

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CIVIL ACTION NO.
)
v.) 1:12cv1097
) 1:12cv1099
)
CABOT CORPORATION; DETREX)
CORPORATION; ELKEM METALS COMPANY)
L.P.; THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY; GENCORP INC.;)
MALLINCKRODT.'NNE; MILLENNIUM "*****"+)
INORGANIC CHEMICALS INC.; OCCIDENTAL)
CHEMICAL CORPORATION; OHIO POWER)
COMPANY; OLIN CORPORATION; RMI)
TITANIUM COMPANY, INC.; THE)
SHERWIN-WILLIAMS COMPANY; UNION)
CARBIDE CORPORATION; CBS OPERATIONS)
INC.; NORFOLK SOUTHERN RAILWAY)
COMPANY; NORFOLK SOUTHERN)
CORPORATION; CONRAIL INC.;)
and CONSOLIDATED RAIL CORPORATION,)
Defendants.)

STATE OF OHIO, ex rel. Michael DeWine,)
Ohio Attorney General,)
Plaintiff,) CIVIL ACTION NO.
v.)
CABOT CORPORATION; DETREX)
CORPORATION; ELKEM METALS COMPANY)
L.P.; THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY; GENCORP INC.;)
MALLINCKRODT.'NNE; MILLENNIUM "*****"+)
INORGANIC CHEMICALS INC.; OCCIDENTAL)
CHEMICAL CORPORATION; OHIO POWER)
COMPANY; OLIN CORPORATION; RMI)
TITANIUM COMPANY, INC.; THE)
SHERWIN-WILLIAMS COMPANY;)

UNION CARBIDE CORPORATION; CBS)
OPERATIONS INC.; NORFOLK SOUTHERN)
RAILWAY COMPANY; NORFOLK)
SOUTHERN CORPORATION; CONRAIL INC.;)
CONSOLIDATED RAIL CORPORATION;)
UNITED STATES GENERAL SERVICES)
ADMINISTRATION; UNITED STATES)
DEPARTMENT OF ENERGY; UNITED)
STATES DEPARTMENT OF THE NAVY; and)
UNITED STATES MARITIME)
ADMINISTRATION,)
)
)
Defendants.)
_____)

**CONSENT DECREE
REGARDING ASHTABULA RIVER AREA NATURAL RESOURCE DAMAGES**

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I. BACKGROUND

A. The United States of America (the “United States”) on behalf of the Secretary of the United States Department of the Interior (“DOI”) and the Secretary of the United States Department of Commerce (“Commerce”) (acting through the National Oceanic and Atmospheric Administration (“NOAA”)), and the State of Ohio (the “State”), by and through the Attorney General of Ohio, on behalf of the people of Ohio, and at the request of the Ohio Environmental Protection Agency (“Ohio EPA”) (collectively the “Plaintiffs”), filed Complaints asserting claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, and Section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321, commonly known as the Clean Water Act (“CWA”), seeking damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by, or appertaining to the United States or the State, resulting from releases of hazardous substances into or which have migrated into the Ashtabula River Area, including the costs of assessing such injury, destruction, or loss.

B. The Complaints filed by Plaintiffs herein allege that natural resources, including but not limited to, fish, invertebrates, birds, water and sediments, have been injured and that the public has suffered the loss of natural resource services, including lost recreational fishing, reduced opportunities for navigation, and passive human use losses, as a result of releases of hazardous substances to the Ashtabula River Area from various facilities in Ashtabula, Ohio. The Complaints also allege that Plaintiffs have incurred costs in connection with the assessment of such injuries, destruction or losses. The Complaints allege that hazardous substances, including, but not limited to, polychlorinated biphenyls (“PCBs”), polynuclear aromatic

hydrocarbons (“PAHs”), chlorinated benzenes, chlorinated ethenes, hexachlorobutadiene and heavy metals, have been detected in the sediments, water and fish of the Ashtabula River Area.

C. The Complaints further allege that Settling Defendants are liable for damages for injury to, destruction of, or loss of natural resources within the Ashtabula River Area because Settling Defendants (or their predecessors) are owners or operators of one or more facilities from which such releases occurred or were owners or operators of one or more such facilities at a time hazardous substances were disposed at such facilities. In addition, the Complaint filed by the State alleges that Settling Federal Agencies are liable for damages for injury to, destruction of, or loss of natural resources within the Ashtabula River Area because Settling Federal Agencies (or their predecessors) are owners or operators of one or more facilities from which such releases occurred or were owners or operators of one or more such facilities at a time hazardous substances were disposed at such facilities.

D. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaints. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any claim asserted by the State. By entering into this Consent Decree, undertaking the obligations imposed under its terms, and making the payments required by its terms, Settling Defendants and Settling Federal Agencies do not expressly, or by implication, admit liability for damages for injury to, destruction of, or loss of natural resources in the Ashtabula River Area as alleged in the Complaints or otherwise.

E. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300 (the “NCP”), DOI through the United States Fish and Wildlife Service (“FWS”) and the

United States Department of Commerce, acting through NOAA, have been delegated authority to act as Federal Trustees for natural resources impacted by the releases of hazardous substances into or within the Ashtabula River Area. Ohio EPA has been delegated authority to act as the State Trustee for natural resources impacted by such releases of hazardous substances.

F. Pursuant to 43 C.F.R. Part 11, the FWS, NOAA, and Ohio EPA (collectively the “Trustees”) initiated an assessment of injuries to natural resources resulting from the releases of hazardous substances into or within the Ashtabula River Area.

G. Pursuant to the Great Lakes Legacy Act of 2002, as amended, 33 U.S.C. § 1268, the United States Environmental Protection Agency entered into a Project Agreement with the Ashtabula City Port Authority to provide for, among other things, removal of approximately 497,000 cubic yards of contaminated sediments from a segment of the Ashtabula River between the Upper Turning Basin and the Fifth Street Bridge, proper disposal of such sediments, and implementation of certain habitat restoration activities. Funding for the Ashtabula River Great Lakes Legacy Act Project (“GLLA Project”) was provided by the United States, the Ashtabula City Port Authority, in cooperation with ARCG II, and the State of Ohio. Sediment removal activities under the Project Agreement were completed during 2007, but habitat mitigation activities under the GLLA Project have not yet been completed.

H. Pursuant to the Rivers and Harbors Act of 1937 and the Water Resources Development Act of 1986, as amended, 33 U.S.C. § 2211, and pursuant to Sections 312 (a) and (f) (3) of the Water Resources Development Act of 1990, as amended, 33 U.S.C. § 1272(a) and (f)(3), the Department of the Army and the Ashtabula City Port Authority have entered into a Project Cooperation Agreement (W912P4-07-D-0003) for the removal of approximately 135,000

cubic yards of contaminated sediments found outside the boundaries and adjacent to the Federal navigation channel between the Fifth Street Bridge and the mouth of the Ashtabula River, and for the disposal of such contaminated sediment in a privately owned disposal facility, as described in the Final Comprehensive Management Plan (feasibility report) and Environmental Impact Statement dated August, 2004 and approved by the Assistant Secretary of the Army on March 3, 2006. The dredging, removal and disposal of contaminated sediments pursuant to Project Cooperation Agreement W912P4-07-D-0003 commenced by April 1, 2008 and was completed in July, 2008. The Project is defined at Section I.A. of the “Project Cooperation Agreement between the Department of the Army and Ashtabula City Port Authority for Removal and Disposal of Contaminated Sediments from Outside the Boundaries and Adjacent to the Federal Navigation Channel Between the Fifth Street Bridge and the Mouth of the Ashtabula River” entered into on August 22, 2007.

I. In March, 2008, the Trustees published their Draft Natural Resource Restoration Plan and Environmental Assessment for the Ashtabula River and Harbor Site, dated February 22, 2008 (“Draft Restoration Plan”). The Trustees held a public meeting on April 22, 2008 in Ashtabula, Ohio regarding the Draft Restoration Plan and provided an opportunity for submission of public comments on the Draft Restoration Plan until April 30, 2008. After considering and responding to the comments submitted during the public comment period on the Draft Restoration Plan, the Trustees published notice of adoption of a final Natural Resource Restoration Plan and Environmental Assessment for the Ashtabula River and Harbor Site on November 10, 2009. A transcript of the public meeting, copies of the public comments on the Draft Restoration Plan, and the Trustees’ response to such comments are all available to the

public as part of the administrative record maintained by the Trustees for the Ashtabula River Area.

J. In order to facilitate more expeditious restoration of natural resources, ARCG II has previously incurred \$695,289 in connection with acquisition of five of the Restoration Properties identified in Appendix B and various preliminary restoration planning activities.

K. The United States, the State of Ohio and the Settling Defendants (collectively, the “Parties” to this Consent Decree) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, consistent with applicable law, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, except as provided in Section II (Jurisdiction), and with the consent of the Parties, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal jurisdiction over the Parties. Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (e), because the releases and injuries alleged in the Complaints occurred within this district, and a substantial part of the events giving rise to Plaintiffs’ claims occurred in this district. For the purposes of this Consent Decree, or any action to enforce this Decree, Settling Defendants

consent to this Court's jurisdiction over this Decree and any such action and over Settling Defendants as well as to venue in this district.

III. PARTIES BOUND

2. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon the Settling Defendants and any successors, assigns or other persons otherwise bound by law. No change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall relieve such Settling Defendant of its obligation to ensure that the terms of the Decree are implemented.

