

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

_____)	
UNITED STATES OF AMERICA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:11-cv-1029
)	
RICHARD M. OSBORNE SR., et al.,)	
)	
Defendants.)	
_____)	

PARTIAL CONSENT DECREE

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE
II.	APPLICABILITY
III.	SCOPE OF PARTIAL CONSENT DECREE
IV.	RESTORATION AND MITIGATION
A.	RESTORATION
B.	MITIGATION
C.	ANNUAL REPORTING
V.	NOTICES AND OTHER SUBMISSIONS
VI.	RETENTION OF RECORDS AND RIGHT OF ENTRY
VII.	DISPUTE RESOLUTION
VIII.	FORCE MAJEURE
IX.	STIPULATED PENALTIES
X.	ADDRESSES
XI.	COSTS AND FEES
XII.	PUBLIC COMMENT
XIII.	CONTINUING JURISDICITON OF THE COURT
XIV.	EFFECTIVE DATE
XV.	MODIFICATIONS AND EXTENSIONS
XVI.	NOTICES TO THE COURT
XVII.	TERMINATION
XVIII.	SIGNATORIES AND SERVICE

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)

Partial Consent Decree

Table of Exhibits

Exhibit 1: map of the Site

Exhibit 2: Work Plan

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

WHEREAS the United States of America, on behalf of the United States Environmental Protection Agency (“U.S. EPA”), filed the Complaint (Dkt. No. 1) against Richard M. Osborne Sr., individually and as Trustee of the Richard M. Osborne Trust (“Osborne Sr.”); Madison/Route 20, LLC (“Madison”); Midway Industrial Campus Company, LTD. (“Midway”); Naylor Family Partnership; J.T.O., Inc. (“JTO”); and the City of Willoughby (“City”), collectively, “Defendants”, alleging that Defendants violated Sections 301(a) and 404 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1344;

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States in the Cities of Willoughby and Mentor, Lake County, Ohio, (the “Site”), without authorization by the United States Department of the Army, Army Corps of Engineers (the “Corps”);

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of U.S. EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require certain Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, the Complaint named the State of Ohio (“Ohio”) as a party to this action pursuant to CWA section 309(e), 33 U.S.C. § 1319(e), and after the Court granted Ohio’s motion to realign as a plaintiff, Ohio filed crossclaims against the Defendants (Dkt. No. 2);

WHEREAS, each of the Defendants denied the allegations in the Complaint and specifically denied liability to the United States or Ohio;

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

WHEREAS, this Partial Consent Decree is intended to constitute a complete and final settlement of the United States' and Ohio's claims against the City, and JTO (collectively, "Settling Defendants"), and Settling Defendants' counterclaims and attorneys' fees claims against the United States and Ohio in this case;

WHEREAS, the United States, Ohio, and Settling Defendants (collectively, the "Parties") agree that settlement of this case is in the public interest and that entry of this Partial Consent Decree is the most appropriate means of resolving the United States' and Ohio's claims and Settling Defendants' counterclaims and attorneys' fees claims against the United States and Ohio in this case; and

WHEREAS, the Court finds that this Partial Consent Decree is a reasonable and fair settlement of the United States' and Ohio's claims against Settling Defendants, the Settling Defendants' counterclaims and attorneys' fees claims against the United States and Ohio in this case, and that this Partial Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, upon consent of the Parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the Parties pursuant to CWA sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. Venue is proper in the Northern District of Ohio pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Settling Defendants conduct business in this District, the subject property is located in this District, and the violations alleged in the Complaint occurred in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

II. APPLICABILITY

4. The obligations of this Partial Consent Decree shall apply to and be binding upon Settling Defendants and any successors, assigns, or other entities or persons otherwise bound by law. Settling Defendants shall provide a copy of this Partial Consent Decree to all officers, directors, employees, and agents who are responsible for compliance with any provision of this Partial Consent Decree, as well as to any contractor retained to perform work required under this Partial Consent Decree. Settling Defendants shall condition any contract for performance of such work on conformity with the terms of this Partial Consent Decree. In any action to enforce this Partial Consent Decree against a Settling Defendant, that Settling Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Settling Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in any portion of the Site shall not alter or relieve any Settling Defendant of its obligation to comply with the terms of this Partial Consent Decree.

