

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SL-9874

----- X
UNITED STATES OF AMERICA,

Plaintiff,

- against -

Civil Action
No. 03-6374
(Amon, J.)
(Gold, M.J.)

CITYGAS GASOLINE CORPORATION,
FOSTER REALTY CORPORATION,
9702-9706 FOSTER AVENUE LLC,
FOSTER OPERATING CORPORATION,
14TH AVENUE REALTY CORPORATION,
10 B. STREET REALTY CORPORATION,
GARY'S AUTO SERVICE STATION, INC.,
4090 BOSTON ROAD CORPORATION,
4090 BOSTON ROAD LLC,
CONNOR GAS N.Y. INC. (a/k/a
CONNOR GAS (N.Y.) INC.),
4090 N.Y. CORPORATION,
117-01 SPRINGFIELD BLVD, LLC,
SPRINGFIELD OPERATING CORPORATION,
117-01 N.Y. CORP.,
LEGGETT LAND LIMITED,
1081 N.Y. CORPORATION,
TIJUANA ENTERPRISES, INC.,
ONE MORE GASOLINE COMPANY INC.,
2800 BRUCKNER BOULEVARD LLC,
E.D. FUELS, LLC,
QUINCY GAS N.Y., INC. (a/k/a
QUINCY GAS (N.Y.) INC.),
ENKIDO GASOLINE CORPORATION,
SIDNEY ESIKOFF FAMILY TRUST,
141-50 UNION TURNPIKE LLC,
SATIN VENTURES, INC.,
83-10 ASTORIA BOULEVARD LLC,
EDEN EQUITIES INC.,
SLINGSHOT GASOLINE, INC.,
PENN-FULTON MANAGEMENT, INC,
FULTON GAS N.Y., INC. (a/k/a
FULTON GAS (N.Y.) INC.),
FLUSHING 168 CORPORATION,
1981 N.Y. CORPORATION,
RICHARD FINKELSTEIN,

Defendants.

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CONSENT JUDGMENT WITH SIDNEY ESIKOFF FAMILY TRUST,
141-50 UNION TURNPIKE LLC, 83-10 ASTORIA BOULEVARD LLC,
AND 2800 BRUCKNER BOULEVARD LLC

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Plaintiff United States of America, by the authority of the Attorney General and on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action on December 19, 2003, and a first amended complaint ("Amended Complaint") on June 30, 2005, pursuant to section 9006 of the Resource Conservation and Recovery Act, as amended, ("Act" or "RCRA"), 42 U.S.C. § 6991e, alleging that, inter alia, Defendants Sidney Esikoff Family Trust ("SEFT"), 141-50 Union Turnpike LLC, 83-10 Astoria Boulevard LLC, and 2800 Bruckner Boulevard LLC (collectively, "SEFT Defendants") violated requirements of the Act regarding underground storage tanks ("USTs"), 40 C.F.R. Part 280.

The Amended Complaint alleges that, at all relevant times, Defendant 2800 Bruckner Boulevard LLC owned a facility at 2800 Bruckner Boulevard, Bronx, New York ("the Bruckner Boulevard Facility"), which was an automobile fueling station with eleven USTs, at which it: (1) failed to replace, upgrade or close USTs by the December 22, 1998 deadline, in violation of 40 C.F.R. § 280.21; (2) failed to ensure that gasoline USTs were structurally sound before installing cathodic protection in violation of 40 C.F.R. § 280.21(b)(2); (3) failed to provide methods of release detection or to maintain records of release detection for USTs in violation of 40 C.F.R. § 280.34, and 40 C.F.R. Part 280, Subpart D; (4) failed to maintain records of cathodic protection in violation of 40 C.F.R. §§ 280.31(d) and 280.34; and (5) failed to close out-of-service gasoline tanks in accordance with 40 C.F.R., Part 280,

Subpart G.

The Amended Complaint further alleges that, at all relevant times, Defendant 83-10 Astoria Boulevard LLC owned a facility at 83-10 Astoria Boulevard, Jackson Heights, New York ("the Astoria Boulevard Facility"), which was an automobile fueling station with eleven USTs, at which it: (1) failed to ensure that gasoline USTs were structurally sound before installing cathodic protection in violation of 40 C.F.R. § 280.21(b)(2); (2) failed to provide methods of release detection or to maintain records of release detection for USTs in violation of 40 C.F.R. § 280.34, and 40 C.F.R. Part 280, Subpart D; and (3) failed to maintain records of cathodic protection in violation of 40 C.F.R. §§ 280.31(d) and 280.34.

The Amended Complaint further alleges that, at all relevant times, Defendants 141-50 Union Turnpike LLC and SEFT owned a facility at 141-50 Union Turnpike, Flushing, New York ("the Union Turnpike Facility"), which has been an automobile fueling station with five USTs, at which they: (1) failed to provide methods of release detection or to maintain records of release detection for USTs in violation of 40 C.F.R. § 280.34, and 40 C.F.R. Part 280, Subpart D; and (2) failed to maintain records of cathodic protection in violation of 40 C.F.R. §§ 280.31(d) and 280.34.

Defendant 2800 Bruckner Boulevard LLC admits that it is a limited liability company organized and existing under the laws of the State of New York with a principal address at 3720 South Ocean

Boulevard, Apt. 710, Highland Beach, Florida 33487.

Defendant 2800 Bruckner Boulevard LLC further admits that it owned at relevant times in the Amended Complaint, eleven USTs at 2800 Bruckner Boulevard, Bronx, New York.

