

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK and JOSEPH J.	:	
MARTENS, as Commissioner of the New York	:	<b>09-CV-04126 (LDW/ETB)</b>
State Department of Environmental	:	
Conservation,	:	
Plaintiffs,	:	<b>SECOND PARTIAL</b>
	:	<b>CONSENT DECREE</b>
-against-	:	<b>FILED</b>
	:	IN CLERK'S OFFICE
PALL CORPORATION,	:	U.S. DISTRICT COURT E.D.N.Y.
	:	<b>★ JUN 02 2015 ★</b>
Defendant.	:	LONG ISLAND OFFICE
	x	

Plaintiffs the State of New York and Joseph J. Martens, 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 on October 9, 2009 (the “Complaint”), the State 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”), and damages for injuries to natural resources resulting from those releases.
2. DEC divided the Site into two “operable units.” Operable Unit No. 1 (“OU No. 1”) of the Site consists of all 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). OU No. 2 of the Site consists of on-Site and off-Site deep subsurface contamination (deep subsurface contamination being defined as all contamination at depths of greater than 60 feet below the ground surface). DEC investigated OU No. 2 of the Site jointly with its investigation of OU No. 2 of the Photocircuits Corporation site, which is contiguous to the Site.

3. The State and Settling Defendant finally resolved all claims with respect to OU No. 1 of the Site through a Partial Consent Decree ordered, adjudged and decreed by the United States District Court of the Eastern District of New York on October 21, 2009, which was entered on October 23, 2009 (Case 2:09-cv-04126-LDW-ETB) (the “OU No. 1 Consent Decree”).

4. After the OU No. 1 Consent Decree was entered, the Court administratively closed this case pending DEC’s investigation of OU No. 2.

5. DEC investigated OU No. 2 and issued a Record of Decision (“ROD”) for it in March 2013 (“OU No. 2 ROD”). The OU No. 2 ROD selected an in-situ chemical oxidation/groundwater extraction and recirculation system as the remedy for the OU No. 2 contamination. That system will also address OU No. 2 contamination at the Photocircuits Corporation site.

6. This Second Partial Consent Decree is intended to resolve the State’s claims against Pall for response costs with respect to OU No. 2 of the Site and natural resource damages, as described in paragraph 9 below.

7. The State alleges that Settling Defendant, as the current owner of a portion of the Site and former owner and operator of the remaining portion of the Site within the meaning of §

107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (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. 2 pursuant to §§ 107(a)(1) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9613(g)(2).

8. 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.

9. The State and Settling Defendant (collectively "the Parties") desire to fully and finally resolve all claims with respect to OU No. 2 and natural resources damages claims with respect to the Site, 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. Together with the OU No. 1 Consent Decree, this Second Partial Consent Decree (the "Consent Decree") fully and finally resolves liability among the Parties for costs incurred on the Site and natural resource damages associated with the Site. The State has determined that full and final settlement of this case in accordance with the terms set forth below is in the best interest of the public.

10. Settling Defendant desires to settle and resolve the claims with respect to OU No. 2 and natural resource damages 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.

11. Upon approval and entry of this Consent Decree by the Court, this Consent Decree and the OU No. 1 Consent Decree resolve all the State's claims against Settling Defendant in this action. The Court finds that there is no reason for delay and therefore enters the two decrees as a final judgment under Fed. R. Civ. P. 54 and 58.

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

**Purpose and Scope of Consent Decree**

12. "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. 2 of the Site, including, but not limited to, claims arising out of or in connection with the "previously known conditions" described in paragraph 24 below, and including claims for natural resource damages, but excluding those matters specifically reserved in this Consent Decree.

13. The purpose of this Consent Decree is (1) to provide for payment of certain consideration to the State, to finally resolve the Covered Matters, subject to paragraphs 23 and 24 below, (2) to provide contribution protection for the 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**

14. 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 State is not a party.

**Parties Bound**

15. 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**

16. Settling Defendant shall within thirty (30) days of the Effective Date of this Consent Decree pay the sum of three million two hundred fifty thousand dollars (\$3,250,000.00) by delivering to the Attorney General, Attention: Assistant Attorney General Nancy Christensen, 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.

17. 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**

18. Pursuant to the terms of the OU No. 1 Consent Decree, Settling Defendant granted 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, which continues to be owned by Settling Defendant (the "Pall Owned Property"). The Environmental Easement was recorded in the Nassau County Clerk's Office on August 26, 2011 in Book of Deeds 12752 at pages 363-373, and requires compliance with the Site Management Plan ("SMP") that will be developed in accordance with the ROD for OU No. 1. 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 the OU No. 1 Consent 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.