3. ARCG II and the Railroads may each retain contractors to perform obligations under this Consent Decree, including, without limitation, acquiring and holding title to Restoration Properties and Additional Restoration Properties, establishing and recording Environmental Covenants, negotiating subordination agreements, conveying Restoration Properties and Additional Restoration Properties to Acceptable Entities, and performing work required under Restoration Workplans or SOWs. ARCG II and the Railroads shall require contractors to perform all work in conformity with all requirements of this Consent Decree. ARCG II and the Railroads shall nonetheless be responsible for ensuring that their contractors and subcontractors perform all work contemplated herein in accordance with this Consent Decree. ARCG II shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work on behalf of ARCG II under this Consent Decree. The Railroads shall provide a copy of this Consent Decree to all officers, employees,

and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work on behalf of the Railroads under this Consent Decree. In any action to enforce this Consent Decree, no Settling Defendant shall raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in the CWA, CERCLA, the NCP, or the DOI Natural Resource Damage Assessment and Restoration Regulations, 43 C.F.R. Part 11, shall have the meaning assigned to them in such statutes or regulations. Whenever terms listed below are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. “Acceptable Entity” means a nonprofit corporation, governmental authority, including a local park district or department, or other organization or entity, approved in writing by the Trustees to be a grantee of a property interest in any Restoration Property or Additional Restoration Property.

b. “Additional Restoration Property” or “Additional Restoration Properties” means any real property or properties, other than those listed in Appendix B, approved by the Trustees as suitable for implementation of ARCG II Restoration Projects pursuant to the provisions of Paragraph 7, below.

c. “ARCG II” means each of the following companies, which are members of an unincorporated association known as the “Ashtabula River Cooperating Group II”: Cabot

Corporation; Detrex Corporation; Elkem Metals Company L.P.; The Cleveland Electric Illuminating Company; GenCorp Inc.; Mallinckrodt. 'NNE; Millennium Inorganic Chemicals Inc.; Occidental Chemical Corporation; Ohio Power Company; Olin Corporation; RMI Titanium Company, Inc.; The Sherwin-Williams Company; Union Carbide Corporation; and CBS Operations Inc. All obligations of ARCG II under this Consent Decree shall be joint and several obligations of each ARCG II member.

d. “ARCG II Restoration Projects” means natural resource restoration projects that are implemented by ARCG II in accordance with the requirements of Section VI, below. The term “ARCG II Restoration Projects” includes: 1) the acquisition of property interests acceptable to the Trustees in Restoration Properties identified in Appendix B and any Additional Restoration Properties identified by the Trustees pursuant to Paragraph 7, below; 2) the development and implementation of Restoration Workplans for Restoration Properties and Additional Restoration Properties, in accordance with the requirements of Paragraphs 8 - 10, below; and 3) the conveyance to an Acceptable Entity of title to, or other property interest held by ARCG II in, such Restoration Properties and Additional Restoration Properties in accordance with Paragraph 15, below.

e. “Ashtabula River Area” means all areas below the ordinary high water mark within a segment of the Ashtabula River located in Ashtabula County, Ohio between United States Army Corps of Engineers Station 195 and the mouth of the Ashtabula River (where it meets the Ashtabula Harbor) and within the Ashtabula Harbor, as specifically depicted on the Map attached as Appendix A.

f. “Assessment Costs” means the costs that the Trustees have paid in connection with the assessment of the Natural Resource Damages in the Ashtabula River Area.

g. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*

h. “Consent Decree” or “Decree” means this Consent Decree and all Appendices attached hereto, as well as all plans, reports or other items or deliverables approved by the Trustees pursuant to this Consent Decree. In the event of a conflict between this Consent Decree and any Appendix hereto, or any plan, report or other item or deliverable approved by the Trustees pursuant to this Consent Decree, this Consent Decree shall govern.

i. “CWA” means the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, also known as the Clean Water Act.

j. “Day” means a calendar day unless expressly stated to be a Working Day. “Working Day” means a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

k. “DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.

l. “Effective Date” means the effective date of this Consent Decree as provided by Section XXII (Effective Date and Retention of Jurisdiction) of this Consent Decree.

m. “Environmental Covenant” means an “Environmental covenant” as defined in Ohio Revised Code § 5301.80(D) that complies with Ohio Revised Code §§ 5301.80 - 5301.92.

n. “FWS” means the Fish and Wildlife Service of the United States Department of the Interior.

o. “Interest” means interest accruing at the rate established pursuant to 28 U.S.C. § 1961.

p. “Lodging Date” means the date on which this Consent Decree is lodged with the Court.

q. “Natural Resources” means land, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State.

r. “Natural Resource Damages” means compensation for injury to, destruction of, or loss of, Natural Resources in the Ashtabula River Area arising from or relating to releases of hazardous substances into, or which have migrated into, the Ashtabula River Area, as set forth in Section 107(a)(4)(C) of CERCLA. Natural Resource Damages includes reimbursement of Assessment Costs incurred by the Trustees in assessing such injury, destruction, or loss arising from or relating to such a release, and each of the categories of damages described in 43 C.F.R. §11.15.

s. “NOAA” means the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments or agencies of the United States.

t. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

u. “Ohio EPA” means the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio.

v. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

w. “Parties” means the United States, the State, and the Settling Defendants.

x. “Plaintiffs” means the United States and the State.

y. “Qualified Costs” means reasonable costs incurred by ARCG II after the date of lodging of this Consent Decree in connection with implementation of ARCG II Restoration Projects in accordance with the requirements of this Consent Decree, including reasonable costs of:

1) acquiring property interests acceptable to the Trustees in Additional Restoration Properties, including but not limited to, the title report, the title insurance, as built drawings, filing fees, and any such costs approved by the Trustees in writing prior to ARCG II’s acquisition of such properties, provided that ARCG II establishes Environmental Covenants on such properties in accordance with Paragraphs 11 - 14, below;

2) establishing Environmental Covenants in accordance with Paragraphs 11 - 14, below;

3) developing Restoration Workplans in accordance with Paragraphs 8 and 9, below;

4) performing work in accordance with the requirements of approved Restoration Workplans pursuant to Paragraph 10, below; and

5) conveying Restoration Properties and Additional Restoration Properties to an Acceptable Entity in accordance with Paragraph 15, below;

provided, however, that the term “Qualified Costs” does not include: a) any costs of acquisition of Restoration Properties, including but not limited to, the title report, the title insurance, as built drawings, and filing fees; b) any costs incurred by the ARCG II, its contractors or representatives, in negotiating the acquisition of property interests or Environmental Covenants in, or in negotiating the conveyance to an Acceptable Entity of property interests acceptable to the Trustees in, the Restoration Properties or Additional Restoration Properties; c) any closing costs not listed on standard closing documents; or d) any costs incurred in connection with any dispute resolution proceeding pursuant to Section XIII, below, or in connection with litigation or other efforts by ARCG II to enforce any terms of Environmental Covenants or any agreements between ARCG II and any person not a party to this Consent Decree.

z. “Railroads” means Norfolk Southern Railway Company, Norfolk Southern Corporation, Conrail Inc., and the Consolidated Rail Corporation. All obligations of the Railroads under this Consent Decree shall be joint and several obligations of Norfolk Southern Railway Company, Norfolk Southern Corporation, Conrail Inc., and the Consolidated Rail Corporation.

aa. “Railroads Restoration Project” means the natural resource restoration project described in the Railroad Restoration Workplan attached hereto as Appendix G.

bb. “Railroads Restoration Property” refers to the real property described in the Railroads Restoration Project Workplan attached hereto as Appendix G.

cc. “Restoration Property” or “Restoration Properties” means one or more of the real properties identified in Appendix B.

dd. “Section” means a portion of this Consent Decree identified by a roman numeral.

ee. “Settling Defendants” means the ARCG II and the Railroads.

ff. “Settling Federal Agencies” means the United States General Services Administration, the United States Department of Energy, the United States Department of the Navy, the United States Maritime Administration, and any predecessor or successor agencies or departments of the United States.

gg. “State” means the State of Ohio.

hh. “Trustees” means DOI, NOAA and Ohio EPA.

ii. “United States” means the United States of America, including all of its departments, agencies and instrumentalities, including, without limitation, DOI, FWS, NOAA and the Settling Federal Agencies.

jj. “WRDA” means the Water Resources Development Act of 1990, as amended, 33 U.S.C. § 2316 *et seq.*

kk. “WRDA Project” means the Water Resources Development Act project to dredge and dispose of the contaminated sediment of the Ashtabula River downstream of the Fifth Street Bridge, United States Army Corps of Engineers Station 139, as described more particularly in the “Project Cooperation Agreement between the Department of the Army and

Ashtabula City Port Authority for Removal and Disposal of Contaminated Sediments from Outside the Boundaries and Adjacent to the Federal Navigation Channel Between the Fifth Street Bridge and the Mouth of the Ashtabula River” entered into on August 22, 2007.

V. STATEMENT OF PURPOSE

5. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide for the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of releases of hazardous substances into or within the Ashtabula River Area through implementation of ARCG II Restoration Projects and the Railroads Restoration Project consistent with the restoration plans approved by the Trustees; (ii) to reimburse natural resource damage assessment costs and certain other costs incurred by the Trustees, as provided herein; (iii) to resolve potential liability among the Parties with respect to Natural Resource Damages as provided herein, without determining any other rights, claims or obligations of any parties, including any such rights, claims or obligations at issue in *ARCG II v. Norfolk Southern, et al.*, United States District Court, Northern District of Ohio, Case No. 1:07CV3311; and, (iv) to avoid costly and time-consuming litigation.

VI. ARCG II RESTORATION PROJECTS

6. Subject to the provisions of Paragraph 19, below, ARCG II shall implement ARCG II Restoration Projects on each of the Restoration Properties identified in Appendix B, in accordance with the provisions set forth below in this Section VI.

7. The Trustees may identify Additional Restoration Properties that they determine are suitable for implementation of ARCG II Restoration Projects consistent with the approved Restoration Plan. For a period of one year after the Effective Date of this Consent Decree,

ARCG II shall use best efforts, subject to the provisions of Paragraph 19, below, to acquire such Additional Restoration Properties, including the payment of reasonable sums which shall be subject to approval by the Trustees. Subject to the provisions of Paragraph 19, below, ARCG II shall implement ARCG II Restoration Projects in accordance with the provisions set forth below in this Section VI on any Additional Restoration Properties acquired by ARCG II.

