U.S. Department of Justice

Environment and Natural Resources Division

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BSG:AML
DJ No. 90-11-3-1620/2

October 23, 2002

VIA FEDERAL EXPRESS
CONFIDENTIAL SETTLEMENT COMMUNICATION

EPA Region 5 Records Ctr.
275016

Gary Franke, Esq.
120 E. Fourth St.
Suite 560
Cincinnati, OH 45202

Re: United States v. Aeronca, Inc. et al.
Civil Action No. 1:01 CV 00439
Draft Consent Decree

Dear Gary:

I have attached for your review a proposed Consent Decree embodying the settlement between the United States and your clients. Except for the monetary terms, the terms and conditions of the attached Consent Decree are identical to the terms and conditions contained in the Consent Decree that the United States entered into with Acme Wrecking, Hirschberg, and Sealy. Several items are worth noting.

I listed five defendants as the "Settling Defendants" in the attached Decree: the three you would expect and "Clarke's Complete Collection" and "Dick Clarke Trash Removal and Demolition." As you are aware, Clarke's Complete Collection is one of the names that Thomas Clarke used to run his sole proprietorship business. While the United States did not name Clarke's Complete Collection as a defendant in its suit (instead, we alleged that Clarke's Services, Inc. was the successor to the liability of Clarke's Complete Collection), the PRPs did name Clarke's Complete Collection as a defendant. Therefore, I assumed that Richard Clarke would like Clarke's Complete Collection to be expressly named and released in the settlement with the United States.

The PRPs also named one other Thomas Clarke entity as a defendant in their complaint: "Clarke Sanitary Landfill." I have elected to list that entity as a "Settling Defendant" in the Consent Decree with the Martin Clarke Entities. Thus, the Consent Decree for the Martin Clarke Entities includes one predecessor business (Clarke Sanitary Landfill) and the Consent Decree for the Dick Clarke Entities includes the other (Clarke's Complete Collection). Between the two Consent Decrees, therefore, all predecessor Clarke companies that were listed in the PRPs' complaints have been included.

In addition, the PRPs – but not the United States – named "Dick Clarke Trash Removal and Demolition" as a defendant. Thus, I have included that entity in this settlement.

Except for the monetary terms and conditions – and the identities of the "Settling Defendants" – the attached Consent Decree is identical to the one that I am sending to the Martin Clarke Entities.

The mechanism by which the PRPs will dismiss their complaints against your clients is set forth in Paragraph E of the Background section (page 1 of the Consent Decree). This commitment, together with the Contribution Protection provisions of the Decree, provides your clients with assurance that the contribution action against them will cease provided that your clients make the payments required under the Decree.

This Consent Decree is based on the April 4, 2001 Consent Decree in this matter (which included many "cash out" parties) and the subsequent Consent Decree with Acme Wrecking, Hirschberg, and Sealy. The Consent Decree also is based on the model CERCLA consent decrees that we follow. Because of that, I have very little flexibility in changing any of the attached terms. Of course, because the attached Decree provides a very broad covenant not to sue and contribution protection, there should be little reason for any changes.

Finally, the attached Consent Decree still is subject to the review and approval by officials with delegated settlement authority.

Thank you for your prompt attention to this matter. I look forward to any comments by no later than October 31, 2002. I would like to have your clients' signature page shortly thereafter.

Sincerely,

Annette M. Lang

Annette M. Lang
Trial Attorney

cc: Michael O'Callaghan
Craig Melodia

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

THE DOW CHEMICAL CO., et al., Plaintiffs, v. ACME WRECKING CO., INC., et al., Defendants.	Civil Action Nos. C-1-97-0307; C-1-97-0308 (Consolidated Actions) C-1-01-439 (Transferred Action)
THE DOW CHEMICAL CO., et al. Plaintiffs, v. SUN OIL COMPANY, d/b/a SUNOCO OIL CORP., et al., Defendants.	Judge Weber
UNITED STATES OF AMERICA, Plaintiff, v. AERONCA, INC. (f/k/a Aeronca Manufacturing Corp. f/k/a/ Aeronca Aircraft), CLARKE CONTAINER, INC., CLARKE'S INCINERATORS, INC., WHITTON CONTAINER, INC. (f/k/a John J. Whitton Trucking, Inc.), CLARKE, INC., CLARKE SERVICES, INC., RICHARD M. CLARKE, ACME WRECKING COMPANY, INC.,	

DAVID HIRSCHBERG CO.,	)
SEALY, INC., SEALY MATTRESS	)
COMPANY,	)
	)
Defendants.	)
	)

PARTIAL CONSENT DECREE WITH SETTLING DEFENDANTS RICHARD M. CLARKE, CLARKE'S COMPLETE COLLECTION, DICK CLARKE TRASH REMOVAL AND DEMOLITION, CLARKE'S SERVICES, INC., AND CLARKE, INC.

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PARTIAL CONSENT DECREE WITH SETTLING DEFENDANTS RICHARD M. CLARKE, CLARKE'S COMPLETE COLLECTION, DICK CLARKE TRASH REMOVAL AND DEMOLITION, CLARKE'S SERVICES, INC., AND CLARKE, INC.

