



U.S. Department of Justice

ROSSI
199705011
SL

FILED

FEB 13 2001

United States Attorney
District of New Jersey

AT 8:30
WILLIAM T. WALSH
CLERK

970 Broad Street, Suite 700
Newark, NJ 07102

(973) 645-2700

SCC:kcpb/28

(973) 645-2844

February 13, 2001

William T. Walsh, Clerk
U.S. District Court
District of New Jersey
Dr. Martin Luther King, Jr.
Federal Building & Courthouse Bldg.
50 Walnut Street
Newark, New Jersey 07102

RECEIVED

FEB 13 2001

AT 8:30
WILLIAM T. WALSH
CLERK

Re: United States of America v. Arnold Maxwell Livingston, et als
Civil Action. No. 97-4770

Dear Mr. Walsh:

Enclosed for filing please find an original and two (2) copies of the Consent Decree in the above-captioned matter. **The Consent Decree is ready to be lodged with the Court, but we will not be requesting entry until after the close of a 30-day public comment period.** Please return a stamped copy in the envelope provided for your convenience.

Thank you.

*Date of entry
02/20/01*

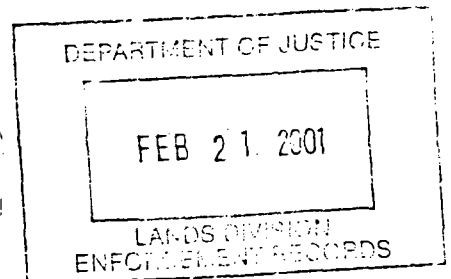
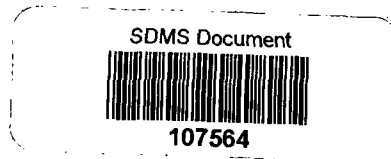
Very truly yours,

ROBERT J. CLEARY
United States Attorney

Susan C. Cassell

By: SUSAN C. CASSELL
Assistant U.S. Attorney
Deputy Chief, Civil Division

Encl.



501105

1997/05/01
SL

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

_____)
 UNITED STATES OF AMERICA.)
)
 Plaintiff,)
)
 v.)
)
 ARNOLD MAXWELL LIVINGSTON.)
 TIFA, LTD., TIFA (CI).)
)
 Defendants and)
 Third-Party Plaintiffs.)
)
 v.)
)
 FIREMAN'S FUND INSURANCE)
 COMPANY. and NEW JERSEY)
 PROPERTY- LIABILITY INSURANCE)
 GUARANTY ASSOCIATION.)
)
 Third-Party Defendants.)
 _____)

Civil Action No. 97-4770 (WGB)

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	3
III.	<u>PARTIES BOUND</u>	3
IV.	<u>DEFINITIONS</u>	3
V.	<u>REIMBURSEMENT OF RESPONSE COSTS</u>	5
VI.	<u>FAILURE TO MAKE TIMELY PAYMENTS</u>	6
VII.	<u>COVENANTS NOT TO SUE BY PLAINTIFF</u>	7
VIII.	<u>COVENANTS BY SETTLING DEFENDANTS</u>	9
IX.	<u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	10
X.	<u>RETENTION OF RECORDS</u>	11
XI.	<u>NOTICES AND SUBMISSIONS</u>	12
XII.	<u>RETENTION OF JURISDICTION</u>	13
XIII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	13
XIV.	<u>SIGNATORIES / SERVICE</u>	13
XV.	<u>FINAL JUDGMENT</u>	14

I. BACKGROUND

WHEREAS,

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in September 1997 in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. The United States filed a second complaint in this matter in April 1998, which was consolidated with the original complaint. The United States filed an amended complaint in February 1999.

B. The United States, in its complaint and amended complaint seeks, *inter alia*: reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Brook Industrial Park Superfund Site (the "Site") in the Borough of Bound Brook, Somerset County, New Jersey, together with accrued interest.

C. The defendants and third-party plaintiffs Arnold Maxwell Livingston and TIFA Ltd. filed a third-party complaint against third-party defendants Fireman's Fund Insurance Companies and New Jersey Property-Liability Insurance Guaranty Association on or about October 26, 1998, seeking a declaration under 28 U.S.C. § 2201 of the defense and indemnification obligations of the third-party defendants under primary and excess liability policies negotiated and entered into in New Jersey with respect to plaintiffs' actual and potential liabilities for property damage and/or personal injury resulting from alleged surface, groundwater and/or soil contamination existing at and emanating from the Site.