8. For each Restoration Property and for each Additional Restoration Property acquired prior to the Effective Date of this Consent Decree, ARCG II shall, within 90 days after the Effective Date of this Consent Decree, develop and submit to the Trustees for approval in accordance with the provisions of Section VIII (Review and Approval of Workplans and Other Submissions), Restoration Workplans providing detailed descriptions of activities proposed to be undertaken on each such Restoration Property and Additional Restoration Property to restore, replace or acquire the equivalent of natural resources that the Trustees allege were injured as a result of releases of hazardous substances into or within the Ashtabula River Area, together with proposed schedules for implementation of such activities, estimated costs of such activities, and the basis for such cost estimates. Each such Restoration Workplan shall be consistent with the Natural Resource Restoration Plan & Environmental Assessment for the Ashtabula River and Harbor Site attached hereto as Appendix C (hereinafter "Restoration Plan") and with the Scope of Work attached as Appendix D to this Consent Decree.

9. For each Additional Restoration Property acquired after the Effective Date of this Consent Decree, ARCG II shall, within 60 days after acquisition of such Additional Restoration Property, develop and submit to the Trustees for approval in accordance with the provisions of Section VIII (Approval of Workplans and Other Submissions), a Restoration Workplan

providing a detailed description of activities proposed to be undertaken on such Additional Restoration Property to restore, replace or acquire the equivalent of natural resources that the Trustees allege were injured as a result of releases of hazardous substances into or within the Ashtabula River Area, together with a proposed schedule for implementation of such activities, an estimate of the costs of such activities, and the basis for such cost estimates. Each such Restoration Workplan shall be consistent with the Restoration Plan and with the Scope of Work attached as Appendix D to this Consent Decree.

10. Upon approval of each Restoration Workplan submitted pursuant to Paragraph 8 or 9, above, ARCG II shall implement the ARCG II Restoration Project described in such approved Restoration Workplan, in accordance with the terms and schedules therein, subject to ARCG II's right to contest Trustees' determination with respect to any schedule in such Workplan in accordance with Section XIII (Dispute Resolution). All such work shall be performed consistent with the Restoration Plan, the Scope of Work, and the provisions of Paragraph 21, below.

11. Within 30 days following approval of the Restoration Workplan for any Restoration Property or any Additional Restoration Property acquired by ARCG II or its contractors pursuant to this Consent Decree, ARCG II shall submit to the Trustees:

a. for approval in accordance with Section VIII (Review and Approval of Workplans and Other Submissions), a draft Environmental Covenant relating to the Restoration Property or Additional Restoration Property that is the subject of such approved Restoration Workplan; and

b. a description of all interests in such Restoration Property or Additional Restoration Property that would not be subject to the Environmental Covenant under Ohio Revised Code § 5301.86(A), absent a subordination agreement.

Each such draft Environmental Covenant shall be consistent with and in substantially the same form as the Environmental Covenant Template set forth in Appendix E.

12. If requested by the Trustees, ARCG II shall seek to negotiate subordination agreements with persons holding any interest identified pursuant to Paragraph 11.b, above, and shall incorporate any such subordination agreements in a revised draft Environmental Covenant submitted to the Trustees for approval.

13. Subject to the right of ARCG II to contest, in accordance with Section XIII (Dispute Resolution), any disapproval or modification of the draft Environmental Covenant by the Trustees, ARCG II shall, within 30 days after approval of any draft Environmental Covenant by the Trustees, execute such Environmental Covenant as approved by the Trustees and present the executed Environmental Covenant to the Trustees for signature.

14. Within 30 days after receipt of all Trustee signatures on any Environmental Covenant, ARCG II shall cause the fully executed Environmental Covenant to be recorded in the office of the Ashtabula County Recorder, as provided in Ohio Revised Code § 5301.88.

15. For each Restoration Property and Additional Restoration Property acquired by ARCG II or its contractors, ARCG II shall cause any property interest held by ARCG II or its contractors in such Restoration Property or Additional Restoration Property (including title) to be conveyed to an Acceptable Entity, free and clear of liens and other encumbrances (except for

encumbrances acceptable to the Trustees), in accordance with the requirements set forth in Paragraphs 16 - 18, below.

16. At the time ARCG II submits each draft Environmental Covenant pursuant to Paragraph 11.a., above, ARCG II shall also submit to the Trustees for approval in accordance with Section VIII (Review and Approval of Workplans and Other Submissions):

a. a draft deed or other instrument providing for conveyance of any interest of ARCG II in the Restoration Property or Additional Restoration Property that is the subject of the Environmental Covenant (other than ARCG II's interest as a holder of the Environmental Covenant) to an Acceptable Entity; and

b. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (2001) (the "Standards"), or otherwise acceptable to the Trustees.

17. Concurrently with the submission of each draft deed or other instrument to the Trustees, ARCG II shall provide a copy of such draft deed or other instrument to the Acceptable Entity named as grantee in the deed, and a copy of the Environmental Covenant relating to such property. All such draft deeds or other instruments shall be enforceable under the laws of the State of Ohio, free and clear of liens and other encumbrances (except for encumbrances acceptable to the Trustees) , and otherwise acceptable under the United States Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255.

18. Subject to the right of ARCG II to contest, in accordance with Section XIII (Dispute Resolution) any disapproval or modification by the Trustees of any draft deed, for each draft deed submitted pursuant to Paragraph 16.a., above, ARCG II shall, within 30 days

following approval of such draft deed by the Trustees, cause the title searches of the Restoration Property or Additional Restoration Property that is the subject of the deed to be updated if requested by the Trustees, and execute and deliver to the Acceptable Entity, the approved deed along with final title evidence acceptable under the Standards for each such Restoration Property or Additional Restoration Property. ARCG II shall ensure that each such deed is properly recorded.

19. Nothing in this Consent Decree shall be construed to require ARCG II to expend more than \$1,454,711.00 in Qualified Costs for ARCG II Restoration Projects. If ARCG II is unable to acquire one or more of the Additional Restoration Properties identified by the Trustees pursuant to Paragraph 7, above, within one year after the Effective Date of this Consent Decree and ARCG II has expended less than \$1,454,711.00 in Qualified Costs upon completion of ARCG II Restoration Projects on the Restoration Properties and all of the Additional Restoration Properties acquired by ARCG II, then ARCG II shall pay to the NRDAR Fund, Ashtabula River Account within thirty (30) days of completion of all ARCG II Restoration Projects, the difference between \$1,454,711.00 and the amount of the Qualified Costs expended by ARCG II.

20. Accounting to the Trustees. ARCG II shall submit to the Trustees on a monthly basis (a) an accounting of costs incurred by ARCG II in connection with ARCG II Restoration Projects, to the extent that ARCG II believes such costs are Qualified Costs, and (b) a statement of ARCG's projected costs of completing remaining activities under all Restoration Workplans approved under this Section VI.

21. ARCG II shall notify the Trustees in writing whenever it appears that the costs identified in Paragraph 20(a) and (b), above, would exceed the limitation on Qualified Costs in

Paragraph 19, above. After receiving any such notification, the Trustees may provide ARCG II with a written Statement of Priorities for proceeding with remaining work on the ARCG II Restoration Projects. Following receipt of any such statement, ARCG II shall implement all remaining work consistent with the Statement of Priorities.

22. Completion of Required Restoration Activities. When ARCG II has satisfied all requirements under this Section VI, ARCG II shall submit to the Trustees for approval a Restoration Completion Report. The Restoration Completion Report shall include a detailed description of all activities performed by ARCG II on each Restoration Property and Additional Restoration Property acquired pursuant to this Consent Decree and shall include as-built drawings, signed and stamped by a professional engineer, for any construction undertaken pursuant to an approved Restoration Workplan. In addition, the Restoration Completion Report shall include a final statement of the total Qualified Costs incurred by ARCG II.

a. The Restoration Completion Report shall state whether ARCG II fully implemented all provisions of each approved Restoration Workplan and provide a description of any Restoration Workplan provisions not completed by ARCG II. The Restoration Completion Report shall include a statement, signed by a registered professional engineer and the ARCG II's Project Coordinator, affirming that all restoration activities undertaken by ARCG II pursuant to this Section were performed in accordance with approved Restoration Workplans and all other requirements of this Consent Decree.

b. If the Restoration Completion Report indicates that ARCG II did not fully implement all provisions of approved Restoration Workplans, the Restoration Completion Report shall include a final accounting of the Qualified Costs incurred by ARCG II, signed by

ARCG II's Project Coordinator, together with supporting documentation demonstrating that all such costs claimed by ARCG II satisfy the requirements of Paragraph 4.y, above.

c. The Restoration Completion Report shall contain the following statement, signed by ARCG II's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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.

VII. RAILROADS RESTORATION PROJECT

23. Railroads shall implement the Railroads Restoration Project described in the approved Railroads Restoration Workplan attached hereto as Appendix G, in accordance with the terms and schedules of such Workplan. All such work shall be consistent with the Restoration Plan attached as Appendix C to this Consent Decree.

24. Within 30 days after the Effective Date of this Consent Decree, Railroads shall submit to the Trustees:

a. for approval in accordance with Section VIII (Review and Approval of Workplans and Other Submissions) a draft Environmental Covenant relating to Railroads Restoration Property; and

b. a description of all interests in such Railroads Restoration Property that would not be subject to the Environmental Covenant under Ohio Revised Code § 5301.86(A), absent a subordination agreement.

Such draft Environmental Covenant shall be consistent with and in substantially the same form as the Environmental Covenant Template set forth in Appendix E.

25. If requested by the Trustees, Railroads shall seek to negotiate subordination agreements with persons holding any interest identified pursuant to Paragraph 24.b, above, and shall incorporate any such subordination agreements in a revised draft Environmental Covenant submitted to the Trustees for approval.