19. Within 75 days of the Effective Date of this Consent Decree, Pall shall submit to DEC for review and approval a draft Environmental Easement ("Easement No. 2") and any notices, subordination agreements and other documentation required by DEC to address OU No. 2 and this Consent Decree. Pall shall execute and return Easement No. 2 to DEC within 30 days of DEC's approval of the submitted Easement No. 2. Within 30 days of DEC's return of the fully executed Easement No. 2 to Pall, (a) Pall shall request from DEC a release extinguishing the Environmental Easement executed pursuant to paragraph 15 of the OU No. 1 Consent Decree ("Easement No. 1"), (b) record the release extinguishing Easement No. 1, (c) record Easement No. 2, any subordination agreements (if applicable) and any miscellaneous documents required

by DEC, and (d) send all required notices, and submit copies of the notices and certified receipts of mailing to DEC.

**Entry Upon the Site**

20. Settling Defendant consents to entry to the property owned by Settling Defendant as is reasonably necessary for the purpose of conducting response actions, including 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 consent to entry upon the Pall Owned Property 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.

21. DEC shall consider the potential for Site redevelopment for commercial or industrial uses in its design and construction of the remedies set forth in the RODs for OU No. 1 and OU No. 2 at the Site. To the extent practicable, DEC will make reasonable efforts to locate

and install aboveground and underground structures, facilities, equipment and utilities needed to implement the OU No. 1 and OU No. 2 remedies at the Site in such locations in, on and under the Pall Owned Property such that their placement will not unreasonably interfere with property redevelopment for commercial or industrial uses, provided that Pall provides DEC with redevelopment plans.

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

22. In consideration of Settling Defendant's payment under paragraph 16 above, and subject to paragraphs 17 above and 23 and 24 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, 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 16 above. 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 of this Consent Decree, provided, however, that a change in applicable statutes, regulations, standards or guidance 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 paragraphs 23 and 24 below.

**Reopener**

23. 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. 2 of the Site, or (b) to reimburse the State for additional costs of response actions relating to OU No. 2 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 actions selected for OU No. 2 of the Site in the OU No. 2 ROD are not protective of human health or the environment.

24. For purposes of this Reopener, previously known conditions at OU No. 2 of the Site and previously known information include all conditions and information known to the State as of the Effective Date of this Consent Decree including, but not limited to, (i) all contaminants detected on the Photocircuits and Pall sites during the joint Photocircuits/Pall OU No. 2 Remedial Investigation for groundwater and all contaminants detected in the groundwater during the Photocircuits OU No. 1 Remedial Investigation and the Pall OU No. 1 Remedial

Investigation, and specifically with respect to trichloroethane (“TCA”), trichloroethylene (“TCE”) and tetrachloroethylene (“PCE”) detected in the groundwater, any stabilizers detected in groundwater at the Photocircuits and/or Pall sites that are known to be associated with TCA, TCE or PCE provided that Pall presents to DEC and DEC accepts a written technical document showing that such stabilizers can be associated with the presence of TCA, TCE or PCE, and (ii) all conditions identified and information contained or submitted for inclusion in the Administrative Record, attached as Appendix B to the ROD for OU No. 2, or in the files and records of the DEC or the New York State Department of Health.

25. Previously known conditions at OU No. 2 shall also include all degradation products of previously known contaminants, the migration of previously known contaminants and their degradation products in groundwater from neighboring sites not owned by Pall or any Pall affiliate (e.g. the Photocircuits site) into OU No. 2, and the migration of those contaminants and their degradation products in groundwater from OU No. 2 to OU No. 1 or from OU No. 1 to OU No. 2. The migration of previously known contaminants from OU No. 2 to OU No. 1 or from OU No. 1 to OU No. 2 is covered by the release, discharge and covenant not to sue under this Consent Decree and Settling Defendant shall not be subject to a Reopener based on the migration of previously known contaminants from OU No. 2 to OU No. 1 or from OU No. 1 to OU No. 2.

#### **Covenants by Settling Defendant**

26. 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 the Covered Matters; provided, however, that Settling Defendant reserves its right to challenge any attempt to

reopen this Consent Decree as provided in paragraphs 23 and 24 above or to challenge any response actions demanded or performed by the State in addition to the actions in the OU No. 2 ROD or any subsequent cost recovery action.

**Contribution Protection**

27. 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 to persons not parties to this Consent Decree for the Covered Matters. 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 with respect to the Covered Matters pursuant to and in accordance with this Consent Decree.

28. 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**

29. 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 22 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 22 of this Consent Decree.

**Jurisdiction**

30. 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**

31. 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 Court. This Consent Decree may be signed in counterparts.

**Effective Date**

32. 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**

33. 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.

STATE OF NEW YORK and  
JOSEPH J. MARTENS  
as Commissioner of the New York State  
Department of Environmental Conservation and  
Trustee of Natural Resources

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

Dated: February 19, 2015

By: Nancy M. Christensen  
Nancy M. Christensen  
Assistant Attorney General  
New York State Department of Law  
120 Broadway  
New York, New York 10271

PALL CORPORATION

Dated: February 10, 2015

By: Roya Behnia  
DocuSigned by:  
Roya Behnia  
General Counsel  
25 Harbor Park Drive  
Port Washington, NY 11050

ORDERED, ADJUDGED AND DECREED this 2<sup>nd</sup> day of June, 2015  
S/ Leonard D. Wexler  
[Signature]  
U.S.D.J.  
Central Islip, NY