D. The defendants and third-party plaintiffs Arnold Maxwell Livingston and TIFA Ltd. filed counterclaims against the United States on or about February 17, 1998, seeking, *inter alia*, a declaratory judgment as to the liability of the United States, through the United States Department of the Air Force ("USAF"), and contribution from the United States on behalf of the USAF under Section 113 of CERCLA, 42 U.S.C. § 9613, to reduce the amount that these defendants would be required to pay should they be held liable for response costs incurred in connection with the cleanup of the Site.

E. The USAF entered into a partial consent decree with the United States, on behalf of EPA, Jame Fine Technologies, Inc. (formerly known as Jame Fine Chemicals, Inc.); the Estate of Richard Schleck, and National Metal Finishings Corporation, Inc., which partial consent decree was lodged with the Court on October 3, 2000. Upon entry of that partial consent decree, the USAF will have resolved its liability and will receive protection from contribution claims or actions as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), with regard to "matters addressed" by that settlement, which term includes response costs incurred in connection with the cleanup of the Site, thus mooting the claims set forth in Paragraph D above.

F. The parties defined herein as the "Livingston Defendants" have agreed among

themselves that the payments required of them under this Consent Decree will be made by Arnold M. Livingston, with the other Livingston Defendants acting as guarantors of payment and remaining jointly and severally liable with Arnold M. Livingston for the full and timely performance of all obligations imposed on the Livingston Defendants under this Consent Decree and for all remedies available to the United States under this Consent Decree, or otherwise, in the event of any non-performance of any such obligations.

G. The defendants and third-party defendants that have entered into this Consent Decree do not admit any fact, fault or liability to any party or entity arising out of the transactions or occurrences alleged in the aforementioned complaint, third-party complaint, or counterclaims, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41,000.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced a Focused Feasibility Study ("FFS") on January 3, 1985, and a Remedial Investigation and Feasibility Study ("RI/FS") in April 1989 for the Site pursuant to 40 C.F.R. § 300.430.

J. EPA completed a Remedial Investigation and Feasibility Study ("RI/FS") in July 1994.

K. The decision by EPA on the Remedial Action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1994.

L. The Remedial Action embodied in the ROD was, and continues to be implemented by EPA, and is being financed in large part with public funds.

M. The Parties to this Consent Decree desire to protect public health and welfare and the environment at the Site, and to resolve Settling Defendants' liability with respect to all costs incurred or to be incurred by the United States in responding to the release of hazardous substances at or from the Site, except as reserved herein.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, consistent with the goals of CERCLA, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

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

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

b. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that remedial action has been completed at the Site in accordance with the requirements of the NCP, the ROD and any consent decree requiring the performance of remedial action at the Site.

c. "Consent Decree" shall mean this Decree and any attached appendices.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Effective Date" shall mean the date on which this Consent Decree is entered by the Court.

g. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Livingston Defendants" shall mean Arnold Maxwell Livingston, TIFA, Ltd. and TIFA (CI) and, for purposes of Sections VII, VIII and IX of this Consent Decree, shall also include Blue Spruce Co., Inc. and Blue Spruce International, Inc.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

j. "Parties" shall mean the United States and Settling Defendants.

k. "Plaintiff" shall mean the United States of America.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

m. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 30, 1994 by the Regional Administrator, EPA Region II, or his/her delegate, and all attachments thereto.

n. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.

o. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA have incurred or will incur for response actions at or in connection with the Site, plus Interest on all such costs.

p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

q. "Settling Defendants" shall mean: the Livingston Defendants, Fireman's Fund Insurance Company, and New Jersey Property-Liability Insurance Guaranty Association.

r. "Site" shall mean the Brook Industrial Park Superfund Site, encompassing approximately 4.5 acres, located at 100 West Main Street, Borough of Bound Brook, Somerset County, New Jersey.

s. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, and any federal natural resources trustee.

t. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of United States Response Costs. Settling Defendants shall make payments to the United States totaling \$1,060,000.00, plus applicable Interest, in reimbursement of Response Costs, according to the terms and the schedule set forth below.

