

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.: 3:16-cv-01703
v.)	
)	
PAR INDUSTRIAL CORPORATION,)	
)	
Defendant.)	

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	1
III.	PARTIES BOUND	2
IV.	DEFINITIONS.....	2
V.	STATEMENT OF PURPOSE	5
VI.	PAYMENT OF RESPONSE COSTS.....	5
VII.	FAILURE TO COMPLY WITH CONSENT DECREE	12
VIII.	JUDGMENT AND NOTICE OF LIEN	13
IX.	COVENANTS BY THE UNITED STATES	13
X.	RESERVATION OF RIGHTS BY UNITED STATES	14
XI.	COVENANTS BY SETTLING DEFENDANT.....	14
XII.	EFFECT OF SETTLEMENT/CONTRIBUTION	15
XIII.	PROPERTY REQUIREMENTS	16
XIV.	ACCESS TO INFORMATION & CERTIFICATION.....	17
XV.	NOTICES AND SUBMISSIONS.....	18
XVI.	RETENTION OF JURISDICTION.....	19
XVII.	INTEGRATION/APPENDICES	19
XVIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	19
XIX.	SIGNATORIES/SERVICE.....	19
XX.	FINAL JUDGMENT	20

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint against PAR Industrial Corporation (“PAR” or “Settling Defendant”) in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the PAR Industries, Inc. Superfund Site (“the Site”) in Nitro, Putnam County, West Virginia.

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions at the Site in the future.

C. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

D. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred and to be incurred at the Site.

E. Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

G. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid further complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any Transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“Eligible Property” shall mean the Property less the Ineligible Property.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Excluded Expenses” shall mean the following expenses paid by Settling Defendant that arise from the sale of the Eligible Property or, as applicable, any portion of the Eligible Property: (i) any payment in consideration of the release of any lien listed as a Permitted Encumbrance in Appendix C; (ii) any reasonable closing costs; (iii) any reasonable broker’s fees; and (iv) any state and/or municipal transfer taxes.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Ineligible Property” shall mean the following areas or portions of the Property: (1) the structure identified as Building 16 on Appendix B (“Building 16”), the real property beneath Building 16, and real property surrounding Building 16 such that the total real property associated with Building 16 does not exceed three (3) acres; and (2) the structure used by Settling Defendant for its office space designated as 190 Pickens Road on Appendix B (“Office Building”), the real property beneath the Office Building, and real property surrounding the Office Building such that the total real property associated with the Office Building does not exceed 1.5 acres. “Ineligible Property” shall also include a right of way, the configuration of which is subject to approval by the United States, via Plant Road to access Building 16 and approximately 10.1 acres of real property identified as Parcel 1.1 on Nitro Town Map 6 (“Building No. 1 Parcel,” outlined in red on Appendix B).

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Net Sales Proceeds” shall mean all consideration received by Settling Defendant from the sale of the Eligible Property or, as applicable, any portion of the Eligible Property, less the Excluded Expenses relating to the sale.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and the Settling Defendant.

“PCBs” shall mean polychlorinated biphenyls.

“Plaintiff” shall mean the United States.

“Property” shall mean the approximately 83.12-acre plot of land located at or near 190 Pickens Road in Nitro, Putnam County, West Virginia, which is identified as No. 6-1-0000 in the Putnam County, West Virginia land records; more specifically, it shall mean all land described in a deed, dated December 30, 1982, between Nitro Leasing Corporation and Par Industrial Corporation, and recorded on January 3, 1983, in the land records of Putnam County, West Virginia, in Deed Book 267, Page 791 (Appendix D), excepting the following parcels:

(a) A parcel consisting of approximately 10.1 acres conveyed to Par Associates Limited on or about August 8, 1984, and recorded in Deed Book 281, Page 363 (Nitro Town Tax Map 6, Parcel 1.1);

(b) A parcel consisting of approximately 7.96 acres conveyed to Nitro Corporation on or about September 10, 1987, and recorded in Deed Book 306, Page 177 (Nitro Town Tax Map 6, Parcel 1.2);

(c) A parcel consisting of approximately 11.44 acres conveyed to A C & S Inc. on or about September 30, 1988, and recorded in Deed Book 313, Page 902 (Nitro Town Tax Map 6, Parcel 1.3);

(d) A parcel consisting of approximately 0.4 acres conveyed to Builder Realty Inc. on or about November 9, 1989, and recorded in Deed Book 321, Page 913 (Nitro Town Tax Map 6, Parcel 1.4)

(e) A parcel consisting of approximately 1.96 acres conveyed to Nitro Corporation on or about November 16, 2011, and recorded in Deed Book 511, Page 455 (Nitro Town Tax Map 6, Parcel 4); and

(f) A parcel consisting of approximately 1.97 acres conveyed to Nitro Corporation on or about November 16, 2011, and recorded in Deed Book 511, Page 455 (Nitro Town Tax Map 6, Parcel 5).

“Pulp Mill Building” means the approximately 575 feet by 125 feet building located on the Property where Defendant stored a number of transformers, equipment, and containers containing PCB oils. The Pulp Mill Building is designated on the map contained in Appendix B.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Record” shall mean any records, reports, documents, or other information, including records, reports, documents, and other information in electronic form.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean PAR Industrial Corporation.

“Site” shall mean the PAR Industries, Inc. Superfund Site, which is located on the Property and encompasses the Water Treatment Building, the Pulp Mill Building, and a PCB dechlorination trailer located at GPS coordinates 38.43002 North and -81.84268 West. Appendix B identifies these three structures on the map of the Property.

