

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK and ALEXANDER B.  
GRANNIS, as Commissioner of the New York State  
Department of Environmental Conservation,

Plaintiffs,

**PARTIAL CONSENT DECREE**

-against-

PALL CORPORATION,

Defendant.

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Plaintiffs the State of New York and Alexander B. Grannis, as the Commissioner of the New York State Department of Environmental Conservation (“DEC”) (hereinafter collectively, the “State”), and defendant Pall Corporation (“Pall” or “Settling Defendant”), hereby agree as follows:

**Recitations**

1. In a complaint filed contemporaneously with this Consent Decree (the “Complaint”), the State has commenced an action against Pall pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. (“CERCLA”), and the common law of the State of New York, seeking to recover response costs that have been and will be incurred by the State in responding to the release or threatened release of hazardous substances at the Pall Corporation Site, located at 30 and 36 Sea Cliff Avenue, Glen Cove, Nassau County, New York (the “Site”). Operable Unit No. 1 (“OU No. 1”) of the Site consists of on-Site and off-Site surface and shallow subsurface contamination (shallow subsurface contamination being defined as all contamination within 60 feet of the ground surface). This Decree is intended to resolve claims for response costs with respect to OU No. 1

of the Site, as described in Paragraph 7 below. OU No. 1 is distinguished from and is separate from OU No. 2, which consists of all contamination at a depth of greater than 60 feet below ground surface on or migrating from the Site.

2. The State alleges that Settling Defendant, as the current owner of a portion of the Site within the meaning of § 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), is liable for all response costs incurred and to be incurred by the State in responding to releases of hazardous substances at OU No. 1 pursuant to §§ 107(a)(1) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9613(g)(2).

3. The State alleges that Settling Defendant, as the former owner of a portion of the Site within the meaning of § 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), is liable for all response costs incurred and to be incurred by the State in responding to releases of hazardous substances at OU No. 1 pursuant to §§ 107(a)(2) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2) and 9613(g)(2).

4. The State alleges that Settling Defendant, as a former operator of the Site within the meaning of § 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), is liable for all response costs incurred and to be incurred by the State in responding to releases of hazardous substances at OU No. 1 pursuant to §§ 107(a)(2) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2) and 9613(g)(2).

5. The State alleges that Settling Defendant is liable under the common law of the State of New York for maintaining a public nuisance at the Site, and for restitution and indemnification of the State with respect to the State's costs and expenses in investigating and remediating contamination at the Site.

6. Settling Defendant entered into an Administrative Order on Consent, Index # W1-0831-04-01, effective date, June 25, 2004 (“the ACO”), to implement the Record of Decision Pall Corporation Site, Operable Unit No. 1, Surface and Shallow Subsurface Contamination, City of Glen Cove, Nassau County, New York, Site Number 1-30-053B, dated March 31, 2004. This Consent Decree supersedes the ACO.

7. The State and Settling Defendant (collectively “the Parties”) desire to fully and finally resolve all claims with respect to OU No. 1, except natural resources damages claims, that could now or hereafter be asserted by the State with respect to the matters covered herein without the necessity or further expense of litigation, and without admission, adjudication or determination of any issue of fact or law. The State has determined that partial settlement of this case in accordance with the terms set forth below is in the best interest of the public. The State reserves any and all rights arising out of or in connection with OU No. 2.

8. Settling Defendant desires to settle and resolve claims with respect to OU No. 1 without admitting or denying the State’s allegations. The Parties agree that this Consent Decree represents a good faith compromise of disputed claims and that the compromise is fair, reasonable, in the public interest and in furtherance of the statutory goals of CERCLA and the goals underlying the common law claims asserted in the Complaint.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**Purpose and Scope of Consent Decree**

9. “Covered Matters,” as that term is used in this Consent Decree, is defined to include any and all past, present or future claims that were, or could now or hereafter be, asserted by the State, its successors and assigns against Settling Defendant arising out of or in connection with the disposal, release, and threat of release of hazardous substances at or from OU No. 1 of

the Site, including the “previously known conditions” described in Paragraph 18 below, and excluding those rights specifically reserved in this Consent Decree and specifically excluding any and all liability arising out of or in connection with OU No. 2 or related to damages to the State’s natural resources.

10. The purpose of this Consent Decree is (1) to provide for payment of certain consideration to the State, to finally resolve all Covered Matters, subject to paragraphs 18 and 26 below, (2) to provide contribution protection for Covered Matters, (3) to provide mutual Covenants Not to Sue with respect to the Covered Matters, and (4) for the other purposes set forth herein.

