

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of the

Complaint of Montauk Oil
Transportation Corp., as Owner
of the Barge "CIBRO SAVANNAH,"

Plaintiff and Third
Party Plaintiff,

For Exoneration from or
Limitation of Liability

against

The Steamship Mutual
Underwriting Association (Bermuda)
Limited,

Third Party
Defendant.

-----X

CONSENT DECREE

WHEREAS, the parties to this Consent Decree agree that settlement of the claims in this case against Montauk Oil Transportation Corp., as Owner of the Barge CIBRO SAVANNAH ("Montauk") and certain shareholders of Montauk who are signatory to this Decree ("Settling Shareholders"), Bouchard Transportation Co., Inc. ("Bouchard") and Northeast Petroleum, Division of

Cargill, Inc. ("Northeast") is in the public interest and that entry of this Consent Decree is the most appropriate means to resolve the matters covered herein;

WHEREAS, a spill of No. 2 fuel oil occurred from the Barge CIBRO SAVANNAH on or about March 6, 1990 as a result of an explosion and fire on the Barge("Spill");

WHEREAS, No. 2 fuel oil from the spill entered into the waters of the State of New Jersey and the State of New York and reached the shorelines of, and property owned by, the United States, the States of New York and New Jersey, and the City of New York;

WHEREAS, the United States, the State of New Jersey, and the State of New York are trustees for certain natural resources damaged by the spill;

WHEREAS, the United States, the State of New York, the State of New Jersey, the City of New York, and the City of Elizabeth (hereinafter jointly referred to as the "Governments") filed their respective separate claims in this action alleging that Montauk is responsible for the Spill and liable for all natural resource damages, response and assessment costs, and penalties;

WHEREAS, the State of New Jersey has filed claims against Bouchard and Northeast under New Jersey statutory and common law; and

WHEREAS, the Governments, Montauk, Bouchard and Northeast have consented to the entry of this Consent Decree as a final judgement without trial or adjudication of any issue of fact or law herein and without this Consent Decree constituting an admission of liability or fault on the part of any party hereto;

NOW THEREFORE, it is hereby Ordered, Adjudged and Decreed, and agreed among the parties:

I. JURISDICTION

This Court has jurisdiction over the subject matter and over the parties to this action pursuant to 28 U.S.C. Sections 1331, 1332, 1345, 1367 and 33 U.S.C. Sections 1319 and 1321. This Court also has jurisdiction over the subject matter of the pendent state law claims in this action. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b) and (c).

II. DEFINITIONS

"Bouchard" shall mean Bouchard Transportation, Inc., its officers directors, employees, assigns, insurers, underwriters, affiliates, parent and subsidiary corporations.

"City of New York" shall mean the City of New York including the Department of Parks and Recreation, Sanitation, and Environmental Protection and Police.

"Montauk" shall mean Montauk Oil Transportation Corporation, as owner of the CIBRO SAVANNAH, its officers, directors, employees her operators and managers, assigns, insurers, underwriters, affiliates, parent and subsidiary corporations.

"Natural resources" shall have the meaning provided in Section 101(16) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601(16).

"Northeast" shall mean Northeast Petroleum, a Division of Cargill, Incorporated, its officers directors, employees, assigns, insurers, underwriters, affiliates, parent and subsidiary corporations.

"Response and assessment costs" shall mean costs incurred for cleanup, removal, and monitoring of the Spill and assessment of natural resource injury and damages resulting from the Spill as defined by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., ("FWPCA") and as amended by CERCLA, 42 U.S.C. §§ 9601 et seq., and under other law and regulation including the study of both the short-term and long-term effects of oil upon

the natural resources, and damages to the natural resources owned, controlled, managed by, held in trust by, appertaining to, or otherwise controlled, by the Governments; costs incurred in the cleanup and removal of the Spill and direct and indirect damages arising out of the Spill pursuant to § 181(1) of the New York State Navigation law; and emergency response costs incurred in response to the Spill pursuant to New York City Administrative Code § 24-604.

"State of New Jersey" shall mean the State of New Jersey and Robert C. Schinn, Jr., Commissioner of the Department of Environmental Protection and Energy.

"State of New York" shall mean the State of New York and John P. Cahill, Commissioner of the New York State Department of Environmental Conservation.

"United States" shall mean the United States of America, including the Department of Commerce through the National Oceanic and Atmospheric Administration.