“State” shall mean the State of West Virginia.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Water Treatment Building” means the approximately 75 feet by 170 feet building that is located adjacent to a water treatment facility and which is approximately 1,000 feet from the Pulp Mill Building. The Water Treatment Building is designated on the map contained in Appendix B.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make cash payments to resolve its alleged civil liability for the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, as provided in the Covenants by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs. Settling Defendant shall pay the principal amount of \$300,000.00 to EPA in accordance with Paragraph 7 below. Payment of the principal amount shall be made in three (3) installments. The first installment payment of \$50,000.00 is due within one (1) year of the Effective Date. The first installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the Effective Date of this Consent Decree. The second installment payment of \$125,000.00 is due within two (2) years of the Effective Date. The third installment payment of \$125,000.00 is due within three (3) years of the Effective Date. The second and third installment payments shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of the payment. The Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Southern District of West Virginia shall send a calculation of the Interest due for each payment to Settling Defendant. Settling Defendant may pay any installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

6. Payment of Net Proceeds of Sale of Property. In addition to the requirement to pay response costs in accordance with Paragraph 5, Settling Defendant shall pay to EPA the proceeds from the sale of certain real property as provided in this Paragraph 6.

a. Requirement of Clear Title.

- (1) Commencing on the Effective Date, Settling Defendant shall timely take all necessary steps to obtain clear and marketable title to the Property.
- (2) Settling Defendant shall maintain clear and marketable title to the Property until Settling Defendant has subdivided the Eligible Property from the Ineligible Property.
- (3) After the Eligible Property has been subdivided from the Ineligible Property, Settling Defendant shall maintain clear and marketable title to the Eligible Property or, in the case of a partial Transfer of a

portion of the Eligible Property, to any remaining portion of the Eligible Property still owned by Settling Defendant, until the entire Eligible Property has been Transferred.

b. Subdivision of Property.

- (1) Within 45 days after the Effective Date, Settling Defendant shall submit to the United States a proposed subdivision plat plan (which shall include all materials required to be submitted to the Putnam County Planning Commission in order to subdivide the Eligible Property from the Ineligible Property) that Settling Defendant intends to submit to Putnam County to effectuate the subdivision of the Ineligible Property from the Eligible Property in accordance with the Subdivision Regulations of the Putnam County Planning Commission. The United States shall provide its approval or disapproval of Settling Defendant's proposed subdivision plat plan in writing.
- (2) If the United States disapproves Settling Defendant's proposed subdivision plat plan, the United States shall provide Settling Defendant with notice of the reasons for such disapproval. Within fifteen (15) days of receiving such notice, Settling Defendant shall submit to the United States for approval a revised proposed subdivision plat plan that addresses the stated reasons for the United States' disapproval. The revised subdivision plat plan shall be subject to the United States' approval or disapproval as provided above.
- (3) Within seven (7) days of the United States' approval of the proposed subdivision plat plan, Settling Defendant shall initiate the process to subdivide the Eligible Property from the Ineligible Property in accordance with the EPA-approved proposed subdivision plat plan. Copies of all materials or plans submitted to the Putnam County Planning Commission during the subdivision approval process shall be simultaneously provided to EPA.
- (4) If, in order to effectuate the subdivision of the Eligible Property from the Ineligible Property, Settling Defendant is required to modify the proposed subdivision plat plan, Settling Defendant shall submit the revised subdivision plat plan to EPA for approval pursuant to Paragraph 6.b(1) and 6.b(2) prior to submitting the revised subdivision plat plan to the Putnam County Planning Commission. Thereafter, Settling Defendant shall file the EPA-approved subdivision plat plan as provided in Paragraph 6.b(3).
- (5) Within three (3) days after the Putnam County Planning Commission's approval of the proposed subdivision plat plan,

Settling Defendant shall provide a copy of the approved subdivision plat plan to the United States.

- (6) Within ninety (90) days after the Putnam County Planning Commission's approval of the proposed subdivision plat plan, Settling Defendant shall file the approved subdivision plat plan and all other necessary documents with the Putnam County Clerk's Office. Settling Defendant shall provide EPA with a copy of the recorded subdivision within three (3) days after recording the subdivision documents in the Putnam County land records.

c. Appraisal of Eligible Property. Within fifteen (15) days after the approval of the subdivision of the Property by the Putnam County Planning Commission under Paragraph 6.b, Settling Defendant shall submit to the United States the names of one or more appraisers. The appraisers identified shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. The United States may, within forty-five (45) days thereafter (or within such timeframe that is stipulated by the United States in writing), disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by the United States, Settling Defendant shall, within fifteen (15) days after such disapproval, submit names of additional appraisers, which shall be subject to the United States' disapproval as provided above. Any appraisers not disapproved by the United States shall be deemed to be approved. Settling Defendant shall, within sixty (60) days after the deadline for the United States' disapproval of the proposed appraisers, obtain an appraisal of the Eligible Property. The appraisal shall be performed by any appraiser deemed to be approved and shall be memorialized in a written appraisal report. Settling Defendant shall be responsible for all appraisal fees. Settling Defendant shall submit a copy of the appraisal report to the United States.

- (1) At the request of the United States, Settling Defendant shall obtain a new appraisal of the Eligible Property by an appraiser approved by EPA in accordance with this Paragraph 6.c if:
 - (a) The Eligible Property has not been sold within one year of the date of the most recent appraisal; or
 - (b) The Eligible Property or any portion thereof has been subdivided since the most recent appraisal.
- (2) In the event that the Eligible Property is subdivided such that a partial Transfer of the Eligible Property occurs, any subsequent appraisal(s) shall only assess the value of the remaining portion of the Eligible Property that has not yet been Transferred.

d. Maintenance of the Eligible Property. Until all of the Eligible Property is sold, Settling Defendant shall, with respect to all portions of the Eligible Property owned by Settling Defendant, and at its own expense:

- (1) Maintain and make necessary repairs to the Eligible Property;

- (2) Take reasonable precautions to avoid loss by fire or personal injury on the Eligible Property;
- (3) Timely pay or cause to be paid all real property taxes;
- (4) Timely pay all water and sewer bills regarding the Eligible Property; and
- (5) Refrain from encumbering and maintain clear title to the Eligible Property, with the exception of those encumbrances listed as a Permitted Encumbrance in Appendix C.

e. Marketing of the Eligible Property. Within thirty (30) days after the date of the appraisal report, Settling Defendant shall commence using best efforts to sell the Eligible Property.

