index number CV-83-5371 in the United States District Court for the Eastern District of New York.

(e) On December 9, 1983 the Town of Hempstead and the County of Nassau filed a civil action against Purex Industries Inc. and Purex Corporation entitled Town of Hempstead and County of Nassau v. Purex Industries Inc. and Purex Corporation, index number CV-83-5363 in the United States District Court for the Eastern District of New York.

(f) The complaints for the government parties allege, *inter alia*, that pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the New York State Environmental Conservation Law, Purex is responsible for response costs and damages to natural resources caused by hazardous substances on the Property and by the migration of the hazardous substances from

the Property into the soil and groundwater of New York State.

(g) Purex has served answers to the complaints denying, *inter alia*, liability.

#### Definitions

4. "Requisite Remedial Technology" means known engineering, scientific and construction principles and practices, used or acceptable for use in the cleanup or containment of chemical contamination which are applicable to the materials and hydrogeological conditions found at the Property and its environs.

5. "Remedial Program" as used in this Consent Judgment means that program of remediation described in detail in Appendices A, B and C which the government parties and Purex believe, on the basis of present knowledge, to be an appropriate technology to accomplish the remedial goals of this Consent Judgment.

6. a) "Basin Ambient Criteria" means the concentration of those chemicals listed in Appendix A, Table 1, existing prior to the time of discharge of effluent pursuant to this Consent Judgment, in the upper 10 feet of the water table below the recharge basin.

b) "Well Ambient Criteria" means the concentration of those chemicals listed in Appendix A, Table 1, existing prior to the time of discharge of effluent pursuant to this Consent Judgment, in the groundwater zone over which the recharge well is screened.

c) "Property Ambient Criteria" means the concentration of those chemicals listed in Appendix A, Table 1, existing prior to the time of discharge of effluent pursuant to this Consent Judgment in the upper ten feet of the water table below the Property.

7. "Hazardous Substances" as used in this Consent Judgment includes those substances referred to as hazardous substances in Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601(14) and those substances referred to as hazardous wastes in the New York State Environmental Conservation Law §27-1301.

Contamination of Soil and Groundwater

8. Chemical analysis of groundwater and soil samples obtained from the Property has established that there is an area on the Property where the soil is contaminated with hazardous substances resulting in property damage.

9. Chemical analyses in the environs of the Property establish that the hazardous substances on the Property have migrated and continue to migrate into and through the groundwater causing damage to property.

10. Based on current data, the government parties and Purex believe the approximate location and dimensions of contaminated soil and groundwater to be as shown in Appendix A, Exhibits 1 and 2.

11. Purex and the County, in keeping with their respective responsibilities, as provided in paragraphs 12 and 13, shall design, construct, operate or administer the Remedial Program, which the parties believe will remediate existing contamination at the Property and such contamination which has migrated or will migrate or threatens to migrate from the Property.

### Obligation to Remediate

12. The following shall constitute the specific Remedial Program obligations of Purex:

- (a) Purex shall, at its own expense, construct the Remedial Program detailed in Appendix A.
- (b) Purex shall, at its own expense, then operate and maintain the Remedial Program until such time as the County commences administration of the operation of the Remedial Program as described in Appendix A, Section IV (B);
- (c) Purex shall be obligated, at its own expense, to modify and alter the Remedial Program as needed, after obtaining the approval of the State, to meet the Discharge Criteria set forth in Appendix A;
- (d) Purex shall have the responsibility for selecting and contracting with all consultants, contractors, engineers, laboratories or others ("contractors"), necessary to complete the tasks outlined in 12(a), (b), and (c), subject to the approval of the State, and County; such approval, however, shall not be unreasonably withheld.
- (e) Purex shall provide the County with an amount of money, to be determined as hereinafter provided, to defray the costs of operation and maintenance of the Remedial Program for that period of time commencing as of the end of Purex's operation of the Remedial Program as described in Appendix A, Section IV(B), and ending on the date ten years following that point in time during the startup period on which Purex demonstrates at least 500 gpm extraction and treatment from the source area on a reasonably continuous basis as noted in Appendix A, Section IV(A). The County shall establish an Operation and Maintenance Fund (hereinafter the "O & M Fund") to be administered by the appropriate County official, into which the aforesaid amount paid by Purex shall be deposited.
- (f) ~~To determine the amount to be deposited into the O & M Fund, Purex shall within 90 days of the date of entry of this Consent Judgment, commence the selecting of and contracting with contractors to perform the operation and maintenance of the Remedial Program as referred to in subdivision (a) above.~~ Upon Purex's entering into any such contract, as approved by the State and County pursuant to subdivision (d)

above and upon such contractor posting a bond or such other financial security approved by the County, such approval not to be unreasonably withheld, Purex and the County shall meet in good faith to calculate the amount required for the O & M Fund, such amount to be discounted to reflect present day value. Upon the agreement of the parties as to said amount, which the parties expect to arrive at in about 45 days of such meeting, Purex shall pay said amount to the County as provided for in subdivision (e) above. In the event that as of the end of Purex's operation of the remedial system no such contract is in force, Purex and the County shall meet to calculate or recalculate the appropriate amount of such O & M Fund, which calculation may include, if necessary, the operation of such system by County employees. In the event that such recalculation results in an additional amount having to be contributed to such Fund, said additional amount shall forthwith be paid by Purex to such O & M Fund.