Defendant 83-10 Astoria Boulevard LLC admits that it is a limited liability company organized and existing under the laws of the State of New York with a principal address at 3720 South Ocean Boulevard, Apt. 710, Highland Beach, Florida 33487.

Defendant 83-10 Astoria Boulevard LLC further admits that it owned at relevant times in the Amended Complaint, eleven USTs at 83-10 Astoria Boulevard, Jackson Heights, New York.

Defendant SEFT admits that it is a trust organized and existing under the laws of the State of New York with an address at 3720 South Ocean Boulevard, Apt. 710, Highland Beach, Florida 33487.

Defendant 141-50 Union Turnpike LLC admits that it is a limited liability company organized and existing under the laws of the State of New York with a principal address at 3720 South Ocean Boulevard, Apt. 710, Highland Beach, Florida 33487.

Defendants 141-50 Union Turnpike LLC and SEFT further admit that they owned at relevant times in the Amended Complaint, five USTs at 141-50 Union Turnpike, Flushing, New York.

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

The Parties to this Consent Judgment recognize, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1), and over the Parties. Venue lies in this district pursuant to section 9006(a) of the Act, 42 U.S.C. § 6991e(a), and 28 U.S.C. §§ 1391 and 1395 because the violations occurred within this district and/or the defendants reside in this district. For purposes of this Consent Judgment, or any action to enforce this Consent Judgment, the SEFT Defendants consent to the Court's jurisdiction over this Consent Judgment or such action and over the SEFT Defendants, and consent to venue in this judicial district.

2. For purposes of this Consent Judgment, the SEFT Defendants agree that the Amended Complaint states claims upon which relief may be granted pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e, and 40 C.F.R. Part 280.

II. APPLICABILITY

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

4. No transfer of ownership or operation of the Union Turnpike Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant 141-50 Union Turnpike LLC of its obligation to ensure that the terms of the Consent Judgment are implemented. Any transfer of ownership or operation of the Union Turnpike Facility to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by Sections IV, V and VI of this Consent Judgment, as provided in a written agreement between Defendant 141-50 Union Turnpike LLC and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Defendant 141-50 Union Turnpike LLC shall provide a copy of this Consent Judgment to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States, in accordance with Section XIII of this Consent Judgment (Notices). No later than five days after the completion of such transfer, the SEFT Defendants shall provide an executed copy of the written agreement, to the United States, in accordance with Section XIII of this

Consent Judgment (Notices). Except for any change of operation of the Union Turnpike Facility by way of termination of a lease with an entity owned by Richard Finkelstein and transfer of the premises to Union Turnpike LLC or an entity related to Union Turnpike LLC, any attempt to transfer ownership or operation of the Union Turnpike Facility without complying with this Paragraph constitutes a violation of this Consent Judgment.

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

6. In any action to enforce this Consent Judgment, the SEFT Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, lessees, sublessees or contractors to take any actions necessary to comply with the provisions of this Consent Judgment. In such an action, the SEFT Defendants expressly reserve, and do not waive, their rights to pursue appropriate recourse against other defendants to this action or third parties.

III. DEFINITIONS

7. Terms used in this Consent Judgment that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or the regulations found at 40 C.F.R. § 280.12, unless otherwise provided in this Consent Judgment. Whenever the terms set forth below are used in this Consent Judgment, the following definitions shall apply:

a. "Amended Complaint" shall mean the First Amended Complaint filed by the United States in this action on June 30, 2005;

b. "Astoria Boulevard Facility" shall mean the automobile fueling station formerly located at 83-10 Astoria Boulevard, Jackson Heights, New York;

c. "Bruckner Boulevard Facility" shall mean the automobile fueling station formerly located at 2800 Bruckner Boulevard, Bronx, New York.

d. "Consent Judgment" shall mean this Consent Judgment;

e. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor

departments or agencies of the United States;

g. "Interest" shall mean interest at the rate specified in 28 U.S.C. § 1961 and posted on March 14, 2008, which was 1.52%.

h. "NYSDEC" shall mean the New York State Department of Environmental Conservation;

i. "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral;

j. "Parties" shall mean the United States and the SEFT Defendants, as defined herein;

k. "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral;

l. "SEFT" shall mean Sidney Esikoff Family Trust;

m. "SEFT Defendants" shall mean Sidney Esikoff Family Trust ("SEFT"), 141-50 Union Turnpike LLC, 83-10 Astoria Boulevard LLC, and 2800 Bruckner Boulevard LLC.;

n. "Union Turnpike Facility" shall mean the automobile fueling station located at 141-50 Union Turnpike Facility, Flushing, New York.

o. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. The SEFT Defendants shall pay the sum of \$325,000 as a civil penalty, together with Interest accruing from the date on which the Consent Judgment is lodged with the Court ("Settlement

Amount") in accordance with the provisions of Paragraph 9.

9. The SEFT Defendants shall pay the Settlement Amount to the United States in 60 monthly installments. The SEFT Defendants shall pay the first installment, in the amount of \$6,045.00, within 15 days of the Effective Date. Starting 30 days thereafter, the SEFT Defendants shall make equal monthly installment payments, in the amount of \$6,045.00. All installment payments include an additional amount for Interest on the unpaid balance calculated from the date of lodging of this Consent Judgment.

