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NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO WESTERN DIVISION

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

THE CITY OF TOLEDO, et al.

Defendants.

CASE NO. **3:99CV7507**

JUDGE

JUDGE JAMES G. CARR

CONSENT ORDER

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INTRODUCTION

Plaintiff State of Ohio by its Attorney General, Betty Montgomery, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendants hereby consent to the entry of this Consent Order.

NOW, THEREFORE, without trial of any issues of fact, without admission of liability or fact, and upon the consent of the parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

I. OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER

1. In entering into this Consent Order, the mutual objectives of the State of Ohio and Defendants include: (A) the design and implementation of the Primary Phase of the Remedial Action which has been selected by the Ohio EPA and described in the Decision Document; (B) monitoring, operation, and maintenance of the Primary Phase of the Remedial Action; (C) providing for the payment of current and future Oversight Costs and Response Costs to the State of Ohio as more fully described herein; and (D) the resolution of the State's claims as set forth in this Order.
2. This Consent Order requires the completion of Remedial Design/Remedial Action ("RD/RA") and the implementation of Operation and Maintenance ("O&M") of the Site as provided in this Consent Order.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 42 U.S.C. §§9601 et seq., 28 U.S.C. §1367 and O.R.C. Chapters 6111 and 3734. Venue is proper in this Court for purposes and duration of this Consent Order. Solely for the purposes of this Consent Order and the underlying Complaint, Defendants

agree that the Complaint states a cause of action against them. In signing this Consent Order, the Defendants waive any rights they may have to an adjudication hearing and/or appeal under O.R.C. Chapters 119 and 3745 for any act or action of the Ohio Environmental Protection Agency performed under the terms of this Consent Order; provided, however, that Defendants do not waive the right to an adjudication hearing and/or appeal under O.R.C. Chapters 119 and 3745 for rulemaking and/or permitting actions.

III. DEFINITIONS

4. Unless otherwise stated, all terms used in this Consent Order and the Appendices shall have the same meaning as used in O.R.C. Chapters 3734 and 6111 and the regulations adopted thereunder. In addition to this definition section, terms are also defined throughout the appendices, and shall have the same meaning whether the term is used in an appendix or in this Consent Order. Further, as used in this Consent Order and in the appendices, the following terms are defined as set forth below:

- A. "Additional Work Workplan" means those documents which are to be submitted to Ohio EPA by Defendants pursuant to Section XI of this Consent Order. Each workplan required to be submitted to Ohio EPA pursuant to Section XI of this Consent Order shall include a detailed description of the proposed activities; a time schedule for conducting those activities; and personnel and equipment needs.
- B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.
- C. "Certification of Completion" shall mean the approval of Defendants' construction completion report pursuant to Section 3.4.3. of the Statement of Work, which is attached as Appendix A
- D. "City" means the City of Toledo, Ohio.

- E. "Consent Order" means this document that has been consented to by the parties in the above-captioned case, and entered by the court. This term includes all appendices and attachments identified herein.
- F. "Contractor" means a contractor retained by Defendants pursuant to this Consent Order and any subcontractor, representative, agent, employee, or designee thereof.
- G. "Decision Document" means the document issued by Ohio EPA, setting forth the remedial action requirements for the Site, which is to be incorporated herein, and is, or will be, attached hereto as Appendix D.
- H. "Defendants" means all of the defendants that are signatories to this Consent Order, i.e. the City of Toledo, NL Industries, Inc. and each of the Industrial Group Defendants.
- I. "Deliverables" means any document which must be submitted to Ohio EPA under this Consent Order or its appendices.
- J. "DERR" means Ohio EPA's Division of Emergency and Remedial Response.
- K. "Document" means any record, report, log, journal, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports, and any and all documentary evidence, relating to the treatment, storage or disposal, and concerning the investigation and remediation of, hazardous wastes, solid wastes, industrial wastes, other wastes, hazardous substances, hazardous constituents and radioactive wastes at the Site. "Document" shall be construed broadly to promote the effective sharing between Defendants and Ohio EPA of information and views concerning the Work to be performed pursuant to this Order.
- L. "Entity" means any "person" as that term is defined in O.R.C. §§ 3734.01 and 6111.01, and includes, but is not limited to the Defendants.
- M. "Industrial Group Defendants" means AlliedSignal, Inc.; The Toledo Blade Company; E.I. duPont de Nemours and Company; The Toledo Edison Company; Sunoco, Inc. (R & M); BFI Waste Systems of North America, Inc.; Owens-Illinois, Inc.; Libbey Glass Inc.; GenCorp Inc.; Dana Corporation; Teledyne Continental Motors Turbine Engines a Division of Teledyne Industries, Inc.; Tecumseh Products Company; The Sherwin-Williams Company; Federal-Mogul Corporation; Federal-Mogul Ignition Company; Illinois Tool Works, Inc.; and Eagle Industries, Inc.
- N. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in the Comprehensive Environmental Response, Compensation and Liability

Act of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300.

- O. "NL" or "NL Industries" means Defendant NL Industries, Inc.
- P. "O.A.C." means Ohio Administrative Code.
- Q. "O.R.C." means Ohio Revised Code.
- R. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- S. "Operation and Maintenance" or "O&M" means all activities required to ensure that the response actions remain operational and functional. These operation and maintenance activities shall be described in an operation and maintenance workplan submitted by the City and approved by Ohio EPA.
- T. "Oversight Costs" means all direct and indirect costs incurred by the State of Ohio in verifying the Work to be performed by the Defendants pursuant to this Consent Order, including but not limited to the costs of payroll, fringe benefits, contractors, travel, samples, laboratory analysis, data management, safety and general equipment, supplies, reviewing of or developing workplans, reports, or other deliverables pursuant to this Consent Order. Oversight Costs also include costs associated with legal advice or assistance provided by the Ohio EPA's legal staff and the Ohio Attorney General's office in order for the State of Ohio to verify the Work performed by the Defendants.
- U. "Parties" means collectively the State of Ohio and all Defendants.
- V. "Plaintiff" or "State of Ohio" means the State of Ohio on the relation of its Attorney General who brought this action upon the written request of the Director of the Ohio EPA.
- W. "Preferred Plan" means the document attached as Appendix C, which was prepared by the Ohio EPA, Division of Emergency and Remedial Response (DERR), which presents to the public DERR's preferred alternative for remediation of the Site in accordance with the procedures outlined in Appendix B. The Preferred Plan includes a brief summary of the alternatives evaluated in the detailed analysis of the Feasibility Study, highlighting the key factors that led to the identification of the preferred alternative.
- X. "Primary Phase" means, at the time of the parties' execution of the Consent Order, Section 8.1 of the Ohio EPA's Preferred Plan, including all of the elements set forth in that section. Upon issuance of the Decision Document, "Primary Phase" shall mean the section within the Decision

Document that corresponds to Section 8.1 of the Preferred Plan, including all of the elements set forth in that section.