III. SCOPE OF PARTIAL CONSENT DECREE

6. This Partial Consent Decree shall constitute a complete and final settlement of all civil CWA Sections 301(a) and 404 claims alleged in the Complaint against Settling Defendants concerning the Site, all Ohio state law claims for failing to obtain a permit authorizing fill activities and unauthorized discharges of pollution to waters of the State, and all Settling Defendants' counterclaims and claims for attorneys' fees against the United States and Ohio in this case.

7. It is the express purpose of the Parties in entering this Partial Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, and Revised Code Chapter 6111. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Partial Consent Decree or resulting from the activities required by this

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

Partial Consent Decree shall have the objective of causing Settling Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA and Ohio's Water Pollution Control Statutes.

8. Except as in accordance with this Partial Consent Decree, Settling Defendants are enjoined from discharging any pollutant into waters of the United States on the Site, unless such discharge complies with the provisions of the CWA, Revised Code Chapter 6111, and their respective implementing regulations.

9. This Partial Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, State, local or any other law. Nothing in this Partial Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Partial Consent Decree limit U.S. EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c), or Ohio EPA's ability to exercise its authority pursuant to Revised Code Chapter 6111. However, the Parties acknowledge that Nationwide Permit 32, found at 82 Fed. Reg. 1,860 (March 19, 2017), authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Partial Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Partial Consent Decree shall be subject to the conditions of the Nationwide Permit and this Partial Consent Decree.

10. This Partial Consent Decree in no way affects or relieves Settling Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This Partial Consent Decree in no way affects the rights of the United States or the rights of Ohio as against any person not a party to this Partial Consent Decree.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

12. The United States and Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Partial Consent Decree and applicable law.

13. Except as set forth in Paragraphs 1 and 2, nothing in this Partial Consent Decree shall constitute an admission of fact, law, or liability by any party.

IV. RESTORATION AND MITIGATION

14. Nothing in this Partial Consent Decree shall be construed to require a Settling Defendant to assume responsibility for the obligations of any other Settling Defendant set forth herein.

15. Settling Defendants shall perform restoration and mitigation projects under the terms and conditions as set forth below in sub-paragraphs A-C. These parties acknowledge and agree that the objective of such restoration and mitigation projects is to restore and replace the lost ecological functions and services of the alleged filled and disturbed wetlands, streams, and other waters described in the Complaint.

A. Restoration. The City shall re-engineer Riverside Commons Drive and Apollo Parkway Extension in accordance with the Work Plan attached as Exhibit 2.

B. Mitigation.

- i. Within 120 days after the Effective Date of this Partial Consent Decree, the City shall purchase mitigation credits in an amount not to exceed One Million, Two Hundred Thousand Dollars (\$1,200,000), from mitigation banks in the Ashtabula-Chagrin River watershed (HUC 04110003). The selection of the credits is subject to U.S. EPA's and Ohio EPA's prior approval, which approval shall not be unreasonably withheld. Within 30 days after such purchase, the City shall provide written notice of the purchased mitigation credits to U.S. EPA, the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office at the addresses specified in Section X of this Partial Consent Decree.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

ii. JTO shall purchase 3 mitigation credits from mitigation banks in the Chagrin River watershed. The selection of the credits is subject to U.S. EPA's and Ohio EPA's prior approval, which approval shall not be unreasonably withheld. JTO shall purchase the first credit within four months after the Effective Date of this Partial Consent Decree, the second credit within eight months after the Effective Date of this Partial Consent Decree, and the third credit within twelve months after the Effective Date of this Partial Consent Decree. Within 30 days after the third credit is purchased, JTO shall provide written notice of the purchased mitigation credits to U.S. EPA, the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office at the addresses specified in Section X of this Partial Consent Decree.

C. Annual Reporting. For any year in which restoration or mitigation is to be, or has been, performed under this Partial Consent Decree, the performing Settling Defendant shall submit an annual report to U.S. EPA, the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office at the addresses specified in Section X, detailing the work accomplished during that year and any work scheduled or anticipated during the coming year. The annual report shall include monitoring reports on the status of mitigation credits purchased, and mitigation and restoration accomplished, during that reporting period. The annual report shall include an update on any restoration or mitigation that has been initiated; an estimate of the amount to be spent on specific restoration and/ or mitigation; and any other pertinent information. Legible maps, drawings, photographs and/ or charts shall be included, as appropriate.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

V. NOTICES AND OTHER SUBMISSIONS

16. In all notices, documents or reports submitted to U.S. EPA, the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office pursuant to this Partial Consent Decree, Settling Defendant shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

17. Until termination of this Partial Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in Section IV, regardless of any corporate retention policy to the contrary. Until termination of this Partial Consent Decree, each Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Section IV.

