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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

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

Plaintiff,

v.

AK Steel, et al.

Defendants.

CASE NO. **C 3 01- 206**
JUDGE **WALTER HERBERT R**

CONSENT DECREE

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendants for reimbursement of Response Costs incurred by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. ("CERCLA") and Ohio Revised Code ("R.C.") Chapter 3745. Plaintiff and Defendants are referred to herein as "Parties."

NOW, THEREFORE, without trial or admission of any issue of law or fact and upon the consent of the Parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

DEFINITIONS

1. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

A. "Consent Decree" means this Decree.

- B. **"Hazardous substance"** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- C. **"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 Action of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300.
- D. **"Ohio EPA"** means the Ohio Environmental Protection Agency, and its designated representatives.
- E. **"Response Costs"** means all direct and indirect costs incurred by the State of Ohio which are not inconsistent with the NCP and that are related to the response and remedial actions conducted at the United Scrap Lead Site by the Settling Defendants, other PRPs, U.S. EPA, and Ohio EPA, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, costs of reviewing or developing plans, report or other items.
- F. **"Settling Defendants"** means those Parties, other than the State, identified in Appendix A.
- G. **"Site"** or **"United Scrap Lead Site"** refers to the location where treatment, storage, or other placement of hazardous substances was conducted at the United Scrap Lead facility, which is located at 2117 South County Road 25A, approximately one mile south of the City of Troy, Miami County, Ohio, 45373.
- H. **"State"** means the State of Ohio.
- I. **"U.S. EPA"** means the United States Environmental Protection Agency and its designated representatives.
- J. **"Work"** means all activities Settling Generator Defendants are required to perform pursuant to the federal Consent Decree signed by U.S. EPA and Settling Generator Defendants and filed on July 31, 1998 the United States District Court, Southern District of Ohio, captioned United States v. The Atlas Lederer Company, No. C-3-91-309 (J. Rice).

BACKGROUND

2. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the United Scrap Lead Site, located approximately one mile south of the City of Troy, Miami County, Ohio (the "Site" as specifically defined in Paragraph 1.G. of this Consent Order) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 48 Fed. Reg. 37030 (1984).

3. From 1986 to 1988, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, the U.S. EPA commenced and completed a Remedial Investigation pursuant to 40 C.F.R. § 300.68.

4. In August 1988 a Feasibility Study ("FS") was conducted by U.S. EPA pursuant to 40 C.F.R. § 300.68.

6. The U.S. EPA completed both a RI Report in February 1988 and a FS Report in August 1988. The FS contained a proposed plan for remedial action at the Site.

7. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action.

8. The decision by U.S. EPA on the remedial action to be implemented at the Site was embodied in a Record of Decision ("ROD"), executed on September 30, 1988; to which the State gave its concurrence.

9. On June 27, 1997, U.S. EPA and the Settling Defendants amended the ROD. The Amended ROD revised the clean-up levels at the Facility. Notice of the final plan was published in accordance with Section 117(b) of CERCLA. Ohio EPA did not concur with the remedy as set forth in the Amended ROD.

10. On July 31, 1998, U.S. EPA and the Settling Defendants filed a federal Consent Decree in the United States District Court, Southern District of Ohio, captioned United States v. The Atlas Lederer Company, et al., No. C-3-91-309 (J. Rice) which required the Settling Defendants to design and implement the ROD remedy as modified by the Amended ROD. Although Ohio EPA was not a party to the federal consent decree, it participated in consent decree discussions with U.S. EPA and the Settling Defendants and reviewed the RI/FS, SOW, ROD, Amended ROD, remedial design and other material documents. However, Ohio EPA did not concur with the remedy as set forth in Amended ROD.

11. The State has incurred response costs in addressing releases or the substantial threat of releases of hazardous substances at and from the Site.

12. The Settling Defendants have consented to the entry of this Consent Decree without admitting liability or facts of any type, and the participation of the Settling Defendants in the settlement of this matter or execution of this Consent Decree shall not be considered an admission of liability for any purpose.

JURISDICTION

13. This Court has jurisdiction over the subject matter herein pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and state law, and over the Parties consenting hereto. The Settling Defendants shall not challenge

this Court's jurisdiction to enter and enforce this Consent Decree. The Settling Defendants individually waive service of the complaint and summons in this action. Venue is proper in this Court.

PARTIES BOUND

14. This Consent Decree applies to and is binding upon the Parties to this action, and their successors in interest, assigns, receivers, officers, agents, servants, representatives, and employees. Each signatory hereto represents and warrants that he or she is fully authorized by the party or parties whom she or he represents to sign this document and to enter into the terms and conditions of the Consent Decree and to legally bind that party to it.

CALCULATION OF TIME

15. Unless otherwise stated in this Consent Decree, where this Decree requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the seventh day after the entry of this Consent Decree. In computing any period of time under this Consent Decree, 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.