- (1) “Best efforts” for purposes of this Paragraph includes:
 - (a) Timely effectuating any additional subdivision(s) of the Property, after consultation with the United States, in order to maximize the Net Sale Proceeds to be recovered within two (2) years from the Effective Date;
 - (b) Timely entering into a listing agreement, for the purpose of marketing and selling the Eligible Property, with a real estate broker, dealer, or agent licensed in the State of West Virginia who customarily deals with real property similar to the Eligible Property;
 - (c) Timely advertising the Eligible Property for sale in appropriate publications;
 - (d) Timely listing the Eligible Property with appropriate real estate listing services;
 - (e) Maintaining the Eligible Property in a condition suitable for showing to prospective buyers; and
 - (f) Providing access to the Eligible Property, at reasonable times, to real estate brokers, dealers, or agents, and prospective buyers.

- (2) Settling Defendant shall submit reports to the United States regarding Settling Defendant’s efforts to market the Eligible Property.
 - (a) The first such report shall be due ninety (90) days after commencement of efforts to market the Eligible Property and shall identify the date upon which Settling Defendant began marketing the Eligible Property.

- (b) Successive reports shall be due by the end of each ninety (90) day period thereafter.

f. Contract Execution and Notice of a Proposed Contract for Sale. If a proposed contract for the sale of the Eligible Property or any portion thereof provides for Settling Defendant to receive all cash, is for at least 90% of the appraised value of all remaining Eligible Property, and provides for the property sale to occur within sixty (60) days after the date of execution of the sales contract, then Settling Defendant may execute the contract without the United States' prior written approval. Otherwise, Settling Defendant shall provide to the United States a copy of the proposed Eligible Property sales contract, and must obtain the United States' written approval before executing the contract.

g. Within seven (7) days after signing the contract for sale of the Eligible Property or any portion thereof, Settling Defendant shall provide to the United States:

- (1) A copy of the executed contract;
- (2) A metes and bounds description of the parcel of the Eligible Property to be sold pursuant to the executed contract; and
- (3) A written request for release of the federal lien filed by EPA on August 30, 2013 regarding the Property and/or a release of any judgment lien imposed under Paragraph 15 with respect to the parcel of Eligible Property to be sold.

h. Notice of Sale and Calculation of Net Sales Proceeds. Settling Defendant shall submit to the United States, at least ten (10) days prior to the date of closing of the sale of the Eligible Property or any portion thereof, a notice of the sale, Settling Defendant's calculation of the Net Sales Proceeds, and all documentation regarding the values used in the calculation, including:

- (1) Copies of all documents to be executed regarding the sale;
- (2) Documentation of the amounts to be paid to holders of any liens listed as a Permitted Encumbrance in Appendix C;
- (3) Documentation of the amounts of closing costs to be paid;
- (4) Documentation of all broker's fees regarding the sale; and
- (5) Documentation of the amounts of state and municipal transfer taxes to be paid regarding the sale.

i. Approval of Settling Defendant's Calculation of Net Sales Proceeds. The United States shall provide its approval or disapproval of Settling Defendant's calculation of Net Sales Proceeds in writing. In order to be considered for approval, the values of the Excluded Expenses shall be adequately supported by the documentation submitted pursuant to Paragraph 6.h.

- (1) If the United States disapproves Settling Defendant's calculation of Net Sales Proceeds, the United States shall provide Settling Defendant with notice of the reasons for such disapproval. Within five (5) days of receiving such notice, Settling Defendant shall submit to the United States for approval a revised calculation of Net Sales Proceeds that addresses the stated reasons for the United States' previous disapproval.
- (2) The United States' approval of Settling Defendant's calculation of Net Sales Proceeds shall be binding in any subsequent dispute between the United States and Settling Defendant regarding whether Settling Defendant has complied with Paragraph 6.k.

j. If, within two (2) years after the date on which Settling Defendant began to market the Eligible Property, Settling Defendant has not executed a contract for the sale of the entirety of the Eligible Property, and upon receipt of notice from the United States, Settling Defendant shall commence best efforts to sell the Eligible Property or any remaining portions thereof to the highest bidder at a public auction. The proceeds of any sale at auction shall be distributed in the same manner as any other sale in accordance with Paragraph 6.k.

- (1) For purposes of this Paragraph 6.j, best efforts shall mean engaging the services of a professional auctioneer who will advertise the auction in at least two local newspapers for at least thirty (30) days prior to the auction and who will conduct other marketing activities as appropriate.
- (2) The agreement with the professional auctioneer shall be provided to the United States for review and approval.

k. At the time of closing of the sale of the entire Eligible Property or, if subdivided, upon the closing of the sale of each and every subdivided parcel of the Eligible Property, Settling Defendant shall pay to EPA:

- (1) 90% of the Net Sales Proceeds with respect to the first \$1,000,000.00 in Net Sales Proceeds; and
- (2) 85% of the Net Sales Proceeds with respect to Net Sales Proceeds exceeding \$1,000,000.00

Settling Defendant shall continue to comply with the requirements set forth in this Paragraph 6.k until the sum of the amount paid pursuant to Paragraph 5 and the amount of payment of Net Sales Proceeds to EPA equals \$2,592,332.96. Payment shall be made in accordance with Paragraph 7 below.

l. Provided that the amount of Net Sales Proceeds is approved, the United States shall arrange for the execution or delivery, at the time of closing, of a release of the federal lien filed on August 30, 2013 regarding the property sold and of any judgment lien imposed under Paragraph 15. In the event of a partial sale of the Eligible Property, the release of the

federal lien and/or judgment lien shall apply only to the portions of the Eligible Property that are to be sold in the partial sale.

m. Settling Defendant shall not be required to comply with this Paragraph 6 with respect to the Eligible Property or any portion thereof in the event the Eligible Property or such portion thereof is Transferred involuntarily by operation of law, including foreclosure or its equivalent of any lien which is listed as a Permitted Encumbrance in Appendix C, or is Transferred by deed or other assignment in lieu of foreclosure due to a default on indebtedness secured by the Eligible Property or any portion thereof. Settling Defendant shall notify the United States of all such Transfers within ten (10) days of the effective date of each such Transfer.

n. In the event of a sale or other Transfer of the Property or any portion thereof (whether consisting of portions of the Eligible Property or otherwise), Settling Defendant shall continue to be subject to all terms, conditions and benefits of this Consent Decree, except for Section XIII (Property Requirements), to the extent it requires Settling Defendant to provide access to, or to abide by any land, water, or other resource use restrictions regarding the Property or portion thereof that was sold or Transferred.