**Disclaimer of Admission/Denial**

11. Settling Defendant is entering into this Consent Decree as a compromise of disputed claims and in doing so does not admit or deny any liability, wrongdoing or fault under any of the claims alleged against it in the Complaint. Settling Defendant, however, agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Consent Decree or creating the impression that this Consent Decree is without factual basis. Nothing in this paragraph affects Settling Defendant’s (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party, and nothing in this paragraph shall preclude Settling Defendant from contending that it has no liability for OU No. 2 or for natural resource damages.

**Parties Bound**

12. This Consent Decree shall apply to and be binding upon the State of New York, including its departments, agencies, instrumentalities, and its and their successors and assigns,

and upon Settling Defendant, its successors, assigns, parents, affiliates, subsidiaries, directors, officers, agents and representatives. Each signatory represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to bind the party on whose behalf he or she signs.

**Consideration by Settling Defendant**

13. **Payment of Response Costs.** Settling Defendant shall within thirty (30) days of the Effective Date of this Consent Decree pay the sum of two million dollars (\$2,000,000.00) by delivering to the Attorney General, Attention: Assistant Attorney General Todd D. Ommen, 120 Broadway, 26th Floor, New York, New York 10271, a certified or bank check in that amount payable to the State of New York containing a notation of DEC's site number 130053B. Any payments and all correspondence related to this Consent Decree must reference CD-AOD # 08-118.

14. Settling Defendant's failure to comply with this Consent Decree shall subject Settling Defendant, without prejudice to all other available enforcement mechanisms, sanctions, penalties or claims, to a proceeding in this Court for contempt of this Decree.

**Grant of Environmental Easement**

15. Settling Defendant shall grant to The People of the State of New York, acting through the Commissioner of DEC, an Environmental Easement for the 30 Sea Cliff Avenue portion of the Site owned by Settling Defendants (the "Pall Owned Property") substantially similar to the form attached to this Consent Decree as Exhibit 1, which will require compliance with the Site Management Plan ("SMP") that will be developed in accordance with the ROD. The Easement and SMP together will, *inter alia*, require soil characterization and, where applicable, disposal/reuse in accordance with DEC regulations, restrict the use of groundwater in

any Operable Unit underlying the Pall Owned Property, require any buildings developed or constructed on the Pall Owned Property after the Effective Date of this Decree to have an active sub-slab depressurization system (or other exposure barrier or mechanism acceptable to the DEC) for so long as the mitigation of soil vapor intrusion from a building's sub-slab is necessary, limit the use of the Pall Owned Property to commercial or industrial uses only, and provide for an annual certification that all engineering controls are functioning properly. This Easement shall be granted according to the following schedule: (1) Pall shall submit the Easement with all required documentation to DEC within 75 days of the Effective Date of this Decree for DEC review and approval; (2) Pall shall execute and return the Easement to DEC within 30 days of DEC's approval of the submitted Easement; and (3) within 30 days of DEC's return of the fully executed Easement to Pall, Pall shall (a) record the Easement, the final survey certified to DEC, any subordination agreements (if applicable) and any miscellaneous documents and (b) submit copies of all notices and certified receipts of mailing to DEC. In all events, Pall shall record the Easement prior to any sale of, or transfer of title to, any portion of the Site currently owned by Pall.

**Entry Upon the Site**

16. Settling Defendant consents to entry to the property owned by Settling Defendant as is reasonably necessary for the purpose of conducting investigations or remedial work at the Site (collectively, the "Work"), upon prior notice except in an emergency situation, and upon presentation of proper credentials by any duly designated officer or employee of the DEC or any duly designated officer or employee of the State or any State agency having jurisdiction with respect to the investigation and remediation of environmental contamination at the Site and by any agent, consultant, contractor, or other person so authorized by the Commissioner of DEC.

Further, Settling Defendant will ensure that such entry upon the property owned by Settling Defendant continues after and survives any sale of the property. To the extent that permission from a third party is required to access any portion of the Site, Settling Defendant agrees to use reasonable efforts to obtain that permission if requested by DEC. Any person granted access under this paragraph shall comply with all applicable health and safety laws and regulations. The State agrees to execute within 120 days of Settling Defendant's (or its successor's or assign's) request, an instrument in a form reasonably acceptable to Settling Defendant (or its successors or assigns) acknowledging termination of the right of entry granted hereunder, provided such request is not made earlier than the date on which DEC determines that the Work is completed.