13. The following shall constitute the specific Remedial

Program obligations of the County:

- (a) The County shall, at its own expense, and subject to the contribution by Purex described in paragraph 12(e) and (f) above, be responsible for the Remedial Program as described in Appendix A;
- (b) Commencing with the completion of the period described in paragraph 12(b) above, the County shall be responsible for the Remedial Program until such time that the Remediation Criteria described in Appendix A are met;
- (c) The County shall be obligated, at its own expense, to modify and alter the Remedial Program as needed, after obtaining the approval of the State, to meet the Water Condition, to the extent feasible, as set forth in Appendix A and paragraph 27 below;
- (d) The County shall have the responsibility for selecting and contracting with all consultants, contractors, engineers, laboratories or others ("contractors"), necessary to complete the tasks outlined in 13(a), (b) and (c). ~~Notwithstanding this provision, nothing in this agreement shall preclude the County from continuing to employ contractors originally employed by Purex. All contractual obligations undertaken by the County shall be subject to the approval of the State, such approval, however, shall not be unreasonably withheld.~~

14. Purex or the County may request, after attempting in good faith to achieve the Discharge Criteria and after setting forth data and other information in support of such request, that the State agree to an increase in the contaminant concentrations in the Discharge Criteria. The State shall not be obligated to approve such a request nor shall the provisions of this sentence create any entitlements to approval by the State. The State may approve such a request in whole or in part or the State may approve an increase which is less than that requested by Purex or by the County. Should the State approve any such request to alter these criteria, such altered criteria shall be deemed a part of this Consent Judgment.

Purex or the County may seek review before this Court of the denial by the State in whole or in part of any such request for an increase in the contaminant concentrations in the Discharge Criteria or the approval by the State of an increase which is less than that requested. In any such review, the standard of review shall be whether the State's determination was arbitrary or capricious.

15. Treated groundwater which is discharged into any recharge basin shall meet the Discharge Criteria or the Basin Ambient Criteria, whichever criteria or portion thereof is more stringent. The use of a recharge basin(s) for discharge is subject to State approval which approval shall not be unreasonably withheld.

#### Health and Safety Plan

16. ~~The complete Health and Safety Plan shall be prepared by~~



Purex and submitted to the State for approval within 45 days of the entry of this Consent Judgment. The Health and Safety Plan, which is outlined in ~~Appendix B~~, shall be designed to prevent unauthorized access to the Property and its environs and to ensure the safety of the public and of any persons on and/or in the vicinity of the Property and its environs during the construction and operation of the Remedial Program. Construction shall not begin until such Health and Safety Plan has been approved.

#### Monitoring Program

17. The complete Monitoring Plan shall be prepared by Purex and submitted to the State for approval within a reasonable period of time after the entry of this Consent Judgment as provided for in Appendix C. The Monitoring Program, which is outlined in Appendix C, shall provide, but shall not be limited to, data sufficient to determine the effectiveness of the contamination reduction and hydraulic control measures implemented under the Remedial Program. A timetable for a range of contaminant reduction levels expected to be achieved shall be prepared by Purex and submitted to the State for approval within one year of the start of Normal Operation as described in Appendix A, Section IV (B).

#### Consistency with the Laws of the State of New York and Federal Law

18. The obligations required of Purex and of the County under this Consent Judgment are consistent with the laws of the State of New York. The State, County and Town each also agrees that, in any civil, judicial, or administrative proceeding instituted by any person or

entity against Purex and/or the County and arising from activities at the Property, it will acknowledge the appropriateness of the Remedial Program as indicated in paragraph 5 above.

19. The activities described in this Consent Judgment as the Remedial Program are not inconsistent with the National Contingency Plan.

Review and Approval Procedure

20. Whenever this Consent Judgment calls for the development, modification or alteration of plans, programs, specifications or schedules (hereinafter collectively referred to as "plan" or "plans") by Purex or by the County, such plans shall not be implemented until they are reviewed by all other parties hereto and approved by the State according to the following procedure:

[a] A copy of each proposed plan shall be mailed to:

- i. Norman Spiegel, Esq.  
NYS Department of Law  
Two World Trade Center, Room 4772  
New York, New York 10047
- ii. Owen B. Walsh, Esq. (for requests from Purex)  
Second Chief Deputy County Attorney  
Nassau County Executive Building  
One West Street  
Mineola, New York 11501
- iii. Kenneth Chave, Esq.,  
Town Attorney  
Town of Hempstead  
Town Hall  
Main Street  
Hempstead, New York 11550
- iv. Robert C. Williams, Esq.  
Beveridge and Diamond  
101 Park Avenue, Suite 2506  
New York, New York 10178