- Y. "RD/RA" means the Primary Phase of the remedial design and remedial action including operation and maintenance of the Site to be performed under this Consent Order
- Z. "Reimbursable Costs" means all costs and expenses that the State of Ohio is lawfully entitled to obtain pursuant to statute or common law.
- AA. "Remedial Design" means the detailed engineering plans, specifications and construction drawings which are in compliance with NCP (40 CFR Part 300) and sufficient to implement the selected remedial action or any portion thereof.
- BB. "Remedial Action" means any action, or part thereof, selected by the Ohio EPA that abates or reduces the threat posed by a placement or disposal or threatened disposal of hazardous waste, hazardous substances, hazardous constituents, pollutants, industrial wastes and/or other wastes to prevent present or future harm to the public health or welfare or to the environment and is consistent with applicable local, State and Federal laws and regulations, the NCP (40 CFR Part 300), and this Order.
- CC. "Response Action" includes "Remedial Action" as defined above and "removal", as defined by Section 101(23) of CERCLA, 42 U.S.C. §9601 (23).
- DD. "Response Costs" means all direct and indirect costs incurred by the State of Ohio, within the meaning of subparagraph (A) of 42 USC §9607 (a).
- EE. "Section" means a portion of this Consent Order identified by a Roman numeral.
- FF. "Site" means the physical facility located at 444 Dura Avenue, Toledo, Ohio, where treatment, storage, placement, or disposal of hazardous waste or industrial waste or other waste, and/or discharge into waters of the State of industrial waste or other waste has occurred, including any other area where such hazardous wastes, including industrial wastes, and/or other wastes have migrated or threaten to migrate. "Site" does not include the Ottawa River, nor the sediments contained therein.
- GG. "State" means the State of Ohio.
- HH. "Special Counsel Fees" means the legal fees and expenses charged by Roetzel & Andress as special counsel to the Attorney General of the State of Ohio in connection with the negotiation and court approval of this Consent Order.

- II. "Statement of Work" ("SOW") means the model statement of work for the implementation of the RD/RA as set forth in Appendix A to this Consent Order.
- JJ. "Waste Material" shall mean (1) any "hazardous waste" as that term is defined under O.R.C. §3734.01(J); (2) any "solid waste" as that term is defined under O.R.C. § 3734.01(E); (3) any "industrial waste" as that term is defined under O.R.C. § 6111.01 (C); (4) any "other wastes" as that term is defined under O.R.C. § 6111.01 (D); (5) any "hazardous substances" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (6) any "hazardous waste constituent" as that term is defined under O.A.C. § 3745-50-10(A)(43).
- KK. "Work" means all activities Defendants are required to perform under this Consent Order.
- LL. "Workplan" means those documents approved by the Ohio EPA detailing the requirements necessary to implement the RD/RA and O&M, as more fully described in this Consent Order.

IV. CONCLUSIONS OF LAW AND DETERMINATION

- 5. Based on the information available to the State, the State has determined that:
 - A. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
 - B. "Hazardous substances", as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14), have been found in cover soils, riverbank soils, leachate, and landfill gas at the Site.
 - C. Each defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
 - D. Defendants are either the "present owners" and/or operators of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), or are either person(s) (a) who at the time of disposal of any hazardous substances owned or operated the Site, or (b) who arranged for disposal or transport for disposal of hazardous substances at the Site, or (c) who accepted hazardous substances for transport for disposal at the Site, and the Site was selected by that person. Each defendant may therefore be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
 - E. The conditions at the Site constitute an actual or threatened "release" of a hazardous substance into the "environment" as defined by Section 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).

- F. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 CFR §300.415(b)(2).
- G. Defendants are "persons" as defined under O.R.C. Sections 3734.01(G) and 6111.01(I).
- H. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that certain contaminants found at the Site are "hazardous wastes" as defined under O.R.C. §3734.01 (J) of the Ohio Revised Code.
- I. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored or disposed.
- J. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as set forth in O. R. C. §3734.20.
- K. Certain contaminants found at the Site are "industrial wastes" or "other wastes" as defined under O.R.C. §6111.01 of the Ohio Revised Code.
- L. The ground water and surface water at the Site are "waters of the state" as defined under O.R.C. §6111.01(H).

V. PARTIES BOUND

- 6. The provisions of this Consent Order shall apply to and are binding upon the Parties, in accordance with Rule 65(d) of the Federal Rules of Civil Procedure.
- 7. Defendants shall provide a copy of this Consent Order to each of their respective contractors, subcontractors and consultants employed to perform any of the Work itemized or referenced herein. Defendants shall ensure that any agreements with their contractors and subcontractors to perform the Work contemplated herein, expressly provide that the Work must be performed in accordance with this Consent Order. A contractor's or subcontractor's failure to perform Work in accordance with this Consent Order shall not relieve the Defendants from completing the Work as provided hereunder.

8. No change in Corporate ownership or status of any Defendant, including, without limitation, any transfer of assets or real or personal property, shall in any way alter Defendants' obligations under this Consent Order. A copy of this Consent Order shall be provided to any subsequent owners or successors prior to transfer of such, up and until the Ohio EPA's approval of the Construction Completion Report as identified in the approved Statement of Work.

VI. CALCULATION OF TIME

9. Unless otherwise stated in this Consent Order, where this Order requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the day after the entry of this Consent Order. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

VII. DESIGNATION OF SITE COORDINATORS

10. Within ten (10) days, the City and the Industrial Group Defendants shall jointly designate, in writing to the Ohio EPA, a Site Coordinator who shall be responsible for administration of their actions required by this Consent Order, and to coordinate with the Ohio EPA Site Coordinator. The Defendants may also designate an alternate Site Coordinator. To the greatest extent practicable, during the duration of this Consent Order, the Defendants' Site Coordinator shall be present on-site or readily available during the times that the Work is being performed.

11. Unless the Defendants are otherwise notified by the Ohio EPA, the Ohio EPA Site Coordinator is Ali M. Moazed, Ohio EPA Northwest District Office, 347 North Dunbridge

Road, Bowling Green, Ohio 43402. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided. During the duration of this Consent Order, the Ohio EPA's Site Coordinator shall be reasonably available for communication with Defendants regarding the implementation of this Consent Order.

12. To the maximum extent practicable, communications between Defendants and Ohio EPA concerning the activities performed under this Consent Order shall be through the Site Coordinators. Each Party's Site Coordinator shall be responsible for assuring that communications from the other Party are appropriately disseminated and processed.

13. Defendants or Ohio EPA may change their Site Coordinator or alternate by notifying the other Party at least five (5) days prior to the change, unless impractical, but in no event later than the actual day the change is made.