10. Payment shall be made in accordance with the instructions provided by the United States Attorney's Office for the Eastern District of New York at the time of entry of this Consent Judgment. Any funds received by the United States after 4:00 p.m. Eastern Standard Time shall be credited on the next business day. At the time of each payment, the SEFT Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-7-1-07464 and the civil action number of this case) to the United States in accordance with Section XIII of this Consent Judgment (Notices).

11. Financial Security. In order to ensure the proper and timely payment of the Settlement Amount (including Interest) to the United States, no later than 30 days after the Effective Date

of the Consent Judgment, Defendant 141-50 Union Turnpike LLC shall establish and maintain financial security, in the following manner:

a. Defendant 141-50 Union Turnpike LLC shall grant the United States a blanket collateral note and mortgage on so much of the property located at 141-50 Union Turnpike, Flushing, New York ("Mortgage") as is more particularly described on Appendix A.

b. Defendant 141-50 Union Turnpike LLC shall grant the United States a security interest in all personal property, assets, fixtures and equipment located at 141-50 Union Turnpike, Flushing, New York and shall file a Form UCC-1 Financing Statement covering such personal property, assets, fixtures and equipment as collateral ("Security Interest").

Upon payment in full of the Settlement Amount and upon written request of Defendant 141-50 Union Turnpike LLC, the United States will consent to the discharge and release of record of the Mortgage and the security interest reflected in the UCC-1 Financing Statement by filing and recording a satisfaction of the Mortgage and a release of the Security Interest by the filing of a UCC Termination Statement in each and every jurisdiction where the UCC-1 Financing Statement was filed.

12. The SEFT Defendants shall not deduct any penalty paid under this Consent Judgment pursuant to this Section or Section VII (Stipulated Penalties) in calculating their respective

federal income taxes.

V. COMPLIANCE REQUIREMENTS

13. The SEFT Defendants shall comply with all provisions of Sections 9001-9010 of the Act, 42 U.S.C. §§ 6991-6991m, and its implementing regulations, 40 C.F.R. Part 280, that are applicable to the USTs at the Union Turnpike Facility.

14. Compliance Requirements for the Union Turnpike Facility. The compliance requirements set forth in Paragraph 13 include, but are not limited to, the following:

a. Within 30 days of receipt, the SEFT Defendants shall provide complete and accurate written responses to any requests for documentation, testing and monitoring pursuant to 40 C.F.R. § 280.34 and section 9005 of Subtitle I of the Act.

b. Within 30 days of any new or replacement UST system being brought into use, the SEFT Defendants shall notify the NYSDEC or the designated state or local agency or department in accordance with 40 C.F.R. § 280.22 and provide EPA with a copy of such notification.

c. No later than thirty days from the Effective Date, the SEFT Defendants shall comply with the performance standards for new UST systems set forth at 40 C.F.R. § 280.20.

d. No later than 180 days from the Effective Date, for existing UST systems, the SEFT Defendants shall comply with upgrade requirements set forth at 40 C.F.R. § 280.21 or permanent closure

requirements set forth at 40 C.F.R. § 280.71.

e. The SEFT Defendants shall conduct a site assessment during permanent closure of any UST system pursuant to 40 C.F.R. § 280.72. If contaminated soils or groundwater, or free product as a liquid or vapor, is found, the SEFT Defendants shall report such release to the NYSDEC or the designated state or local agency or department in accordance with 40 C.F.R. § 280.50 and undertake corrective action in accordance with 40 C.F.R. § 280.72(b). The SEFT Defendants shall copy EPA on all correspondence with NYSDEC or the designated state or local agency or department related to any such release.

f. For any UST system that is temporarily closed, the SEFT Defendants must continue operation and maintenance of corrosion protection in accordance with 40 C.F.R. § 280.31. Release detection is also required unless the UST systems have been emptied in accordance with 40 C.F.R. § 280.70(a). Any UST system that has been temporarily closed for three months or more must comply with the requirements of 40 C.F.R. § 280.70(b). As set forth in 40 C.F.R. § 280.70(c), if a substandard UST system is temporarily closed for more than twelve months, the substandard UST system must be permanently closed in accordance with 40 C.F.R. §§ 280.71-74.

g. Prior to installing any cathodic protection pursuant to 40 C.F.R. § 280.21(b)(2) after the date of lodging of this

Consent Judgment, the SEFT Defendants shall assess the integrity of the UST system. Within 30 days of the integrity assessment, the SEFT Defendants shall follow the recommendations of the corrosion expert performing such integrity assessment. For any UST for which no integrity assessment was performed prior to adding cathodic protection, the SEFT Defendants shall conduct an integrity assessment within 60 days of the Effective Date or acquisition of the UST.

h. Upon installation or upgrade, any steel UST system installed or upgraded must be cathodically protected in accordance with 40 C.F.R. § 280.20(a)(2) or 40 C.F.R. § 280.21(b)(2).

i. Within ten years after any lining installation made pursuant to 40 C.F.R. § 280.21(b)(1), and every five years thereafter, the SEFT Defendants shall internally inspect the lined UST to ensure that the lined UST is structurally sound with the lining still performing in accordance with 40 C.F.R. § 280.21(b)(1)(ii). If the lining is found not to be structurally sound, the lining must be repaired or replaced in accordance with 40 C.F.R. § 280.33 within 30 days.

