



U.S. Department of Justice

Environment and Natural Resources Division

Steven D. Ellis

90-11-3-09090/3

(U.S. Postal Service Mail Delivery)
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

(Private Courier Delivery)
Environmental Enforcement Section
601 D. St., N.W., Room 8904
Washington, DC 20004

December 7, 2015

Via Email and First Class Mail

Gregory J. DeGulis
Attorney for Ohio Department of Transportation
McMahon DeGulis, LLP
The Caxton Building
812 Huron Road, Suite 650
Cleveland, Ohio 44115

Re: Ottawa River Natural Resource Damage Assessment Site: Settlement Agreement
with Ohio Department of Transportation

Dear Mr. DeGulis:

Please be advised that on October 14, 2015, the United States Department of Justice published notice of the Settlement Agreement (the "Settlement Agreement") between the United States Department of the Interior, Fish and Wildlife Service and the Ohio Environmental Protection Agency, as Trustees, and your client, the Ohio Department of Transportation, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C § 9607(a)(4)(C), in connection with the Ottawa River Natural Resource Damage Assessment Area (the "Site"), located in Toledo, Ohio.

Paragraph 14 of the Settlement Agreement provides that final approval of the Agreement is subject to a 30-day public notice and comment period following the October 14, 2015 publication of the notice in the Federal Register. The parties to the Settlement Agreement further acknowledged that the United States and Ohio EPA reserve the right to withdraw or withhold their consent "if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate."

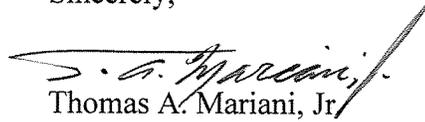
The public comment period has now closed. You are hereby notified that during the public comment period the United States received one comment, which is attached to this letter. After careful review of the comment, both the United States and Ohio EPA give the Settlement Agreement their final approval, having concluded that the comment discloses no facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or

Gregory J. DeGulis
December 7, 2015
Page 2

inadequate. As noted in Paragraph 15 of the Settlement Agreement, the Effective Date of the Settlement Agreement is the date of this letter.

If you have any questions, please contact Steven Ellis, Senior Counsel, Environmental Enforcement Section at (202) 514-3163 or steven.ellis@usdoj.gov.

Sincerely,



Thomas A. Mariani, Jr.
Deputy Chief
Environmental Enforcement Section

Cc (by email): Kim Gilmore
Timothy Kern
Kimberly Rhoads

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES
OF AMERICA, ON BEHALF OF THE DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE, AND THE STATE OF OHIO, ON BEHALF OF THE
OHIO DEPARTMENT OF TRANSPORTATION, AND THE OHIO ENVIRONMENTAL
PROTECTION AGENCY**

I. Introduction

1. The United States of America, on behalf of the U.S. Department of the Interior (“DOI”), U.S. Fish and Wildlife Service (“FWS”), the State of Ohio on behalf of the Ohio Department of Transportation (“ODOT”), and the State of Ohio on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”) enter into this Settlement Agreement to settle, without litigation, the United States’ and Ohio EPA’s Civil Claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, for damages for injuries to, destruction of, or loss of natural resources resulting from releases of hazardous substances into or which have migrated into the Ottawa River Assessment Area, including the costs of assessing such injury, destruction, or loss.

2. Under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), a person may be jointly and severally liable to the United States and Ohio EPA for damages for injuries, destruction, or loss of natural resources resulting from release of hazardous substances into the Ottawa River Assessment Area for resources managed by, held in trust by, appertaining to, or otherwise controlled by the United States and Ohio EPA, as well as for the reasonable costs of assessing such injuries, destruction, or loss. The injuries in the Ottawa River Assessment Area include injuries to fish, invertebrates, migratory birds, water and sediments and the public has

suffered associated losses of natural resource services, including lost recreational fishing, bird watching, boating, and passive human uses losses such as provided parks, waterways and a healthy ecosystem.

II. Parties Bound

3. The provisions of this Settlement Agreement shall apply to and be binding upon ODOT and its successors and assigns, Ohio EPA and its successors and assigns, and upon the United States, on behalf of FWS.