a. The Livingston Defendants shall pay \$100,000 to the EPA Hazardous Substance Superfund in reimbursement of Response Costs, in accordance with the provisions of this subparagraph. Within 30 days of the Effective Date of this Consent Decree, the Livingston Defendants shall pay to the EPA Hazardous Substance Superfund \$25,000.00, plus Interest on that sum calculated from December 1, 2000 through the date of payment, in accordance with the ~~payment instructions set forth in subparagraph d. below.~~ The Livingston Defendants shall pay the remaining balance in three equal installments of \$25,000.00, plus Interest on each installment calculated from December 1, 2000 through the date of payment, with the first installment due within one year of the Effective Date, the second installment due within two years of the Effective Date, and the third installment due within three years of the Effective Date. The installment payments shall likewise be made in accordance with the payment instructions set forth in subparagraph d. below.

b. Within 30 days of the Effective Date, Fireman's Fund Insurance Companies shall pay \$900,000.00, plus Interest on that sum calculated from December 1, 2000 through the date of payment, to the EPA Hazardous Substance Superfund, in reimbursement of Response Costs, in accordance with the payment instructions set forth in subparagraph d. below.

c. Within 30 days of the Effective Date, New Jersey Property-Liability Insurance Guaranty Association shall pay \$60,000.00, plus Interest on that sum calculated from December 1, 2000 through the date of payment, to the EPA Hazardous Substance Superfund, in reimbursement of Response Costs, in accordance with the payment instructions set forth in subparagraph d. below.

d. The payments required to be made pursuant to this Paragraph shall be made via FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 9403885, the EPA Region and Site/Spill ID #02-95, and DOJ case number

90-11-2-1287. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. To ensure that payor's payment is properly recorded, payor shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number and payor's name and address to the United States as specified in Section XI (Notices and Submissions) and to:

Ron Gherardi
Chief, Financial Management Branch
US EPA Region II
290 Broadway
New York, NY 10007

5. By their respective signatures to this Consent Decree, each of the Livingston Defendants certifies to the best of its knowledge and belief that the information concerning its financial resources and ability to pay that it has provided to the United States is true, accurate and complete. The United States has relied upon such information in agreeing to the settlement contained herein. In the event that the information provided by any of the Livingston Defendants is false or inaccurate in any material respect or fails to disclose material information bearing on the Livingston Defendants' financial resources or ability to pay Response Costs, then the United States' covenants not to sue set forth in Paragraph 11 of this Consent Decree are voidable as to the Livingston Defendants in the sole discretion of the United States, and the United States shall be free to pursue its claims pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, against any of the Livingston Defendants. Each of the Livingston Defendants hereby waives any statute of limitations defense that it may otherwise have had if the United States pursues any of the Livingston Defendants pursuant to this Subparagraph.

VI. FAILURE TO MAKE TIMELY PAYMENTS

6. Interest on Late Payments. In the event that any payments required by Section V are not made when due, Interest, as provided for in Paragraph 4, shall continue to accrue on the unpaid balance, through the date of payment.

7. Stipulated Penalty. If any amounts due to the United States under this consent decree are not paid by the required date, the delinquent Settling Defendant(s) shall pay as a stipulated penalty, in addition to the Interest required by Paragraphs 4 and 6, the following stipulated penalties per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day

\$500

31st day and beyond

Stipulated penalties are due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to:

Ron Gherardi
Chief, Financial Management Branch
US EPA Region II
290 Broadway
New York, NY 10007

and shall reference U.S.A.O. file number 9403885, the EPA Region and Site/Spill ID #02-95, and DOJ case number 90-11-2-1287. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to the United States and State as provided in Section XI (Notices and Submissions). Penalties shall accrue as provided above regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand.

8. If the United States must bring an action to collect any payment required by this Consent Decree, the Settling Defendant(s) against whom the action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. No payments made under this Section shall be tax deductible for Federal tax purposes.

10. Payments made under Paragraphs 6-8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of a Settling Defendant's failure to make timely payments required by this Consent Decree.

VII. COVENANTS NOT TO SUE BY PLAINTIFF

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 12 through 15, the United States covenants not to sue or to take administrative action against the Livingston Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date and shall remain in effect subject to the other provisions of this Consent Decree; provided, however, failure on the part of a Settling Defendant to make any payment required by Section V of this Consent Decree, by 11:00 a.m. (Eastern Time) on the third day following the date payment was due shall void the covenants not to sue as to the Livingston Defendants. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA. These covenants not to sue extend only to the Livingston Defendants

and do not extend to any other person. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement against the Livingston Defendants, if any of the Financial Information provided by the Livingston Defendant(s), or the financial certification made by the Livingston Defendants in Paragraph 5, is false or, in any material respect, inaccurate.