26. Within 30 days after approval of such draft Environmental Covenant by the Trustees, Railroads shall execute such Environmental Covenant as approved by the Trustees and present the executed Environmental Covenant to the Trustees for signature.

27. Within 30 days after receipt of all Trustee signatures on the Environmental Covenant, Railroads shall cause the fully executed Environmental Covenant to be recorded in the office of the Ashtabula County Recorder, as provided in Ohio Revised Code § 5301.88.

28. Completion of Required Restoration Activities. When Railroads have satisfied all requirements under this Section VII, Railroads shall submit to the Trustees for approval a Restoration Completion Report. The Restoration Completion Report shall include a detailed description of all activities performed by Railroads on the Railroads Restoration Property and shall include as-built drawings, signed and stamped by a professional engineer, for all construction undertaken pursuant to the approved Railroads Restoration Project Workplan.

a. The Restoration Completion Report shall include a statement, signed by a registered professional engineer and Railroads' Project Coordinator, affirming that all restoration activities undertaken by Railroads pursuant to this Section were performed in accordance with the approved Railroads Restoration Workplan and all other requirements of this Consent Decree.

b. The Restoration Completion Report shall contain the following statement, signed by Railroads' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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.

VIII. REVIEW AND APPROVAL OF WORKPLANS AND OTHER SUBMISSIONS

29. After review of any Workplan, draft deed or Environmental Covenant, report or other item submitted for approval pursuant to this Consent Decree, the Trustees shall: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission to cure any deficiencies; (d) disapprove, in whole or in part, the submission, directing the submitting Party or Parties to modify the submission; or (e) any combination of the above.

30. Following approval, approval upon conditions, or modification by the Trustees of any Workplan or other submittal pursuant to the preceding Paragraph, the submitting Party or Parties shall proceed to take any action required by the Workplan, or other submittal, as approved or modified by the Trustees, subject only to any right of such Party or Parties to contest such disapproval or modification under Section XIII (Dispute Resolution).

31. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 29(d), the Party or Parties submitting the Workplan or other submission shall, within 30 days or such longer time as specified by the Trustees in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XIV, shall accrue during the 30-day period or otherwise specified period but

shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 33.

b. Notwithstanding the receipt of a notice of disapproval of any Workplan or other submission pursuant to Paragraph 29(d), the Party or Parties submitting such Workplan or other submission shall proceed, at the direction of the Trustees, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the submitting Party or Parties of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

32. In the event that a resubmitted Workplan or other submission, or portion thereof, is disapproved by the Trustees, the Trustees may again require the submitting Party or Parties to correct the deficiencies, in accordance with the preceding Paragraphs. Trustees also retain the right to modify or develop the resubmitted Workplan or other submission. The submitting Party or Parties shall implement any Workplan or other submission as modified or developed by the Trustees, subject only to the right of such Party or Parties to invoke the procedures set forth in Section XIII (Dispute Resolution).

33. If upon resubmission, a plan, report, or item is disapproved or modified by the Trustees due to a material defect, the submitting Party or Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the submitting Party or Parties invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) and the Trustees' action is overturned pursuant to that Section. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the Trustees'

disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIV.

34. All Workplans and other items required to be submitted to Trustees for approval under this Consent Decree shall, upon approval or modification by the Trustees, be enforceable under this Consent Decree. In the event the Trustees approve or modify a portion of a plan, report, or other item required to be submitted to the Trustees under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

IX. PAYMENTS FOR ASSESSMENT COSTS AND TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION ACTIVITIES

35. Payments by ARCG II. Within 30 days after the Effective Date of this Consent Decree, ARCG II shall pay to the Trustees a total of \$1,027,445.70, for Assessment Costs, plus Interest on such amount accruing from June 1, 2010, and an additional \$415,000.00 for Trustee-sponsored natural resource restoration activities, including oversight and operation and maintenance of ARCG II Restoration Projects, as specified below in this Paragraph.

a. Payment to the United States. ARCG II shall pay \$1,234,285.20, plus Interest accruing from June 1, 2010 through the date of payment on the sum of the principal amounts set forth in Paragraph 35.a.(2) and (3), to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-210/1. Payment shall be made in accordance with instructions provided to the ARCG II by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern

Time) will be credited on the next business day. Of the total amount paid by ARCG II pursuant to this Paragraph 35.a.:

(1) \$415,000.00 shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the federal and state Trustees to pay for Trustee-sponsored natural resource restoration activities, including oversight and operation and maintenance of ARCG II Restoration Projects, in accordance with Section X, below.

(2) \$763,494.90, plus Interest on that amount accruing from June 1, 2010 through the date of payment, shall be deposited in the DOI NRDAR Fund, in reimbursement of DOI's Assessment Costs.

(3) \$55,790.30, plus Interest on that amount accruing from June 1, 2010 through the date of payment, shall be deposited in the NOAA Damage Assessment Restoration and Revolving Fund ("DARRF"), in reimbursement of NOAA's Assessment Costs.

b. Payment to State of Ohio. ARCG II shall pay \$208,160.50, plus Interest on that amount accruing from June 1, 2010 through the date of payment, to the State of Ohio in reimbursement of the State of Ohio's Assessment Costs. The payment shall be made in the form of an Electronic Funds Transfer to the Treasurer, State of Ohio, to be deposited into the Natural Resource Damages Fund, referencing the Ashtabula River NRD claim. A copy of the Electronic Funds Transfer transmittal shall be sent to: Steven Snyder or his successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049; and to Assistant Attorney General

Timothy J. Kern, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

36. Payments by Railroads. Within 30 days after the Effective Date of this Consent Decree, Railroads shall pay to the Trustees a total of \$306,791.25 for Assessment Costs plus Interest on that amount accruing from June 1, 2010 through the date of payment, and an additional \$25,000.00 for Trustee-sponsored natural resource restoration activities, as specified below in this Paragraph.

a. Payment to the United States. Railroads shall pay \$269,635.34, plus Interest accruing from June 1, 2010 through the date of payment on the sum of the principal amounts set forth in Paragraph 36.a.(2) and (3), to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-210/1. Payment shall be made in accordance with instructions provided to Railroads by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Of the total amount paid by Railroads pursuant to this Paragraph 36.a.:

(1) \$25,000.00 shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the federal and state Trustees to pay for Trustee-sponsored natural resource restoration activities in accordance with Section X, below.

(2) \$227,976.58, plus Interest on that amount accruing from June 1, 2010 through the date of payment, shall be deposited in the DOI NRDAR Fund, in reimbursement of DOI's Assessment Costs.

(3) \$16,658.76, plus Interest on that amount accruing from June 1, 2010 through the date of payment, shall be deposited in the NOAA DARRF, in reimbursement of NOAA's Assessment Costs.

b. Payment to State of Ohio. Railroads shall pay \$62,155.91, plus Interest on that amount accruing from June 1, 2010 through the date of payment, to the State of Ohio in reimbursement of the State of Ohio's Assessment Costs. The payment shall be made in the form of an Electronic Funds Transfer to the Treasurer, State of Ohio, to be deposited into the Natural Resource Damages Fund, referencing the Ashtabula River NRD claim. A copy of the Electronic Funds Transfer transmittal shall be sent to: Steven Snyder or his successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus., Ohio 43216-1049; and to Assistant Attorney General Timothy J. Kern, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

37. Payments on behalf of Settling Federal Agencies. As soon as reasonably practicable after the Effective Date of this Consent Decree, and consistent with Paragraph 37.a and 37.b, the United States, on behalf of Settling Federal Agencies, shall pay to the Trustees a total of \$768,799.69, which payment includes Interest accruing from July 1, 2008.

a. Payment For Assessment Costs of DOI and NOAA. The United States, on behalf of Settling Federal Agencies, shall pay \$613,040.87 to the U.S. Department of Justice,

referencing DOJ Case Number 90-11-2-210/1, and in accordance with Interagency Payment System information furnished by the U.S. Department of Justice. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

Of the total amount paid on behalf of Settling Federal Agencies pursuant to this Paragraph 37a.:

(1) \$571,295.05 shall be deposited in the DOI NRDAR Fund, in reimbursement of DOI's Assessment Costs.

(2) \$41,745.82 shall be deposited in the NOAA DARRF, in reimbursement of NOAA's Assessment Costs.

The United States, including the Settling Federal Agencies, and the Settling Defendants recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Paragraph 37.a can only be paid from appropriated funds legally available for such purpose.

Nothing in this Consent Decree shall be interpreted as or constitute a commitment or requirement that any Settling Federal Agency obligate or pay funds pursuant to this Paragraph 37.a in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and §§ 1511-19, or any other applicable law.

b. Payment to State of Ohio. The United States, on behalf of Settling Federal Agencies, shall pay \$155,758.82 to the State of Ohio. The payment shall be made in the form of an Electronic Funds Transfer to the Treasurer, State of Ohio, to be deposited into the Natural Resource Damages Fund, referencing the Ashtabula River NRD claim. A copy of the Electronic Funds Transfer transmittal shall be sent to: Steven Snyder or his successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus., Ohio 43216-1049; and to Assistant Attorney General Timothy J. Kern, Environmental Enforcement Section, Ohio Attorney General's

Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The State and the Settling Federal Agencies agree that in any judicial proceeding to enforce payment of the amounts owed to the State under this Consent Decree, Settling Federal Agencies may raise as a defense their obligation to comply with the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and §§ 1511-19, or any other applicable law. While the State disagrees that such defenses exist, the State and Settling Federal Agencies agree that it is premature at this time to raise and adjudicate the existence of such defenses.