- v. Gregory Shkuda, Ph. D.  
NYS Department of Law  
Two World Trade Center  
New York, New York 10047
- vi. Ludwig C. Hasl, P.E.  
Commissioner  
Nassau County Department of  
Public Works  
One West Street  
Mineola, New York 11501
- vii. Daniel Davis, P.E.,  
Commissioner  
Department of Water - Town of Hempstead 1995  
Prospect Street  
East Meadow, New York 11554
- viii. Albert Machlin, P.E.,  
NYSDEC  
State University of New York, Building No. 40  
Stony Brook, New York 11794
- ix. Norman H. Nosenchuck, P.E.  
Director, Division of  
Solid and Hazardous Waste  
Attn: John Iannotti, P.E., NYSDEC  
50 Wolf Road  
Albany, New York 12233
- x. George J. Farrell, Jr., Esq.  
(for requests from the County)  
Farrell, Fritz, Caemmerer, Cleary, Barnosky &  
Armentano, P.C.  
Attorneys for Purex  
22 Jericho Turnpike  
Mineola, NY 11501
- xi. David Berz, Esq.  
(for requests from the County)  
Wald, Harkrader & Ross  
1300 19th Street, N.W.  
Washington, D. C. 20036

For the purpose of meeting deadlines imposed by this Consent Judgment, the mailing of any proposed plan to Norman Spiegel, Esq.,

(or any designee substituted for Mr. Spiegel by the State of New York) shall constitute service upon the remaining persons listed above (or person substituted by the parties for persons listed above). Any person listed above may designate in writing an alternative person to receive such plan.

(b) After receiving a proposed plan, the State shall promptly respond to said proposal taking into account the concerns and objections if any, of any other party. If the State considers the proposal complete and acceptable, the State shall mail written notice of approval to Purex and the County within 60 days after receipt of the proposed plan. The plan shall become effective on the date the approval is received by the requesting party and shall thereafter be implemented by same.

(c) If the State does not consider the proposal complete or acceptable, the State shall mail to the requesting party and all other parties a written notification of disapproval within 60 days after receipt of the proposal which shall include its particular objections and may include suggested modifications. If the parties cannot thereafter agree on the proposed plan, within a reasonable time of the date of mailing of such notice of disapproval, any party may petition this Court for a resolution of the dispute.

(d) In each instance in which a plan as proposed or modified becomes effective, the State shall attach it to this Consent Judgment as an appendix, mail copies of the appended document to Purex and the

County and file it with the Court and such plan shall be deemed part of the Consent Judgment.

(e) No informal advice or guidance by officers, employees or representatives of the government parties, upon any plan, report, proposal, study or other document, or modifications or additions thereto, shall relieve Purex or the County of its obligation to obtain the State's formal written approval of the same. Notification of such approval shall only be transmitted by the Department of Law.

Property Access and Non Interference  
with Remedial Program

21. The County shall cooperate fully in allowing access to the Property and its environs and all structures and facilities erected thereon, as necessary and in allowing and permitting the use and/or installation of devices, machinery, excavations and borings appropriate and necessary to fulfill the remedial goals, programs and plans described herein.

22. The government parties shall have access to the Property and its environs at all times in order to observe and monitor the progress of the work, to take samples and to conduct surveys or investigations relating to soil and groundwater contamination at, beneath, or near the Property. The government parties shall have the right to obtain split samples or duplicate samples, at their option, of all materials or substances sampled by Purex or by the County in the course of performance of the obligations hereunder. Such activities conducted by the government parties shall, to the maximum extent possible, be

conducted in such a fashion so as not to impede or interfere with the Remedial Program. ~~The government parties shall give Purex and/or the County reasonable notice of all activities to be conducted on or adjacent to the Property that might disrupt remediation activities.~~ Nothing contained in this paragraph shall limit the authority of any governmental body under law.

23. Purex and the County shall provide to the government parties reasonable notice of any construction, excavating, drilling, sampling or other investigative or remedial work to be conducted in the performance of the obligations hereunder.

24. All activities conducted by the County on or adjacent to this Property, including the design, construction and operation of a mass transit facility, shall be conducted in such a fashion so as not to impede or interfere with remediation activities and goals. To the extent that there is a conflict the work required under this Consent Judgment shall have priority. The County will give the State, the Town and Purex reasonable notice of all construction activities to be conducted on or adjacent to the Property.

#### Performance of Work

25. Purex will commence the work provided for in Appendix A no later than 75 days from the entry of this Consent Judgment.

26. The construction and operation of the Remedial Program shall proceed on a reasonably continuous and expeditious basis until the Remediation Criteria as set forth in Appendix A have been met. Purex ~~and/or the County shall provide the government parties with a quarterly~~

report detailing the progress made on the project. Such quarterly reports shall continue until the Consent Judgment has been satisfied in accordance with paragraph 27.