III. TOTAL SUM TO BE PAID AS NATURAL RESOURCE DAMAGES,
AND ASSESSMENT COSTS, PENALTIES AND DAMAGES

(A) Within 30 days after entry of this Consent Decree as an Order of the Court, Montauk and Settling Shareholders shall pay

to the Governments the sum of \$500,000 in compensation for response and assessment costs, natural resource damages, and penalties which shall be paid as set forth in Paragraphs IX(A), X(A) - (D), and XI.

(B) Within 30 days after entry of this Consent Decree as an Order of the Court, Bouchard shall pay to the State of New Jersey the sum of \$50,000 in compensation for natural resource damages which shall be paid as set forth in Paragraph IX(B).

(C) Within 15 days after entry of this Consent Decree as an Order of the Court, Bouchard shall pay to Northeast the sum of \$75,000 which shall represent full and final settlement of all claims between and among Northeast and Bouchard with respect to this litigation. Payment shall be made as required by Paragraph X(E).

IV. PUBLIC COMMENT

This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. Until such time as this Consent Decree is entered as an Order of the Court, the United States, in consultation with the other Governments, reserves the right to withdraw its consent to this Consent Decree

if comments received disclose facts or considerations which indicate that the Consent Decree is not in the public interest. Montauk, Settling Shareholders, Bouchard, and Northeast consent to the entry of this Consent Decree without further notice and may not withdraw from this Consent Decree once signed by their authorized representative(s) unless otherwise agreed by each of the Governments.

V. PARTIES BOUND

This Consent Decree shall apply to and be binding upon and inure to the benefit of the Governments, Montauk, Settling Shareholders, Bouchard, Northeast, and their present and former officers, directors, employees and agents.

VI. ENFORCEABLE JUDGMENT

Upon entry of this Consent Decree as an Order of the Court, the judgment against Montauk in the amount of \$1,350,086.56 shall be an enforceable judgment for the purposes of post-judgment collection of any unpaid amount due, as set forth in Paragraph VII(D), in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable statutory authority, without further order from this Court. Judgment is hereby entered in the

amount of \$1,350,086.56 against Montauk in favor of the United States, the State of New York, the State of New Jersey, and the City of New York, effective upon entry of this Consent Decree as an Order of the Court.

VII. DISMISSAL OF ACTIONS WITH PREJUDICE AND RELEASE OF CLAIMS

Upon entry of this Consent Decree as an Order of the Court:

(A) the Consent Decree shall become effective and constitute a final judgment between and among the Governments and Montauk, Settling Shareholders, Bouchard, and Northeast for natural resources damages, response and assessment costs, damages, indemnity claims, penalties, attorneys' fees, and litigation expenses as to any matter arising out of the Spill;

(B) except as otherwise provided in this paragraph VII, the Consent Decree shall constitute a release and a dismissal with prejudice, but without costs to any party, of all claims, arising from or related to the Spill, among and between Montauk, Settling Shareholders, Bouchard and Northeast;

(C) Montauk, Settling Shareholders, Bouchard, and Northeast each release the Governments, their agencies, employees and agents from any and all claims whether legal, equitable, statutory or in admiralty, including without limitation any and

all claims under common law, that arise out of, or are based on any matter relating to the Spill;

(D) effective upon payment of the sums required by this Consent Decree, as set forth in Paragraph III(A), the Governments release Settling Shareholders from all civil claims by the Governments, arising from or relating to the Spill, whether legal, equitable, statutory, or in admiralty, including all civil claims under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the New York Navigation Law, New York State Environmental Conservation Law, the New York City Administrative Code § 24-604, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. all implementing regulations, and common law, that are alleged in the Complaints and/or Claims of the Governments in this action. Nothing herein shall release any non-settling shareholder/distributees of Montauk assets from liability for satisfaction of the unsatisfied portion of the judgment in this Consent Decree. The unsatisfied portion of the judgment for the non-settling shareholders shall equal the non-settling shareholders estimated 20% share of Montauk stock

ownership multiplied by the judgment amount of \$1,350,086.56, equaling \$270,017.31;

(E) effective upon payment of the sum required by this Consent Decree, as set forth in Paragraph III(B), the Governments release Bouchard and Northeast from all civil claims by the Governments, arising from or relating to the Spill, whether legal, equitable, statutory, or in admiralty, including all civil claims under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the New York Navigation Law, New York State Environmental Conservation Law, the New York City Administrative Code § 24-604, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, the New Jersey Water Pollution Control Act, N.J.S.A 58:10A-1 et seq., all implementing regulations, and common law, that are alleged in the Complaints and/or Claims of the Governments in this action; and

(F) effective upon payment of the sum required by this Consent Decree, as set forth in Paragraph III(C), Northeast and Bouchard mutually release each other from all claims arising from or relating to the Spill.