III. Definitions

4. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA 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 the terms listed below are used in this Settlement Agreement, the following definitions shall apply.

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

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

c. “Effective Date” means the effective date of this Settlement Agreement as provided by Section VIII (Effective Date) of this Settlement Agreement.

d. “FWS” means the U.S. Fish and Wildlife Service of the United States Department of the Interior.

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

f. “Natural Resources” means land, wildlife, biota, air, water, ground water, surface water (including sediments), 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.

g. “Natural Resource Damages” means compensation for injury to, destruction of, or loss of, Natural Resources in the Ottawa River Assessment Area arising from or relating to releases of hazardous substances into, or which have migrated into, the Ottawa River Assessment 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.

h. “NRDAR Fund” means the DOI Natural Resource Damage Assessment and Restoration Fund, established pursuant to 43 U.S.C. §§ 1474b and 1474b-1.

i. “ODOT” means the Ohio Department of Transportation.

j. “Ottawa River Assessment Area” means all portions of the following waterways, including sediments, shorelines, and connected wetlands that contain natural resources: (1) a segment of the Ottawa River, primarily located in Lucas County, Ohio, from River Mile 8.8 to River Mile 0.0, at the mouth of the Ottawa River, and (2) Sibley Creek. This Area is depicted on the map attached as Appendix A.

k. "Paragraph" means a portion of this Settlement Agreement identified by an arabic numeral or an upper case letter.

l. "Parties" means the United States on behalf of DOI and FWS, the State of Ohio, on behalf of Ohio EPA, and ODOT.

m. "Section" means a portion of this Settlement Agreement identified by a roman numeral.

n. "State" means the State of Ohio.

IV. Payments

5. Within 30 days after the Effective Date of this Settlement Agreement, ODOT shall pay to the DOI the amount of two hundred twenty-one thousand, eight hundred sixty-five dollars (\$221,865). Payment shall be in the form of electronic transfer as follows:

ODOT shall pay the full amount of \$221,865 to the DOI NRDAR Fund by FedWire Electronic Funds Transfer ("EFT") in accordance with the current EFT procedures, referencing the Ottawa River Assessment Area. Payment shall be made in accordance with instructions provided to ODOT by the United States. Any payments received by DOI after 4:00 p.m. (Eastern Time) will be credited on the next business day. The total amount paid by ODOT pursuant to this Paragraph 5 shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of DOI and its co-Trustee, Ohio EPA, to pay for Trustee-sponsored natural resource restoration efforts.

Use of Funds and Restoration Planning. All such funds shall be used jointly by the Trustees and applied toward the costs of restoration, rehabilitation, or replacement of injured

natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken. The Trustees intend to prepare a separate Restoration Plan or Plans describing how the funds dedicated for Trustee-sponsored natural resource restoration efforts will be used. As provided by 43 C.F.R. § 11.93, the Plan(s) will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources.

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

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Ref. DJ # 90-11-3-09090

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 3548
Washington, DC 20240

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

Attention: Kimberly Gilmore

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

Attention: Timothy Kern, Assistant Attorney General

6. Interest on Settlement Amount

In the event that ODOT does not make the payment required by this Section IV when due, ODOT shall pay Interest on the unpaid balance commencing on the payment due date and accruing 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 account specified in Paragraph 5. Any payments pursuant to this Paragraph shall be in addition to any other remedies provided by law for failure to make timely payments required under this Section.

V. Covenant Not to Sue and Reservation of Rights by
the United States and Ohio EPA

7. In consideration of the payment to be made by ODOT, the United States, on behalf of the FWS, and Ohio EPA covenant not to sue ODOT for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C). This covenant not to sue is conditioned upon the satisfactory performance of ODOT's obligations under this Settlement Agreement. This covenant not to sue extends only to ODOT and does not extend to any other person.

8. Notwithstanding any other provision of this Settlement Agreement, the United States and Ohio EPA reserve, and this Settlement Agreement is without prejudice to, any claims not governed by Paragraph 7, including, but not limited to:

a. claims based upon a failure of ODOT to meet a requirement of this Settlement Agreement;

b. liability to the United States, including Federal agencies, and Ohio EPA for any other damages against ODOT or any person not a Party to this Settlement Agreement that are not within the definition of Natural Resource Damages;

c. liability based on any future releases, discharges, or spills of hazardous substances after ODOT's signature of this Settlement Agreement; but not including any liability arising from further migration of previously released hazardous substances present in the environment of the Ottawa River Assessment Area as of the date of ODOT's signature of this Settlement Agreement;

d. criminal liability.

9. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Settlement Agreement, the United States and Ohio EPA reserve the right to institute proceedings against ODOT seeking recovery of Natural Resource Damages, based on: (i) conditions, with respect to the Ottawa River Assessment Area, unknown to FWS and Ohio EPA as of the Effective Date, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown NRD Conditions"), or new or additional service losses ("Unknown Conditions"); or (ii) information

received by the FWS and Ohio EPA after the Effective Date which indicates that the releases of hazardous substances at the Ottawa River Assessment Area have resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was unknown to FWS and Ohio EPA as of the Effective Date (“New NRD Information”). For the purpose of this Paragraph, the information and conditions known to FWS and Ohio EPA shall include any information or conditions listed or identified in records specifically relating to the Ottawa River Assessment Area that were in the possession or under the control of FWS and Ohio EPA as of the date of ODOT’s signature of this Settlement Agreement.

VI. Covenant Not to Sue by ODOT

10. ODOT hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or Ohio EPA, or their contractors or employees, with respect to Natural Resource Damages, including payments made under Section IV of this Settlement Agreement, or any liability for costs incurred in connection with any response actions undertaken in the Ottawa River Assessment Area, 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 pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to Natural Resource Damages or any response actions undertaken in the Ottawa River Assessment Area pursuant to CERCLA or 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 brings a cause of action against ODOT pursuant to the reservations set forth in Paragraph 8 or 9, 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 pursuant to such reservations.

VII. Effect of Settlement / Contribution

11. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The United States, ODOT, and Ohio EPA each reserve any and all rights (including, but not limited to, any right to contribution and the right to assert sovereign immunity), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Ottawa River Assessment Area against any person not a Party hereto.

12. In any subsequent administrative or judicial proceeding initiated by the United States, including Federal agencies, or Ohio EPA relating to the Ottawa River Assessment Area, ODOT 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 Ohio EPA in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Section affects the enforceability of the covenants not to sue set forth in Section V herein.

13. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that ODOT is entitled, as of the Effective Date, to protection from contribution actions or claims as

Settlement Agreement between the United States on behalf of the Fish and Wildlife Service and the State of Ohio on behalf of the Ohio Department of Transportation and the Ohio Environmental Protection Agency regarding Natural Resource Damages in the Ottawa River Assessment Area

provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement are Natural Resource Damages; provided, however, that if the United States, including Federal agencies, and/or Ohio EPA exercise rights against ODOT under the reservations in Paragraph 8 or 9, the “matters addressed” in this Settlement Agreement will no longer include those natural resource damages that are within the scope of the exercised reservation.

VIII. Public Comment

14. The Parties acknowledge that final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than 30 days after publication of notice of this Settlement Agreement in the Federal Register. The Parties further acknowledge that the United States and Ohio EPA reserve the right to withdraw or withhold its consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate.

IX. Effective Date

15. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice to ODOT that the public comment period pursuant to Section VIII has closed, and that comments received, if any, do not require modification of or withdrawal of the United States or Ohio EPA from this Settlement Agreement.

16. If the United States or Ohio EPA withholds or withdraws its consent, then this Settlement Agreement will be considered null and void.

X. Notices

17. Except as otherwise set forth in this Settlement Agreement, whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other 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 Settlement Agreement.