7. Methods of Payment. Settling Defendant shall make all payments to EPA under Paragraph 5 (Payment of Response Costs) and Paragraph 6 (Payment of Net Proceeds of Sale of Property) by check or online in the following manner:

a. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of West Virginia shall provide Settling Defendants, in accordance with Section XV (Notices and Submissions), with instructions regarding making payments to the United States on behalf of EPA. The instructions must include a Consolidated Debt Collection System (“CDCS”) number to identify payments made under this Consent Decree.

b. Any check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name (“PAR Industries, Inc. Superfund Site”), Site/Spill ID Number A3AW, the CDCS Number, and DJ Number 90-11-3-10978;

c. All checks shall be made payable to the U.S. Department of Justice;

d. All payments made by check and sent by regular mail shall be addressed to:

Financial Litigation Unit
300 Virginia St. E, Suite 4000
Charleston, WV 25326-1713

e. Online Payment Option

www.pay.gov

Enter sfo 1.1 in the search field at the top of the page. Open and complete the SFO Form Number 1.1.

8. Deposit of Payment. The total amount of each payment to be paid pursuant to Paragraph 5 (Payment of Response Costs) and Paragraph 6 (Payment of Net Proceeds of Sale of Property) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

9. Notice of Payment. At the time of each payment, Settling Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XV (Notices and Submissions), (b) to DOJ in accordance with Section XV; and (c) to the EPA Cincinnati Finance Center (CFC) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number A3AW, and DJ Number 90-11-3-10978.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Payments. If Settling Defendant fails to make the payment required by Paragraph 5 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment. If Settling Defendant fails to make the payment required by Paragraph 6 (Payment of Net Proceeds of Sale of Property) by the required due date under Paragraph 6.k, Interest shall continue to accrue on the unpaid balance from the date payment was due through the date of payment.

11. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 5 (Payment of Response Costs) or Paragraph 6.k are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10 (Interest on Payments), \$250.00 per violation per day that such payment is late.

b. If Settling Defendant fails to use best efforts to sell the Eligible Property in accordance with Paragraphs 6.e(1) or 6.j, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, \$250.00 per day for each day of failure to use best efforts to sell the Property.

c. If Settling Defendant fails to comply with Paragraphs 6.b, 6.c, 6.d, 6.e(2), 28, or 29, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, \$250.00 per violation per day.

d. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by the United States. Settling Defendant shall identify all payments to the United States under this Paragraph as “stipulated penalties” and shall pay them in accordance with Paragraph 7.

e. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 9 (Notice of Payment) and Section XV (Notices and Submissions).

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

g. To the extent that stipulated penalties are due and unpaid at the time of sale of the Eligible Property or any portion thereof, payment of stipulated penalties shall be made prior to, and shall not be considered part of, any distribution of Net Sales Proceeds under Paragraph 6.k.

12. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. JUDGMENT AND NOTICE OF LIEN

15. Settling Defendant consents to the entry of a judgment in favor of the United States for \$2,592,332.96, plus Interest running from the Effective Date until the date of payment. Settling Defendant further consents to the filing by the United States in the Clerk's Office, County of Putnam, State of West Virginia, of a notice of judgment lien regarding the Eligible Property based on this judgment in favor of the United States.

IX. COVENANTS BY THE UNITED STATES

16. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any Interest or

stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to the United States by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 33. These covenants extend only to Settling Defendant and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 16 (Covenants by Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance, pollutant, contaminant, or solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

18. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 33, is false or, in any material respect, inaccurate.

XI. COVENANTS BY SETTLING DEFENDANT

19. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the West Virginia Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

20. Except as provided in Paragraph 22 (Claims Against Other PRPs) and Paragraph 27 (Res Judicata and Other Defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section X (Reservations of Rights by United States), other than in Paragraph 17.a (liability for failure to meet a requirement of the Consent Decree) or 17.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

22. Claims Against Other PRPs. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Except as provided in Paragraph 22 (Claims Against Other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XI (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

24. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to

protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 17.a (liability for failure to meet a requirement of Consent Decree) or 17.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

25. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

26. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within ten (10) days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section IX.

XIII. PROPERTY REQUIREMENTS

28. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Property or any portion thereof, Settling Defendant shall cooperate with EPA’s efforts to secure and ensure compliance with such institutional controls.

29. Notice to Successors-in-Title.

a. Settling Defendant shall, within fifteen (15) days after the Effective Date, submit for EPA approval a notice to be filed regarding the Property in the appropriate land records. The notice must:

- (1) Include a proper legal description of the Property; and
- (2) Provide notice to all successors-in-title that:
 - (a) The Property is part of, or related to, the Site;
 - (b) EPA performed a response action at the Site; and
 - (c) PCBs may remain in the concrete floor of the Pulp Mill Building and in the soil thereunder, and if so, may require maintenance to ensure there is no release of PCBs and steps to ensure proper handling and disposal.

b. Settling Defendant shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

c. Settling Defendant shall, prior to entering into a contract to Transfer any portion of the Eligible Property that contains a portion of the Site, or 60 days prior to Transferring any portion of the Eligible Property that contains a portion of the Site, whichever is earlier:

- (1) Notify the proposed transferee that EPA performed a response action regarding the Site; and
- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

30. In the event of the Transfer of the Property or any portion thereof, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree.

31. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION & CERTIFICATION

32. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

33. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and other federal and state laws;

b. submitted to the United States financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to the United States and the time Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the United States upon request such insurance policies, indemnity agreements, and information.

