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

UNITED STATES OF AMERICA, Plaintiff, v. THE ATLAS-LEDERER COMPANY, *et al.*, Defendants.	)	Civil No. C-3-91-309 Judge Walter H. Rice

AGREED AMENDMENT TO THE CONSENT DECREE
MODIFYING THE RIGHTS, DUTIES, AND OBLIGATIONS OF
SETTLING GENERATOR DEFENDANTS

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APPENDIX B: CURRENT MEMBERS OF THE UNITED SCRAP LEAD SETTLING OWNER/OPERATOR DEFENDANTS

WHEREAS, the Court entered a consent decree in this civil action on September 28, 1998 (the "Original Consent Decree") resolving certain matters at issue in this litigation between the plaintiff, the United States of America (the "United States") and the Defendants listed in Appendix A ("Settling Generator Defendants") and Appendix B ("Settling Owner/Operator Defendants") – all of whom shall be referred to herein collectively as the "Parties;"

WHEREAS, the Original Consent Decree requires, among other things, that the Settling Generator Defendants finance and perform work to design and implement the remedial actions selected by U.S. Environmental Protection Agency ("EPA") in the Record of Decision Amendment signed on June 27, 1999 ("ROD Amendment") to address releases of hazardous substances at the United Scrap Lead Superfund Site ("Site") in Concord Township, Miami County, Ohio, which is depicted generally on the map attached to the Original Consent Decree;

WHEREAS, the Original Consent Decree further requires that the Settling Generator Defendants reimburse the EPA Hazardous Substance Superfund for Future Response Costs, which are defined as costs not inconsistent with the National Contingency Plan incurred by EPA in connection with the Site after June 30, 1996, and by the U.S. Department of Justice ("DOJ") in connection with the Site after September 30, 1996;

WHEREAS, the Setting Generator Defendants maintain that all phases of the "Work" as defined under Paragraph 4.ee of the Original Consent Decree, including operation and maintenance ("O&M"), have been fully performed;

WHEREAS, the Settling Generator Defendants dispute their liability for Future Response Costs incurred by EPA in connection with the Site from March 1, 2006 through February 28, 2014 and wish to resolve their liability for Future Response Costs that EPA is likely to incur in connection with the Site after March 1, 2014;

WHEREAS, the Settling Generator Defendants also wish to be released from other obligations under the Original Consent Decree requiring them to provide support to EPA by performing studies in connection with five-year reviews and securing access to properties owned or controlled by persons other than the Settling Owner/Operator Defendants;

WHEREAS, the Parties intend for all provisions of the Original Consent Decree to remain in full force and effect, except as is specifically modified or amended by this Amendment to the Consent Decree;

NOW THEREFORE, with the consent of the Parties, it is hereby Ordered, Adjudged, and Decreed that the Original Consent Decree be amended as follows:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Amendment to the Consent Decree which are defined in the Comprehensive Environmental Response, Compensation and Liability and Act ("CERCLA"), 42 U.S.C. § 101 *et seq.*, in regulations promulgated under CERCLA, or in the Original Consent Decree, shall have the meaning assigned to them in CERCLA, in such regulations, or in the Original Consent Decree. Whenever terms listed below are used in this Amendment to the Consent Decree, the following definitions shall apply:

a. "Amendment to the Consent Decree" or "Amendment" shall mean this Amendment and all Appendices attached hereto. In the event of conflict between this Amendment and any Appendix, this Amendment shall control.

b. "Consent Decree" shall mean the Original Consent Decree entered by the Court on September 28, 1998 as modified by this Amendment.

c. "Effective Date" shall mean the date upon which this Amendment to the Consent Decree is entered as an order of this Court, as set forth in Paragraph 19 of this Amendment to the Consent Decree.

d. "Original Consent Decree" shall mean the text of the Consent Decree as entered by this Court on September 28, 1998.

e. "Paragraph" shall mean, depending on the context, the individual paragraphs of this Amendment to the Consent Decree referred to by the appropriate designation in this Amendment to the Consent Decree (e.g. "Paragraph 19 of this Amendment to the Consent Decree"), or to an individual paragraph of the Original Consent Decree identified by an Arabic numeral (e.g., "Paragraph 82 of the Original Consent Decree").

f. "Section" shall mean, depending on the context, the Sections of this Amendment to the Consent Decree or the Sections of the Original Consent Decree, designated by the appropriate Roman numeral.

g. "Settling Generator Defendants" shall mean those entities identified in Appendix A of this Amendment, which includes all of the Settling Generator Defendants identified in Appendix D of the Original Consent Decree that, except as noted in Appendix A, remain solvent, ongoing businesses as of the Effective Date of this Amendment.

h. "Settling Owner/Operator Defendants" shall mean those entities identified in Appendix B of this Amendment, which are now represented by the receiver appointed by the Court on October 30, 2012.