#### Completion of Remedial Program

27. The Remediation Program shall be deemed complete when the "Remediation Criteria" (consisting of the "Water Condition" and the "Zero Slope Condition", both of which are set forth in Section VI of Appendix A) have been achieved as the same is set forth in Appendix A. In the event that the Water Condition is met, this judgment shall be deemed satisfied as provided herein subject to the approval of the Court. In the event that the Water Condition is not met but the Zero Slope Condition is met and the Zero Slope Condition is attributable to the original Property contamination as set forth in Appendix A, then the County and State shall examine whether there exists a Requisite Remedial Technology that is capable of achieving the Water Condition or substantially reducing contaminant concentrations. Should the State and County agree that (a) such Requisite Remedial Technology exists and (b) it is appropriate to utilize the same, then the County shall implement said Requisite Remedial Technology. In the event that the State and County do not agree as to whether (a) such Requisite Remedial Technology exists, or (b) it is appropriate to utilize the same, then the dispute shall be submitted to the Court for resolution, the parties reserving all claims in regard thereto. In any event, should the technology applied at the site be incapable of achieving the Water Condition in sufficient time to protect area public drinking

water supplies, the County shall undertake such actions as are necessary to safeguard the public health and the environment including the installation of new public water supply wells or a wellhead treatment program.

28. In the event that the public water supply provided by Uniondale Water District wells, numbers 5 and 6, exhibit the presence of the contaminants in the amounts indicated in the "Response Factor" of Appendix D, and (1) this condition is evidenced by the results of laboratory analyses of eight consecutive bi-weekly samples taken under continuous operation of the untreated groundwater produced by said wells 5 and 6, and (2) the statistical analyses of these eight samples indicate a continuing upward trend, then the County shall reimburse the Town for the installation of equivalent replacement public water supply wells and facilities related thereto.

The concentrations of the contaminants listed in Appendix D shall be determined by a laboratory approved by the New York State Department of Health.

In the event of such reimbursement of the Town by the County, then title and ownership of said wells numbers 5 and 6, the land and related facilities shall be conveyed to the County free of any encumbrance.

In the event that future New York State Drinking Water Guidelines be established or promulgated which include minimum concentration levels lower than the "Response Factor", then those levels shall become the basis for reimbursement by the County.



### Compliance With All Law

29. (a) Purex shall use its best efforts, and the State, County and Town shall cooperate consistent with their legal authority, to obtain on a timely basis such permits, easements, rights of way, rights of entry, approvals, or other authorizations from any federal, State, or local government entity, or any corporation, partnership, association, or private person which are necessary to carry out any of Purex's obligations pursuant to this Consent Judgment. Purex shall promptly notify the governmental parties in the event of Purex's inability to obtain such authorizations on a timely basis or its inability to obtain authorizations which do not contain use restrictions which prohibit or interfere with activities required pursuant to this Consent Judgment, or of Purex's receipt of governmental authorizations containing terms or conditions not specifically required by federal or state statutes or regulations or by this Consent Judgment.

(b) In the event Purex is unable to obtain the authorizations required by the preceding paragraph, the State, County and Town shall, consistent with their legal authority, assist in obtaining, as appropriate, all such authorizations which Purex was unable to obtain or which it could not obtain without terms and conditions which effectively prevent implementation of this Consent Judgment. If, despite Purex's best efforts, Purex does not obtain the aforementioned authorizations on a timely basis or if Purex obtains authorizations containing terms and conditions which effectively prevent timely compliance with

the terms and conditions of this Consent Judgment, the time for performance of any obligations pursuant to this Consent Judgment which are necessarily dependent upon such authorizations shall be extended as appropriate. If, despite Purex's best efforts, such authorizations or access cannot be obtained despite an enlargement of time, this Consent Judgment shall be modified by excusing performance of any obligations pursuant to this Consent Judgment which are necessarily dependent upon such authorizations.

(c) When the County commences administration of the Remedial Program pursuant to paragraph 13 above, it shall assume the above-stated obligations of Purex described in subdivisions (a) and (b) above.

30. All work undertaken by Purex and the County pursuant to this Consent Judgment shall be performed in compliance with all applicable Federal, State and local laws and regulations.

#### Modification in Performance

31. No modification by Purex or the County shall be made in the Remedial Program which varies from Appendix "A", "B" or "C" without prior written approval of the State and of the Court. Any such approved modification shall supersede inconsistent requirements of this Consent Judgment.

#### Recording, Alienation and Leasing

32. (a) Within fifteen days after obtaining an easement, right of way, right of entry, lease amendment or other such interest in real

property necessary to carry out this Consent Judgment, the obtaining party shall file a copy of the same for recording with the Nassau County Clerk.