14. Without limiting any authority conferred by law on the Ohio EPA, the authority of the Ohio EPA Site Coordinator includes:

- A. Taking and analyzing samples, directing the type, quantity and location of samples to be taken and analyzed by Defendants pursuant to an approved Work Plan;
- B. Observing, taking photographs, or otherwise recording information related to the implementation of this Consent Order, including the use of any mechanical or photographic device;
- C. Directing that work stop for a period of time not to exceed 72 hours, whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination. If the Chief of DERR makes a similar finding, the 72-hour time limitation shall not be applicable;
- D. Conducting investigations related to the implementation of this Consent Order;
- E. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Consent Order;

- F. Assessing Defendants' compliance with this Consent Order; and
- G. Attending regularly scheduled job Site/construction meetings.

VIII. PERMANENT INJUNCTION

15. Defendants are hereby enjoined and ordered to comply with their respective obligations under this Consent Order. Defendants are to perform the Work detailed in this Order, including but not limited to complying with any terms and conditions of any permits, and renewals or modifications thereof, and approvals issued by the Ohio EPA under this Order.

IX. RD/RA AND O&M WORK

16. All Work to be performed by Defendants pursuant to this Section shall be under the direction and supervision of a firm or person qualified to perform the Work required by this Consent Order. Defendants shall perform RD/RA at the Site in accordance with the following provisions:

- A. Within thirty (30) days, Defendants shall submit a RD/RA workplan for the implementation of the Primary Phase of the Remedial Action, as set forth in the Decision Document. The RD/RA workplan shall be developed in conformance with this Consent Order, the Statement of Work (herein incorporated as Appendix A to this Order), state law including O.R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, the NCP, 40 CFR Part 300, and the most current version of the guidance documents specified in Appendix B to this Consent Order. If, after the effective date of this Consent Order, Ohio EPA determines that any revised guidance documents or guidance documents in addition to those specified in Appendix B to this Consent Order affect the Work to be performed, Ohio EPA will notify Defendants in writing and any affected Workplan or reports shall be modified accordingly. Tasks required under the approved Workplan which have already been materially implemented shall not be required to be redone pursuant to any revised or additional guidance documents without the Defendants' consent, which consent shall not be unreasonably withheld.
- B. Within thirty (30) days of Ohio EPA's approval of the RD/RA Workplan, Defendants shall commence implementation of the work detailed therein,

and complete the requirements in accordance with the schedule contained in the approved RD/RA Workplan.

- C. Not later than ninety (90) days prior to the scheduled completion date of the Remedial Action, as specified in the approved RD/RA Workplan, the City shall submit, for Ohio EPA review and approval, a plan for implementation of O&M at the Site. The O&M workplan shall be developed in conformance with this Consent Order, the Primary Phase of the Remedial Action as described in the Decision Document, the Statement of Work, state law, including O.R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, the NCP, 40 CFR Part 300, and the most current version of the guidance documents specified in Appendix B to this Consent Order.
- D. The RD/RA Workplan, reports required by this Consent Order, any amendments to the approved RD/RA Workplan, and the O&M Workplan shall be subject to the review, approval or disapproval by Ohio EPA in accordance with the provisions set forth in Section XIV of this Consent Order.

17. The City shall perform or shall ensure performance of all Operation and Maintenance measures and tasks referenced in the O&M Workplan necessary to achieve the effectiveness, implementation and long-term maintenance of the response actions which occur at the Site pursuant to this Consent Order and the Statement of Work.

X. PERIODIC REVIEW TO ASSURE PROTECTION OF HEALTH AND THE ENVIRONMENT

18. If the Work performed by the Defendants pursuant to this Consent Order results in any Waste Material remaining at the Site, the Ohio EPA may review the Work at least once every five (5) years after Certification of Completion of the RD/RA to evaluate whether the RD/RA continues to be protective of human health and the environment.

19. Defendants shall conduct studies and investigations as set forth in the Statement of Work to assist Ohio EPA in its review of the RD/RA identified in the previous paragraph.

20. If Ohio EPA determines that further response action is appropriate for protection of human health and the environment at the Site, then Ohio EPA may take any appropriate action, including exercising its rights under Section XXVI, RESERVATION OF RIGHTS.

XI. ADDITIONAL WORK

21. Should Ohio EPA determine that additional Work is necessary to achieve the purposes of this Consent Order as set forth in Section I, OBJECTIVE OF PARTIES AND PURPOSE OF CONSENT ORDER Ohio EPA may notify Defendants in writing of the need for such additional Work. Provided, however, that the Industrial Group Defendants' obligations for Additional Work shall be limited to the Work identified in paragraph 25 (B) of this Order. Within ten (10) days of the receipt of such notification from Ohio EPA or such later time as may be agreed to by the Parties, Defendants shall prepare and submit to Ohio EPA for review and approval a workplan for the performance of the additional Work ("Additional Work Workplan"). For any required Workplan that includes sampling as an element, the workplan shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.

22. Defendants shall submit the Additional Work workplan for review and approval pursuant to Section XIV, DELIVERABLES AND APPENDICES. Upon approval of the Additional Work Workplan by Ohio EPA, Defendants shall implement the Additional Work Workplan in accordance with the schedules contained therein.

23. In the event that Defendants determine that additional Work is necessary to achieve the purposes of this Consent Order as set forth in Section I, OBJECTIVE OF PARTIES AND PURPOSE OF CONSENT ORDER, Defendants shall submit a written request for approval to Ohio EPA explaining the need for and detailing the nature of the

additional Work prior to performing the additional Work. Upon agreement by Ohio EPA with Defendants' request, Defendants shall develop and implement an Additional Work Workplan as set forth in this section.

24. In the event that additional Work is necessary for any task described in this Consent Order, the deadline for completing such task(s) shall be extended by the amount of time required to perform the additional Work required, including the period of time required to plan and/or obtain approval from the Ohio EPA for the performance of such Work.

XII. IMPLEMENTATION OF WORK

25. The Industrial Group Defendants shall :

- (A) Contract with, and, pay up to \$921,118 for the cost of a qualified engineering contractor to design the RD/RA (including the preparation of the RD/RA Workplan and the O&M Plan) and perform and complete the field engineering Work during the construction of the approved design; and
- (B) Purchase the flexible membrane liner, geosynthetic clay liner, and drainage net, necessary to install the Type II synthetic liner ("synthetic liner") contemplated by the Decision Document. The Industrial Group Defendants' obligation with respect to the synthetic liner includes the requisite engineering design, the purchase of the materials, as well as the cost of the installation of the materials. The Industrial Group Defendants' obligation for the costs of these components does not have a limitation.