XV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to the other, 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10978

As to EPA: Andrew S. Goldman (3RC41)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Carlyn Winter Prisk (3HS62)
Investigator
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendant: Nancy Pizzuto
Par Industrial Corporation
P.O. Box 61
Nitro, WV 25143

XVI. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

36. This Consent Decree and its appendices constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of the financial documents submitted to EPA by Settling Defendant.

“Appendix B” is the map of the Property, including the structures constituting Ineligible Property and the Site.

“Appendix C” is the list of Permitted Encumbrances.

“Appendix D” is the deed, dated December 30, 1982, and recorded on January 3, 1983, in the land records of Putnam County, West Virginia, in Deed Book 267, Page 791.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of either Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

39. The undersigned representative of Settling Defendant and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

41. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

42. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. Moreover, pursuant to Section VIII (Judgment and Notice of Lien), the Court enters a judgment in favor of the United States for \$2,592,332.96, plus Interest running from the Effective Date until the date of payment. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___ DAY OF _____, 2017.


Chief Judge Robert Chambers
United States District Judge
United States District Court for the
Southern District of West Virginia

Signature Page for Consent Decree Regarding the PAR Industries, Inc. Superfund Site

FOR THE UNITED STATES OF AMERICA:

8/10/2017

Dated



NATHANIEL DOUGLAS

Deputy Chief

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

P.O. Box 7611

Washington, D.C. 20044-7611



THOMAS P. KOLKIN

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

P.O. Box 7611

Washington, D.C. 20044-7611

(202) 305-0427

Thomas.Kolkin@usdoj.gov

Signature Page for Consent Decree Regarding the PAR Industries, Inc. Superfund Site

FOR THE UNITED STATES OF AMERICA:

CAROL A. CASTO
United States Attorney
Southern District of West Virginia

By: 

GARY L. CALL
Assistant United States Attorney
Southern District of West Virginia
WV State Bar No. 589
P.O. Box 1713
Charleston, West Virginia 25326
T: 304/345-2200
F: 304/347-5440
E: gary.call@usdoj.gov

Dated: Aug. 11, 2017

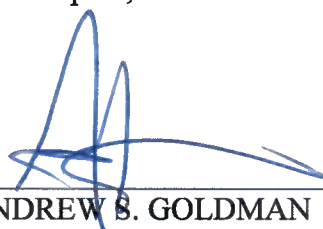
Signature Page for Consent Decree Regarding the PAR Industries, Inc. Superfund Site



CECIL RODRIGUES
Acting Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103



MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103



ANDREW S. GOLDMAN
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Signature Page for Consent Decree Regarding the PAR Industries, Inc. Superfund Site

FOR PAR Industrial Corporation:

6/6/17
Date

Nancy Pizzuto / Pres.
NANCY PIZZUTO
President
Par Industrial Corporation
190 Pickens Rd.
Nitro, WV 25143