II. MODIFICATION OF THE ORIGINAL CONSENT DECREE

2. Subject to and conditioned upon EPA's receipt of all payments required under Sections IV (Payment of Response Costs) and V (Failure to Comply with this Amendment) of this Amendment, the Settling Generator Defendants are excused, as of the Effective Date of this Amendment, from the following obligations and duties set forth in the Original Consent Decree:

a. The obligation and duty under Paragraph 19 of the Original Consent Decree to conduct any studies and investigations as required by EPA that are reasonably necessary to permit EPA to conduct reviews of whether the remedial action selected in the ROD Amendment is protective of human health and the environment at least every five years as required by CERCLA Section 121(c), 42 U.S.C. § 9621(c);

b. The obligation and duty under Paragraphs 6.a. and 37 of the Original Consent Decree to reimburse EPA for all Future Response Costs not inconsistent with the NCP;

c. The obligation and duty under Paragraph 32 of the Original Consent Decree to use best efforts to secure access rights and restrictive covenant rights with respect to properties owned or controlled by persons other than the Settling Owner/Operator Defendants.

3. As of the Effective Date of this Amendment, the Settling Generator Defendants surrender their right under Paragraph 43 of the Original Consent Decree to receive any portion of the proceeds from the lease, sale, reuse or other disposition of the Site.

III. CERTIFICATION OF COMPLETION OF WORK

4. Subject to and conditioned upon EPA's receipt of all payments required under Sections IV (Payment of Response Costs) and V (Failure to Comply with this Amendment) of this Amendment, EPA hereby certifies that the Work required under the Original Consent Decree has been completed and performed in accordance with the requirements of the Original Consent Decree, as modified by this Amendment.

IV. PAYMENT OF FUTURE RESPONSE COSTS

5. Within 30 days of the Effective Date of this Amendment to the Consent Decree, the Settling Generator Defendants shall pay to the United States the amount of $158,564 to resolve its liability for Future Response Costs under the Original Consent Decree. Payment shall be by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 9124845, EPA Region 5 and Site Spill ID Number 05H5, DOJ Case Number 90-11-3-279/6, and the name and address of the party making the payment. Payment shall be made in accordance with instructions provided to the Settling Generator Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio following the lodging of this Amendment to the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The Settling Generator Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XXVIII (Notices and Submissions). The total amount to be paid pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund. Settling Generator Defendants shall be jointly and severally liable to the United States for this payment.

V. FAILURE TO COMPLY WITH REQUIREMENTS OF THIS AMENDMENT

6. Interest on Late Payments. In the event that any payments required by Section IV (Payment of Future Response Costs) or Section V, Paragraph 7 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalty

a. If any amount due to be paid under this Consent Decree is not paid by the required date, Settling Generator Defendants shall pay as a stipulated penalty to EPA, in addition to the Interest required by Paragraph 6, five hundred dollars ($500) per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection
Agency Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Each payment shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279/6. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XII (Notices and Submissions).

8. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Generator Defendants of a violation or made a demand for

payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after the later payment was due and shall continue to accrue until receipt by EPA of the full payment due.

9. If the United States brings an action to enforce a payment under this Amendment, Settling Generator Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

10. Payments made under Paragraphs 7-9 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Generators Defendants' failure to comply with the requirements of this Amendment. Settling Generators Defendants shall be jointly and severally liable to the United States for any interest, penalties or attorney's fees, or other remedies or sanctions authorized by this Section.

11. 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 Amendment.

VI. RESOLUTION OF DISPUTE REGARDING OVERSIGHT BILLS

12. Payment of all amounts due under this Amendment to the Consent Decree shall constitute full settlement and satisfaction of all unpaid amounts owed by the Settling Generator Defendants under the Original Consent Decree for reimbursement of Future Response Costs as of the Effective Date of this Amendment.

13. As of the Effective Date of this Amendment, the formal dispute filed by Settling Generator Defendants with respect to Future Response Costs incurred by EPA in connection with the Site from March 1, 2006 through February 28, 2014 is dismissed with prejudice.

VII. REVISED NOTICES AND SUBMISSIONS

14. Paragraph 111 of the Original Consent Decree is superseded by the following Paragraph 15 of this Amendment.

15. 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 another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. For purpose of complying with their collective obligations under this Section, Settling Generator Defendants may act or respond through their authorized representative. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Generators Defendants, and Settling Owner/Operator Defendants, respectively.