VIII. NO ADMISSION OF LIABILITY AND RESERVATION BY MONTAUK,
BOUCHARD AND NORTHEAST

This Consent Decree does not constitute any evidence against or an admission of liability by Montauk, Settling Shareholders, Bouchard or Northeast and is without prejudice to their right to make any claim or file any cause of action against a person not a party to this Consent Decree.

IX. PAYMENT OF NATURAL RESOURCE DAMAGES

A. Montauk shall make payment of natural resource damages in the amount of \$ 278,940. A first partial payment of \$ 190,000 shall be made by bank check or check drawn on an attorney's escrow account made payable to "Treasurer, State of New Jersey." The payment shall be sent to:

Robert J. Genatt
Deputy Attorney General
Division of Law, Environmental
Enforcement Section
Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, New Jersey 08625

A second partial payment of natural resource damages by Montauk of \$ 88,940 shall be made by bank check or check drawn on an attorney's escrow account made payable to "State of New York." The payment shall be sent to:

Gordon J. Johnson
Deputy Bureau Chief
New York State Dept. of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271

B. Bouchard shall make payment of natural resource damages in the amount of \$50,000 by bank check or check drawn on an attorney's escrow account made payable to "Treasurer, State of New Jersey." The payment shall be sent to:

Robert J. Genatt
Deputy Attorney General
Division of Law, Environmental
Enforcement Section
Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, New Jersey 08625

C. The natural resource damage recoveries and damage assessment and response cost recoveries shall be distributed among the Trustee Governments in accordance with the Memorandum of Agreement dated January 13, 1999, and attached hereto.

X. PAYMENT OF RESPONSE AND DAMAGE ASSESSMENT COSTS

(A) Payment of response and assessment costs by Montauk in the amount of \$ 56,630 shall be made by bank check or check drawn on an attorney's escrow account made payable to the "Treasurer of the United States." The check shall indicate that it is a

payment of response and assessment costs pursuant to the Consent Decree in 90 Civ. 5702 (KMW). The payment shall be sent to the United States Attorney for the Southern District of New York at the following address:

United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, New York 10007

Montauk shall send copies of the transmittal letter and check to NOAA and the United States Department of Justice at the following addresses:

Marguerite Matera
Office of General Counsel
National Oceanic and Atmospheric
Administration, Northeast Region
One Blackburn Drive, 2d Floor
Gloucester, Massachusetts 01930

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

(B) Payment of response and assessment costs by Montauk in the amount of \$ 6,550 shall be made by bank check or check drawn on an attorney's escrow account made payable to "State of New York". The check shall indicate that it is a payment of response

and assessment costs pursuant to the Consent Decree in 90 Civ.

5702 (KMW). The payment shall be sent to:

Gordon J. Johnson
Deputy Bureau Chief
New York State Dept. of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271

(C) Payment of response and assessment costs by Montauk in the amount of \$ 10,000 shall be made by bank check or check drawn on an attorney's escrow account made payable to "Treasurer, State of New Jersey". The check shall indicate that it is a payment of response and assessment costs pursuant to the Consent Decree in 90 Civ. 5702 (KMW). The payment shall be sent to:

Robert J. Genatt
Deputy Attorney General
Division of Law, Environmental
Enforcement Section
Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, New Jersey 08625

(D) Payment of response and assessment costs by Montauk in the amount of \$ 122,880 shall be made by bank check or check drawn on an attorney's escrow account made payable to "City of New York". The check shall indicate that it is a payment of

response and assessment costs pursuant to the Consent Decree in 90 Civ. 5702 (KMW). The payment shall be sent to:

Marjorie Fox
Assistant Corporation Counsel
Environmental Law Division
New York City Law Department
100 Church Street
New York, New York 10007

(E) Payment of damages by Bouchard in the amount of \$75,000 shall be made by bank check or check drawn on an attorney's escrow account made payable to "Cargill, Incorporated". The check shall indicate that it is a payment of claims pursuant to the Consent Decree in 90 Civ. 5702 (KMW). The payment shall be sent to:

Cargill, Incorporated
72 Cherry Hill Drive
P.O. Box 1090
Beverly, MA 01915-0790

Attention: Kristin Seela

XI. PAYMENTS FOR PENALTIES

Payment of penalties in the amount of \$ 25,000 in satisfaction of violations of the FWPCA, shall be made by bank check or check drawn on an attorney's escrow account made out to "Treasurer of the United States." This check shall be accompanied by a letter referring to the name, caption, and court

index number of this case, and shall be sent to the United States Attorney for the Southern District of New York at the following address:

United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, New York 10007

XII. PENALTIES FOR LATE PAYMENTS

(A) If any payment required of Montauk and Settling Shareholders under this Consent Decree is not made within 30 days after notification of entry thereof, Montauk and each of the Settling Shareholders, shall be jointly and severally obligated to pay a stipulated penalty of \$2,000.00 per day until full payment is made.