(b) All property, including real property structures, constructions, and fixtures, owned by the County or any successor owner ("Owners") or any real property or interest in real property which is necessary to carry out this Consent Judgment, may be freely alienated or leased ("alienated"); provided that forty-five (45) days prior to the date of such alienation the Owners give the State, Town and Purex written notice of such alienation and a description of which of the Owners' obligations, if any, pursuant to the Consent Judgment shall be performed by the person or entity to whom the property is alienated. The Owners shall at the same time give written notice of this Consent Judgment to the person to whom the real property or interest in real property is to be alienated. The Owners may proceed with such alienation unless, within 30 days following such notification (1) the State, Town or Purex file a petition with this Court objecting to such alienation on grounds that it would interfere with the performance or any party's obligations pursuant to this Consent Judgment and (2) in response to such petition, the Court orders such alienation not to proceed pending final determination of the issues raised by such petition or the Court determines that such alienation would interfere with a party's obligations pursuant to this Consent Judgment. In the event of such alienation, all of the Owners' obligations pursuant to this Consent Judgment shall continue to be met

either by, at the Owners' option, the owners or the person or entity to whom the property is alienated. Any deed, title or other instrument of conveyance of real property or interest in real property at the Property shall contain notice of such provisions for continuing performance as herein described and, additionally, shall clearly describe the use for which the real property or interest in real property has been subjected.

(c) Owners and any subsequent owners shall comply with the provisions of § 27-1317 of the New York State Environmental Conservation Law and nothing herein constitutes a waiver of the provisions of said law.

#### Enforcement of Consent Judgment

33. If any of the parties to this Consent Judgment considers that any other party has failed to comply with the terms and conditions of this Consent Judgment, the party alleging noncompliance may seek appropriate relief from the court.

#### Indemnification

34. Purex shall indemnify and hold harmless the State, County and Town and their officers, employees and representatives, for claims, suits, actions, damages and costs of every name and description arising out of or resulting from the performance or attempted performance by Purex of its obligations hereunder.

35. The County shall indemnify and hold harmless the State, Town and Purex and their officers, employees and representatives, for

claims, suits, actions, damages and costs of every name and description arising out of or resulting from the performance or attempted performance by the County of its obligations hereunder.

Release and Covenant Not to Sue

A. Purex

36. Effective upon entry of this Consent Judgment, and conditioned only upon compliance by Purex with the provisions of this Consent Judgment, the State, the County, and the Town hereby covenant not to assert against Purex or its predecessors, subsidiaries, affiliates, successors, assigns, or any of their officers, agents, or employees in any civil, judicial or administrative proceeding any claim which may arise under Federal, State or local law, including common law, intended to protect the environment or authorize recovery of penalties or damages, which may arise from past activities at the Property. This covenant not to sue includes all claims which arise out of or relate to, or may in the future arise out of or relate to, any present or future migration, discharge or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

37. Effective upon entry of this Consent Judgment, and conditioned only upon compliance by Purex with the provisions of this Consent Judgment, this Consent Judgment shall constitute full discharge and release of Purex, its predecessors, subsidiaries, affiliates, successors, assigns, and all of their officers, agents and employees from any

claim which arises out of or relates to, or may in the future arise out of or relate to, any present or future migration, discharge or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

38. Compliance with the provisions of this Consent Judgment shall be considered a complete defense to any action any of the government parties may bring against Purex, its predecessors, subsidiaries, affiliates, successors, assigns, and any of their officers, agents and employees which arises out of or relates to or may in the future rise out of or relate to, the present or future migration, discharge or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

39. Notwithstanding the foregoing, nothing herein shall limit the authority of the State or its agencies under federal, state or local law to order and require Purex to respond to a condition which constitutes a significant threat to the health and safety of people or to the environment which may arise from any present or future migration, discharge or release of existing contaminants from the Property. Nothing herein constitutes an admission by Purex that it is liable in the event of such a condition. Nothing herein discharges or releases Purex from any obligations at law or in equity which arise from pollution of soil, groundwater and drinking water which is unrelated to the chemical contamination which is the subject of this Consent Judgment, unless said pollution is identified and made a subject of the Consent Judgment.

## **B. County**

40. Effective upon entry of this Consent Judgment, and conditioned only upon compliance by the County with the provisions of this Consent Judgment and subject to the provisions of paragraph 27, the State, the Town and Purex hereby covenant not to assert against the County or any of its officers or employees in their official capacities in any civil, judicial or administrative proceeding any claim which may arise under Federal, State or local law, including common law, intended to protect the environment or authorize recovery of penalties or damages, which may arise from past activities at the Property. This covenant not to sue includes all claims which may arise out of or relate to, or may in the future arise out of or relate to, any present or future migration, discharge, or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

41. Effective upon entry of this Consent Judgment, and conditioned only upon compliance by the County with the provisions of this Consent Judgment and subject to the provisions of paragraph 27, this Consent Judgment shall constitute full discharge and release of the County and any of its officers and employees in their official capacities from any claim which arises out of or relates to, or may in the future arise out of or relate to, any present or future migration, discharge or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

42. Compliance with the provisions of this Consent Judgment shall

be considered a complete defense to any action the State, the Town or Purex may bring against the County and all of its officers and employees in their official capacities which arises out of or relates to, or may in the future arise out of or relate to, any present or future migration, discharge, migration or release of contaminants from the Property which are present at the time of execution of this Consent Judgment.