26. The City shall procure all other necessary materials, complete construction, and perform all other tasks required under the RD/RA Workplan and O&M Plan. Further, in the event that the tasks in Paragraph 25(A) above, exceed the costs identified therein, the City shall be responsible for paying the remaining costs.

27. NL has previously paid the City of Toledo \$180,000.00, which the City of Toledo has deposited into the Dura Avenue Landfill Remediation Account. In accordance with the provisions of this paragraph, NL shall pay the City of Toledo, and the City of Toledo shall deposit into the Dura Avenue Remediation Account, an additional amount consistent

with the provisions of paragraph 3 of the Court approved December 29, 1998 Settlement Agreement between NL and the City of Toledo. However, if NL implements the dispute resolution provisions of paragraph 3 of the Court approved December 29, 1998 Settlement Agreement between NL and the City, NL shall pay on the specific invoice in accordance with a subsequent court order or determination.

28. In the event the cost for any portion of the Work in this Consent Order is greater than estimated, the Defendant(s) that is obligated to perform and/or pay for that portion of the Work shall be liable for any cost overrun.

XIII. DURA AVENUE LANDFILL REMEDIATION ACCOUNT

29. The City of Toledo shall establish and administer the Dura Avenue Landfill Remediation Account (the "Account") in accordance with the provisions of this Section.

30. Within 45 days the Industrial Group Defendants shall transfer to the City of Toledo, funds in the amount of \$3,900,000.00, plus interest in the amount of 5% per annum beginning September 15, 1998 through the date of payment. The City of Toledo is ordered to place said funds into the Account.

31. The City of Toledo is ordered to deposit all funds previously obtained, or obtained in the future, whether through judicial decree or settlement, in satisfaction of the City's Cost Recovery and/or Contribution Claims for the Dura Avenue Landfill, including any funds obtained from any other party in connection with the case captioned City of Toledo v. Allied-Signal, Inc., et al., U.S.D.C. Case No. 3:90-CV-7140, into the Account. This includes, but is not limited to the settlements with the following parties: U.S. Reduction - \$1,200,000.00; NL Industries - \$180,000.00 plus additional payments which equal 7% of the total cost of the RD/RA; Vallet Paint - \$15,000.00. Said funds shall be deposited

within 30 days of the entry of the Order, or upon payment to the City of Toledo, whichever is later in time.

32. Any funds within the Account, including any interest and/or income generated from said funds, shall be used exclusively for costs incurred by the City of Toledo after November 1, 1998 for the implementation of the Remedial Action of the Dura Avenue Landfill, as set forth within the Decision Document and in accordance with the approved RD/RA and O&M Workplans. The Defendants may use other sources of funds for costs associated with the implementation of the Remedial Action.

33. For the monthly progress report that is due in March of each year, the City of Toledo shall also submit a report to the Ohio EPA, identifying the following information:

- (A) Balance on the date entry of the Consent Order;
- (B) Balance as of the last report;
- (C) Current Balance;
- (D) Itemization of all deposits, interest and/or income since the last report; and
- (E) Itemization of all disbursements since the last report.

34. Upon the completion of O&M, the City may close the account and use any remaining funds as it believes to be appropriate.

XIV. DELIVERABLES AND APPENDICES

35. Ohio EPA will review in a timely manner any workplan, report, and other items required to be submitted pursuant to this Consent Order in accordance with the Consent Order, and appropriate State and Federal laws. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Defendants of deficiencies; or (e) any combination of the above.

36. Upon approval, approval upon condition, or modification by the Ohio EPA of any submission, the Defendant(s) responsible for implementing the Work required by the submission shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

37. In the event that Ohio EPA initially disapproves a submission, in whole or in part, it will notify the submitting Defendant(s) in a timely manner of the alleged deficiencies. Within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, the submitting Defendant(s) shall correct the alleged deficiencies and resubmit to Ohio EPA for approval a revised submission. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Defendants shall proceed to take any action required by a non-deficient portion of the submission which is not affected by the alleged deficient part.

38. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require the submitting Defendant(s) to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. In doing so, the Ohio EPA does not waive any rights reserved in Section XXVI.

39. In the event that Ohio EPA approves a portion of a Workplan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of this Consent Order.

40. The following documents are appended to this Consent Order and incorporated by reference at the time of entry of this Consent Order:

Appendix A – Model RD/RA Statement of Work

Appendix B – List of Guidance Documents

Appendix C – Preferred Plan

Appendix D – Decision Document

41. Those requirements of Appendix A addressed in the RD/RA Workplan submitted by the Defendants shall be superseded by the RD/RA Workplan upon approval of that document by the Ohio EPA.

42. Those requirements of Appendix A addressed in the O&M Workplan submitted by the Defendants shall be superseded by the O&M Workplan upon approval of that document by Ohio EPA.

XV. INSPECTIONS AND ACCESS

43. Ohio EPA, its employees, contractors and agents shall have access at all times to the Site and any other property to which access may be needed for the implementation of this Consent Order to the extent access to the property is controlled by Defendants. Access under this Consent Order shall be for the purposes of conducting any activity related to this Consent Order including, but not limited to the following:

- A. Monitoring the Work;
- B. Conducting sampling;
- C. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of this Consent Order in accordance with the provisions of Section XVII;
- D. Conducting investigations and tests related to the implementation of this Consent Order;
- E. Verifying any data and/or other information submitted to Ohio EPA;
- F. Performing time critical work or other actions required under this Consent Order that the Defendants have refused to perform;

44. No provision of this Consent Order shall be construed to eliminate or restrict any right of the State to seek access to Defendants' property which it may otherwise have under Federal or State law.

45. To the extent that the Site or any other property to which access may be needed for the implementation of this Consent Order is owned or controlled by persons other than the Parties, the Defendants shall use their best efforts to secure from such persons access for the Defendants and the Ohio EPA as necessary to implement this Consent Order. For purposes of this paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access, unless the Defendants establish to the satisfaction of the Ohio EPA that the owner of the property for which access is sought would be a potentially liable party at the Site under Section 107(A)(1) of CERCLA, 42 U.S.C. §9607(A)(1). Copies of all access agreements obtained by Defendants shall be provided promptly to Ohio EPA. If any access required to implement this Consent Order is not obtained within thirty (30) days, or within thirty (30) days of the date Ohio EPA notifies Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify the Ohio EPA in writing of the steps Defendants have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Defendants in obtaining access.

XVI. SAMPLING AND DATA AVAILABILITY

46. Defendants shall allow split or duplicate samples to be taken by Ohio EPA of all samples collected by Defendants. Accordingly, Defendants shall notify the Ohio EPA Site coordinator not less than fourteen (14) days in advance of any sample collection called for under this Consent Order.