18. At the conclusion of the document retention period, each Settling Defendant shall notify U.S. EPA, the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office at the addresses specified in Section X of this Partial Consent Decree at least 90 days prior to the destruction of any such records or documents, and, upon request, Settling Defendant shall deliver any such records or documents to U.S. EPA or Ohio EPA. Each Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the United

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

States or Ohio requests delivery of a Settling Defendant's records or documents and Settling Defendant asserts such a privilege, Settling Defendant shall provide the United States and Ohio with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of the Partial Consent Decree shall be withheld on the grounds that they are privileged.

19. Until termination of this Partial Consent Decree, the United States, Ohio, and their authorized representatives and contractors shall have authority at all reasonable times, upon advance reasonable notice and upon presentation of credentials, to enter the Site or any Settling Defendant's place of business to:

- A. Inspect the Site and monitor the activities required by this Partial Consent Decree;
- B. Verify any data or information submitted to the United States and/or Ohio pursuant to this Partial Consent Decree;
- C. Obtain samples and, upon request, splits of any samples taken by Settling Defendants or their representatives, contractors, or consultants at the Site;
- D. Obtain documentary evidence of the Site, including photographs and similar data;
- E. Assess the Settling Defendant's compliance with this Partial Consent Decree; and,
- F. Inspect and review any records required to be kept under the terms and conditions of this Partial Consent Decree.

20. Upon request, each Settling Defendant shall provide U.S. EPA or their authorized representatives splits of any samples taken by that Settling Defendant.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

21. This Partial Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or Ohio pursuant to applicable federal and state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Settling Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VII. DISPUTE RESOLUTION

22. This Section shall govern all disputes arising with respect to the meaning or requirements of this Partial Consent Decree. Any dispute that arises with respect to the meaning or requirements of this Partial Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States, Ohio, and the Settling Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States, Ohio, and/or the Settling Defendants affected by the dispute cannot be resolved by informal negotiations, then the position advanced by the United States and Ohio shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Settling Defendants affected by the dispute file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States and Ohio shall have thirty (30) days to respond to the motion. In resolving any such dispute, the Settling Defendants affected by the dispute shall bear the burden of proving by a preponderance of the evidence that the United States' and/or Ohio's position is not in accordance with the objectives of this Partial Consent Decree and the CWA and Ohio Revised Code Chapter 6111, and that Settling Defendants' position will achieve compliance with the terms and conditions of this Partial Consent Decree, the CWA, and Ohio Revised Code Chapter 6111.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

23. If the United States or Ohio believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, either the United States or Ohio may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Settling Defendants affected by the dispute shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Settling Defendant affected by the dispute shall bear the burden of proving by a preponderance of the evidence that the United States' and/or Ohio's position is not in accordance with the objectives of this Partial Consent Decree, and that Settling Defendants' position will achieve compliance with the terms and conditions of this Partial Consent Decree and the CWA and Ohio Revised Code Chapter 6111.

24. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Settling Defendants under this Partial Consent Decree as a result of such filing.

VIII. FORCE MAJEURE

25. Settling Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Settling Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Partial Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Site, or failure to obtain federal, state or local permits.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

26. If Settling Defendants believe that a Force Majeure event has affected its ability to perform any action required under this Partial Consent Decree, Settling Defendants shall notify U.S. EPA and the United States Department of Justice, Ohio EPA, and the Ohio Attorney General's Office in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by Settling Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Settling Defendants may also provide any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Partial Consent Decree. Failure to provide timely and complete notification shall constitute a waiver of any claim of Force Majeure as to the event in question.

27. If U.S. EPA and Ohio EPA determine that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Settling Defendants shall coordinate with U.S. EPA and Ohio EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

28. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Partial Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Partial Consent Decree.