38. Notice of Payment. Upon making payments required under this Section, the Party or Parties making the payment shall send to the following addresses written notice that payment has been made:

For notice to the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Ref. DJ # 90-11-2-210/1

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, DC 20240

Department of the Interior
Office of the Solicitor
Three Parkway Center, Suite 385
Pittsburgh, PA 15220

NOAA/U.S. Department of Commerce
General Counsel's Office for Natural Resources/NE
NOAA Office of General Counsel
55 Great Republic Drive
Gloucester, MA 01930

For notice to the State of Ohio:

Fiscal Officer
DERR
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
ATTN: Steven Snyder or his successor

Timothy J. Kern
Assistant Attorney General
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street - 25th Floor
Columbus, Ohio 43215

39. In the event that Settling Defendants do not make any payment required by this Section IX when due, the Party or Parties responsible for such payment shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment. In the event that Settling Federal Agencies do not make any payment required under Paragraph 37 within 120 days after entry of this Consent Decree, Settling Federal Agencies shall pay Interest on the unpaid balance commencing on the 121st day after entry through the date of full payment. All payments required pursuant to this Paragraph shall be made in the same manner and directed to the same funds or accounts as specified in Paragraph 35.a and b (for payments by ARCG II), Paragraph 36.a and b (for payments by Railroads), and Paragraph 37.a and b (for payments by Settling Federal Agencies). Any payments pursuant to this Paragraph shall be in

addition to any other remedies provided by this Consent Decree for failure to make timely payments required under this Section.

X. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION ACTIVITIES

40. All funds deposited in a segregated sub-account within the NRDAR Fund pursuant to Paragraphs 19, 35.a.(1) or 36.a.(1) shall be managed by DOI for the joint benefit and use of the Trustees to pay for natural resource restoration efforts in accordance with this Consent Decree, including but not limited to, planning, selection and implementation of any natural resource restoration activities, as well as any administrative, legal, oversight and maintenance activities undertaken by the Trustees in connection with ARCG II Restoration Projects or the Railroad Restoration Project. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources.

41. Restoration Planning. The Trustees have prepared a Restoration Plan describing how the funds will be used for restoration, rehabilitation, replacement or acquisition of equivalent resources. The Restoration Plan is attached hereto as Appendix C.

42. Use and Expenditure of Funds. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees, acting through a Trustee Council. Settling Defendants and Settling Federal Agencies shall not be entitled to dispute, in this or any other forum or proceeding, any decision of the Trustees relating to use of funds or restoration efforts under this Section.

**XI. ACCESS TO RESTORATION PROPERTIES; INFORMATION
AND DOCUMENT RETENTION**

43. a. Commencing on the date of lodging of this Consent Decree, ARCG II shall provide the Plaintiffs and their representatives access at all reasonable times to the Restoration Properties upon presentation of credentials, and allow Plaintiffs and their representatives to move about, without restriction, for the purposes of conducting any activity related to this Consent Decree, including but not limited to monitoring implementation of ARCG II Restoration Projects, verifying any data or information submitted to the Plaintiffs under this Consent Decree, and assessing ARCG II's compliance with this Consent Decree.

b. Upon acquisition of any Additional Restoration Property, ARCG II shall provide the Plaintiffs and their representatives access at all reasonable times to such Additional Restoration Property, and to allow Plaintiffs and their representatives to move about such Additional Restoration Property, without restriction, for the purposes of conducting any activity related to this Consent Decree, including but not limited to monitoring implementation of ARCG II Restoration Projects, verifying any data or information submitted to the Plaintiffs under this Consent Decree, and assessing ARCG II's compliance with this Consent Decree.

44. Commencing on the date of lodging of this Consent Decree, Railroads shall provide the Plaintiffs and their representatives access at all reasonable times to the Railroads Restoration Property upon presentation of credentials, and allow Plaintiffs and their representatives to move about, without restriction, for the purposes of conducting any activity related to this Consent Decree, including but not limited to monitoring implementation of the Railroads Restoration Project, verifying any data or information submitted to the Plaintiffs under this Consent Decree, and assessing Railroads' compliance with this Consent Decree.

45. All rights of access pursuant to this Section XI shall be in addition to, and shall not limit, any access rights afforded by any law or regulation.

46. Settling Defendants shall provide to Plaintiffs, upon request, copies of all documents and information within their possession or control (or that of their contractors or agents) relating to compliance with this Consent Decree. Settling Defendants shall also make available to Plaintiffs their employees, agents, or representatives with knowledge of relevant facts concerning their compliance with this Consent Decree.

47. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in their possession or control, or which come into their possession or control, that relate in any manner to: (i) the claims alleged in the Complaint; or (ii) Settling Defendants' compliance with this Consent Decree. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to the United States or the State.

a. ARCG II and Railroads may assert business confidentiality claims covering part or all of the documents or information submitted to the Plaintiffs under this Consent Decree, to the extent permitted by and in accordance with 40 C.F.R. Part 2 (with respect to information or documents submitted to the United States) and in accordance with applicable state law (with respect to information or documents submitted to the State). For documents or information determined to be confidential by Plaintiffs, the United States will afford the documents or information confidentiality protection as provided by 40 C.F.R. Part 2, Subpart B, and the State

will afford the documents or information confidentiality protection as provided by applicable state law. If no claim of confidentiality accompanies documents or information when they are submitted to the Plaintiffs, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B or applicable state law.

b. Settling Defendants may assert that certain documents and information are privileged under the attorney-client privilege or any other privilege recognized by law. If Settling Defendants assert such a privilege in lieu of providing documents, Settling Defendants shall provide the Plaintiffs with the following: (i) the title of the document; (ii) the date of the document; (iii) the name and title of the author of the document; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document; and (vi) the privilege asserted by Settling Defendants. No documents or information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

48. The United States acknowledges that each Settling Federal Agency is subject to all applicable Federal record retention laws, regulations and policies.

XII. FORCE MAJEURE

49. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise “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 potential force majeure event (1) as it is occurring

and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete any requirements of this Consent Decree.

50. If any event occurs or has occurred that may delay the performance of an obligation of any Settling Defendant under this Consent Decree, whether or not caused by a force majeure event, the Party or Parties whose performance may be affected by the event shall notify orally the Trustees, within 3 days of when such Party or Parties first knew that the event might cause a delay. Within 14 days thereafter, such Party or Parties shall provide to the Trustees a written notice setting forth: 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 to be taken to prevent or mitigate the delay or the effect of the delay; the rationale for attributing such delay to a force majeure event if such a claim may be asserted by the Party or Parties submitting the notice; and a statement as to whether, in the opinion of the Party or Parties submitting the notice, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Party or Parties submitting such notice shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure of any Party to comply with the above requirements shall preclude such Party 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. For purposes of this Section, circumstances known, or that should have been known, by any ARCG II member, any entity controlled by any ARCG II member or any contractor retained by ARCG II for purposes of this Consent Decree, shall be deemed to be known by all ARCG II

members, and circumstances known, or that should have been known, by either of the Railroads, any entity controlled by either of the Railroads, or any contractor retained by Railroads for purposes of this Consent Decree, shall be deemed to be known by both Railroads.

51. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Trustees, 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. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Trustees will notify the Settling Defendants in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure event, the Trustees will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

52. Settling Defendants may invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) to contest any decision of the Trustees under this Section, provided that they shall do so no later than 15 days after receipt of notice of the Trustees' decision. In any such proceeding, the Settling Defendants invoking dispute resolution 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 such Settling Defendants

complied with the requirements of Paragraphs 49 and 50, above. In any case where this burden is carried by the Party or Parties asserting the force majeure claim, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Decree identified to Trustees and the Court.

XIII. DISPUTE RESOLUTION

53. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree; provided, however, that: nothing in this Consent Decree shall be construed to authorize any Party to dispute any action or determination of the Trustees: (a) disapproving, modifying, or conditionally approving, any provision (other than the proposed implementation schedule) in any Workplan submitted pursuant to Section VI, above; or (b) in selecting or carrying out any natural resource restoration activities or in managing or expending funds pursuant to Section X (Trustee-Sponsored Natural Resource Restoration Activities). The procedures set forth in this Section shall not apply to actions by Trustees to enforce obligations of any Settling Defendants that have not been disputed in accordance with this Section. Nor shall this Section apply to disputes between or among Settling Defendants and the Settling Federal Agencies under this Consent Decree.

54. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Party contesting the action or determination of the Trustees sends the Trustees a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement of the Parties to the dispute. If

the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Trustees shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, the Party contesting the action or determination of the Trustees (the “Disputing Party”) invokes formal dispute resolution procedures as set forth below.

55. Formal Dispute Resolution. The Disputing Party shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Trustees a written Statement of Position 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 Disputing Party’s position and any supporting documentation relied upon by the Disputing Party. The Trustees shall serve their Statement of Position within 45 Days of receipt of the Disputing Party’s Statement of Position. The Trustees’ 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 Trustees.

a. An administrative record of the dispute shall be maintained by the Trustees and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental Statements of Position by the parties to the dispute.

b. The Regional Director of FWS and the Director of Ohio EPA or their designees will jointly issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 55.a. This decision shall be binding upon the Disputing Party, subject only to the right to seek judicial review pursuant to Paragraph 56.

56. The Disputing Party may seek judicial review of the dispute by filing with the Court and serving on the Trustees, in accordance with Section XIX of this Consent Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the administrative decision pursuant to Paragraph 55.b. The motion shall contain a written statement of the Disputing Party's position on the matter in dispute, including the Disputing Party's position concerning the applicable Standard of Review to be applied by the Court pursuant to Paragraph 58.a or b, below, together with 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 Decree.