j. No later than thirty days from the Effective Date, the SEFT Defendants shall comply with general operating requirements set forth at 40 C.F.R. Part 280, Subpart C, including, but not limited to:

i. operation and maintenance of spill and overfill

control, as required by 40 C.F.R. § 280.30;

ii. operation and maintenance of corrosion protection, as required by 40 C.F.R. § 280.31. As set forth in 40 C.F.R. § 280.31(b)(1), the SEFT Defendants are required to test the cathodic protection system within six months of installation and every three years thereafter. As set forth in 40 C.F.R. § 280.31(c), if there is an impressed current rectifier system at any Facility, the SEFT Defendants are additionally required to inspect the system every sixty days to ensure that the equipment is running properly;

iii. repair requirements set forth at 40 C.F.R. § 280.33; and

iv. reporting and recordkeeping requirements set forth at 40 C.F.R. § 280.34.

k. No later than thirty days from the Effective Date, the SEFT Defendants shall comply with release detection requirements for tanks and piping set forth at 40 C.F.R., Part 280, Subpart D, including, but not limited to, the recordkeeping requirements set forth at 40 C.F.R. § 280.45. In the event of a suspected release or unusual operating condition (as defined in 40 C.F.R. § 280.50(b)), the SEFT Defendants shall follow the reporting procedures set forth in 40 C.F.R. § 280.50 for reporting to NYSDEC or the designated state or local agency or department, and take necessary release investigation, release confirmation, response

actions and/or corrective action, as required by 40 C.F.R. Part 280, Subparts E and F. If NYSDEC or the designated state or local agency or department determines that corrective action is required, then the SEFT Defendants shall work with NYSDEC or the designated state or local agency or department in designing and implementing a corrective action plan. The SEFT Defendants shall copy EPA on all correspondence with the NYSDEC or the designated state or local agency or department related to such suspected release or unusual operating condition.

1. No later than 30 days from the expiration of the financial responsibility mechanisms currently in effect, the SEFT Defendants shall comply with the financial responsibility requirements set forth at 40 C.F.R. Part 280, Subpart H, including, but not limited to, coverage for compensation of third parties for bodily injury. The SEFT Defendants shall also comply with these financial responsibility requirements no later than thirty days from the commencement of operation of any UST system(s) not included in the financial responsibility mechanism currently in effect.

m. Permits. Where any compliance obligation under this Consent Judgment requires the SEFT Defendants to obtain a federal, state, or local permit or approval, the SEFT Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The SEFT

Defendants may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Judgment for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the SEFT Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals. The SEFT Defendants must make any such request in writing, and include documentation of their timely efforts to obtain all such permits and approvals and any related correspondence from the permitting authority.

VI. REPORTING REQUIREMENTS

15. The SEFT Defendants shall be jointly and severally obligated to submit the reports set forth in this Section to EPA for the Union Turnpike Facility until the expiration of five years after the Effective Date or the termination of this Consent Judgment, whichever is later. If the SEFT Defendants learn that the documents required under this Consent Judgment have been sent to EPA by their tenant at the Union Turnpike Facility, then, instead of submitting a duplicate of the submission already made, they may submit a letter that references the tenant's submission and includes a description of the date and contents of the submission and any other evidence that the documents have been submitted. The preceding sentence shall not relieve the SEFT

Defendants of their obligation to ensure that the terms of the Consent Judgment pertaining to submission of documents are implemented. Thus, if the tenant at the Union Turnpike Facility did not make a proper and timely submission to the United States, then the SEFT Defendants shall be liable for stipulated penalties to the United States for the violation as set forth in Section VII (Stipulated Penalties) as of the date that the submission was due.

a. Records Required for any UST System Upgrade. The following documents must be submitted for any UST system upgrade:

i. Integrity assessment. The SEFT Defendants shall provide a copy of the integrity assessment report to EPA within 30 days of the performance of the integrity assessment. The SEFT Defendants shall provide documentation that they followed the recommendations of the corrosion expert within 30 days of implementation of such recommendations.

ii. Cathodic Protection. The SEFT Defendants shall provide copies of cathodic protection installation within 30 days of installation, and initial inspection and survey reports within ten days of such inspection and survey.

iii. Lining. The SEFT Defendants shall provide a copy of any lining installation report within 20 days of the installation.

iv. Spill and Overflow Prevention Equipment. If applicable, within ten days of installation, the SEFT

Defendants shall provide documentation that spill and overfill prevention equipment was installed pursuant to 280.20(c). If the SEFT Defendants believe that spill and overfill prevention equipment is not required, the SEFT Defendants shall provide a written explanation within ten days of such determination.

b. Records Required for any New UST System Installation.

The following records must be submitted for any new UST system installation:

i. The SEFT Defendants shall provide a certification of installation pursuant to 40 C.F.R. § 280.20(e) by no later than 20 days after installation.

ii. The SEFT Defendants shall provide a current State UST registration listing the new USTs consistent with 40 C.F.R. § 280.22 by no later than 20 days after installation.

c. Records Required for any UST System in Temporary Closure.