29. Settling Defendants shall bear the burden of proving (1) that the alleged noncompliance at issue was caused by circumstances entirely beyond the control of Settling Defendants and any entity controlled by Settling Defendants, including their contractors and

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

consultants; (2) that Settling Defendants or any entity controlled by Settling Defendants could not have foreseen and prevented such alleged noncompliance; and (3) the number of days of alleged noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

30. After entry of this Partial Consent Decree, if any Settling Defendant fails to timely complete any of its obligations required by Paragraph 15(A) through 15(C) of this Partial Consent Decree, that Settling Defendant shall pay stipulated penalties as follows:

- | | | |
|----|---|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$1,000.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$2,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$3,000.00 per day |

Stipulated penalties accrue from the date of the violation and payment of such stipulated penalties shall be made no later than thirty (30) days after the United States or Ohio issues Settling Defendant a written demand. The method of payment shall be in accordance with the provisions of Paragraph 34 below.

31. Any disputes concerning the amount of stipulated penalties, or the underlying alleged violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 22, 23, and 24.

32. The filing of a motion requesting that the Court resolve a dispute regarding stipulated penalties shall stay the Settling Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

of payment, stipulated penalties shall continue to accrue from the first day of any alleged failure or refusal to comply with any term or condition of this Partial Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Settling Defendant as provided in this Section.

33. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

34. Settling Defendants shall make any payment of a stipulated penalty by transmitting 50% of the payment by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2014V00147, U.S. EPA Region 5, and the DOJ case number 90-5-1-1-17817. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Ohio. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. For the State of Ohio, the remaining 50% of the payment will be made by cashier’s check or certified funds, payable to “Treasurer, State of Ohio,” and will be sent to:

Sandra Finan, Paralegal
Attorney General’s Office
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215

Further, upon payment of any stipulated penalties, Settling Defendant shall provide written notice, at the addresses specified in Section X of this Partial Consent Decree.

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

35. The United States or Ohio may, in its sole and unreviewable discretion, suspend, mitigate, or waive the portion of any stipulated penalty owed under this Section to the United States or to Ohio, respectively.

36. Nothing in this Partial Consent Decree, including but not limited to the provisions of this Section, shall be construed to preclude or limit the right of the United States or Ohio to seek sanctions for contempt of this Partial Consent Decree or any order to enforce this Partial Consent Decree.

X. ADDRESSES

37. All notices and communications required under this Partial Consent Decree shall be made to the Parties through each of the following persons and addresses:

A. TO U.S. EPA:

- (1) Matthew R. Dawson
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Dawson.Matthew@epa.gov
- (2) Water Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (WC-15J)
Chicago, IL 60604-3507
r5weca@epa.gov

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Daniel R. Dertke
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
daniel.dertke@usdoj.gov
Reference: DJ # 90-5-1-1-17817

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

C. TO OHIO EPA:

Chief, Division of Surface Water
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

D. TO THE OHIO ATTORNEY GENERAL OFFICE:

Section Chief,
Environmental Enforcement Section
Office of Ohio Attorney General David Yost
30 East Broad Street, 25th Floor
Columbus, OH 43215

E. TO DEFENDANT CITY:

Michael Lucas, Esq.
Law Director, City of Willoughby
One Public Square
Willoughby, Ohio 44094

F. TO DEFENDANT JTO:

Gregory J. DeGulis (0045705)
McMAHON DeGULIS LLP
The Caxton Building — Suite 650
812 Huron Road
Cleveland, OH 44115-112

38. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

39. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Partial Consent Decree or by mutual agreement of the Parties in writing.

XI. COSTS AND FEES

40. Each party to this Partial Consent Decree shall bear its own costs and attorneys' fees in this action; however, the United States and Ohio reserve the right to seek costs (including

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

attorneys' fees) incurred in any action necessary to enforce this Partial Consent Decree, and Settling Defendants reserve the right to oppose any request for such costs.

XII. PUBLIC COMMENT

41. The Parties acknowledge that after the lodging and before the entry of this Partial Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Partial Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Settling Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Partial Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Partial Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

42. This Court shall retain jurisdiction over this action in order to enforce or modify this Partial Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Partial Consent Decree.