REIMBURSEMENT

16. No later than thirty (30) days after entry of this Consent Decree, Defendants shall pay to the State, a total of Twenty-Seven Thousand, Eight Hundred, Seventy-Nine Dollars and Five Cents (\$27,879.05) as reimbursement for past Response Costs incurred by the State prior to the date of entry of this Consent Decree.

17. The payment made pursuant to Paragraph 16 above shall be made in the form of a check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 S. Front St., Columbus, Ohio 43216-1049, ATTN: Vicki Galilei, or her successor. Defendants shall send a copy of the transmittal letter and copy of the check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 S. Front St., Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

COVENANT NOT TO SUE

18. In consideration of the payment made by Settling Defendants pursuant to Paragraph 16 above, the State covenants not to sue pursuant to CERCLA, §107 and Ohio Revised Code §3745.12 Settling Defendants and their successors in interest, assigns, receivers, officers, agents, servants, representatives, and employees for any past Response Costs related to the Site which were incurred by the State and any future Response Costs paid pursuant to Paragraph 16.

19. Except as expressly provided in Paragraph 18 above, the State reserves all rights it may have to seek any other relief from any of the Settling Defendants or any other person or entity regarding the Site, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payment required by Paragraph 16 is not made, cost recovery for past Response Costs;
- C. judicial relief for criminal sanctions for violations of applicable environmental law;
- D. liability arising from hazardous substances removed

from the Site;

- E. administrative action or judicial relief for injunctive relief, Response Costs, penalties, or damages pursuant to CERCLA, or any other provision of federal law or State law in the event the State determines that there has been a violation of federal or State law or that the Settling Defendants have not performed the required Work at the Site.
- H. intervention by the State into United States v. The Atlas Lederer Company., et al., Case No. C-3-91-309 (S.D. Ohio); and
- I. judicial relief for natural resource damages.

By signing this Consent Decree, the Settling Defendants have not agreed that any such claim is valid and reserve all defenses they may have to any of the State actions described in this paragraph, except that Settling Defendants shall not assert, and may not maintain any defense or claim based upon the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that claims raised by the State in a subsequent action were, or should have been brought in the instant case. Furthermore, by signing this Consent Decree, the Settling Defendants do not alter in any respect nor waive any provision of the Federal Consent Decree. Nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in paragraph 18.

20. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a Settling Defendant to this Consent Decree for any liability it may have arising out of or relating to the Site, including but not limited to, liability for any Response Costs unreimbursed by this Consent Decree. The Parties expressly

reserve their right to sue any person other than a Party, in connection with the Site.

CONTRIBUTION PROTECTION

21. This Consent Decree provides Settling Defendants with contribution protection to the full extent of the law as provided in Section 113(f) of the Superfund Amendments and Reauthorization Act of 1986 and under state law.

ENTRY OF CONSENT ORDER

22. Pursuant to Federal Rules of Civil Procedure 58 and 79, the Clerk of Courts is hereby directed to enter this judgment into the civil docket of the Court.

RETENTION OF JURISDICTION

23. The Court retains jurisdiction over this action for the purpose of enforcing this Consent Decree.

COSTS

24. Settling Defendants shall pay the costs of this action.



HONORABLE
UNITED STATES DISTRICT JUDGE

5-21-01
DATE

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. Additionally, the Settling Defendants identified in Appendix A represent that they have obtained legal advice as each deems necessary prior to entering this decree.

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

A handwritten signature in black ink, appearing to read "Ann M. Wood", is written over a horizontal line.

ANN M. WOOD (0064894)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766

The Settling Defendants identified in Appendix A, through their authorized representative, hereby consent to the foregoing Consent Decree in State of Ohio v. AK Steel, et al.

Settling Defendants (Appendix A)

By: Michael A. Cyphert
Signature of Representative

Michael A. Cyphert
Name of Representative

Chairman — Steering Committee
United Scrap Lead Respondent Group
Title

April 19, 2001
Date

APPENDIX A

Settling Defendants State of Ohio v. AK Steel, et al.