43. Notwithstanding the foregoing, nothing herein shall limit the authority of the State or its agencies under federal, state or local law to order and require the County to respond to a condition which constitutes a significant threat to the health and safety of people or to the environment which may arise from any present or future migration, discharge or release of existing contaminants from the Property. Nothing herein constitutes an admission by the County that it is liable in the event of such a condition. Nothing herein discharges or releases the County from any obligations at law or in equity which arise from pollution of soil, groundwater and drinking water which is unrelated to the chemical contamination which is the subject of this Consent Judgment, unless said pollution is identified and made a subject of the Consent Judgment.

#### Contribution Protection

44. The parties believe that this Consent Judgment will control and be determinative of the rights and liabilities of Purex and of the County with respect to any other person or entity who may be subsequently alleged or finally judicially determined to be liable for



any cost or damage in any way related to the presence of chemicals in the soil or groundwater at the Property, or in groundwater alleged to be affected by the Property. To this end, the parties intend to protect Purex and the County from claims for contribution asserted by any person or entity and to minimize the necessity and expense of having Purex or the County be or remain a party of record and participate in a trial for the purposes of determining if it was a joint tortfeasor or otherwise jointly and severally liable or had any obligation to indemnify. Accordingly, all parties hereto agree to reduce the total final judgment obtained against any and all joint tortfeasors or persons and entities jointly and severally liable with Purex and/or the County arising out of or in any way related to the endangerment to health and the environment at the Property, whether or not Purex or the County was in fact a joint tortfeasor, by the total cost associated with the performance of the Remedial Program as shall be demonstrated by Purex or the County, as the case may be.

#### Waiver of Claims

45. Unless expressly stated otherwise, nothing in this Consent Judgment shall constitute a waiver of any claim which any party to this Consent Judgment may have against any nonparty arising from or relating to activities at the Property or the environmental conditions presented at the Property or expenses and damages incurred by any party.

#### General Disclaimer

46. Neither this Consent Judgment nor any part hereof shall constitute an admission of law or fact or evidence of same, or an admission of any violation of any law or regulation. Nothing in this Consent Judgment nor any part hereof shall constitute an admission that Purex is responsible in any way for activities which may have been conducted by its subsidiary Baron-Blakeslee. It is intended that this Consent Judgment shall neither create nor affect the rights of persons or entities who are not parties to these actions.

#### Data Generated

47. Purex shall provide all data generated under this Consent Judgment to the government parties within a reasonable time after Purex or its consultants obtain such data, unless such parties waive their right to all or some of such data.

#### Delay of Performance

48. (a) "Force majeure" for purpose of this Consent Judgment is defined as an event arising from causes beyond the control of Purex or of the County which cannot be overcome by diligence and which (1) delays any performance required under this Consent Judgment or (2) makes legally impossible substantial performance of the obligations imposed by this Consent Judgment.

(b) If a delay occurs or Purex anticipates a delay in performance of its obligations under this Consent Judgment, whether or not due to a "force majeure" event, Purex shall promptly notify the State, County, and Town in writing of the nature, cause and anticipated

length of the delay and all steps which Purex has taken or will take, with a schedule for their implementation, to avoid or minimize the delay. If the parties agree that the delay was attributable to a "force majeure" event or otherwise is reasonable, the parties may stipulate to a reasonable extension. If the parties do not agree that the delay was caused by a "force majeure" event, or if regardless of the cause of the delay, the parties are unable to agree on a stipulated extension of time to be granted to Purex, the State, County, or Town shall notify Purex in writing. In that event, Purex shall file a motion with the Court to resolve the dispute within ten days of receiving such notification.

(c) If a "force majeure" event occurs, Purex may file a motion with the Court asking it to so determine. If the Court determines that a "force majeure" event has made impossible the performance of any of the obligations under this Consent Judgment, any party may petition the Court for such further relief as may be appropriate and all parties reserve the right to raise any claims or defenses or opposition to claims or defenses they may have with respect to further performance by Purex pursuant to this Consent Judgment.

(d) If a delay occurs or the County anticipates a delay in performance of its obligations under this Consent Judgment, whether or not due to a "force majeure" event, the County shall promptly notify the State, Town and Purex in writing of the nature, cause and anticipated length of the delay and all steps which the County has taken or will take, with a schedule for their implementation, to avoid or

minimize the delay. If the parties agree that the delay was attributable to a "force majeure" event or otherwise is reasonable, the parties may stipulate to a reasonable extension. If the parties do not agree that the delay was caused by a "force majeure" event, or if regardless of the cause of the delay, the parties are unable to agree on a stipulated extension of time to be granted to the County, the State or Town shall notify the County in writing. In that event, the County shall file a motion with the Court to resolve the dispute within ten days of receiving such notification.