57. The Trustees shall respond to the Disputing Party's motion within the time period allowed by the Local Rules of this Court. The Disputing Party may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 55 pertaining to the adequacy or appropriateness of implementation schedules, or any other items requiring approval by the Trustees under this Consent Decree; the adequacy of the performance of restoration activities undertaken pursuant to Sections VI and VII of this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Disputing Party shall have the burden of demonstrating, based on the administrative record, that the administrative resolution of the dispute by the Regional Director

FWS and the Director of Ohio EPA, or their designees, is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 55, the Disputing Party shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of any Settling Defendant under this Consent Decree, 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 64. If the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

60. Settling Defendants shall be liable to Plaintiffs for stipulated penalties in the amounts set forth below in this Paragraph for failure to comply with the requirements of this Consent Decree specified below, unless excused pursuant to Section XII (Force Majeure). “Compliance” shall include completion of activities under this Consent Decree or any work plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, any applicable Statement of Work, and any plans approved by Trustees pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

a. The following stipulated penalties shall accrue per violation per day for each failure to submit a timely or adequate Restoration Workplan pursuant to Paragraphs 8 or 9:

<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

b. The following stipulated penalties shall accrue per violation per day for each failure to establish and record any Environmental Covenant in accordance with Paragraph 14 or 27:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,500	15th through 30th day
\$5,000	31st day and beyond

c. The following stipulated penalties shall accrue per violation per day for each failure to implement any approved Restoration Workplan in accordance with Paragraphs 10 or 23:

<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

d. The following stipulated penalties shall accrue per violation per day for each failure to make any payment required pursuant to Paragraphs 35 or 36:

<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

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section VIII (Review and Approval of Workplans and Other Submissions), during the period, if any, beginning on the 31st day after the Trustees' receipt of such submission until the date that the Trustees notify Settling Defendants of any deficiency; (2) with respect to a decision by the Regional Director of FWS and the Director of Ohio EPA or their designees under Paragraph 55.b of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to Trustees' Statement of Position is received until the date that the Regional Director of FWS and the Director of Ohio EPA or their designees issue a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

62. Following the Trustees' determination that Settling Defendants have failed to comply with applicable requirements of this Consent Decree, the Trustees may give such Settling

Defendants written notification of the same, describing the noncompliance, and a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Trustees have notified the Settling Defendants of a violation.

63. All stipulated penalties shall be due and payable within 30 days of Settling Defendants' receipt of a demand for payment of the penalties unless Settling Defendants invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution). For any noncompliance referred to in Paragraph 60.a - c, above, one-half of the stipulated penalty amount due shall be paid to the United States, and one-half of the stipulated penalty amount due shall be paid to the State of Ohio as specified below in this Paragraph. All stipulated penalties pursuant to Paragraph 60.d, above, for failure to make any payments due to any Federal Trustee pursuant to Section IX shall be paid to the United States, as specified in Paragraph 63.a. All stipulated penalties pursuant to 60.d, above, for failure to make any payments to State Trustees pursuant to Section IX shall be paid to the State of Ohio as specified in Paragraph 63.b.

a. All stipulated penalties due to the United States shall be paid by certified or cashier's check made payable to the United States Treasury and sent to the United States Attorney for the Northern District of Ohio and sent to:

801 West Superior Avenue
Suite 400
Cleveland, OH 44113-1852

b. All stipulated penalties due to the State of Ohio shall be paid by certified or cashier's checks made payable to "Treasurer, State of Ohio" and sent to Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

c. Copies of the transmittal letters and checks shall be sent to the United States and to the State in the manner provided by Section XIX (Notices and Submissions).

64. Penalties shall continue to accrue as provided in Paragraph 61 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Trustees that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the Trustees within 15 days of the agreement or the receipt of the Trustees' decision;

b. If the dispute is appealed to this Court and the Trustees prevail in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the Trustees within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Trustees or to Settling Defendants to the extent that they prevail.

65. If Settling Defendants fail to pay stipulated penalties when due, Plaintiffs may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of a demand for payment made by the Plaintiffs.

66. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of any tasks required under this Consent Decree.

67. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including but not limited to injunctive relief, and civil and criminal sanctions. Nor shall anything in this Consent Decree be construed as prohibiting, altering, or in any way limiting the ability of the DOI, FWS, NOAA or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based.

68. Notwithstanding any other provision of this Section, the Plaintiffs may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XV. COVENANTS BY PLAINTIFFS

69. Except as provided in Paragraphs 72 and 73, Plaintiffs covenant not to sue the Settling Defendants for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C), Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §1321(f)(4) and (5), or state law. With respect to each Settling Defendant, this covenant not to sue is conditioned upon the satisfactory performance of such Settling Defendant's obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

70. Except as specifically provided in Paragraphs 72 and 74, DOI, FWS and NOAA covenant not to take administrative action against the Settling Federal Agencies for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C), and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §1321(f)(4) and (5). These covenants by DOI, FWS and NOAA shall take effect upon the receipt of the payments required by Paragraph 37.a of Section IX (Payments For Assessment Costs And Trustee-Sponsored Natural Resource Restoration Activities). These covenants by DOI, FWS and NOAA are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. DOI's, FWS' and NOAA's covenants extend only to the Settling Federal Agencies and do not extend to any other person.

71. Except as specifically provided in Paragraphs 72 and 75, the State of Ohio covenants not sue or issue administrative findings and orders against the United States for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C), Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §1321(f)(4) and (5), or state law. The State's covenants shall take effect upon the receipt of the payment required by Paragraph 37.b of Section IX (Payments For Assessment Costs And Trustee-Sponsored Natural Resource Restoration Activities). The State's covenants are conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. The State's covenants extend only to the United States and do not extend to any other person.

XVI. RESERVATION OF RIGHTS BY PLAINTIFFS

72. General Reservations of Rights. The covenants set forth in Section XV (Covenants by Plaintiffs) do not pertain to any matters other than those expressly specified in

Paragraphs 69 - 71, above. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and DOI, FWS, NOAA and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all other matters. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants, and DOI, FWS, NOAA and the State reserve all rights against Settling Federal Agencies, with respect to:

- a. claims based on a failure by any Settling Defendant or Settling Federal Agency to meet a requirement of this Consent Decree;
- b. liability for any other damages that are not within the definition of Natural Resource Damages;
- c. liability for any injury to, or destruction or loss of, Natural Resources resulting from implementation of the GLLA Project, if the habitat restoration component of the GLLA Project is not completed in accordance with the Ashtabula River Great Lakes Legacy Act Project Agreement, and the Great Lakes Legacy Act Restoration Project Construction Services Ashtabula River Area of Concern (CH2MHill September 2009);
- d. liability of any person arising from any injury to Natural Resources resulting from any release or disposal of hazardous substances by such person after the date of lodging of this Consent Decree, but not including any liability arising from further migration of previously released hazardous substances present in the environment in the Ashtabula River Area as of June 18, 2008;
- e. liability pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and state law, to implement any response actions relating to the Ashtabula

River Area or reimburse any response costs incurred in connection with response actions relating to the Ashtabula River Area; and

f. criminal liability.

73. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve the right to institute proceedings against any Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessments, based on: (i) conditions, including but not limited to the release of hazardous substances at or to the Ashtabula River Area, previously unknown to the Trustees, that are discovered after the date of lodging of this Consent Decree, and that cause or contribute to new or additional injuries to, losses of, or destruction of Natural Resources, or new or additional service losses (“Unknown Conditions”); or (ii) information concerning the release of hazardous substances or the resulting injuries to Natural Resources, previously unknown to the Trustees, that is received, in whole or in part, after the date of lodging of this Consent Decree and that, together with any other relevant information, indicates that there are new or additional injuries to, losses of or destruction of Natural Resources, or new or additional service losses (“New Information”). For purposes of this Paragraph, the information and conditions known to the Trustees shall include only the information and the conditions set forth in the administrative record supporting the Restoration Plan, and any additional information of which the Trustees became aware between the date of issuance of the final Restoration Plan and the date of lodging of the Consent Decree regarding conditions in the Ashtabula River Area on or before June 18, 2008 or regarding injuries, losses or destruction of Natural Resources, or the services they provide, resulting from such conditions.

74. Special Reservations By NOAA, FWS and DOI Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, DOI, FWS and NOAA reserve the right to take administrative action against Settling Federal Agencies for the recovery of Natural Resource Damages, including costs of damages assessments, based on: (i) conditions, including but not limited to the release of hazardous substances at or to the Ashtabula River Area, previously unknown to the DOI, FWS and NOAA, that are discovered after the date of lodging of this Consent Decree, and that cause or contribute to new or additional injuries to, losses of, or destruction of Natural Resources, or new or additional service losses (“Unknown Conditions”); or (ii) information concerning the release of hazardous substances or the resulting injuries to Natural Resources, previously unknown to the DOI, FWS and NOAA, that is received, in whole or in part, after the date of lodging of this Consent Decree and that, together with any other relevant information, indicates that there are new or additional injuries to, losses of or destruction of Natural Resources, or new or additional service losses (“New Information”). For purposes of this Paragraph, the information and conditions known to the DOI, FWS and NOAA shall include only the information and the conditions set forth in the administrative record supporting the Restoration Plan, and any additional information of which the Trustees became aware between the date of issuance of the final Restoration Plan and the date of lodging of the Consent Decree regarding conditions in the Ashtabula River Area on or before June 18, 2008 or regarding injuries, losses or destruction of Natural Resources, or the services they provide, resulting from such conditions.

75. Special Reservations By The State Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the State reserves the right to

institute proceedings against the Settling Federal Agencies in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessments, based on:

(i) conditions, including but not limited to the release of hazardous substances at or to the Ashtabula River Area, previously unknown to the State, that are discovered after the date of lodging of this Consent Decree, and that cause or contribute to new or additional injuries to, losses of, or destruction of Natural Resources, or new or additional service losses (“Unknown Conditions”); or (ii) information concerning the release of hazardous substances or the resulting injuries to Natural Resources, previously unknown to the State, that is received, in whole or in part, after the date of lodging of this Consent Decree and that, together with any other relevant information, indicates that there are new or additional injuries to, losses of or destruction of Natural Resources, or new or additional service losses (“New Information”). For purposes of this Paragraph, the information and conditions known to the State shall include only the information and the conditions set forth in the administrative record supporting the Restoration Plan, and any additional information of which the Trustees became aware between the date of issuance of the final Restoration Plan and the date of lodging of the Consent Decree regarding conditions in the Ashtabula River Area on or before June 18, 2008 or regarding injuries, losses or destruction of Natural Resources, or the services they provide, resulting from such conditions.