Acme Metals Incorporated
Akron Auto Wrecking Co., Inc.
AK Steel Corp. (f.n.a. Armco)
Aluminum Alloys Company, a.k.a. Gletzer's Aluminum Alloys Company, Estate of Abraham
and Irwin Gletzer and Others
American Compressed Steel Corporation
Assad Iron & Metals, Inc.
Atlas-Lederer Company (The) (n.k.a. A-L Processors, Inc.)
AT&T/Lucent Technologies
B.&O. Auto Parts Company (The)
Baker Iron & Metal Company
Barberton Auto Wrecking, Inc., David Shue, Beth A. Shue
Bellaire Corp. (f.k.a. The North American Coal Corporation)
Bellaire Road Auto Parts, Inc.
Bill's Battery Co., Inc.
Board of Directors of Wittenberg College (The) operating Wittenberg University
Bob's Auto Parts
Bodas, Gary
Bode-Finn Company (The)
Bonded Oil n.k.a. EMRO Marketing Company
Bridgestone/Firestone, Inc.
Broken Wheel Auto Wrecking
Central Auto Parts, Inc.
Champion International Corp.
Charles Bluestone Company
Cherrington, Paul
Cherrington Scrap Metals, Inc.
Chevron M.S.A. Inc. as Successor to Gulf Oil Corporation
Chillicothe Telephone Co.
Cincinnati Gas & Electric Company (The)
City of Cincinnati (The)
City of Springfield, Ohio (The)
Cleveland Road Autowrecking
Cohen Brothers, Inc.
Commercial Metals Company
Consolidation Coal Company (OV Division)
Continental Can Company, Inc. and Continental Holdings, Inc.
County of Hamilton
Cremer Iron & Metal Co.
CSX Corp. (f.k.a. Consolidated Rail Corporation)

Daniel Cohen Scrap Materials
David J. Joseph Company (The) (also for D. Kirschner & Son, Inc. and Wolff Co.)
Dayton Power & Light Company (The)
Denison Auto Parts, Inc.
Dobrow Industries, Inc. (Muncie Scrap Division)
Eagle Iron Company
Estate of Richard S. Waters for Itself and d.b.a. Waters Supply Co. and Others
Exide Corporation
Ferd Camp Inc., d.b.a. Camp Auto Salvage, dba Camp Auto Wrecking
First Energy Corp., for and on behalf of its Subsidiaries, Ohio Edison, Company,
 Pennsylvania Power Co., The Cleveland Electric Illuminating Co., and Toledo Edison
 Company
Fish Metal Co., f.k.a. Cambridge Iron and Metal Corp. and Mr. Sidney Fish
Ford Motor Company
Franklin Iron & Metal Corporation
General Motors Corporation
Goodyear Tire & Rubber Company (The)
GTE North Incorporated
Henderson, John M.
I.H. Schlezinger, Inc.
InterCity Auto Wrecking
Interlake Corporation (The)
Isaac Corporation (The) (n.k.a. Metal Management Ohio, Inc.)
Jack Fish & Sons Company, Inc.
J.C. Penney Company, Inc.
J. Topy & Sons
Jefferson Smurfit Corporation (U.S.)
Kemper Iron
Kentucky Motor Service Incorporated
Lancaster Auto Parts, Inc.
Level 3 Communications, Inc. (f.k.a. Peter Kiewit & Sons, Inc.)
Maryville Steel, Inc. (f.k.a. Marysville Waste Material Co., Inc. and Marysville Waste
 Material Co.)
McCallister Chevrolet
Mead Corporation (The)
Michelin North America, Inc., Successor-in-Interest to certain tire liabilities of B.F.
 Goodrich Co.
Midwest Iron & Metal Co., Inc.
Milliron Iron & Metal, Inc.
Moskowitz Bros. Inc.
Mosler, Inc.
Muskingum Iron & Metal Company
Nash, John

Navistar International Transportation Corp.
NLO, Inc.
NL Industries, Inc.
Norwalk Waste Materials Company (The) a.k.a. Sandustky Steel & Supply Co.
NS Group, Inc./Newport Steel Corporation
Ohio Bell Telephone Company (The), d.b.a.
Ohio Power Company
Oil & Battery Service Company
Pearl Road Auto Wrecking, Inc.
PPG Industries, Inc.
RMS Properties Corporation (f.k.a. Chillicothe Iron & Metal)
Roadway Express, Inc.
Rohn Industries, Inc. (for Midwest Corporation)
S. Mindlin & Son, Inc.
St. Mary's Iron & Steel Corp.
Sam Barnett Metal Company (The), The Estate of Sam A. Barnett and Annette Barnett
Sears, Roebuck and Company
Sims Brothers, Inc.
Steel City Iron & Metal, Inc.
Strauss Industries, Inc. (f.n.a. Hermon Strauss Inc.)
SW Ohio Regional Transit Authority
Triplett Auto Wrecking Co.
Union Auto Parts, Inc.
Union Oil Company of California d.b.a. UNOCAL, Successor-in-Interest to The
Pure Oil Company
United States Can Company and for the liability of Wheeling Closure
Valley Camp Coal (The), n.k.a. Quaker State Corporation
Walt's Auto, Inc. (f.k.a. Walt's Auto Wrecking, Inc.)
West Virginia State Penitentiary
Wheeling Pittsburgh Steel Corporation
Wheeling Power Company
Wilmington Iron & Metal
Worly Steel and Supply Company

Dated: April 19, 2001