47. Defendant shall submit upon the request of the Ohio EPA Site Coordinator, the results of all sampling, test data (including raw data); original reports of analytical procedures, written explanations concerning raw data and original laboratory reports and non-privileged interpretative reports, generated by them or on their behalf related to the Site. Defendants' submittal shall be indexed or organized in such a manner that the information and documents contained therein can be readily obtained by the Ohio EPA. Further, Defendants must comply with the requirements of Section XVII, below, as to each document withheld under a claim of privilege.

48. Should Defendants, following submission of any report or document pursuant to this Consent Order, discover any error in any report or raw data, Defendants shall within twenty (20) days of discovery, notify Ohio EPA of such discovery and provide to the Ohio EPA the basis for the error, and the corrected information.

XVII. ACCESS TO INFORMATION AND DOCUMENT RETENTION

49. Defendants shall provide to Ohio EPA, upon request, copies of all documents within its possession or control or within possession or control of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

50. Defendants may assert a claim that documents submitted to the Ohio EPA pursuant to this Consent Order are confidential under the provisions of O.A.C. § 3745-50-30(A) or O.R.C. § 6111.05(A). If no such claim of confidentiality accompanies the documents when submitted to the Ohio EPA, the same documents may be made available to the public without notice to Defendants.

51. Defendants may assert that certain documents are privileged under the attorney-client or any other privilege recognized by State law. If Defendants assert that certain

documents are privileged under State law, they shall provide Ohio EPA with the following information as to each document: (1) the title of the document; (2) the date of the document; (3) the name and title of the author of the document; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document; and (6) the privilege being asserted by Defendants, and the basis for the assertion. If the Ohio EPA disagrees with a claimed privilege, Defendant(s) may invoke the Dispute Resolution provisions set forth in Section XXII of this Consent Order. So long as Defendants comply with the requirements of this paragraph, Defendants are not required to provide Ohio EPA with the documents that are withheld under a claim of privilege during the Dispute Resolution process.

52. No claim of confidentiality or privilege, including but not limited to, claims made pursuant to O.R.C. §§ 3745.70 through 3745.73, shall be made with regard to any data, including but not limited to, all sampling, analytical monitoring, or laboratory or technical interpretive reports.

53. Defendants shall preserve for the duration of this Consent Order and for a minimum of ten (10) years after its termination, all documents within its possession or control, or which come into its possession or control that in any way relate to the Work, notwithstanding any document retention policy to the contrary. Defendants shall require that all contracts and agreements for Work provide that the contractor, subcontractor, or agent submit one copy of all documents, records and information of whatever kind that is in any way related to the Work, to Defendants. Defendants may preserve such documents by microfiche, or other electronic or photographic device. Defendants shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents; and upon request, shall deliver such documents and other information to Ohio EPA.

Defendants shall place and retain the documents described in this Section XVII in a repository located at the City of Toledo Law Department.

XVIII. MONTHLY PROGRESS REPORTS

54. Up and until the implementation of O&M, Defendants shall submit written progress reports describing the activities which have been undertaken during the previous month, and activities which are scheduled for the next month, to Ohio EPA by the twentieth day of every month after the entry of this Consent Order. At a minimum, these reports shall:

- A) Identify the Site and activity;
- B) Describe the status of Work at the Site and progress to date;
- C) Demonstrate the percentage of construction completed;
- D) Describe difficulties encountered during the reporting period;
- E) Describe actions taken to rectify problems;
- F) Describe activities planned for the next month;
- G) Identify changes in key personnel;
- H) List target and actual completion dates for each element of activity, including the project completion;
- I) Provide an explanation of any deviation from the milestones in the Workplan Schedules and actions taken to correct the deviation from the milestones;
- J) Describe any data obtained during the reporting period which shows contamination of the Site with Waste Material;
- K) Identify by media, quantity, and location, wastes that were generated, treated and disposed; and
- L) Volume of leachate treated each month.

55. Upon the implementation of O&M, the City shall submit progress reports containing such information and on a periodic basis, as specified within the approved O&M plan.

XIX. NOTICES

56. All documents, including correspondence, progress reports, notifications, or other submissions, required to be submitted under this Consent Order shall be submitted to the following, or their successors, by certified mail, overnight mail, e-mail, facsimile transmission with original sent by regular mail, hand delivery, or other equivalent means of delivery, unless the Consent Order specifically provides otherwise:

As to the State of Ohio:

Ali M. Moazed
Site Coordinator, Dura Avenue Landfill
OHIO EPA - NORTHWEST DISTRICT OFFICE
347 North Dunbridge Road
Bowling Green, OH 43402

- and -

Tim Christman
Technical and Program Support Section
Division of Emergency & Remedial Response
OHIO EPA
P.O. Box 1049
Columbus, OH 43216-1049

As to Defendants:

Paul Munn
Public Service Manager
City of Toledo Department of Public Service
One Government Center
Toledo, Ohio 43604

Either Party may change the name and/or address of its contact person(s) by sending written notice of the change(s) to the other Parties.

XX. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

57. No portion of the Site shall be used in any manner which could adversely affect the integrity of any Response Action implemented pursuant to this Consent Order. The City

shall not convey any title, easement or other interest without immediately providing a provision for continued operation and maintenance of any Response Action implemented pursuant to this Consent Order. Before transferring any interest in the property, the City shall assure that an appropriate notice shall be placed in the deed as to the condition of the property. Said notice shall first be approved by Ohio EPA. The City shall notify Ohio EPA of its intent to convey any interest in the Facility by certified mail at least 90 days prior to any conveyance.

58. Any conveyance of any title, easement or other interest in the Site by the City shall not relieve the City of its obligations under this Consent Order.

**XXI. PAYMENTS OF PAST, CURRENT AND FUTURE OVERSIGHT COSTS
AND RESPONSE COSTS**

59. Within ninety (90) days NL shall pay Ohio EPA \$45,000.00, which represents payment of the State's past cost claims against NL, prior to August 1, 1996. Payment shall be made in accordance with the provisions of paragraph 64, below.

60. Within 90 days, Defendants shall pay Ohio EPA \$72,084.36, which represents the State's current Oversight Costs from August 1, 1996 to July 31, 1998; and shall pay \$50,923.96, which represents the State's Special Counsel Fees through December 31, 1998. Payment of the State's current Oversight Costs and Special Counsel Fees shall be made in accordance with the provisions of paragraph 64, below. Within ninety (90) days Defendants shall also pay the Ohio Attorney General \$1,931.00 for enforcement costs incurred through the entry of this Order. Payment to the Ohio Attorney General shall be made by delivering a check in the above amounts made payable to "Treasurer, State of Ohio" to:

Jena Suhadolnik
Administrative Assistant
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215

61. Defendants shall reimburse the State of Ohio for all Special Counsel Fees incurred from January 1, 1999 through the entry of this Consent Order, and all future Oversight Costs incurred by the State of Ohio from July 31, 1998, and continuing through the termination of this Consent Order. Defendants shall pay the Special Counsel Fees incurred from January 1, 1999 through the entry date of this Order within sixty (60) days of receipt of a statement of such Special Counsel Fees. Ohio EPA will submit an itemized statement of Ohio's Oversight Costs to Defendants on an annual basis. Defendants shall pay Ohio EPA's Oversight Costs for the previous year within ninety (90) days of receipt of such itemized statement. As to the payment of Oversight Costs, the Dispute Resolution Section (Section XXII) of this Consent Order shall apply only to disputes over the accuracy of the costs and whether or not the cost is eligible under the definition of Oversight Costs. Failure to include Oversight Costs in a yearly statement does not preclude submission of such costs in a subsequent yearly statement. In the event of a dispute over Oversight Costs, Defendants shall not be required to pay the contested amount of Oversight Costs until the dispute is resolved.