**XVII. COVENANTS BY SETTLING DEFENDANTS
AND SETTLING FEDERAL AGENCIES**

76. Covenants Not to Sue By Settling Defendants. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Natural Resource Damages, including payments made under Section IX of this Consent Decree, or any liability for costs

incurred in connection with any response actions undertaken in the Ashtabula River Area pursuant to the Great Lakes Legacy Act, 33 U.S.C. § 1268, including but not limited to: (i) any direct or indirect claims for reimbursement of any payment for Natural Resource Damages based on Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613 or (ii) any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to Natural Resource Damages or any response actions undertaken in the Ashtabula River Area pursuant to the Great Lakes Legacy Act, 33 U.S.C. § 1268. These covenants not to sue shall not apply in the event that the United States or the State brings a cause of action against Settling Defendants pursuant to the reservations set forth in Paragraphs 72 and 73, above, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims asserted by the United States or the State pursuant to such reservations.

77. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement of any payment for Natural Resource Damages based on Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; and covenant not to sue the Settling Defendants or the State under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, with respect to Natural Resource Damages, including payments made under Section IX of this Consent Decree, or any liability for costs incurred in connection with any response actions undertaken in the Ashtabula River Area pursuant to the Great Lakes Legacy Act, 33 U.S.C. § 1268. These covenants shall not apply in the event that DOI, FWS, and/or NOAA take administrative action against Settling Federal Agencies pursuant to the reservations set forth in Paragraphs 72 or 74, above, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the administrative actions taken by DOI, FWS, and/or NOAA

pursuant to such reservations. Nor shall these covenants by Settling Federal Agencies apply in the event the State brings a claim and/or administrative action against the Settling Federal Agencies pursuant to the reservations set forth in Paragraphs 72 or 75, above, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims or actions brought by the State pursuant to such reservations.

78. a. Reservations of Rights By Settling Defendants

(1) Except as provided in Paragraph 76, above, Settling Defendants reserve the right to assert and maintain claims against any person for recovery of any costs incurred in connection with any response actions undertaken in the Ashtabula River Area pursuant to the Great Lakes Legacy Act, 33 U.S. C. § 1268, and the Water Resources Development Act, 33 U.S.C. § 1272.

(2) Railroads reserve the right to assert and maintain any and all claims they may have relating to Natural Resource Damages, including contribution claims, against the following persons:

American Premier Underwriters, Inc.
Triad Salvage, Inc.
Acme Scrap Iron and Metal Company
Columbia Iron and Metal Company

b. Waiver of Certain Claims Against Other Persons. Except as provided in Paragraph 78.a.(2), above, each Settling Defendant agrees not to assert any claim and to waive all claims or causes of action that it may have against any person not a party to this Consent Decree for all matters relating to Natural Resource Damages, including for contribution; provided, however, that each Settling Defendant reserves the right to assert and pursue all claims or causes of action (including contribution claims) against any such person: (1) relating to any liability

with respect to claims asserted by the United States, DOI, NOAA, or the State pursuant to reservations of rights in Paragraphs 72 or 73, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims of the United States, DOI, NOAA, or the State pursuant to such reservations of rights; and (2) relating to any Natural Resource Damages in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against such Settling Defendant relating to Natural Resource Damages.

XVIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

79. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant and Settling Federal Agency is entitled, as of the Effective Date of the Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or other federal law, for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages, as defined herein.

80. Each Settling Defendant agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify, in writing, the United States and the State within 10 days of service of any complaint on them. In addition, each Settling Defendant shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a Court setting a case for trial.

81. Waiver of Claim-Splitting Defenses.

a. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, or Natural Resource Damages or other relief

related to the Ashtabula River Area, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section XV.

b. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, or Natural Resource Damages or other relief related to the Ashtabula River Area, the Settling Federal Agencies shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section XV.

XIX. NOTICES AND SUBMISSIONS

82. Whenever, under the terms of this Consent Decree, written notice is required to be given or a plan, report or other submission is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree.

As to the United States:

For the Department of Justice:

Chief, Environmental Enforcement Section (DJ #90-11-2-210/1)
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

For DOI:

Office of the Solicitor
U.S. Department of the Interior
Three Parkway Center, Suite 385
Pittsburgh, PA 15220

For NOAA:

General Counsel's Office for Natural Resources/NE
NOAA Office of General Counsel
55 Great Republic Drive
Gloucester, MA 01930

For the Settling Federal Agencies:

Chief, Environmental Defense Section (DJ # 90-11-6-16703)
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, DC 20026-3986

As to the State:

For the Ohio Attorney General's Office:

Timothy J. Kern
Assistant Attorney General
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street - 25th Floor
Columbus, Ohio 43215

For Ohio EPA:

Ohio EPA
Division of Emergency and Remedial Response
Northeast District Office
2110 Aurora Road
Twinsburg, Ohio 44087
ATTN: Regan Williams

As to ARCG II:

Joseph A. Heimbuch
de maximis inc.
2975 Bee Ridge Road
Suite C
Sarasota, FL 34239

Joseph D. Lonardo
Vorys, Sater, Seymour & Pease, LLP
1909 K Street, N.W. , 9th Floor
Washington, D.C. 20006-1152

Ralph E. Cascarilla
Walter & Haverfield, LLP
1301 East Ninth Street
Cleveland, Ohio 44114-1821

As to Railroads:

For Norfolk Southern Railway Company and Norfolk Southern Corporation:

Karin Stamy
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Russ McDaniel
Norfolk Southern Corporation
1200 Peachtree Street, NE Box 13
Atlanta, GA 30309

For Consolidated Rail Corporation and Conrail Inc.:

Jonathan M. Broder
Consolidated Rail Corporation
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

83. Certification of Notices and Submissions. All notices and submissions required by this Consent Decree to be submitted by or on behalf of any Settling Defendant(s) shall be certified by a responsible official or designated representative of the respective Settling Defendant(s), and accompanied by the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. This certification is based on my personal preparation, review, or analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate and complete.

XX. TERMINATION

84. Request for Termination.

a. ARCG II may serve upon Plaintiffs a Request for Termination of Consent Decree With Respect to ARCG II, together with supporting information, once: (1) ARCG II has paid all amounts due pursuant to Paragraphs 19, 35 and 39, and all accrued stipulated penalties as

required by this Consent Decree; (2) ARCG II has completed all requirements of Section VI (ARCG II Restoration Projects), including the establishment of Environmental Covenants on all Restoration Properties and Additional Restoration Properties acquired pursuant to this Consent Decree; and (3) Trustees have approved the Restoration Completion Report submitted pursuant to Section VI.

b. Railroads may serve upon Plaintiffs a Request for Termination of Consent Decree With Respect to Railroads, together with supporting information, once: (1) Railroads have paid all amounts due pursuant to Paragraphs 36 and 39, and all accrued stipulated penalties as required by this Consent Decree; (2) Railroads have completed all requirements of Section VII (Railroads Restoration Project), including the establishment of an Environmental Covenant; and (3) Trustees have approved the Restoration Completion Report submitted pursuant to Section VII.

85. Following receipt by Plaintiffs of any Request for Termination pursuant to the preceding Paragraph, Plaintiffs may confer informally with the requesting Party to resolve any question or disagreement concerning whether such Party has satisfied the applicable criteria under Paragraph 84 for termination of this Consent Decree. If Plaintiffs agree that the applicable criteria have been satisfied by the requesting Party, Plaintiffs and the requesting Party shall submit for the Court's approval a joint stipulation terminating the Decree with respect to the requesting Party.

86. If Plaintiffs do not agree that the requesting Party has satisfied the applicable criteria under Paragraph 84 for termination of this Consent Decree, the requesting Party may invoke Dispute Resolution under Section XIII of this Decree. However, the requesting Party

shall not seek dispute resolution of any dispute regarding termination, under Paragraph 55 of Section XIII (Dispute Resolution), until 60 days after service of its Request for Termination.

87. The provisions set forth in Paragraph 47 and in Sections XV (Covenants by Plaintiffs), XVI (Reservation of Rights by Plaintiffs), XVII (Covenants by Settling Defendants and Settling Federal Agencies), and XVIII (Effect of Settlement/Contribution Protection) will remain enforceable notwithstanding termination of this Consent Decree.

XXI. PUBLIC COMMENT

88. 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 the provisions of 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

XXII. EFFECTIVE DATE AND RETENTION OF JURISDICTION

89. This Consent Decree shall take effect upon entry by the Court; provided, however, that Settling Defendants shall be bound upon the lodging of this Consent Decree to comply with obligations of Settling Defendants specified in this Consent Decree as accruing upon lodging.

90. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXIII. APPENDICES

91. The following Appendices are attached to and incorporated into this Consent Decree:

- Appendix A Map of the Ashtabula River Area
- Appendix B List of Restoration Properties
- Appendix C Natural Resource Restoration Plan and Environmental Assessment for the Ashtabula River and Harbor Site
- Appendix D Scope of Work for ARCG II Restoration Workplans
- Appendix E Environmental Covenant Template
- Appendix F Trustee Memorandum of Understanding (MOU)
- Appendix G Railroads Restoration Workplan

XXIV. CONSENT DECREE MODIFICATIONS

92. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

93. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

94. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Consent Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Consent Decree.

XXV. SIGNATORIES/SERVICE

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

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

97. Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner 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.

XXVI. FINAL JUDGMENT

98. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants.


SO ORDERED THIS 12th DAY OF July, 2012.