APPENDIX A

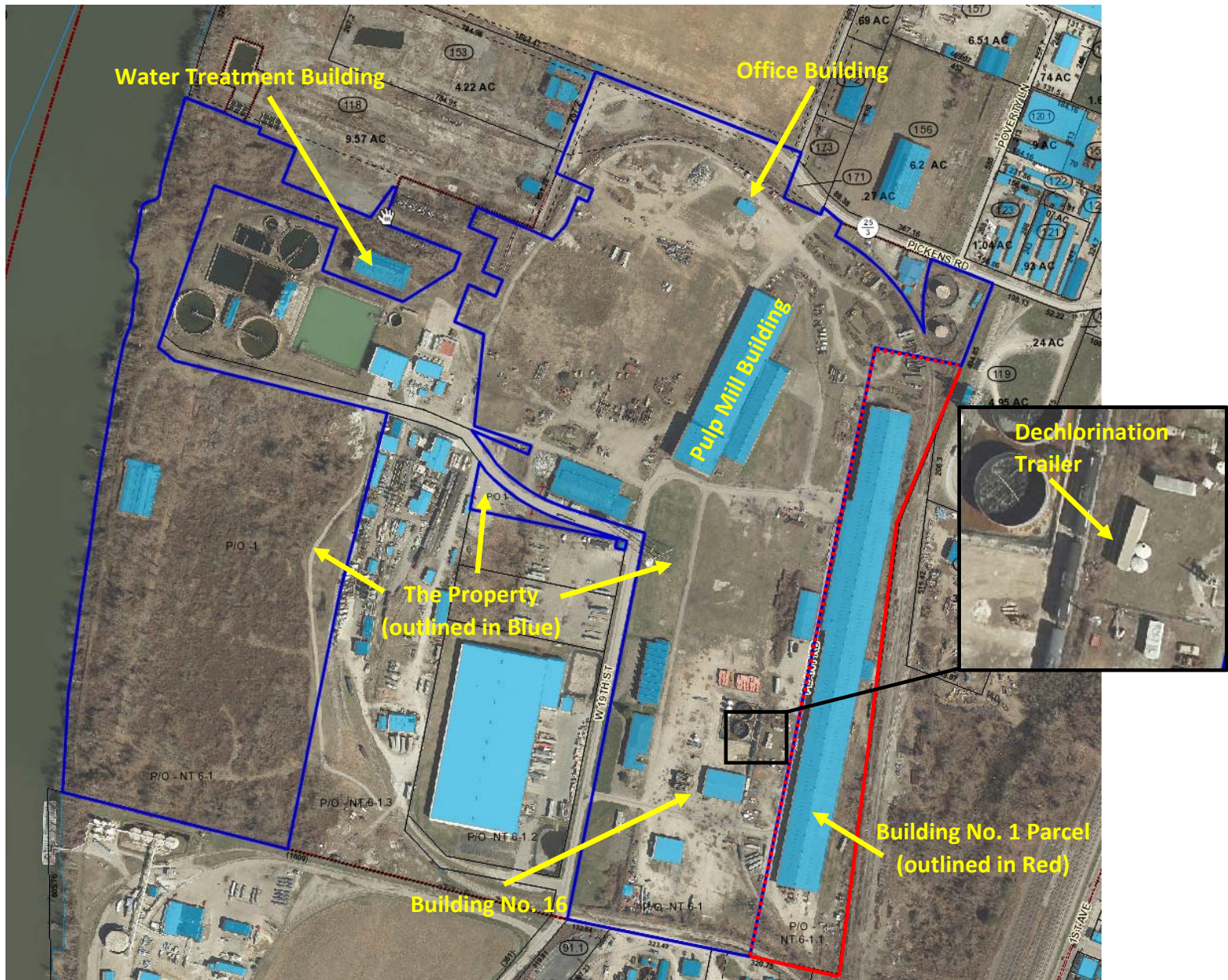
FINANCIAL INFORMATION AND INSURANCE INFORMATION PROVIDED TO EPA¹

1. Federal Income Tax Returns (Form 1120), Par Industrial Corporation, Inc. 2010 through 2015 (for year ending October 31, 2016).
2. Response dated February 23, 2011 to EPA's 104(e) information request letter of December 2010.
3. Response dated August 16, 2011 to EPA's 104(e) information request letter of July 20, 2011.
4. Response dated December 6, 2013 to EPA's 104(e) information request letter of October 22, 2013.
5. Response dated March 4, 2014 to EPA's 104(e) information request letter of December 19, 2013.
6. April 22, 2014, letter from Larry Hoylman, RealCorp, LLC, regarding value of property.
7. May 9, 2014 letter from Bob Weikle, Rish Equipment Company, regarding value of equipment.
8. Defendant's Response to Plaintiff, United States', Request for Production of Documents Related to Par Industrial Corporation's 30(b)(6) Deposition, dated February 2, 2017.
9. Defendant's Supplemental Response to Plaintiff, United States', Request for Production of Documents Related to Par Industrial Corporation's 30(b)(6) Deposition, dated February 3, 2017.
10. Letter, dated March 31, 2017, from Timothy LaFon, Esq. to Thomas Kolkin, U.S. Department of Justice, regarding equipment.
11. Letter, dated March 31, 2017, from Timothy LaFon, Esq. to Thomas Kolkin, U.S. Department of Justice, attaching updated financial information.
12. Letter, dated April 28, 2017, from Timothy LaFon, Esq. to Thomas Kolkin, U.S. Department of Justice, discussing Par's tax liabilities.

¹ Attachments to letters and documents are assumed to be included notwithstanding their specific identification.

13. Letter, dated May 9, 2017, from Timothy LaFon, Esq. to Thomas Kolkin, U.S. Department of Justice, attaching information on Par's tax liability to Putnam County.

APPENDIX B



APPENDIX C

PERMITTED ENCUMBRANCES

As of the date of Settling Defendant's signature of this Consent Decree, the Parties have not identified any Permitted Encumbrances.

APPENDIX D

7/27/82

THIS DEED, Made this 30th day of December, 1982, by and between NITRO LEASING CORPORATION, a West Virginia corporation, grantor and party of the first part, and PAR INDUSTRIAL CORPORATION, a West Virginia corporation, grantee and party of the second part.

W I T N E S S E T H

That, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties of the first part do hereby REMISE, RELEASE and FOREVER QUITCLAIM unto the party of the second part all of of their right, title and interest in and to those certain lots, tracts or parcels of land together with the improvements thereon and the appurtenances thereunto belonging, situate in Pocaticlico District and Scary, Putnam County, West Virginia and being more particularly described in Exhibit "A" annexed hereto and incorporated herein by reference.

This conveyance is made subject to restrictions, encumbrances, liens and all other matters of record. The parties hereto acknowledge that portions of the real property described in Exhibit "A" have heretofore been used as a dump site.

The parties of the first part hereby declare that the total consideration paid for the property conveyed by this document is \$ 2,000,000.

Intended to be the same premises as conveyed by FMC Corporation to Avtex Fibers, Inc. by deed dated August 16, 1976 and recorded in the Office of the Clerk of the County Commission, Putnam County, West Virginia on August 19, 1976, in Deed Book 218, page 431 and as further conveyed by Avtex Fibers, Inc. to Nitro Leasing Corp. by Deed dated March 29, 1978, and recorded in said Clerk's office on April 12, 1978 in Deed Book 231, page 304.

Return To: William E. Hamb P. O. Box 1671 Charleston, W.Va. 25326 Transfer Tax \$6,600 No. 68748

BOOK 267 PAGE 792

WITNESS the following signature and seal.

NITRO LEASING CORPORATION
By: James P. Harbeson IV
Vice President + Treasurer

STATE OF NEW YORK

COUNTY OF NEW YORK

I, STEPHEN P. HOBAN a Notary Public, do certify that James P. Harbeson, IV; who signed the writing hereto annexed, bearing the date the 30th day of December, 1982 for NITRO LEASING CORPORATION, a corporation, has this day, in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and official seal, this 30th day of December 1982.

My commission expires March 30, 1984



Stephen P. Hoban
Notary Public

STEPHEN P. HOBAN
Notary Public, State of New York
No. 30-6817950
Qualified in Nassau County
Commission Expires March 30, 1984

This instrument was prepared by Stephen P. Hoban, Attorney-at-Law, 1505 Kellum Place, Mineola, New York.

EXHIBIT "A"PARCEL I:

All that certain tract or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging or appertaining, situate, lying and being in Pocatalico District, Putnam County, West Virginia, and more particularly bounded and described as follows:

BEGINNING at an old concrete monument, southeast corner of PARCEL NUMBER 1 (57.62 acres) conveyed by Charleston Industrial Corporation to The Viscose Company, a corporation, by deed dated the 22nd day of August, 1921, recorded in the office of the Clerk of the County Court of Putnam County, West Virginia, in Deed Book 48, at page 219; thence running in a westerly direction, successively, with the southerly line of said PARCEL NUMBER 1 (57.62 acres) and with the southerly line of the SECOND TRACT (0.61 acre) conveyed by Nitro Industrial Corporation to American Viscose Corporation by deed dated the 9th day of November, 1937, recorded in the aforesaid Clerk's office in Deed Book 66, at page 536, N. 76° 14' W. a distance of 895.42 feet to an 8" railroad spike at the southwest corner of said SECOND TRACT (0.61 acre) and at the southeast corner of a tract of 54.00 acres conveyed by Nitro Industrial Corporation to American Viscose Corporation by deed dated the 24th day of October, 1938, recorded in the aforesaid Clerk's office in Deed Book 69, at page 172; thence leaving said 0.61 acre tract and continuing in a westerly direction with the southerly line of the aforesaid 54.00 acre tract N. 73° 32' W. 1641.58 feet to a point in the Kanawha River at the old normal pool stage of the Kanawha River at elevation 546.4 feet (Sandy Hook Datum); thence running in a northerly direction down the Kanawha River with its meanders at said elevation of 546.4 feet (Sandy Hook Datum) and successively with the westerly line of said 54.00 acre tract, the westerly line of PARCEL NUMBER 2 (4.83 acres) conveyed by Charleston Industrial Company to The Viscose Company by the aforesaid deed dated the 22nd day of August, 1921, the westerly line of a tract of 7.9 acres conveyed by West Virginia Water Service Company to American Viscose Corporation by deed dated the 9th day of May, 1949, recorded in the aforesaid Clerk's office in Deed Book 95, at page 134, and with the westerly line of the FIRST TRACT (6.23 acres), conveyed by Nitro Industrial Corporation to American Viscose Corporation by the aforesaid deed dated the 9th day of November, 1937, a distance of approximately 2,200 feet, more or less, to a point in said Kanawha River, located S. 23° 45' W. 21.72 feet from the northwest corner of said FIRST TRACT (6.23 acres) conveyed by Nitro Industrial Corporation to American Viscose Corporation by the aforesaid deed dated the 9th day of November, 1937; thence running 21.72 feet equidistant from and parallel to the northerly line of said FIRST TRACT (6.23 acres) on a course S. 66° 15' E. a distance of 282.61 feet to a P.K. nail set in the south side of the concrete base of a fencepost; thence S. 23° 45' W. 19.28 feet to a 1" iron pipe; thence S. 66° 15' E. 124.16 feet to a 1" iron pipe; thence S. 23° 45' W. 111.23 feet to a 1" iron pipe at the end of a concrete wall; thence S. 66° 15' E. with the northerly line of said concrete wall 294.22 feet to a 1" iron pipe located one foot west of an opening in said concrete wall; thence N. 38° 21' E. 115.97 feet to a 1" iron pipe; thence S. 71° 29' E. 12.20 feet to a 1" iron pipe; thence N. 23° 45' E. 38.89 feet to a point in the north line of the aforesaid 6.23 acre tract; thence running with the northerly line of said 6.23 acre tract S. 66° 15' E., 438.19 feet to a 1" iron pipe located at the northeast corner of said 6.23 acre tract and in the westerly line of said PARCEL NUMBER 1 (57.62 acres); thence with the westerly line of said

BOOK 267 PAGE 794

EXHIBIT A

Page 2

PARCEL NUMBER 1 (57.62 acres), N. 23° 45' E. 267.99 feet to a P.K. nail in said line; thence leaving the westerly line of said PARCEL NUMBER 1 (57.62 acres) S. 66° 15' E. 20 feet to a 1" iron pipe in the easterly right of way line of West Virginia County Route 25/3; thence leaving said West Virginia County Route 25/3, N. 81° 38' E. 184.44 feet to a 1" iron pipe located one foot north of a chain link fence; thence N. 79° 55' E. 50 feet to a 1" iron pipe located one foot north of said chain link fence; thence N. 88° 57' E. 50 feet to an iron pipe located one foot north of said chain link fence; thence S. 83° 22' E. 50 feet to a 1" iron pipe located one foot north of said chain link fence; thence S. 74° 45' E. 50 feet to a 1" iron pipe located one foot north of said chain link fence; thence S. 68° 42' E. 50 feet to a 1" iron pipe located one foot north of said chain link fence; thence S. 61° 35' E. 50 feet to a 1" iron pipe located one foot north of said chain link fence; thence S. 54° 04' E. 125 feet to a 1" iron pipe located one foot north of said chain link fence; thence S. 50° 37' E. 100 feet to a 1" iron pipe located one foot north of said chain link fence and in the westerly line of a tract of 0.12 of an acre, more or less, conveyed by Ohio-Apex, Inc. to American Viscose Corporation by deed dated the 1st day of August, 1952, recorded in the aforesaid Clerk's office in Deed Book 106, at page 494 (said iron pipe being also located N. 66° 28' W. 706.00 feet, thence N. 23° 45' E. 14.75 feet from the beginning point of said PARCEL NUMBER 1 (57.62 acres) as described in the aforesaid deed dated the 22nd day of August, 1921, from Charleston Industrial Corporation to The Viscose Company); thence running N. 23° 45' E. 51.89 feet to a 1" iron pipe located along the southern right of way line of West Virginia County Route 25/3; thence with the curve of said southern right of way line of West Virginia County Route 25/3, in a southeasterly direction (radius of said curve being 592.96 feet, delta angle being 13° 20', radii being located 572.96 feet right of Station 13+81.45 of West Virginia County Route 25/3 and said curve being bound by a chord which bears S. 41° 55' E. 137.72 feet from the last described 1" iron pipe) a distance of 137.99 feet to a 1" iron pipe; thence leaving said right of way line of West Virginia County Route 25/3 and running S. 23° 32' W. 9.43 feet to a 1" iron pipe located in a northern line and the closing line of the aforesaid PARCEL NUMBER 1 (57.62 acres); thence S. 66° 28' E. 580.47 feet to a cross marked in the concrete pavement of West Virginia County Route 25/3 at the northeast corner of said PARCEL NUMBER 1 (57.62 acres); thence with the easterly line of said PARCEL NUMBER 1 (57.62 acres), S. 23° 38' W. 805.4 feet to an old concrete monument (said line being described in the aforesaid deed dated August 22, 1921, from Charleston Industrial Corporation to The Viscose Company as thence running in a southerly direction at an angle of ninety degrees and six minutes (90° 06') to the right a distance of 805.4 feet to an iron pipe); thence continuing with the easterly line of said PARCEL NUMBER 1 (57.62 acres) along the line of a chain link fence S. 9° 42' W. a distance of 1408.4 feet to the place of beginning, containing 127.91 acres, more or less, gross, and 116.95 acres, more or less, net, after deduction of the exception hereinafter set forth; which said property is outlined and shown on that certain map entitled "Survey of Property Owned by FMC Corporation to be Conveyed to Avtex Fibers, Inc." made by Banks Engineering Company, dated August 12, 1976, a copy of which is filed herewith; and being a part of the property conveyed to the Grantor herein by American Viscose Corporation, a corporation