The following records must be submitted for any UST system in temporary closure:

i. The SEFT Defendants shall provide documentation that corrosion protection is being properly operated and maintained pursuant to 40 C.F.R. § 280.31 within ten days of temporary closure.

ii. The SEFT Defendants shall provide monthly release detection records as set forth in Paragraph 15(e) within ten days of temporary closure. If the UST system has been

emptied, release detection is not required and the SEFT Defendants shall provide documentation within ten days of compliance with 40 C.F.R. § 280.70(a).

iii. The SEFT Defendants shall provide documentation within ten days of compliance with 40 C.F.R. § 280.70(b).

d. Records Required for any UST System Undergoing Permanent Closure. The following records must be submitted for any UST system undergoing permanent closure:

i. The SEFT Defendants shall provide notice to the United States at least 15 days in advance of any scheduled UST closure or removal.

ii. A site assessment report shall be generated within 60 days of the completion of the required site assessment and a copy sent to EPA within ten days of its receipt by the SEFT Defendants.

iii. In the event of a finding of contaminated soils or groundwater, or free product as a liquid or vapor, the SEFT Defendants shall: (a) as required by Paragraph 14(e) and 14(k), report such release to NYSDEC or the designated state or local agency or department and undertake any response actions and/or corrective action overseen by NYSDEC or the designated state or local agency or department, (b) notify EPA in writing of the substance of such reporting, response actions and/or corrective action within ten days of taking any

such action(s), and (c) send simultaneous copies to EPA of all correspondence with NYSDEC or the designated state or local agency or department regarding such response actions and/or corrective action plan, including, but not limited to, letters, reports and plans submitted to NYSDEC or the designated state or local agency or department.

e. Records Required for Monthly and Annual Release Detection. The SEFT Defendants shall provide records to EPA of the release detection monitoring (including USTs and piping) for the Union Turnpike Facility. Where monthly or bi-monthly records are required to be provided, they shall be provided by the tenth of the following month. Where results of annual tests are required to be provided, they shall be provided no later than 30 days after the tests are performed:

i. Tank records.

(1) *For single-walled tanks:* Automatic Tank Gauging ("ATG"). The SEFT Defendants shall submit monthly release detection records demonstrating that each tank has passed a periodic test (0.2 gallon per hour leak test) for the previous calendar month.

(2) *For double-walled tanks:* Interstitial monitoring. The SEFT Defendants shall submit monthly release detection records demonstrating liquid status on interstitial sensors was "normal" for the previous

calendar month.

(3) *For both single-walled and double-walled tanks:*

In the event of a failed test or any reading other than "normal," the SEFT Defendants shall submit the printout indicating the test results and a written statement indicating what steps have and/or will be taken in response. Such statement shall include dates for work to be performed and documentation of such work, such as contracts or receipts. The SEFT Defendants shall also make any notification required by 40 C.F.R. § 280.50 as a result of a failed test or deviant sensor reading to the NYSDEC or the designated state or local agency or department and provide EPA with a copy of such notification.

ii. Pressurized piping records.

(1) *Line records:*

(a) The SEFT Defendants shall comply with one of the two following alternatives:

(i) The SEFT Defendants shall submit ATG printouts demonstrating liquid status on interstitial sensors was "normal" for the previous calendar month; or

(ii) The SEFT Defendants shall submit the results of an annual line tightness test consistent

with 40 C.F.R. § 280.44(b).

(2) *Line Leak Detector records:*

(a) Electronic line leak detectors: The SEFT Defendants shall submit ATG printouts demonstrating that line leak detection was operational and detecting leaks consistent with 40 C.F.R. § 280.44(a) for the previous calendar month.

(b) All line leak detectors: No later than 30 days after the Effective Date, the SEFT Defendants shall submit the results of the most recent annual test of the line leak detector conducted in accordance with the manufacturer's requirements. Such test results shall be provided thereafter on an annual basis.

(c) All pressurized piping: In the event of a failed test or any reading other than "normal," the SEFT Defendants shall submit the printout indicating the test results and a written statement indicating what steps have and/or will be taken in response. Such statement shall include dates for work to be performed and documentation of such work, such as contracts or receipts. The SEFT Defendants shall also make any notification required by 40 C.F.R. § 280.50 as a result of a failed test or deviant sensor reading to the NYSDEC or the designated state or local agency or department and

provide EPA with a copy of such notification.

iii. Suction Piping records.

(1) If the SEFT Defendants believe that no release detection is required for suction piping at any of their facilities, the SEFT Defendants shall provide documentation that the suction piping is designed and constructed to meet the standards set forth in 40 C.F.R. § 280.41(b)(2)(i) through (v).

(2) The SEFT Defendants shall comply with one of the two following alternatives:

(a) The SEFT Defendants shall submit a monthly release detection record demonstrating liquid status on double walled piping interstitial sensors was "normal" for the previous calendar month; or

(b) No later than 30 days after the Effective Date and every three years thereafter, the SEFT Defendants shall submit the results of a line tightness test in accordance with 40 C.F.R. § 280.44(b).

(3) All suction piping: In the event of a failed test or any reading other than "normal," the SEFT Defendants shall submit the printout indicating same and a written statement indicating what steps have and/or will be taken in response. Such statement shall include

dates for work to be performed and documentation of such work, such as contracts or receipts. The SEFT Defendants shall also make any notification required by 40 C.F.R. § 280.50 as a result of a failed test or deviant sensor reading to the NYSDEC or the designated state or local agency or department and provide EPA with a copy of such notification.

iv. Other Methods. For any leak detection method for tanks and piping not specifically listed above, the SEFT Defendants shall provide documentation demonstrating compliance with 40 C.F.R. Part 280, Subpart D.

f. Records Required for All Operating UST Systems. The following records must be submitted for all operating UST systems:

i. Cathodic Protection. The SEFT Defendants shall provide reports of cathodic protection system inspection and surveys, at least triennially, and reports of 60-day inspections of the impressed current rectifier system within ten days of such inspections and surveys.