(e) If a "force majeure" event occurs, the County may file a motion with the Court asking it to so determine. If the Court determines that a "force majeure" event has made impossible the performance of any of the obligations under this Consent Judgment, any party may petition the Court for such further relief as may be appropriate and all parties reserve the right to raise any claims or defenses or opposition to claims or defenses they may have with respect to further performance by the County pursuant to this Consent Judgment.

#### Costs and Payments

49. Except as otherwise provided in this Consent Judgment, the parties agree that they will bear their respective costs and disbursements.

50. (a) Within 90 days from the date of entry of this Consent Judgment, Purex shall fund a Natural Resources Fund provided for hereafter ("the Fund") with an amount sufficient to provide a total

fund in the amount of \$500,000 ten years from the date of entry of this Consent Judgment. The Fund and any accumulated income may only be expended by the County, upon written approval by the State, for the following purpose: to meet the cost in whole or in part of activities to benefit the environment and people of the County of Nassau that would not otherwise be undertaken. In utilizing such funds, to the extent practicable priority shall be given to activities designed to improve groundwater quality.

(b) The Fund and any accumulated income of the Fund shall not be expended until the Remedial Program is shutdown as provided for in Section VI of Appendix A, and any Requisite Remedial Technology, if employed pursuant to paragraph 27 of this Consent Judgment, ceases to be employed or is demonstrated not to be capable of substantially meeting the Water Condition (as modified below). If at such time the Water Condition (as modified below) has not been substantially met or the Requisite Remedial Technology is not capable of substantially meeting the Water Condition, the Fund and any accumulated income may be expended for the purpose set forth above. If at such time the Water Condition (as modified below) has been substantially met, such Fund and accumulated income shall be paid over to Purex. In any event, should the Water Condition (as modified below) not be substantially met within fifteen (15) years after entry of this Consent Judgment, there shall be no obligation to pay such funds over to Purex and the funds may be expended in accordance with the purpose set forth above.

(c) The Water Condition as modified for purposes of this paragraph means the Water Condition provided for at Appendix A, Table 2, except that the concentrations for trichloroethene shall be 10 parts per billion ("ppb"), for carbon tetrachloride shall be 5 ppb, and for 1,4 - dichlorobenzene shall be 4.7 ppb.

(d) The Fund to be established by this paragraph shall be created and approved by the Nassau County Board of Supervisors and shall have the County Treasurer as custodian of such funds. The County Treasurer shall, to the extent necessary, have those powers with respect to the investment of the Fund and accumulated income as those permitted by law with respect to all funds to which the County Treasurer is charged as custodian. The Fund and any accumulated income shall not be expended except in accordance with the above provisions of this paragraph.

51. Within 90 days after the entry of this Consent Judgment, Purex shall reimburse the State for its past, present and future reimburseable costs which it may be entitled to recover in this matter under the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law and the common law of New York. For purposes of this Consent Judgment, the parties have agreed that these costs shall be deemed to be \$159,765.

52. Within 90 days after the entry of this Consent Judgment, Purex shall reimburse the Town of Hempstead for its past, present and future reimburseable costs which it may be entitled to recover in this

matter under the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law and the common law of New York. For purposes of this Consent Judgment, the parties have agreed that these costs shall be deemed to be \$250,000.

53. No payment or expenditure made in accordance with the Consent Judgment shall be a penalty.

#### Financial Security

54. (a) Within 90 days of the date of entry of this Consent Judgment, Purex shall have the option to post a bond or to deposit a letter of credit in the amount of \$10,000,000.00 to guarantee its full compliance with the goals and work, set forth in this Consent Judgment.

(b) In the event that Purex elects not to post any such bond or to deposit any such letter of credit, it shall be obliged as follows: If at any time prior to the completion of its obligations under the Remedial Program (1) the consolidated net worth of Purex declines by twenty-five percent (25%) or more in any one fiscal quarter, or (2) over a period of three consecutive fiscal quarters the consolidated net worth of Purex declines by a total of twenty-five percent (25%) or more as compared with the consolidated net worth of Purex as of the beginning of the first of such quarters, or (3) if the consolidated net worth of Purex declines by twenty-five percent (25%) or more in any one fiscal year, or (4) if the consolidated net worth of Purex declines at any time to one hundred million dollars (\$100,000,000) or below, Purex shall immediately notify the State and shall promptly

provide security in an amount equal to one hundred and twenty-five percent (125%) of the estimated cost to complete the implementation of its obligations under the Remedial Program.

(c) If, because of other circumstances which substantially affect the financial ability of Purex to comply with its obligations hereunder or because of a substantial increase in the anticipated cost to Purex to comply with this Consent Judgment, the State determines that other or additional financial security is necessary, the State may seek such relief from the Court which shall grant such relief if necessary to insure the availability of funds to complete the implementation of Purex's obligations under the Remedial Program.

(d) Purex's obligations under this paragraph shall be terminated upon completion of the obligations pursuant to paragraph 12 above.