12. Plaintiff's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Livingston Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

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

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

13. Plaintiff's Post-certification Reservations. Notwithstanding any other provisions of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Livingston Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

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

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

14. For purposes of Paragraph 12 of this Consent Decree, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision, and the information gathered by the United States in its activities subsequent to the issuance of the ROD as set forth in the following reports reflecting EPA's pre-Remedial Design Activities: Document Review Report and Scope

of Work for Pre-Design Activities, dated December 12, 1997; Draft Pre-Design Investigation Report, dated July 16, 1999; Ground Water Sampling Report, dated August 1999; Ground Water Treatability Study Report, dated November 19, 1999; Ground Water Modeling Report, dated July 21, 2000. For purposes of Paragraph 13, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-Record of Decision and pre-Certification of Completion administrative record maintained by EPA, or in any information received by EPA prior to Certification of Completion of the Remedial Action pursuant to the requirements of the partial consent decree for the Site between the United States, Jame Fine Chemicals, Inc. (now known as Jame Fine Technologies, Inc.), the Estate of Richard Schleck, and National Metal Finishings Corporation, Inc.

15. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by any of the Settling Defendants to meet a requirement of this Consent Decree;
- (b) liability arising for the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, or from any future disposal, release, or threat of release of waste material at the Site;
- (c) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;
- (d) criminal liability;
- (e) liability, for any past, present, or future violations of federal or state law.

VIII. COVENANTS BY SETTLING DEFENDANTS

16. As to Plaintiff the United States. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law, any claim against the United States or State, including any department, agency, or instrumentality of the United States, pursuant to CERCLA Sections 107 and 113 related to Response Costs, or any claims arising out of response activities at the Site. Provided,

however, that the Livingston Defendants reserve any contribution claims they may have against the United States Air Force in the event any claim is asserted by the United States against the Livingston Defendants under the authority of or under Paragraphs 12, 13, 15 (b), (c). (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against the Livingston Defendants. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

17. Covenant by the Livingston Defendants to the Other Settling Defendants. The claims between the Livingston Defendants and the other Settling Defendants are resolved as provided in a private settlement agreement among those parties.

IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction, or other occurrence relating in any way to the Site against any person not a party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that the Livingston Defendants are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Response Costs as defined in this Consent Decree. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which Plaintiff has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the Plaintiff asserts rights against any of the Settling Defendants coming within the scope of such reservations.

20. Each of the Settling Defendants agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Each of the Settling Defendants also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify in writing the United States within 10 days of service of the complaint on them. In addition, each of the Settling Defendants shall notify the United States within 10 days of its receipt of any Motion for Summary Judgment and within 10 days of its receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the

Site. Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set for in Section VII (Covenants No To Sue By Plaintiff).

X. RETENTION OF RECORDS

22. Until 10 years after the entry of this Consent Decree, each of the Settling Defendants shall preserve and retain all records and documents now in its possession or control or which come into its possession or control (including records and documents in the possession or control of any of its affiliates or subsidiaries) that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

23. At the conclusion of this document retention period, any Settling Defendant intending to destroy any such records or documents shall notify the United States at least 90 days prior to the destruction of any such records or documents, and upon request by the United States, that Settling Defendant shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If any of the Settling Defendants asserts such a privilege, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Any Settling Defendant asserting privilege shall retain all documents, records, and information that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved.

24. Each of the Livingston Defendants hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not, nor has it caused any other entity or individual, to have altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to the potential liability of any of the Livingston Defendants regarding the Site since notification of potential liability by the United States or the filing of suit by the United States against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XI. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1287

and

Director
Emergency Response and Remediation Division
United States Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

As to EPA:

Chief, New Jersey Remediation Branch
United States Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866
Attn: Brook Industrial Park Remedial Project
Manager

As to the Livingston Defendants:

Arnold M. Livingston
c/o Tifa, Ltd.
50 Division Ave.
Millington, NJ 07946

As to Fireman's Fund Insurance
Companies:

Matthew Cullina
Fireman's Fund Insurance Companies
777 San Marin Drive
Novato, CA 94998-3400

As to New Jersey Property-Liability
Insurance Guaranty Association:

Holly C. Bakke, Esq.
Executive Director
New Jersey Property-Liability Insurance
Guaranty Association
59-63 Mine Brook Rd.
Bernardsville, NJ 07924

XII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction of this matter for the purpose of construing or enforcing the terms of this Consent Decree.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants each consent to the entry of this Consent Decree without further notice.

28. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the existence or the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIV. SIGNATORIES / SERVICE

29. The undersigned representative of each of the Settling Defendants, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or his or her designee, each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

30. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of this Consent Decree.

31. Each Settling Defendant shall identify on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

XV. FINAL JUDGMENT

32. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay, and therefore, enters this Consent Decree as a final judgment under Fed. R. Civ. P. 54(b).

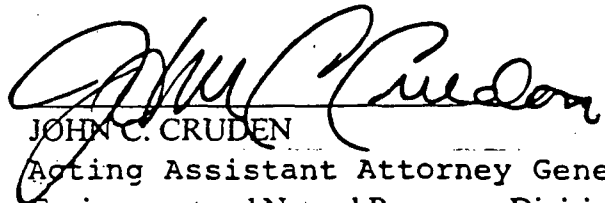
SO ORDERED THIS __ DAY OF _____, 200_.

United States District Judge
District of New Jersey


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

**FOR PLAINTIFF THE UNITED STATES
OF AMERICA**

2.12.01
Date

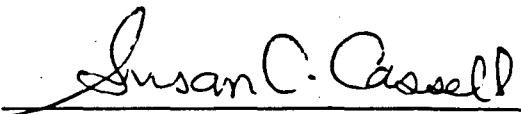

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

1/18/01
Date


DAVID ROSSKAM
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3974

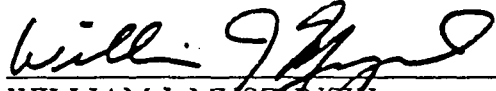
ROBERT J. CLEARY
United States Attorney
District of New Jersey

2/13/01
Date



SUSAN C. CASSELL
Assistant United States Attorney
District of New Jersey
970 Broad Street
Newark, New Jersey 07102

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

Jan 31, 2001
Date


WILLIAM J. MUSZYNSKI
Acting Regional Administrator, Region II
U.S. Environmental Protection Agency
290 Broadway, New York, NY 10007

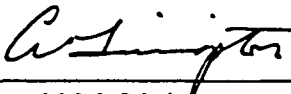
January 24, 2001
Date


MUTHU S. SUNDRAM
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, New York, NY 10007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston. et al., Civil Action No. 97-4770 (D.N.J.)

FOR DEFENDANT ARNOLD
MAXWELL LIVINGSTON

Date: 1/11/01



Arnold M. Livingston

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Mr. Arnold M. Livingston

c/o Tifa, Ltd.
50 Division Avenue

Millington, NJ 07946

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

FOR DEFENDANT TIFA, LTD

Date: 11/11/01

A Livingston, President
[Name & Title]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Mr. Arnold M. Livingston
c/o Tifa, Ltd.
50 Division Avenue
Millington, NJ 07946

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

FOR DEFENDANT TIFA (CI)

Date: _____

1/11/01

[Name & Title]

A Livingston President

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Mr. Arnold M. Livingston

c/o Tifa, Ltd.
50 Division Avenue

Millington, NJ 07946

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

**FOR THIRD-PARTY DEFENDANT
FIREMAN'S FUND INSURANCE
COMPANIES**

Date: 01/17/01

Matthew Callan - Senior Litigation Analyst
[Name & Title]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael E. Buckley, Esq.
Rivlin, Rodler & Kremer
SAB PLAZA
Uniondale, NY 11556-0111

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Livingston, et al., Civil Action No. 97-4770 (D.N.J.)

**FOR THIRD-PARTY DEFENDANT NEW
JERSEY PROPERTY- LIABILITY
INSURANCE GUARANTY ASSOCIATION**

Date: January 17, 2001
✓

Edward J. Strasz
[Name & Title]

EDWARD J. STRASZ
ENVIRONMENTAL CLAIMS EXAMINER

Agent Authorized to Accept Service on Behalf of Above-signed Party:

New Jersey Property Liability Insurance Guaranty Association
59-63 Mine Brook Road
Burnt Hills, NJ 07924
Attn: Holly C. Bakke, Esq.
Executive Director