**Release, Discharge and Covenant Not to  
Sue by the State of New York**

17. In consideration of Settling Defendant's payment and grant of an Environmental Easement and entry rights (as set forth in paragraphs 15 and 16 above), and subject to paragraphs 18 and 26 below, the State releases and discharges Settling Defendant, its parents, subsidiaries, affiliates, predecessors, successors, assigns, and its and their officers, directors, employees, agents and representatives ("Pall Released Parties") from any claims, losses and damages, with respect to the Covered Matters arising under any federal, state or local or common law, including, without limitation, CERCLA, the Environmental Conservation Law of New York ("ECL"), and the regulations related to such laws, and covenants not to sue or take any civil, criminal, judicial, or administrative action with respect to such claims, losses and damages, under any federal, state, or local or common law, including, without limitation, CERCLA, the ECL, and the regulations related to such laws, against the Pall Released Parties, with respect to

the Covered Matters. The release and covenant not to sue of the State shall take effect upon the receipt of the payment required in paragraph 13 above. Nothing in this paragraph is intended to be or should be interpreted as a release or covenant not to sue Settling Defendant with respect to any liability or obligation (a) related to damages to the State's natural resources or (b) related to any part or portion of the Site other than OU No. 1, and the State expressly reserves any and all rights with respect to all aspects and areas of the Site other than OU No. 1. Nothing in this paragraph is intended to be or should be interpreted as a release for Settling Defendant's compliance with all applicable statutes and regulations from and after the Effective Date, provided, however, that a change in applicable statutes or regulations after the Effective Date shall not be a ground for the State to require further response actions or seek reimbursement for additional costs of response with respect to the Covered Matters. The circumstances under which the State may seek to reopen this Consent Decree for further response actions or additional costs are limited to those described in Paragraph 18.

**Reopener**

18. Notwithstanding any other provision of this Consent Decree or any release, discharge or covenant not to sue that Settling Defendant may receive from the State, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings seeking to compel Settling Defendant: (a) to perform further response actions relating to OU No. 1 of the Site, or (b) to reimburse the State for additional costs of response relating to OU No. 1 of the Site, in either case only if:

- (i) conditions at the Site, previously unknown to the State, are discovered after the Effective Date, or



- (ii) material information, in whole or in part previously unknown to the State, is received after the Effective Date,

and these previously unknown conditions or information together with any other relevant information demonstrate that the response measures selected for OU No. 1 of the Site are not protective of human health or the environment.

For purposes of this Reopener, previously known conditions at OU No. 1 of the Site and previously known information include all conditions and information known to the State as of the Effective Date including, but not limited to, all conditions identified and information contained or submitted for inclusion in the Administrative Record, attached as Appendix B to the Record of Decision for the Site, or in the files and records of the DEC. Previously known conditions at OU No. 1 shall include all degradation products of previously known contamination and the migration of contaminants in ground water from neighboring sites not owned by Pall or any Pall affiliate (e.g. the Photocircuits site) into OU No. 1. Unless the State can establish by a preponderance of the evidence that (1) new information shows that contamination is migrating from OU No. 2 to OU No. 1, (2) such information demonstrates that the response measures selected for OU No. 1 of the Site are not protective of human health or the environment and (3) the portion of such contamination that is attributable to Pall is more than de minimis, then the State agrees that migration of contamination from OU No. 2 to OU No. 1 is covered by the release, discharge and covenant not to sue under this Decree, and, in the absence of the foregoing showing by the State, Settling Defendant shall not be subject to a Reopener based on the existence of migration of contamination from OU No. 2 to OU No. 1. In the event that the Court determines that the State has established the conditions described in (1)-(3) above by a preponderance of the evidence, then migration of contamination from OU No. 2 to OU No.

1 meeting those conditions is not covered by the release, discharge and covenant not to sue under this Decree and Settling Defendant shall be subject to a reopener.

**Covenants by Settling Defendant**

19. In consideration of the Release, Discharge, and Covenant not to Sue by the State, Settling Defendant covenants not to sue or assert any claims or causes of action whatsoever against the State, its agencies, officers, or representatives, related to Covered Matters; provided, however, that Settling Defendant reserves its right to challenge any attempt to reopen this Consent Decree as provided in paragraph 18 above or to challenge the additional response actions demanded or performed by the State in this action or any subsequent cost recovery action.