Wm. A. Bryant
United States District Judge

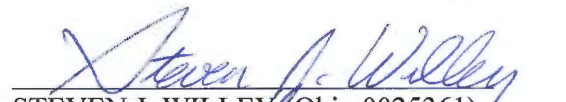
THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR THE UNITED STATES OF AMERICA


Date: 1/31/12


IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 2/1/12


STEVEN J. WILLEY (Ohio 0025361)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: 3/30/12


DANIEL DERTKE
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

UVGXGP 'F GVVGNDCEJ
United States Attorney
Northern District of Ohio

Date: _____

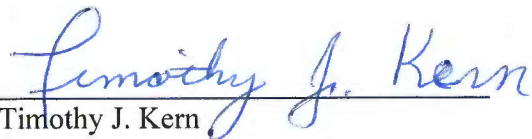
s/ Steven Paffilas
STEVEN PAFFILAS
Assistant United States Attorney
Northern District of Ohio
801 W. Superior Ave., Suite 400
Cleveland, Ohio 44113
(216) 622-3698

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR THE STATE OF OHIO

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Date: MARCH 30, 2012



Timothy J. Kern
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT CABOT CORPORATION

Date:

7/22/2010

Signature



Typed Name: Brian A. Berube

Title: Vice President & General Counsel

Address: Cabot Corporation

Two Seaport Lane, Suite 1300

Boston, MA 02210

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

Typed Name: Gerard A. Caron

Title: Counsel

Address: Cabot Corporation

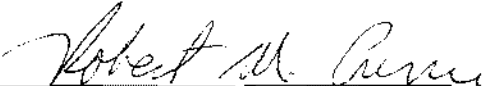
Two Seaport Lane, Suite 1300

Boston, MA 02210

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT DETREX CORPORATION

Date: 7-20-10


Signature

Typed Name: ROBERT M. CURRIE

Title: VICE PRESIDENT, GENERAL COUNSEL & SECRETARY

Address: 24901 NORTHWESTERN HIGHWAY, #410

SOUTHFIELD, MI 48075

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

Typed Name: _____

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT ELKEM METALS ~~COMPANY~~
~~INC~~ COMPANY - ASHTABULA LP

Date: 7/27/10


Signature

Typed Name: Mark Nilsen

Title: President

Address: Airport Office Park, Building 2
400 Rouser Road
Moon Township, PA 15108

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

Typed Name: _____

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY

Date: 8-5-10


Signature

Typed Name: Jacqueline S. Cooper

Title: Assistant Corporate Secretary

Address: 76 S. Main Street

Akron, OH 44308

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

Typed Name: CT Corporation System

Title: _____

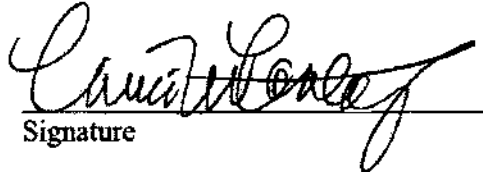
Address: 1300 East Ninth St., Suite 1010

Cleveland, OH 44114

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT GENCORP, INC.

Date: 8/5/11


Signature

Typed Name: Chris W. Conley

Title: V.P., Environmental Health & Safety

Address: GenCorp Aerojet

P.O. Box 13222

Sacramento, CA 95813-6000

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

Typed Name: David Rymph

Title: Director, Environmental Remediation

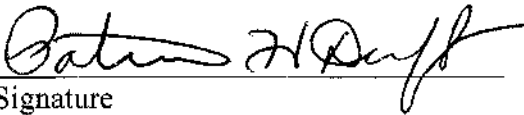
Address: 820 Starkweather

Plymouth, MI 48170

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT MALLINCKRODT, LLC

Date: 2/21/10


Signature



Typed Name: Patricia H. Duft

Title: Vice President

Address: 675 McDonnell Blvd

Hazelwood, MO 63042

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

Typed Name: Gayle Hoopes

Title: Senior Environmental Health and Safety Counsel

Address: 675 McDonnell Blvd

Hazelwood, MO 63042

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT MILLENNIUM INORGANIC CHEMICALS, INC.

Date: 7-26-10

Scott Strayer
Signature

Typed Name: Scott Strayer

Title: Site Director - Ashtabula Complex

Address: 2900 Middle Road

Ashtabula Ohio 44004

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

Typed Name: CT Corporation

Title: _____

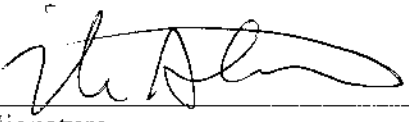
Address: 351 West Camden Street

Baltimore, Md. 21201

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT OCCIDENTAL CHEMICAL CORPORATION

Date: July 28, 2010



Signature

Typed Name: Michael G. Anderson

Title: Vice President

Address: 5005 LBJ Freeway

Suite 1350

Dallas, Texas 75244

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

Typed Name:

Title: General Counsel

Address: Occidental Chemical Corporation

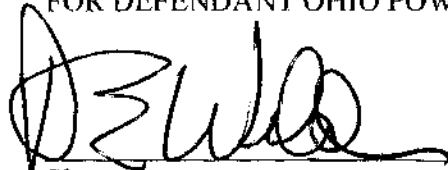
5005 LBJ Freeway, Suite 2200

Dallas, Texas 75244

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT OHIO POWER COMPANY

Date: July 29, 2010


Signature

Typed Name: Dennis E. Welch

Title: Vice President

Address: 1 Riverside Drive

Columbus, Ohio 43215

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

Typed Name: Kevin D. Mack

Title: Senior Counsel

Address: American Electric Power Legal Department

1 Riverside Plaza

Columbus, Ohio 43215

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT OLIN CORPORATION

Date: 7/30/10

Curtis M Richards
Signature

Typed Name: Curtis M Richards

Title: V.P. Environment, Health & Safety

Address: Olin Corporation

3855 North Ocoee St, Suite 200

Cleveland, TN 37312

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

Typed Name: George H Pain

Title: V.P. General Counsel & Secretary

Address: Olin Corporation

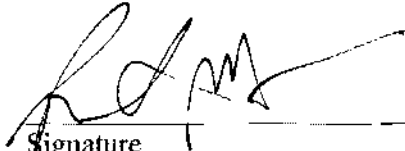
190 Carondelet Plaza, Suite 1530

Clayton, MO 63105

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT RMI TITANIUM COMPANY,
INC.

Date: 8/5/2010


Signature _____

Typed Name: Rick Mason

Title: Director, Safety & Environmental

Address: RMI TITANIUM COMPANY, INC.

1000 Warren Avenue

Niles, OH 44446

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

Typed Name: _____

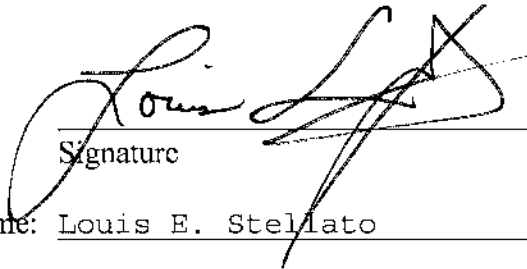
Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT THE SHERWIN-WILLIAMS COMPANY

Date: July 21, 2010


Signature

Typed Name: Louis E. Stellato

Title: Senior Vice President, General Counsel & Secretary

Address: 101 W. Prospect Avenue

Cleveland, OHIO 44115-1075

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

Typed Name: Allen J. Danzig

Title: Associate General Counsel – Environmental

Address: 101 W. Prospect Avenue

Cleveland, OHIO 44115-1075

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT UNION CARBIDE CORPORATION

Date: Aug. 9, 2010

Margaret Lattin Bazany
Signature

Typed Name: Margaret Lattin Bazany
Title: Authorized Representative
Address: 100 Independence Mall West
Philadelphia, PA 19106


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

Typed Name: CT Corporation
Title: _____
Address: 1300 E. 9th Street
Cleveland, OH 44114
216-621-4270

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT CBS OPERATIONS, INC.

Date: August 2, 2010



Signature

Typed Name: Eric J. Sobczak

Title: Vice President and Assistant Secretary

Address: 20 Stanwix Street, 10th Floor

Pittsburgh, PA 15222

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

Typed Name: _____

Title: _____

Address: _____

8

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT NORFOLK SOUTHERN
RAILWAY COMPANY

Date: 8/27/2010


Signature

Typed Name: David F. Julian

Title: Vice President, Safety & Environmental

Address: 1200 Peachtree St. NE Box 73
Atlanta, GA 30309

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

Typed Name: Jeffrey H. Burton

Title: General Counsel - Operations

Address: Three Commercial Place
Norfolk, VA 23510



THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT NORFOLK SOUTHERN CORPORATION

Date: 8/27/2010


Signature

Typed Name: David F. Julian

Title: Vice President, Safety & Environmental

Address: 1200 Peachtree St. NE

Box 73

Atlanta, GA 30309

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

Typed Name: Jeffrey H. Burton

Title: General Counsel - Operations

Address: Three Commercial Place

Norfolk, VA 23510

6

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT CONRAIL, INC.

Date: August 16, 2010


Signature

Typed Name: Jonathan M. Broder
Title: Vice President-Corporate Development & Chief Legal Officer
Address: 1717 Arch Street
32nd Floor
Philadelphia, PA 19103

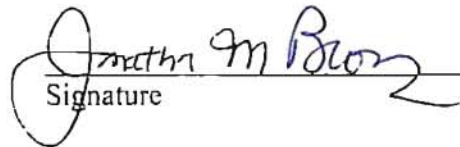
Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Jonathan M. Broder
Title: Vice President-Corporate Development & Chief Legal Officer
Address: 1717 Arch Street
32nd Floor
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree Regarding Ashtabula River Area Natural Resource Damages:

FOR DEFENDANT CONSOLIDATED RAIL CORPORATION

Date: August 16, 2010


Signature

Typed Name: Jonathan M. Broder
Vice President-Corporate Development &
Title: Chief Legal Officer
Address: 1717 Arch Street
32nd Floor
Philadelphia, PA 19103

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

Typed Name: Jonathan M. Broder
Vice President-Corporate Development &
Title: Chief Legal Officer
Address: 1717 Arch Street
32nd Floor
Philadelphia, PA 19103