(B) If any payment required of Bouchard under this Consent Decree is not made within 30 days after notification of entry thereof, Bouchard shall be obligated to pay a stipulated penalty of \$2,000.00 per day until full payment is made.

XIII. OTHER CONDITIONS OF SETTLEMENT

(A) Montauk and each of the Settling Shareholders certifies that the following representations made to the Governments regarding the distribution of Montauk's assets are true and

accurate to the best of their knowledge: (1) the undersigned Settling Shareholders represent that jointly they own legally or beneficially no more than 80% of the outstanding shares of Montauk; (2) that shareholder distributions of the assets of Montauk after March 6, 1990 to the date of this Consent Decree have been made to all shareholders based on each shareholder's respective percentage ownership of stock in Montauk; (3) that the distribution of Montauk assets to all shareholders after March 6, 1990 is greater than \$1.35 million.

(B) If it is determined by the Governments, after entry of this Consent Decree as an Order of the Court, that the foregoing representations in Paragraph XIII(A) are materially untrue, all provisions of this Consent Decree shall remain effective except that Paragraph VII, subparagraph D shall be null and void, and subparagraph B as to Montauk only, shall be null and void, upon written notice to Montauk and Settling Shareholders by the Governments that the representations are materially untrue; and the Governments may pursue Montauk and Settling Shareholders for all claims and potential claims arising from the Spill as if the Spill occurred at the time of notice pursuant to this Paragraph to Montauk by the Governments. Notice pursuant to this Paragraph

to Montauk and Settling Shareholders shall be satisfied by written notice to the undersigned Counsel for Montauk or designated successor.

XIV. DISCOVERY

The Governments shall be entitled to full disclosure of all corporate documents of Montauk at the time of entry of this Consent Decree as an Order of the Court. The Governments are entitled to use such documents in aid of judgment or execution. All such documents shall be retained and made accessible to the Governments for review and copying upon reasonable notice to Montauk until such time as the Governments advise Montauk that such documents are no longer needed or until such time as the judgment against Montauk is fully satisfied. Unless otherwise required by law, the Governments will maintain the confidentiality of all documents and information obtained from Montauk except such documents and information may be disclosed if necessary to further any lawful governmental purpose.

XV. RIGHTS AND DEFENSES OF NON-SETTLORS

The terms of this Consent Decree are without prejudice to the rights and defenses of any non-settling shareholder of

Montauk, and any defenses that may exist are preserved as to such shareholders.

XVI. REPRESENTATIONS

Each undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized to enter into this Consent Decree and to execute and legally bind such party to this Consent Decree.

XVII. COUNTERPARTS

This Consent Decree may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

ORDERED that this Consent Decree and Judgment are entered this ____ day of _____, 199__.

United States District Judge
Southern District of New York

[Second signature page of 23 signature pages for Consent Decree
in the matter of Montauk Oil Transportation]

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

DATE: 1/2/99



Craig O'Connor
Deputy General Counsel

[First signature page of ²³22 signature pages for Consent Decree in the matter of Montauk Oil Transportation]

FOR THE UNITED STATES OF AMERICA:

Joel M. Gross, Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

DATE: 1/5/99

By: 

Richard H. Boote
Senior Attorney
Environmental Enforcement Section

[Third signature page of 23 signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

FOR THE STATE OF NEW YORK:

Eliot Spitzer
Attorney General

DATE: 1/4/09

By: 

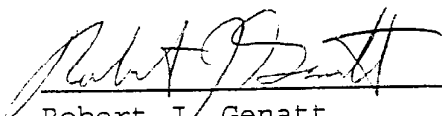
Gordon J. Johnson
Deputy Bureau Chief
Environmental Protection Bureau
New York State Department of Law

[Fourth signature page of 27³ signature pages for Consent Decree ¹⁷²
in the matter of Montauk Oil Transportation]

FOR THE STATE OF NEW JERSEY:

PETER VERNIERO
Attorney General

DATE: 4/13/99

By: 
Robert J. Genatt
Deputy Attorney General

[Fifth signature page of 22 signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

FOR THE CITY OF NEW YORK:

Michael D. Hess
Corporation Counsel

DATE: 12/21/98

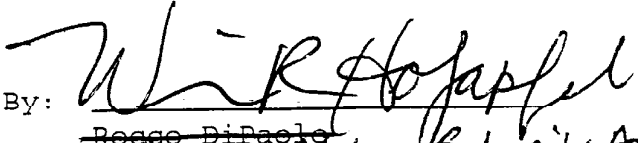
By: Marjorie Fox
Marjorie Fox
Assistant Corporation Counsel
Environmental Law Division

[Sixth signature page of 22 signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

FOR THE CITY OF ELIZABETH, NEW JERSEY:

DATE: January 15, 1999

By:


~~Recco DiPaolo~~
William R. Helzapfel, City Attorney
Law Department
City of Elizabeth

[Seventh signature page of 22 signature pages for Consent Decree in the matter of
Montauk Oil Transportation]

FOR NORTHEAST PETROLEUM

Date: November 19, 1998

By: Gary W. Jarrett
Gary W. Jarrett
President

By: Kelly A. Schreurs
Kelly A. Schreurs
Financial Manager

[Eighth signature page of 22 signature pages for Consent Decree
in the matter of Montauk Oil Transportation]

FOR BOUCHARD TRANSPORTATION

DATE:

12/21/95

BY:

Robert J. Bouchard

23

[Ninth signature page of ~~22~~ signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

FOR MONTAUK OIL TRANSPORTATION:


DATE: 12/17/98

By: William F. Loquadro
William F. Loquadro, Esq.

[Tenth signature page of ²³~~22~~ signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

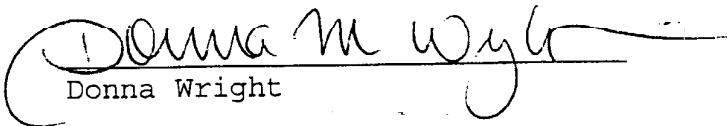
DATE: 11/23/98


Nicholas W. Cirillo

[Eleventh signature page of ²³~~22~~ signature pages for Consent Decree
in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/15/98


Donna Wright

[Twelfth signature page of ²³~~22~~ signature pages for Consent Decree
in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: _____



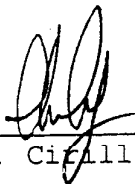
Paul C. Cirillo

23

[Thirteenth signature page of ~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/20/98



Nicholas W. Cirillo, Jr.

23

[Fourteenth signature page of ~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/14/98

William V. Cirillo
William V. Cirillo

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[Fifteenth signature page of ~~28~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/10/98

John Cirillo
John Cirillo

Sixteenth signature page of ²³~~22~~ signature pages for Consent Decree
in the matter of Montauk Oil Transportation

MONTAUK SHAREHOLDER

DATE: _____

Jennifer Cirillo
Jennifer Cirillo

[Seventeenth signature page of ²³~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/9/98

Anne Marie Cirillo
Anne Marie Cirillo

[Eighteenth signature page of ²³~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/10/98

William V. Cirillo


William V. Cirillo
Co-executor for Estate of Angelina Cirillo

23

[Nineteenth signature page of ~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/10/98



John Cirillo
Co-executor for Estate of Angelina Cirillo

{Twentieth signature page of ²³~~22~~ signature pages for Consent
Decree in the matter of Montauk Oil Transportation}

MONTAUK SHAREHOLDER

DATE: 11/13/98

Nancy Cirillo
Nancy Cirillo

[Twenty-first signature page of ²³~~22~~ signature pages for Consent Decree in the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/13/98

Patricia N. Cirillo
Patricia Cirillo

[Twenty-second page of ²³~~22~~ signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

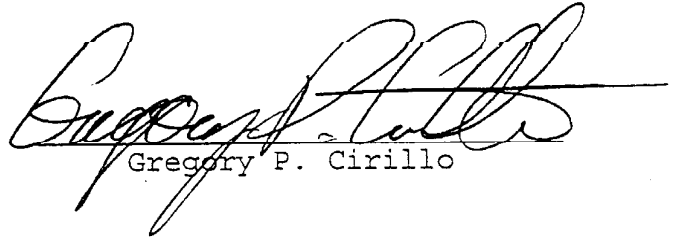
DATE: 12/2/98

Joan Cirillo
Joan Cirillo

[Twenty-third page of 23 signature pages for Consent Decree in
the matter of Montauk Oil Transportation]

MONTAUK SHAREHOLDER

DATE: 11/20/98



Gregory P. Cirillo