EXHIBIT A

Page 3

(Delaware) by deed dated the 10th day of July, 1963, recorded in the office of the Clerk of the County Court of Putnam County, West Virginia, in Deed Book 149, at page 216, and reference is hereby made to said deed and to the map filed herewith for a further description of the property hereby conveyed.

The calls (bearings) used in the description of Parcel 1, above, are based on Magnetic North established by the U.S. Government in 1918. The approximate mean declination of 1918 is 1°47' W. and was established by interpolation of tables prepared by the Geomagnetism Division, Coast and Geodetic Survey, E.S.S.A.

There is excepted and reserved from said PARCEL I, hereinbefore described, and from the operation of this deed, a certain tract or parcel of land with the improvements thereon and the appurtenances thereunto belonging or appertaining, bounded and described as follows:

BEGINNING at a point at the intersection of the west line of Parcel One and the north line of Parcel Three as said Parcels are described in that certain deed dated July 10, 1963, from American Viscose Corporation to FMC Corporation, and recorded in the office of the Clerk of the County Court of Putnam County, West Virginia, in Deed Book 149, at page 216; thence along the property line then the following courses and distances to iron pins N. 27° 51' E. 183.38 feet, S. 62° 09' E. 124 feet, S. 27° 51' W. 42.5 feet, N. 62° 09' W. 33.40 feet, S. 27° 51' W. 93.60 feet, S. 47° 51' W. 60.45 feet, N. 62° 09' W. 254.00 feet, S. 27° 51' W. 66.00 feet, S. 62° 09' E. 93.32 feet, S. 27° 51' W. 109.60 feet, S. 62° 09' E. 66.50 feet, S. 27° 51' W. 54 feet, N. 62° 09' W. 90.60 feet, S. 25° 51' W. 122.38 feet, S. 62° 09' E. 99.02 feet, S. 10° 51' W. 283.99 feet, S. 66° 09' E. 186.91 feet, S. 23° 51' W. 28.36 feet, N. 62° 09' W. 352.45 feet, N. 71° 13' 40" W. 777.07 feet, N. 46° 09' W. 71.15 feet, N. 24° E. 485.71 feet, S. 66° E. 402.87 feet, S. 24° W. 136.68 feet, S. 64° E. 267.77 feet, N. 63° E. 186.75 feet, N. 26° E. 53.76 feet, N. 64° W. 256.75 feet, N. 26° E. 155.10 feet, S. 64° E. 438.19 feet, along the original property line to the place of beginning, containing 10.96 acres, more or less.

PARCEL II:

That certain tract or parcel of land, with the privileges and appurtenances thereunto belonging, and appertaining, at Scary, Putnam County, West Virginia, being more particularly described as follows:

BEGINNING at point 40 feet southwesterly at right angles from the center line of No. 1 Main Track of the Kanawha Subdivision of The Chesapeake and Ohio Railway at Station 2223+70; thence S. 42° 01' 30" W. at right angles from said center line of No. 1 Main Track 170 feet, more or less, to a point in the northerly line of State Secondary Road No. 44; thence northwesterly on said northerly line of State Secondary Road No. 44, which is on a curve to the left and tangent, a total distance of 1902 feet, more or less, to a point in line which bears N. 24° 09' 30" E. toward said center line of No. 1 Main Track at Station 2243+75; thence N. 24° 09' 30" E. 290 feet, more or less, to a point 40 feet southwesterly and radially from said center line of No. 1 Main Track:

BOOK 267 PAGE 795

BOOK 267 PAGE 796

EXHIBIT A

Page 4

thence southeasterly concentric or parallel with and 40 feet from said center line which is on a 2° 30' curve to the right to Station 2232+00 and tangent S. 47° 58' 30" E., a total distance of 2005 feet, more or less, to the point of beginning and containing 11.3 acres, more or less.

PARCEL III:

That certain tract or parcel of land, with the privileges and appurtenances thereunto belonging and appertaining, at Scary, Putnam County, West Virginia, being more particularly described as follows:

BEGINNING at a point 210 feet, more or less, measured S. 42° 01' 30" W. from the center line of No. 1 Main Track of the Kanawha Subdivision of The Chesapeake and Ohio Railway Company at Station 2223+70, said point also being in the northerly line of Railway's original 100-foot strip of right of way; thence S. 42° 01' 30" W. 100 feet to a point in the southerly line of Railway's original 100-foot strip of right of way; thence northwesterly on said southerly line of original right of way, being on tangent N. 50° 08' W. a curve to the left, and tangent N. 65° 50' 30" W. a total distance of 1880 feet, more or less, to a point in line which bears N. 24° 09' 30" E. toward said center line of No. 1 Main Track at Station 2243+75; thence N. 24° 09' 30" E. 100 feet to a point in the said northerly line of original right of way; thence southeasterly on said northerly line of original right of way, being parallel or concentric with and 100 feet from said southerly line of original right of way, as above described, a total distance of 1902 feet, more or less, to the point of beginning and containing 4.34 acres, more or less.

STATE OF WEST VIRGINIA,
County of Putnam, to-wit:

I, CHARLES E. FARLEY, Clerk of the County Commission of said County, do hereby certify that the foregoing writing was this day produced to me in my said office and together with the certificate thereto annexed, was duly admitted to record therein.

Given under my hand this

3rd day of January 1983

Charles E. Farley 3:28 PM

Clerk.

C. & H. #79027