#### Confidential Information

55. All information and documents submitted by Purex to the State, the County, or the Town pursuant to this Consent Judgment shall be subject to public inspection except such information which the Court upon application and demonstration by Purex, finds is a trade secret disclosure of which would cause substantial injury to the competitive position of Purex.

#### Appointment of Coordinators

56. Within five working days of the effective date of this Consent Judgment, the government parties shall collectively designate two coordinators and Purex shall designate one coordinator who shall administer all actions called for by this Consent Judgment and each of



the parties shall submit the coordinators' names to each other party. At any time that Purex or the government parties appoint a new coordinator, the other parties shall be advised in writing. To the maximum extent possible, communications between Purex, the State, the County and the Town concerning the terms and conditions of this Consent Judgment shall be made between said Coordinators. The Coordinator designated by Purex shall receive all relevant information concerning Purex's performance of the terms and conditions of this Consent Decree. Each Coordinator shall be responsible for assuring that all communications from the other are appropriately disseminated and processed.

#### Miscellaneous Provisions

57. Appendices A, B, C, D and E, annexed hereto are an integral part of this Consent Judgment and are hereby incorporated by reference as though they were set forth verbatim.

58. The State, by entering into this Consent Judgment, does not necessarily accept the validity or accuracy of any opinions or conclusions contained in any written materials prepared by Nassau County or Camp Dresser and McKee as consultants to Nassau County, which are annexed hereto.

59. This Consent Judgment shall bind and inure to the benefit of all the parties hereto and their respective successors and assigns.

60. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Judgment and to resolve all disputes arising hereunder as may be necessary or appropriate for the

construction or implementation of this Consent Judgment. The parties will endeavor in good faith to resolve any disputes which may rise under this Consent Judgment. The parties further recognize that time is of the essence and they will discharge their obligations under this Consent Judgment in an expeditious manner.

61. Upon filing of this Consent Judgment the government parties shall file amended complaints in the federal actions delineated in paragraph 3. Such amended complaints shall assert as pendant state claims all of the claims asserted by the government parties against Purex in the state actions delineated in paragraph 3. Upon approval of this Consent Judgment the parties shall discontinue the pending state court actions delineated in paragraph 3.

62. This Consent Judgment and all documents specifically appended hereto are intended by the parties as one final expression of their agreements and is a complete and exclusive statement of terms. Prior dealings between the parties shall not be relevant or admissible to supplement or vary any of the terms of this Consent Judgment. Prior drafts of this Consent Judgment shall not be relevant or admissible to determine its meaning. No other representations, understandings or agreements between Purex and the government parties have been made or relied upon in the making of this Consent Judgment other than those specifically set forth.

63. This Consent Judgment shall become effective on the day it is approved by the Court.

64. The persons signing this Consent Judgment represent that they

have full authority to bind the parties which they represent. This Consent Judgment may be executed in counterpart. Each counterpart may serve as a duplicate original.

Dated: Mineola, New York  
July , 1985

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Norman Spiegel  
Assistant Attorney General

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Gordon J. Johnson  
Assistant Attorney General

THE COUNTY OF NASSAU

By: \_\_\_\_\_  
Owen B. Walsh  
Second Chief Deputy  
County Attorney

THE TOWN OF HEMPSTEAD

By: \_\_\_\_\_  
W. Kenneth Chave  
Town Attorney

BEVERIDGE & DIAMOND  
Attorneys for the Town of Hempstead

By: \_\_\_\_\_  
Robert C. Williams

SO ORDERED.

Dated: Uniondale, New York  
July , 1985

\_\_\_\_\_  
LEONARD D. WEXLER, U.S.D.J.

PUREX INDUSTRIES, INC.

By: \_\_\_\_\_  
Jeffrey Smith  
Attorney

PUREX CORPORATION

By: \_\_\_\_\_  
Jeffrey Smith  
Attorney

WALD, HARKRADER & ROSS  
Attorneys for Purex Industries  
Inc. and Purex Corporation

By: \_\_\_\_\_  
David R. Berz

FARRELL, FRITZ, CAEMMERER, CLEARY,  
BARNOSKY & ARMENTANO, P.C.  
Attorneys for Purex Industries  
Inc. and Purex Corporation

By: \_\_\_\_\_  
George J. Farrell, Jr.

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Dated: Mineola, New York  
July 17, 1985

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Norman Spiegel  
Assistant Attorney General

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Gordon J. Johnson  
Assistant Attorney General

THE COUNTY OF NASSAU

By: *Owen B. Walsh*  
Owen B. Walsh  
Second Chief Deputy  
County Attorney

THE TOWN OF HEMPSTEAD

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W. Kenneth Chave  
Town Attorney

BEVERIDGE & DIAMOND  
Attorneys for the Town of Hempstead

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George J. Farrell, Jr.

Dated: July , 1985  
Mineola, New York

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Norman Spiegel  
Assistant Attorney General

THE STATE OF NEW YORK

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