62. In the event that Defendant(s) petition the Court under paragraph 69, Section XXII, DISPUTE RESOLUTION and the Court affirms the Chief of DERR's resolution of the dispute, the Defendant(s) shall pay the Ohio EPA's Oversight and Response Costs incurred during the resolution and defense of the dispute. However, the time spent by the Chief of DERR in reviewing and ruling upon a dispute shall not be included within these Oversight and Response Costs.

63. In the event that the State of Ohio successfully brings an action to enforce the Defendants' compliance with this Consent Order, the Defendants shall pay the State's Response Costs and Oversight Costs incurred as a result of said action.

64. Defendants shall remit payments pursuant to this Section by making payment to "Treasurer, State of Ohio" and forwarding it to Edith Long, Fiscal Officer, or her successor, at Ohio EPA, Office of Fiscal Administration, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Defendant shall remit the payment with a transmittal letter that identifies the Ohio EPA invoice number, if applicable, and this case caption, and that the payment is for Ohio EPA's Oversight and/or Response Costs for the Dura Avenue Landfill. Defendants shall send a copy of the check and transmittal letter to the Ohio EPA Site Coordinator.

XXII. DISPUTE RESOLUTION

65. This Dispute Resolution Section shall only be applicable to the following portions of this Consent Order: Paragraph 14(c) of Section VII., DESIGNATION OF SITE COORDINATORS, but only as to the facts giving rise to the requirement to stop Work and not to the Ohio EPA's authority under that Section to order that Work stop; Section XI., ADDITIONAL WORK; Section XIV., DELIVERABLES AND APPENDICES; Section XXI., PAYMENTS OF CURRENT AND FUTURE OVERSIGHT AND RESPONSE COSTS, as limited by paragraph 61 of that section; Paragraph 51 of Section XVII., ACCESS TO INFORMATION AND DOCUMENT RETENTION, but only as to a claim of privilege; Section XXVIII., TERMINATION OF LEACHATE COLLECTION AND TREATMENT SYSTEMS; and Section XXIX., TERMINATION. Provided, however, that once a particular issue has been resolved pursuant to this Section, that issue can no longer be disputed absent a change in circumstances that materially affects the issue.

66. The Site Coordinators shall, whenever possible, operate by consensus. In the event that Defendants have a good faith dispute involving any issue that is the subject of this Section, then the Site Coordinators shall have fifteen (15) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the differences. The dispute arises when either the Ohio EPA Site coordinator provides a brief written notice of dispute to the Defendants' Site coordinator, or the Defendants' Site Coordinator provides a brief written notice of dispute to the Ohio EPA Site Coordinator. This fifteen-(15) day period may be extended by mutual agreement of the Site Coordinators, up to an additional seven (7) days.

67. In the event that the Site Coordinators are unable to reach consensus on the dispute, then each Site Coordinator shall reduce his or her position to writing within ten (10) days of the end of the good faith negotiations referenced in the preceding paragraph. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their dispute.

68. If Ohio EPA does not concur with the position of the Defendants, the Ohio EPA Site Coordinator will notify Defendants in writing. Upon receipt of such written notice, the City and/or Industrial Group Defendants shall have ten (10) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to the Chief of Ohio EPA's Division of Emergency Response and Remediation ("DERR"). The statement of dispute shall be limited to a concise presentation of the Defendants' position on the dispute. The Chief of DERR, or his/her designee in the event that the Chief of DERR is unavailable, will resolve the dispute based upon and consistent with this Consent Order; State law, including O.R.C. Chapters 6111 and 3734, and the regulations promulgated

thereunder; the National Contingency Plan, 40 CFR Part 300; and other appropriate State and federal laws. In considering the dispute, the Chief of DERR may consult with the Director of Ohio EPA, any of the Director's deputies, the Chief of the NWDO, and/or any manager within DERR. The Chief of DERR will notify Defendants of the resolution as soon as practicable, but in no event later than twenty-one (21) days of receipt of the request for resolution.

69. The City and/or the Industrial Group Defendants, may petition the Court within fourteen (14) days of receipt of the Chief of DERR's written notification of dispute resolution as described in the preceding paragraph. The Court shall affirm the Chief of DERR's resolution of the dispute unless the City and/or Industrial Group Defendants demonstrates in a de novo hearing by a preponderance of the evidence that the resolution was unlawful or unreasonable within the meaning of O.R.C. Chapter 3745 or beyond the scope of the Consent Order.

70. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of Work to be performed under this Consent Order, except that upon written mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Elements of Work not affected by the dispute will be completed in accordance with the schedules contained in the RD/RA and O&M Workplans and other deliverables.

71. Within thirty (30) days of resolution of a dispute regarding disapproval or inadequacy of a submittal or the need for Additional Work, Defendants shall incorporate the resolution and final determination into the Workplan, report, or other item required to be submitted under this Consent Order and proceed to implement this Consent Order

according to the amended Workplan, report, or other item required to be submitted under this Consent Order.

72. Within thirty (30) days of resolution of a dispute regarding any statement issued for reimbursement of costs, the State of Ohio will make any necessary corrections to the statement and Defendants shall pay the costs in the corrected statement, if payment is required, in accordance with the timeframes set forth in Section XXI .

73. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to those matters set forth in paragraph 65 of this Consent Order.

XXIII. INDEMNIFICATION

74. Defendants agree to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action arising from, or related to, events or conditions at the Site, other than the willful misconduct of the State or its agents. The State agrees to provide notice to Defendants within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Defendants in the defense of any such claim or action against the State. The State shall not be considered a party to and shall not be held liable under any contract entered into by Defendants in carrying out the activities pursuant to this Consent Order.

XXIV. SATISFACTION OF LAWSUIT

75. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants for the claims alleged in the State of Ohio's Complaint, through the date of entry of this Consent Order. Nothing in this Consent Order shall be construed to limit the authority of

the State to seek relief for: (A) claims or conditions not alleged in the Complaint; (B) Phases of the Remedial Action not required to be implemented by this Consent Order; or (C) any violations arising out of acts or omissions first occurring after the date of entry of this Consent Order.