ii. Lining. The SEFT Defendants shall provide a copy of any lining inspection report within 20 days of the inspection.

iii. Repairs. The SEFT Defendants shall provide copies of documentation of all UST system repairs, pursuant to 280.34(b)(3), and repairs to release detection equipment, pursuant to 280.45(c), respectively, within thirty days of the

repair. This includes, but is not limited to, repair or replacement of the lining in accordance with 40 C.F.R. § 280.33 and Paragraph 14(i) of this Consent Judgment.

iv. Alarms. The SEFT Defendants shall provide all information pertaining to known or suspected releases, within ten days of the incident, including, at a minimum, the following information: (a) all recorded alarms (false or otherwise) from release detection systems, from any of the UST systems, and (b) corrective actions taken with respect to any alarms or releases. This shall include any sampling analysis results and all NYSDEC or the designated state or local agency or department documentation, such as release notifications and correspondence with NYSDEC or the designated state or local agency or department.

v. Response Actions and/or Corrective Action. In addition to corresponding with the NYSDEC or the designated state or local agency or department in connection with response actions and/or corrective action overseen by NYSDEC or the designated state or local agency or department, the SEFT Defendants shall (a) notify EPA in writing of the substance of such response actions and/or corrective action within ten days of taking any such action(s), and (b) send simultaneous copies to EPA of all correspondence with NYSDEC or the designated state or local agency or department

regarding such response actions and/or corrective action plan, including, but not limited to, letters, reports and plans submitted to NYSDEC or the designated state or local agency or department.

vi. Financial Responsibility. No later than 30 days from the expiration date of the financial responsibility mechanism(s) currently in effect, the SEFT Defendants shall provide EPA with evidence of compliance with financial responsibility requirements, set forth at 40 C.F.R. Part 280, Subpart H, including, but not limited to, coverage for compensation of third parties for bodily injury. Such evidence shall be provided thereafter on an annual basis.

16. All submissions required by Paragraph 15 shall indicate the case name and case docket number and be sent only to:

U.S. Environmental Protection Agency, Region 2
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
290 Broadway
New York, New York 10007
Attention: Meghan La Reau, Environmental Scientist

17. Notification of Violation. If the SEFT Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Judgment, the SEFT Defendants shall notify the United States of such violation and its likely duration, in writing, within ten business days of the day the SEFT Defendants first become aware of the violation, with an explanation of the violation's likely cause and of all remedial measures taken, or to

be taken, to address such violation. Such notification to the United States shall be made pursuant to the Notice procedures set forth in Paragraph 60. If the cause of a violation cannot be fully explained at the time the report is due, the SEFT Defendants shall so state in the report. The SEFT Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day the SEFT Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the SEFT Defendants of their obligation to provide the notice required by Section VIII of this Consent Judgment (Force Majeure).

18. Notification of Immediate Threat. Whenever any violation of this Consent Judgment or any other event affecting the SEFT Defendants' performance under this Consent Judgment, or the performance of the USTs at any of their Facilities, may pose an immediate threat to the public health or welfare or the environment, the SEFT Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the SEFT Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

19. All reports or notifications required by this Consent Judgment shall be submitted to the persons designated in

Section XIII of this Consent Judgment (Notices), except as set forth in Paragraph 16.

20. Certification. An official of the SEFT Defendants shall submit the following certification for all documents and attachments submitted to EPA pursuant to this Consent Judgment:

I certify under penalty of law that the attached document(s) and attachments submitted to EPA herewith pursuant to this Consent Judgment were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify, based on my personal knowledge or on my inquiry of the person(s) directly responsible for gathering the information, that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

21. The reporting requirements of this Consent Judgment do not relieve the SEFT Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

VII. STIPULATED PENALTIES

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

24. Late Payment of Civil Penalty. If the SEFT Defendants fail to pay any civil penalty installment required to be paid under Section IV of this Consent Judgment (Civil Penalty) when due, the SEFT Defendants shall pay a stipulated penalty of \$1,000 per day for each day that any payment is late from the 1st day through the 14th day; \$1,500 per day for each day any payment is late from the 15th day through the 30th day; and \$2,000 per day for each day that any payment is late for the 31st day and beyond. Late payment of any civil penalty installment shall be made in accordance with Section IV, above. Stipulated Penalties shall be paid in accordance with Section VII, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Judgment, or for Stipulated Penalties for late payment, as applicable, and shall

include the identifying information set forth in Paragraph 10, above.

25. Compliance Milestones. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Paragraphs 13 and 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

26. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VI:

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

27. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Judgment.

28. The SEFT Defendants shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

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

30. Stipulated Penalties shall continue to accrue as provided in Paragraph 26, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

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

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

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

31. The SEFT Defendants shall pay stipulated penalties

owing to the United States in the manner set forth in Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall identify the violation(s) for which the stipulated penalties are being paid.

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

33. Subject to the provisions of Section XI of this Consent Judgment (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the United States for the SEFT Defendants' violation of this Consent Judgment or applicable law. Where a violation of this Consent Judgment is also a violation of the Act and its implementing regulations, the SEFT Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

34. For purposes of this Consent Judgment, "force majeure" is defined as any event arising from causes beyond the

control of the SEFT Defendants, their contractors, or any entity controlled by the SEFT Defendants that delays the performance of any obligation under this Consent Judgment despite the SEFT Defendants' best efforts to fulfill the obligation. The requirement that the SEFT Defendants use "best efforts" to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include (a) the SEFT Defendants' financial inability to perform any obligation under this Consent Judgment, or (b) the failure of any lessee, sublessee, or assignee under a lease or sublease, any entity controlled by any entity controlled by the lessee, sublessee, or assignee, or the lessee, sublessee, or assignee's contractors, to perform any obligations required under this Consent Judgment or the Act.

35. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, whether or not caused by a force majeure event, the SEFT Defendants shall provide notice by electronic or facsimile transmission as soon as possible, within 72 hours of when the SEFT Defendants first knew that the event might cause a delay. Within seven days thereafter, the SEFT Defendants shall also provide in writing, as

provided in Section XIII of this Consent Judgment (Notices), an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures taken or to be taken to prevent or minimize the delay; the SEFT Defendants' rationale for attributing any delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the SEFT Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The SEFT Defendants shall include with any notice documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the SEFT Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The SEFT Defendants shall be deemed to know of any circumstances of which the SEFT Defendants, any entity controlled by the SEFT Defendants, or the SEFT Defendants' contractors, knew or should have known.

36. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Judgment that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time

for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify the SEFT Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

38. If the SEFT Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, the SEFT Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the SEFT Defendants complied with the requirements of Paragraphs 33 and 34 of the Consent Judgment. If the SEFT Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the SEFT Defendants of the affected obligation of this Consent Judgment identified to EPA and the Court.

IX. DISPUTE RESOLUTION

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

40. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Judgment shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the SEFT Defendants send the United States a written Notice of Dispute, in accordance with Section XIII (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises (i.e., the date of the SEFT Defendants' written Notice of Dispute to the United States), unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the SEFT Defendants invoke formal dispute resolution procedures as set forth below.

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

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

43. The SEFT Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Judgment (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The

motion shall contain a written statement of the SEFT Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Judgment.

44. The United States shall respond to the SEFT Defendants' motion within the time period allowed by the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Rules"). The SEFT Defendants may file a reply memorandum, to the extent permitted by the Court and the Local Rules.

45. Standard of Review

a. Disputes Concerning Matters Accorded Record Review.

Except as otherwise provided in this Consent Judgment, in any dispute brought under Paragraph 40 pertaining to performance of a compliance or reporting obligation, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the SEFT Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Judgment, in any other dispute brought under Paragraph 40, the SEFT Defendants shall bear the burden of demonstrating that

their position complies with this Consent Judgment, the Act and its implementing regulations, and that the SEFT Defendants are entitled to relief under applicable law.

46. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the SEFT Defendants under this Consent Judgment, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. If the SEFT Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

47. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Union Turnpike Facility, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Judgment;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Judgment;

c. obtain samples and, upon request, splits of any samples taken by the SEFT Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess the SEFT Defendants' compliance with this Consent Judgment.

48. Upon request, the SEFT Defendants shall provide EPA or its authorized representatives splits of any samples taken by the SEFT Defendants. Upon request, EPA shall provide the SEFT Defendants splits of any samples taken by EPA.

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

documents, records, or other information required to be maintained under this Paragraph.

50. At the conclusion of the information-retention period provided in the preceding Paragraph, the SEFT Defendants shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph, and, upon request by the United States, the SEFT Defendants shall deliver any such documents, records, or other information to EPA. The SEFT Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the SEFT Defendants assert such a privilege, they shall provide 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 each 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 by the SEFT Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

51. The SEFT Defendants may also assert that information required to be provided under this Section is protected as

Confidential Business Information ("CBI") under 40 C.F.R., Part 2. As to any information that the SEFT Defendants seek to protect as CBI, the SEFT Defendants shall follow the procedures set forth in 40 C.F.R. Part 2, including, but not limited to, providing sufficient documentation to satisfy the requirements of 40 C.F.R. § 2.204(e)(4). Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B.

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

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

53. Except as specifically provided in this Section XI (Effect of Settlement/Reservation of Rights), this Consent Judgment resolves the civil claims of the United States against the SEFT Defendants for the violations alleged in the Amended Complaint filed in this action through the date of lodging of this Consent Judgment. This release shall take effect upon receipt by EPA of all amounts required by Section IV (Civil Penalty) and any amount due under Section VII (Stipulated Penalties). This release is

conditioned upon the satisfactory performance by the SEFT Defendants of their obligations under this Consent Judgment. This release extends only to the SEFT Defendants and does not extend to any other person.

54. This Consent Judgment shall not relieve the SEFT Defendants of their obligation to comply with all applicable provisions of Federal, State or local law, and with any order of the Court.

55. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Judgment, except as expressly stated herein. This Consent Judgment shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Union Turnpike Facility, whether related to the violations addressed in this Consent Judgment or otherwise.

56. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, and/or other appropriate relief relating to the Union Turnpike Facility, the SEFT Defendants shall not assert, and

may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 52, above.

57. This Consent Judgment is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The SEFT Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the SEFT Defendants' compliance with this Consent Judgment shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Judgment, warrant or aver in any manner that the SEFT Defendants' compliance with any aspect of this Consent Judgment will result in compliance with provisions of the Act, 42 U.S.C. § 6991, or with any other provisions of federal, State, or local laws, regulations, or permits.

58. This Consent Judgment does not limit or affect the rights of the SEFT Defendants or of the United States against any third parties, not party to this Consent Judgment, nor does it limit the rights of third parties, not party to this Consent

Judgment, against the SEFT Defendants, except as otherwise provided by law.