As to the United States:

As to DOJ and EPA

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ #90-11-3-279B

Sherry L. Estes
Mail Code C-14J
Associate Regional Counsel
ATTN: United Scrap Lead Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Richard C. Karl
Director, Superfund Division
ATTN: United Scrap Lead Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

As to Settling Generator Defendants:

Michael A. Cyphert
Walter & Haverfield LLP
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114-1821

As to Settling Owner/Operator Defendants

Arthur R. Hollencamp, Receiver
Hollencamp & Hollencamp
First National Plaza
130 West Second Street
Suite 2017
Dayton, OH 45402-1502

VIII. RIGHTS AND RESPONSIBILITIES UNDER ORIGINAL CONSENT DECREE

16. Except as expressly provided in this Amendment to the Consent Decree, the Original Consent Decree remains binding upon the Parties.

IX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

17. Lodging: This Amendment to the Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amendment to the Consent Decree disclose facts or considerations which indicate that the Amendment is inappropriate, improper, or inadequate. The Settling

Generator Defendants and the Settling Owner/Operator Defendants consent to entry of this Amendment to the Consent Decree without further notice.

18. Agreement Voidable if Not Entered by the Court: If for any reason the Court should decline to approve this Amendment to the Consent Decree in the form presented, this Amendment is voidable at the sole discretion of any Party and, if voided, the terms of the agreement may not be used as evidence in any litigation between the Parties.

X. EFFECTIVE DATE OF THIS AMENDMENT TO THE CONSENT DECREE

19. This Amendment to the Consent Decree shall be effective upon execution by the United States District Judge assigned to this matter as set forth below and upon entry on the docket of the U.S. District Court for the Southern District of Ohio.

XI. SIGNATORIES/SERVICE

20. Each undersigned representative of the Settling Generator Defendants, the Settling Owner/Operator Defendants, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that he or she is authorized to enter into the terms and conditions of this Amendment to the Consent Decree and to execute and bind legally such party to this document.

XII. FINAL JUDGMENT

21. Upon approval and entry of this Amendment to the Consent Decree, the Consent Decree, as amended, shall constitute a final judgment between and among the United States, the Setting Generator Defendants, and the Settling Owner/Operator Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS____ DAY OF _____

_____
WALTER HERBERT RICE
United States District Judge

WE HEREBY CONSENT to the entry of this Agreed Amendment to the Consent Decree Modifying the Rights, Duties, and Obligations of the Settling Generator Defendants in the matter of *United States v. The Atlas-Lederer Co. et al*, relating to the United Scrap Lead Superfund Site, subject to the public notice requirements of 28 C.F.R. § 50.7.

Date: 3/19/15

FOR THE UNITED STATES

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FOR THE SETTLING GENERATOR DEFENDANTS

Michael A. Cyphert

Michael A. Cyphert
Walter & Haverfield LLP
1301 East Ninth Street, Suite 3500 Cleveland, OH 44114-1821

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FOR THE SETTLING OWNER/OPERATOR DEFENDANTS

Arthur Hollencamp w/permission DWCW

ARTHUR R. HOLLENCAMP, RECEIVER
Hollencamp & Hollencamp
First National Plaza
130 West Second Street
Suite 2017
Dayton, OH 45402-1502

APPENDIX A

CURRENT MEMBERS OF THE UNITED SCRAP LEAD SETTLING GENERATOR DEFENDANTS

1. The Atlas Lederer Company (formerly known as Atlas Metals, Inc., nka A-L Processors, Inc.);
2. Sims Bros. Inc.;
3. Herman Strauss Inc. (nka Strauss Industries, Inc.);
4. The David J. Joseph Company (includes D. Kirschner & Sons and Wolff Co.);
5. Consolidated Railroad Corporation;
6. AK Steel Corporation (successor in interest to the Eastern Steel Division of Armco, Inc.);
7. Baker Iron & Metal Company, Inc.;
8. Bill's Battery Co., Inc.;
9. Cherrington Scrap Metals, Inc.;
10. RMS Properties Corporation (formerly known as Chillicothe Iron & Metals Co.);
11. Cohen Brothers, Inc.;
12. Dobrow Industries, Inc.;
13. Eagle Iron Company, Inc. (no longer in business);
14. J. Topy & Sons;
15. Midwest Corporation (nka Rohn Industries, Inc.);
16. Muskingum Iron & Metal Company;
17. The Wilmington Iron & Metal Co., Inc.;
18. Worley Steel & Supply Co., Inc.; and
19. Commercial Metals Company.

APPENDIX B

CURRENT MEMBERS OF THE UNITED SCRAP LEAD SETTLING OWNER/OPERATOR DEFENDANTS

1. United Scrap Lead Company
2. United Scrap Lead
3. Bailen Brothers
4. Charles Bailen
5. Estate of Edward Bailen