XXV. COVENANTS NOT TO SUE

76. In consideration of the actions that will be performed under the terms of this Order, and except as specifically provided in Section XXVI., RESERVATION OF RIGHTS, the State of Ohio covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA, O.R.C. Chapters 3734, 6111 and other statutes or the common law for performance of the Work and for recovery of Response Costs incurred prior to the entry of this Order. These covenants not to sue shall take effect upon the execution of this Order; however, these covenants not to sue are conditioned upon the complete and satisfactory performance by Defendants of their respective obligations under this Order. These covenants not to sue extend only to the Defendants and do not extend to any other person.

XXVI. RESERVATION OF RIGHTS

77. This Consent Order shall not be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint. The State of Ohio reserves all rights as to the Defendants for any violations or conditions which occur after the entry date of this Consent Order.

78. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action to eliminate or mitigate conditions which may present a threat to the public health, welfare or environment and to seek cost reimbursement for any such action, against any entity, including Defendants. Nothing in this Consent Order

shall be construed to limit the authority of the State of Ohio to seek relief for claims for damages to natural resources under CERCLA and/or any other legal theory. This reservation also explicitly includes any and all claims the State of Ohio may have concerning any disposal of Waste Material by Defendants at any location other than the Site.

79. Nothing in this Consent Order, nor in the Decision Document, shall be construed to limit the authority of the State of Ohio to undertake any action, against any entity including the Defendants, to eliminate, abate or mitigate conditions related to leachate at, or leaving the Site, and/or any off-site contamination, including but not limited to, contamination of the sediments in the Ottawa River. In exercising its rights under this paragraph, the State will consider data and other information, including, but not limited to: the volume, chemical concentration and toxicity of the leachate; any adverse environmental or health effects or conditions related to the leachate at or leaving the Site; and the cost of eliminating, abating or mitigating such conditions in accordance with O.R.C. Section 6111.03 and the NCP.

80. The State reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of this Consent Order, including penalties against Defendants for noncompliance with this Consent Order.

81. The State reserves the right to perform all or any portion of the Work and to seek recovery of all associated Response Costs, Oversight Costs, and Reimbursable Costs in the event that the requirements of this Consent Order are not wholly complied with within the time frames required by this Consent Order.

82. The State reserves the right to exercise any lawful authority under this Consent Order or in any other proceeding, including but not limited to issuance of an administrative

order or initiation of judicial proceedings, to compel Defendants and/or any other person to perform additional Response Actions to ensure protection of human health and the environment and to seek cost recovery of its Response Costs, Oversight Costs and Reimbursable Costs with respect to such additional actions; and in the event the State has had to perform Response Actions at the Site because of the Defendants' failure or refusal to do so, the State also reserves the right to institute proceedings against Defendants to recover the State's Response Costs, and Reimbursable Costs incurred in performing such response actions at the Site.

83. The State reserves the right to take and/or bring any action to require Defendants to implement the remaining Phase(s) of the Remedial Action.

84. Nothing in this Consent Order, including SECTIONS XXIV., SATISFACTION OF LAWSUIT, and XXV., COVENANTS NOT TO SUE, shall be construed as a limitation upon the State's reservation of rights set forth in this Section XXVI.

85. By entering into this Consent Order, the Defendants do not waive any defenses which they may legally raise in any future action identified in this Section XXVI, nor do the Defendants waive any claim or defenses amongst themselves or against any others not a party to this action. However, Defendants shall not assert, and may not maintain any defense or claim based upon Statute of Limitations or the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defense based upon the contention that the claims brought by the State in a subsequent action were, or should have been brought in the instant action.

XXVII. OTHER CLAIMS

86. Nothing in this Consent Order shall constitute or be construed as a release by any party and/or the parties from any claim, cause of action, or demand in law or

equity against any person, firm, partnership, or corporation, not a party to this Consent Order for any liability arising from, or related to, events or conditions at the Site.

XXVIII. TERMINATION OF LEACHATE COLLECTION AND TREATMENT SYSTEMS

87. The City will operate the barrier wall/leachate collection and treatment systems and the main gate leachate collection system in accordance with this Consent Order. If the City determines that further operation of any of these systems is no longer necessary to protect the public health and the environment, and to achieve the objectives of this Consent Order, the City may request, in writing, to discontinue or modify such collection, treatment and/or monitoring operations, by submitting information justifying such request. The Ohio EPA shall respond to this request in writing. If the request is not approved, the City may invoke the dispute resolution provisions set forth in Section XXII.

XXIX. TERMINATION

88. This Consent Order shall terminate upon approval of the Court, following completion of all activities, including Operation and Maintenance Activities, required under this Consent Order, in accordance with the provisions of this Section. Once the Defendants have completed all requirements of this Consent Order, including Operation and Maintenance Activities, Defendants shall notify the Ohio EPA, in writing, and expressly reference this provision. If the Ohio EPA concurs, in writing, that the Defendants have completed all activities, the Parties shall file a joint motion to terminate the Consent Order, in accordance with this Section. If the Ohio EPA disagrees that the Defendants have fully complied with the requirements of this Consent Order, Ohio EPA shall notify the Defendants, in writing, of the alleged compliance deficiencies. If any Defendant disagrees with the Ohio EPA's notice of compliance deficiencies, it may invoke

the dispute resolution provisions set forth in Section XXII. This Section, and the Sections of this Consent Order entitled RESERVATION OF RIGHTS, DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE, and SAMPLING AND DATA AVAILABILITY, shall survive this termination provision.

89. The requirements of Section XI., ADDITIONAL WORK shall terminate upon the Ohio EPA's issuance of the Certification of Completion.

XXX. CONTRIBUTION PROTECTION

90. With regard to claims for contribution against Defendants for matters addressed in this Order, the Parties hereto agree that the Defendants are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4) for matters addressed in this Order. Nothing in this Order precludes parties from asserting any claims, causes of action or demands against any person not a party to this Order for indemnification, contribution or cost recovery.

91. The "matters addressed" in this Consent Order are the Work, past response costs, and oversight costs related to the Work. As to any person not a party to this Order, Defendants reserve all other claims or defenses that they have to claims for, inter alia, indemnification, cost recovery or contribution.

XXXI. POTENTIAL FORCE MAJEURE

92. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify Ohio EPA in writing within fourteen (14) days from when a Defendant knew, or by the exercise of due diligence should have known, of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by

Defendants to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

93. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, or in a dispute resolution under Section XXII. DISPUTE RESOLUTION, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by circumstances beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however agreed by Defendants and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to enforce this Consent Order is commenced by the State or during dispute resolution pursuant to Section XXII. DISPUTE RESOLUTION. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Failure by Defendants to timely comply with the notice requirements of this Section shall constitute a waiver by Defendants of any right they may have to raise such a defense. Changes in Defendants' financial circumstances shall not in any event constitute circumstances beyond the control of Defendants.