**Contribution Protection**

20. The parties to this Consent Decree agree that Settling Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law, extinguishing Settling Defendant's potential liability related to environmental conditions in OU No. 1 to persons not parties to this Consent Decree. As provided under 42 U.S.C. § 9613 and New York General Obligations Law § 15-108, and to the extent authorized under any other applicable law, Settling Defendant shall be deemed to have resolved its liability to the State under applicable law including, without limitation, CERCLA, ECL, and common law, for purposes of contribution protection and with respect to the Covered Matters addressed pursuant to and in accordance with this Consent Decree.

21. Any rights Settling Defendant may have to obtain contribution or otherwise recover costs or damages from persons that are not parties to this Consent Decree are preserved. In addition, all claims and defenses of Settling Defendant with respect to all other persons other than the State are expressly reserved.

**Effect on Liability of Other Parties**

22. Nothing in this Consent Decree is intended as a release of, or covenant not to sue with respect to, any person or entity not expressly identified as a Pall Released Party in the Release, Discharge and Covenant Not to Sue set forth in paragraph 17 of this Consent Decree, and the State expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the State may have against any person, firm, corporation, or other entity other than the Pall Released Parties expressly identified in the Release, Discharge and Covenant Not to Sue set forth in paragraph 17 of this Consent Decree.

**Jurisdiction**

23. For purposes of entry and enforcement of this Consent Decree, the parties to this Consent Decree agree that this Court has jurisdiction in this matter and shall retain jurisdiction to enforce the terms of this Consent Decree.

**Complete Agreement/Signing**

24. This Consent Decree constitutes the complete agreement of the Parties. This Consent Decree may not be amended, modified, supplemented, or otherwise changed without the written consent of both the State and Settling Defendant, and approval of the District Court. This Consent Decree may be signed in counterparts.

**Effective Date**

25. The Effective Date of this Consent Decree shall be that date on which this Consent Decree is entered by the Clerk of the United States District Court for the Eastern District of New York.

**Miscellaneous**

26. The State reserves all claims against Settling Defendant arising out of or in connection with OU No. 2 or related to damages to the State's natural resources. With respect to those claims and any other claims not resolved in this Consent Decree, the action commenced by the service of the Complaint is discontinued herein without prejudice.

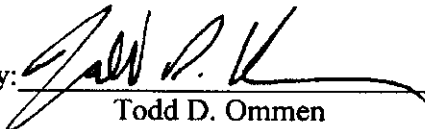
27. The terms and conditions set forth herein are for use in the implementation of this Consent Decree only and do not constitute a basis or a precedent or represent the position of the State of New York or its executive agencies for any other dispute, claim, or cause of action of any kind that has or may be raised in any court of competent jurisdiction or arbitration proceeding, by any party proceeding against the State, its employees or any of its executive agencies for any purpose.

28. The Parties agree that any applicable statute of limitations with respect to all claims reserved by the State herein and all of Settling Defendants' defenses to those claims shall be tolled from the date of the filing of the Complaint in this matter to the earlier of August 14, 2010 or the date that the State files a complaint with respect to any such claim, or seeks to renew the Complaint filed herewith, but nothing herein shall reinstate any claim for which the applicable limitations period has already expired.

STATE OF NEW YORK and  
ALEXANDER B. GRANNIS  
as Commissioner of the New York State  
Department of Environmental Conservation and  
Trustee of Natural Resources

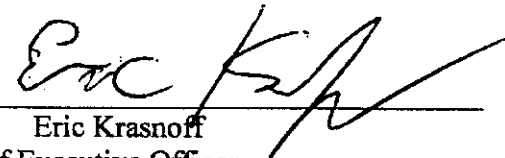
ANDREW CUOMO  
Attorney General of the State of New York

Dated: 9-23-09

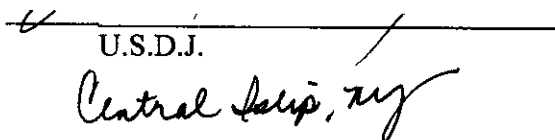
By:   
Todd D. Ommen  
Assistant Attorney General  
New York State Department of Law  
120 Broadway  
New York, New York 10271

PALL CORPORATION

Dated: 9.18.09

By:   
Eric Krasnoff  
Chief Executive Officer  
2200 Northern Boulevard  
East Hills, NY 11548

ORDERED, ADJUDGED AND DECREED this 21<sup>st</sup> day of October, 2009,

  
U.S.D.J.  
Central Islip, NY