As to the United States:

For the Department of Justice

Chief, Environmental Enforcement Section (DJ #90-11-3-09090)
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

For the United States Department of the Interior

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

For the United States Fish and Wildlife Service

Deborah Millsap
U.S. Fish and Wildlife Service
Ohio Ecological Services Field Office
4625 Morse Road, Suite 104
Columbus, OH 43230

As to the State:

For the Ohio Environmental Protection Agency

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

Mark Rickrich
Ohio EPA
Division of Environmental Response and Revitalization
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

For the Ohio Department of Transportation

Gregory J. DeGulis
McMahon DeGulis LLP
The Caxton Building
812 Huron Road, Suite 650
Cleveland, Ohio 44115

Tim Hill
Ohio Department of Transportation
Office of Environmental Services
1980 W. Broad Street
Columbus, Ohio 43223

XI. Signatories

18. Each undersigned representative of the State of Ohio and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

XII. Entire Agreement

19. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Settlement Agreement and supersedes all prior agreements and understandings, whether oral or written. No other document nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Settlement Agreement or the settlement it represents, nor should it be used in construing the terms of this Settlement Agreement.

XIII. Modification

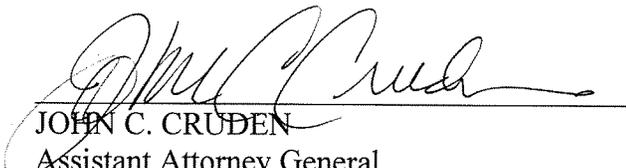
20. The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by the Parties.

21. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, all of which shall constitute one and the same instrument.

FOR THE UNITED STATES OF AMERICA

On Behalf of the Department of the Interior, Fish
and Wildlife Service

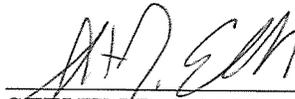
Dated: June 3, 2013



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

Settlement Agreement between the United States on behalf of the Fish and Wildlife Service and the State of Ohio on behalf of the Ohio Department of Transportation and the Ohio Environmental Protection Agency regarding Natural Resource Damages in the Ottawa River Assessment Area

Dated: Aug. 20, 2015



STEVEN D. ELLIS
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division U.S.
Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Dated: _____

TOM MELIUS
Regional Director
U.S. Fish and Wildlife Service, Region 3

Dated: _____

KIMBERLY GILMORE
Attorney, Office of the Solicitor
United States Department of the Interior
Three Parkway Center, Room 385
Pittsburgh, PA 15220

FOR THE STATE OF OHIO

On behalf of the Ohio Department of Transportation

Dated: _____

JERRY WRAY
Director, Ohio Department of Transportation
1980 W. Broad Street
Columbus, OH 43223

Dated: _____

STEVEN D. ELLIS
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division U.S.
Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Charles M. Wooley
Acting Regional Director

Dated: 3/9/15

Charles M. Wooley
THOMAS O. MELIUS
Regional Director
U.S. Fish and Wildlife Service, Region 3

Dated: 9/30/15

Kimberly Gilmore
KIMBERLY GILMORE
Attorney, Office of the Solicitor
United States Department of the Interior
Three Parkway Center, Room 385
Pittsburgh, PA 15220

FOR THE STATE OF OHIO

On behalf of the Ohio Department of Transportation

Dated: _____

JERRY WRAY
Director, Ohio Department of Transportation
1980 W. Broad Street
Columbus, OH 43223

Dated: _____

STEVEN D. ELLIS
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division U.S.
Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Dated: _____

TOM MELIUS
Regional Director
U.S. Fish and Wildlife Service, Region 3

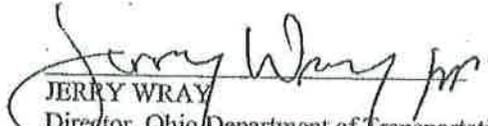
Dated: _____

KIMBERLY GILMORE
Attorney, Office of the Solicitor
United States Department of the Interior
Three Parkway Center, Room 385
Pittsburgh, PA 15220

FOR THE STATE OF OHIO

On behalf of the Ohio Department of Transportation

Dated: 11.20.14


JERRY WRAY
Director, Ohio Department of Transportation
1980 W. Broad Street
Columbus, OH 43223

Settlement Agreement between the United States on behalf of the Fish and Wildlife Service and the State of Ohio on behalf of the Ohio Department of Transportation and the Ohio Environmental Protection Agency regarding Natural Resource Damages in the Ottawa River Assessment Area

On behalf of the Ohio Environmental
Protection Agency

Dated: 11/20/2014


TIMOTHY J. KERN
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215

**APPENDIX A,
OTTAWA RIVER ASSESSMENT AREA**