XIV. EFFECTIVE DATE

43. The Effective Date of this Partial Consent Decree shall be the date upon which this Partial Consent Decree is entered by the Court or a motion to enter the Partial Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. MODIFICATIONS AND EXTENSIONS

44. Upon its entry by the Court, this Partial Consent Decree shall have the force and effect of a final judgment. U.S. EPA and Ohio EPA, in their sole discretion and acting through the United States Department of Justice and the Ohio Attorney General's Office, respectively, may extend in writing the completion deadlines in Paragraph 15, without further action by the

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

Court, provided a Settling Defendant submits a timely written request demonstrating good cause for the requested extension. Any modification of this Partial Consent Decree shall be in writing, and shall not take effect unless signed by both the United States, State of Ohio and Settling Defendant and approved by the Court.

XVI. NOTICES TO THE COURT

45. Within six months after the Effective Date, and every six months thereafter until termination as to all Settling Defendants, the United States, Ohio, and any Settling Defendant as to whom this Partial Consent Decree has not been terminated shall report to the Court on the status of compliance or non-compliance with this Partial Consent Decree.

XVII. TERMINATION

46. Except for Paragraph 8 as it applies to JTO, this Partial Consent Decree may be terminated at any time by either of the following:

A. Settling Defendants and the United States may at any time make a joint motion to the Court for termination of this Partial Consent Decree or any portion of it; or

B. Any Settling Defendant may move the Court to terminate this Partial Consent Decree with respect to itself after each of the following has occurred:

1. That Settling Defendant has attained and maintained compliance with all applicable provisions of this Partial Consent Decree for twelve (12) consecutive months;

2. That Settling Defendant has paid all applicable penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. That Settling Defendant has certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. within forty-five (45) days after receiving such certification from that Settling Defendant, U.S. EPA and Ohio EPA have not contested in writing

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

that such compliance has been achieved. If U.S. EPA or Ohio EPA disputes any Settling Defendant's full compliance, this Partial Consent Decree shall remain in effect as to that Settling Defendant pending resolution of the dispute by the Parties or the Court.

47. Notwithstanding Paragraph 46 of this Partial Consent Decree, this Partial Consent Decree shall sunset as to only the City three years after the Effective Date, provided however that this sunset provision with respect to the City shall apply only in the event that the City has discharged its Restoration and Mitigation obligations and requirements in Paragraphs 15(A) and 15(B) of this Partial Consent Decree, to come into compliance with the CWA.

XVIII. SIGNATORIES AND SERVICE

48. Each undersigned representative of Settling Defendants, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, U.S. EPA, Ohio EPA, and the Ohio Attorney General Office certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and legally bind the Party he or she represents to this document.

49. This Partial Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Settling Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Partial Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2020.

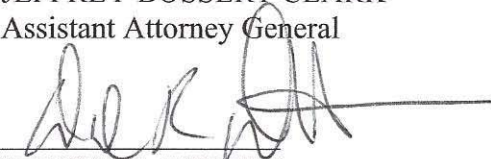
UNITED STATES DISTRICT JUDGE

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

ON BEHALF OF THE UNITED STATES:

Date: 7/13/20

JEFFREY BOSSERT CLARK
Assistant Attorney General



DANIEL R. DERTKE
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-0994

JUSTIN E. HERDMAN
United States Attorney
Northern District of Ohio

STEPHEN PAFFILAS
Assistant United States Attorney
400 United States Court House
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Cleveland, OH 44113-1852
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steven.paffilas@usdoj.gov
Registration No. 0037376

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)

Partial Consent Decree

Date: June 2, 2020 _____

**SUSAN
BODINE**

Digitally signed by
SUSAN BODINE
Date: 2020.06.02
17:35:48 -04'00'

Susan Parker Bodine
Assistant Administrator for Enforcement
and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree


T. Leverett Nelson Digitally signed by T. Leverett Nelson
Date: 2020.06.05 10:47:41 -05'00'

Date: _____

T. Leverett Nelson
Regional Counsel
United States Environmental Protection Agency, Region 5
77 W. Jackson Boulevard (C-14J)
Chicago, Illinois 60604

ON BEHALF OF THE STATE OF OHIO:

Date: 6/3/2020


Lawrence Helkowski (0068622)
Environmental Enforcement Section
Office of Ohio Attorney General David Yost
30 East Broad Street, 25th Floor
Columbus, OH 43215

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

ON BEHALF OF SETTLING DEFENDANT J.T.O., Inc.:

Date: 6/1/2020




J.T.O., Inc.
By: TIMOTHY C POSAR
{title} Treasurer/CFO

United States v. Osborne, No. 1:11-cv-1029 (N.D. Ohio)
Partial Consent Decree

ON BEHALF OF SETTLING DEFENDANT CITY OF WILLOUGHBY, OHIO:

Date: 05.21.2020



City of Willoughby, Ohio
By: Robert A. Fiala
{title} Mayor

Exhibit 1

Map of the Site

The Site, depicted in the below 2004 aerial photograph, is located south of State Route 2 and east of Lost Nation Road in the cities of Willoughby and Mentor, Ohio, west of the Great Lakes Industrial Park Boulevard in Mentor.