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

XII. COSTS

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

XIII. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-7-1-07464

Sandra L. Levy
Assistant U.S. Attorney
U.S. Attorney's Office
Eastern District of New York

271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
Re: USAO No. 2001V01130

To EPA:

Naomi P. Shapiro
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, WTS Branch
290 Broadway
New York, New York 10007

To the SEFT Defendants:

David Rosenberg, Esq.
Cally Schickler, Esq.
Rosenberg & Fortuna, LLP
666 Old Country Road
Garden City, NY 11530

Jane Perlow
3720 South Ocean Boulevard
Highland Beach, FL 33487

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

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

64. Notices of payment submitted pursuant to this Section shall state whether the payment is for a regular monthly installment payment of the Settlement Amount, late payment of a monthly installment payment of the Settlement Amount, for interest, or for stipulated penalties.

XIV. EFFECTIVE DATE

65. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court or a motion to enter the Consent Judgment is granted, whichever occurs first.

XV. RETENTION OF JURISDICTION

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

XVI. MODIFICATION

67. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only upon approval by the Court.

68. Any disputes concerning modification of this Consent Judgment shall be resolved pursuant to Section IX of this Consent Judgment (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 44 of this Consent Judgment, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in

accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

69. After the SEFT Defendants have satisfactorily complied with the payment, compliance and reporting requirements of Sections IV, V and VI of this Consent Judgment, for the period of five years set forth herein, and have paid any accrued stipulated penalties as required by Section VII of this Consent Judgment, the SEFT Defendants may serve upon the United States a Request for Termination, stating that the SEFT Defendants have satisfied those requirements, together with all necessary supporting documentation.

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

71. If the United States does not agree that the Consent Judgment may be terminated, the SEFT Defendants may invoke Dispute Resolution under Section IX of this Consent Judgment. However, the SEFT Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 40, until 30 days after

service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

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

XIX. SIGNATORIES/SERVICE

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

74. This Consent Judgment may be signed in counterparts, and its validity shall not be challenged on that basis.

75. The SEFT Defendants agree to accept service of

process by mail with respect to all matters arising under or relating to this Consent Judgment with courtesy copies to parties referred to in Paragraph 60 with respect to the SEFT Defendants and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

76. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Judgment and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Judgment or the settlement it represents, nor shall it be used in

construing the terms of this Consent Judgment.

XXI. FINAL JUDGMENT

77. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a final judgment of the Court as to the United States and the SEFT Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this ____ day of _____, 2009.

THE HONORABLE CAROL BAGLEY AMON
United States District Judge
Eastern District of New York

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: Washington, D.C.
Dec 23, 2008

RONALD TENPAS
Assistant Attorney General
Environment and Natural
Resources Division
United States Department of Justice

Dated: Brooklyn, N.Y.
Dec 23, 2008

BENTON J. CAMPBELL
United States Attorney
Eastern District of New York
Attorney for Plaintiff
271 Cadman Plaza East, 7th Floor
Brooklyn, New York. 11201

By:

SANDRA L. LEVY (SL-9874)
Assistant U.S. Attorney
(718) 254-6014

Dated: New York, N.Y.
12/23, 2008

ERIC SCHAAP
Regional Counsel, Region 2
U.S. Environmental Protection
Agency

FOR ALL SEFT DEFENDANTS:

Dated: Garden City, New York
July 2, 2008

ROSENBERG, FORTUNA & LAITMAN, LLP
Attorneys for SEFT Defendants
666 Old Country Road
Garden City, New York 11530

By: _____
CALLY SCHICKLER (CS-6566)

FOR SIDNEY ESIKOFF FAMILY TRUST

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. Citygas Corporation, et al., Civil Action No. CV-03-6374 (E.D.N.Y.):

Dated: 6/3, 2008

JANE PERLOW, Trustee, Sidney Esikoff Family Trust

Before me this 3rd day of June, 2008 came JANE PERLOW to me known, who by me duly sworn, did depose and say that deponent is Trustee of the Sidney Esikoff Family Trust described herein, that deponent is duly authorized to execute this CONSENT JUDGMENT on behalf of the Sidney Esikoff Family Trust, and that she is executing this CONSENT JUDGMENT on behalf of that trust.

NOTARY PUBLIC



FOR 141-50 UNION TURNPIKE LLC, 83-10 ASTORIA BOULEVARD LLC, AND
2800 BRUCKNER BOULEVARD LLC:

THE UNDERSIGNED PARTY enters into this Consent Judgment in the
matter of United States of America v. Citygas Corporation, et al.,
Civil Action No. CV-03-6374 (E.D.N.Y.):

Dated: 6/3, 2008

Jane Perlow
JANE PERLOW, Managing Member, 141-50
Union Turnpike LLC, 83-10 Astoria
Boulevard LLC, and 2800 Bruckner
Boulevard LLC

Before me this 3rd day of June, 2008 came JANE PERLOW to me
known, who by me duly sworn, did depose and say that deponent is
managing member of 141-50 Union Turnpike LLC, 83-10 Astoria
Boulevard LLC, and 2800 Bruckner Boulevard LLC described herein,
that deponent is duly authorized to execute this CONSENT JUDGMENT
on behalf of the corporations, and that she is executing this
CONSENT JUDGMENT on behalf of those corporations.

Jane P. Dillon
NOTARY PUBLIC