XXXII. MODIFICATION

94. No modification shall be made to this Consent Order without the written agreement of the Parties and the approval of the Court.

XXXIII. RETENTION OF JURISDICTION

95. This Court shall retain jurisdiction of this matter for the purpose of dispute resolution in accordance with Section XXII., and enforcing Defendants' compliance with this Consent Order.

XXXIV. COURT COSTS

96. Defendants shall pay the court costs of this action.

XXXV. STIPULATED PENALTIES

97. In the event that any Ohio EPA approved deadline contained in the schedule of any approved submittal is not met, Defendants are ordered and enjoined to pay stipulated penalties which shall accrue in the amount of \$250 per day for the first seven days of non-compliance; \$500 per day for the 8th through 14th day of noncompliance; \$1,000 per day, for the 15th day through the 30th day of noncompliance; and \$2,500 per day, per violation for violations lasting beyond 30 days and thereafter.

98. Any payment of stipulated penalties accrued under the provisions of the previous paragraph shall be made by delivering to the Environmental Enforcement Section of the Ohio Attorney General, State Office Tower, 30 East Broad Street-25th Floor, Columbus, Ohio 43215-3428, Attn: Administrative Assistant, a certified check(s) for the appropriate amount(s), within fourteen (14) days from the date the default is cured. Said check(s) shall be made payable to "Treasurer, State of Ohio" to be deposited into the Hazardous Waste Clean-up Account, created pursuant to O.R.C. §3734.28. Provided, however, if the Defendants claim that a deadline was not met due to a force majeure event, and the Defendants comply with the requirements of Section XXXI , then Defendants shall not be

required to pay the stipulated penalties until 30 days after the resolution of the dispute under Section XXXI , or 30 days following an order of the Court.

XXXVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

99. By signing this Consent Order, each of the undersigned Parties represents and warrants that he/she has completely read the foregoing, fully understands its contents, and intends to be bound thereby.

100. In addition, in the case of corporations, each signatory represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

101. Attached to this Consent Order is a resolution of the Toledo City Council authorizing the City to enter into this Consent Order.

XXXVII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

102. Upon signing of this Consent Order by the Court, the Clerk of Courts is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed in Rule 5(b) of the Federal Rules of Civil Procedure and note the service in the appearance docket.

103. The Parties agree and acknowledge that this Consent Order is being made available for public participation under state requirements and in a manner consistent with 40 C.F.R. §123.27(d)(2)(iii), by providing for notice of the lodging of this Consent Order, opportunity for public comment and the consideration of any public comment. The State of Ohio and each Defendant reserve the right to withdraw consent to this Consent Order upon filing with this Court notice of such withdrawal in the event that (1) the remedial

activities selected in the Decision Document issued by Ohio EPA differ in any material respect from the remedial activities proposed by Ohio EPA in the Preferred Plan; or (2) the Parties cannot agree to changes proposed by the State of Ohio to this Consent Order as a result of public comment. The right to withdraw consent as set forth in this paragraph shall only exist for the period of time between issuance of the Decision Document and the end of the fifteenth (15) day after issuance of the Decision Document or thirty (30) days after Ohio EPA's notice to the Defendants regarding proposed changes to this Consent Order, whichever period is later in time. The Parties may agree to a longer period for filing a withdrawal in a joint notice filed by the Parties with the Court.

104. The State shall provide notice to the Court after expiration of the time period for withdrawal of consent as set forth in this paragraph, and the Parties agree that at that time this Court may enter this Consent Order, provided no withdrawal of consent has been timely filed with the Court. In addition to this notice, the State shall also provide the Court with a copy of the Decision Document, to be attached to this Order as Appendix D.

XXXVIII. EFFECTIVE DATE

105. This Consent Order shall be effective upon the date of its entry by the Court.

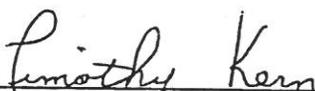
IT IS SO ORDERED:

ENTERED THIS 18th DAY OF OCTOBER 1999.



JUDGE
UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO.

APPROVED:



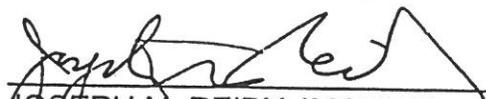
TIMOTHY J. KERN (0034629)
Counsel for Plaintiff, State of Ohio
Ohio Attorney General's Office
Environmental Enforcement Section
30 E. Broad Street
25th Floor
Columbus, OH 43215



MICHAEL L. HARDY (0011717)
Counsel for Industrial Group Defendants
Thompson, Hine & Flory
127 Public Square
Suite 900
Cleveland, Ohio 44114

Date: 8/19/99

Date: _____



JOSEPH M. REIDY (0030346)
Counsel for the City of Toledo
Samuels & Northrop Co., LPA
180 E. Broad Street
Columbus, Ohio. 43215



MARCUS MARTIN (62868)
Counsel for NL Industries, Inc.
Highland Environmental Management
1630 30th Street, Suite 598
Boulder, Colorado 80301

Date: 8-19-99

Date: 6-11-99

IT IS SO ORDERED:

ENTERED THIS _____ DAY OF _____ 1999.

JUDGE
UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO.

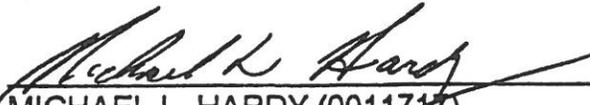
APPROVED:

TIMOTHY J. KERN (0034629)
Counsel for Plaintiff, State of Ohio
Ohio Attorney General's Office
Environmental Enforcement Section
30 E. Broad Street
25th Floor
Columbus, OH 43215

DATE

JOSEPH M. REIDY (0030346)
Counsel for the City of Toledo
Samuels & Northrop Co., LPA
180 E. Broad Street
Columbus, Ohio 43215

DATE

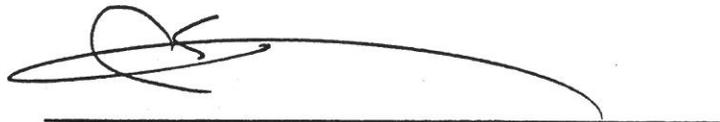


MICHAEL L. HARDY (0011717)
Counsel for Industrial Group Defendants
Thompson, Hine & Flory
127 Public Square
Suite 900
Cleveland, Ohio 44114

August 20 1999
DATE

By: Carleton S. Finkbeiner
(PRINT NAME)

Title: Mayor



CSF (SIGNATURE)
Authorized Representative of the City of Toledo

7/2/99
DATE