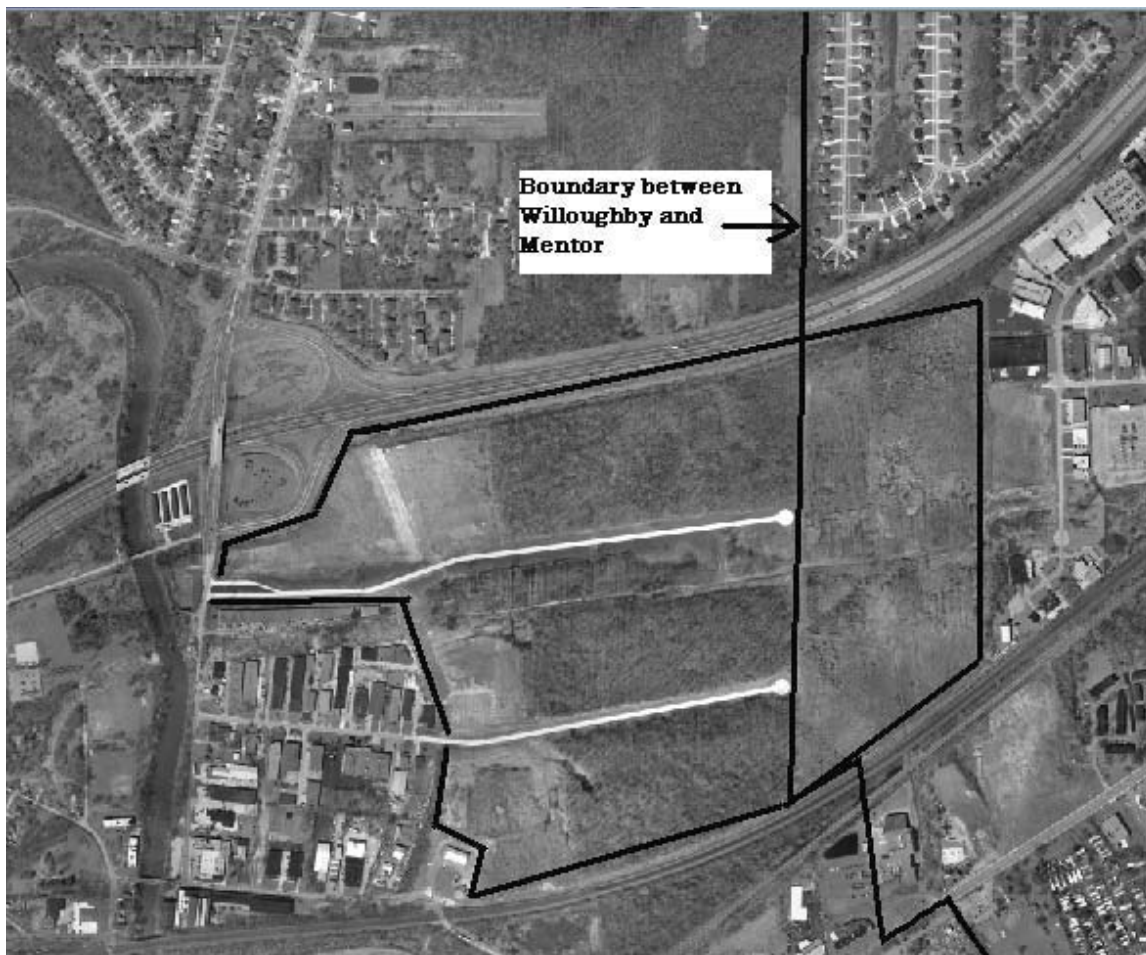


Exhibit 2

Work Plan