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint, an amended complaint, and a second amended complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Skinner Landfill Superfund Site in West Chester, Ohio (the "Facility" or "Site").

B. In 1997, several Potentially Responsible Parties ("PRPs") at the Site filed complaints ("PRP Contribution Complaints") pursuant to, inter alia, Section 113 of CERCLA, 42 U.S.C. § 9613, that now are consolidated under Civil Action Numbers C-1-97-0307 and C-1-97-308. The defendants that have entered into this Consent Decree ("Settling Defendants") were named in those actions.

C. Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaints.

D. Settling Defendants do not admit any liability to the PRPs arising out of the transactions or occurrences alleged in the PRP Contribution Complaints.

E. On or about the same date as this Consent Decree was lodged with this Court, the PRPs notified Settling Defendants in writing of the PRPs' intention to dismiss the PRP

Contribution Complaints as against them upon receipt by the PRPs of the payments due under this Consent Decree.

F. The United States and Settling Defendants 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 will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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 Defendants. Settling Defendants consent to and shall not challenge entry 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 Defendants and their 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 Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which 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:

a. "April 3, 2001 Consent Decree" shall mean the Consent Decree entered by this Court on April 3, 2001, in a matter styled United States v. Elsa Skinner-Morgan, et al., with a Civil Action No. of C-1-00-424.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Consent Decree" shall mean this Partial Consent Decree and the appendices attached hereto. In the event of conflict between this Consent Decree and the appendices, the Consent Decree shall control.

d. "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 holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

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

h. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).

i. "Matters Addressed" shall mean all response actions taken or to be taken in connection with the Site, and the payment of all Response Costs incurred or to be incurred by the United States or any other person at or in connection with the Site and all actions required under the April 3, 2001 Consent Decree.

j. "Municipal sewage sludge" shall mean any solid, semi-solid or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

k. "Municipal solid waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States and Settling Defendants.

n. "Plaintiff" shall mean the United States.

o. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

p. "Response Costs" shall mean all costs of removal or remedial action, at or in relation to the Site, incurred by the United States not inconsistent with the NCP, and all costs of removal or remedial action, at or in connection with the Site, incurred by any other person consistent with the NCP.

q. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

r. "Settling Defendants" shall mean Richard M. Clarke, Clarke's Complete Collection, Dick Clarke Trash Removal and Demolition, Clarke's Services, Inc., and Clarke, Inc.

s. "Site" shall mean the Skinner Landfill Superfund Site in West Chester, Ohio, encompassing approximately 67 acres, located on the Cincinnati-Dayton Road in West Chester, Union Township, Ohio, and legally described in Appendix A and depicted on the survey of the Site attached as Appendix B.

t. "Skinner Landfill Site Group" shall mean the persons that have agreed to implement the remedial action at the Site pursuant to the April 3, 2001 Consent Decree. The members of the Skinner Landfill Site Group are listed in Appendix C.

u. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. DETERMINATIONS AS TO SETTLING DEFENDANTS

4. The Regional Administrator of Region V of EPA, or his delegates, has determined the following:

a. Prompt settlement with the Settling Defendants is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. The payments to be made by the Settling Defendants under this Consent Decree involve only a minor portion of the Response Costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total Response Costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is approximately $21 million.

c. The amount of hazardous substances contributed to the Site by the Settling Defendants and the toxic or other hazardous effects of the hazardous substances, if any, contributed to the Site by the Settling Defendants are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because (1) the amount of materials containing hazardous substances contributed to the Site by the Settling Defendants does not exceed 1.5% of the total volume of waste disposed of at the Site; and (2) the hazardous substances contributed by the Settling Defendants are not significantly more toxic or are not of significantly greater hazardous effect than other hazardous substances at the Site.

VI. REIMBURSEMENT OF RESPONSE COSTS

5. Payment of Response Costs to the EPA Hazardous Substance Superfund by Settling Defendants. By no later than thirty (30) days after entry of this Decree, Settling Defendants shall pay $100,500 to the EPA Hazardous Substance Superfund in reimbursement of Response Costs incurred and to be incurred by the United States. Payment shall be made by certified or cashier's check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, USAO File Number 2001V01024, EPA Region and Site Spill ID Number 05-73, and DOJ Case Number 90-11-3-1620/2. Settling Defendants shall

ensure that their check is received at the following address by no later than 30 days after entry of the Consent Decree:

Financial Litigation Unit
U.S. Attorney's Office, Southern District of Ohio
220 U.S. Post Office and Courthouse
100 E. 5th St.
Cincinnati, Ohio 45202

Simultaneously, Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency — Region 5
Mail Code MF 10-J
77 W. Jackson Blvd.
Chicago, IL 60604

6. Payment of Response Costs to the Skinner Landfill Site Group by Settling Defendants. By no later than thirty (30) days after entry of this Consent Decree, Settling Defendants shall pay $25,500 to the Skinner Landfill Site Group in reimbursement of Response Costs incurred and to be incurred by the Skinner Landfill Site Group. Payment shall be made by certified or cashier's check made payable to "Skinner Landfill Site Group." Settling Defendants shall ensure that their check is received at the following address by no later than thirty (30) days after entry of the Consent Decree:

Skinner Landfill Site Group
c/o Charles Terwilliger, Jr.
Glenn Springs Holding Co.
2480 Fortune Dr.
Lexington, Kentucky 40509

7. The payments to be made by Settling Defendants include an amount for: (1) past response costs incurred at or in connection with the Site; (2) projected future response costs to be

incurred at or in connection with the Site; and (3) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total Response Costs upon which Settling Defendants' payments are based.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

8. Interest on Late Payments. In the event that any payments required by Section VI, Paragraphs 5 and 6 (Reimbursement of Response Costs) or Section VII, Paragraph 9 (Stipulated Penalty), are not received when due, Interest shall accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Defendants shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, $100.00 per violation 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 — Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, EPA Region and Site Spill ID Number 05-73, and DOJ Case Number 90-11-3-1620/2. 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 XIII (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency — Region 5
Mail Code MF 10-J
77 W. Jackson Blvd.
Chicago, IL 60604

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants 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 complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

11. Payments made under Paragraphs 5, 6, 8, 9 and 10 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree. Settling Defendants are jointly and severally liable for all payments due or that become due under this Decree.

12. 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.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

13. Covenant Not to Sue by United States. In consideration of the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 14 and 15, the United States covenants not to sue or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 5 (Payment of Response Costs to EPA Hazardous Substance Superfund), Paragraph 8 (Interest on Late Payments), and Paragraph 9.a (Stipulated Penalty for Late Payment), and upon receipt by the Skinner Landfill Site Group of all payments required by Paragraph 6 (Payment of Response Costs to Skinner Landfill Site Group) and Paragraph 8 (Interest on Late Payments). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person; provided however, that this covenant not to sue (and the reservations thereto) shall also apply to Settling Defendants' divisions, successors and assigns, and former or current officers, directors, and employees, but only to the extent that the alleged liability of such person is based on the person's acts and/or omissions which occurred in the scope of the person's employment or capacity as a division, successor or assign, officer, director, or employee of the

Settling Defendants, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendants.

14. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 13 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant, or contaminant at the Site after the date of lodging of this Consent Decree.

15. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against the Settling Defendants in this action, or in a new action or to issue an administrative order to the Settling Defendants seeking to compel the Settling Defendants to perform response actions relating to the Site, and/or to reimburse the United States for additional costs or response, if information is discovered which indicates that the Settling Defendants contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the Settling Defendants no longer qualify as de minimis parties at the Site because Settling

Defendants contributed greater than 1.5% of the total volume of waste disposed of at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

IX. COVENANTS BY SETTLING DEFENDANTS

16. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or 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 claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Ohio 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.

17. 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).

18. Waiver of Claims Against Other Persons Relating to the Site. Except for contribution claims asserted in response to claims raised by the State of Ohio relating to the Site, and/or contribution claims asserted in response to claims for natural resource damages relating to

the Site, Settling Defendants agree not to assert any claims and to waive all claims or causes of action that it may have against all persons for all matters relating to the Site, including for contribution; provided however, that Settling Defendants reserve the right to assert and pursue all claims, causes of action, and defenses relating to the Site against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against Settling Defendants relating to the Site. Nothing within this Paragraph shall operate to waive or release any claim or action by Settling Defendants under any contract of insurance.

19. Waiver of Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

(a) any materials contributed by such person to the Site constituting Municipal Solid Waste ("MSW") or Municipal Sewage Sludge ("MSS") did not exceed 0.2% of the total volume of waste at the Site; and

(b) the materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person

contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as expressly provided in Paragraph 13 (Covenant Not To Sue by United States), Paragraph 18 (Waiver of Claims Against Other Persons Relating to the Site), Paragraph 19 (Waiver of Claims Against De Micromis Parties) and Paragraph 21 (Contribution Protection), 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 Paragraph 13 (Covenant Not To Sue by United States), Paragraph 18 (Waiver of Claims Against Other Persons Relating to the Site), Paragraph 19 (Waiver of Claims Against De Micromis Parties), and Paragraph 21 (Contribution Protection), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. Contribution Protection. Except for contribution claims asserted in response to claims raised by the State of Ohio relating to the Site, and/or contribution claims asserted in response to claims for natural resource damages relating to the Site, the Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 122(g)(5),

42 U.S.C. § 9622(g)(5) (as applicable), for Matters Addressed, as defined in Section IV of this Consent Decree. Settling Defendants' divisions, successors and assigns, and former and current officers, directors, and employees are also entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 122(g)(5), 42 U.S.C. § 9622(g)(5) (as applicable), for Matters Addressed in this Consent Decree, but only to the extent that the alleged liability of such person is based on the person's acts and/or omissions which occurred in the scope of the person's employment or capacity as a division, successor or assign, officer, director, or employee of Settling Defendants, and not to the extent that the alleged liability arose independently of the alleged liability of Settling Defendants.

22. Settling Defendants agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify the United States in writing within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States in writing within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

23. 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 Defendants 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 Covenant Not to Sue by Plaintiff set forth in Section VIII.

XI. RETENTION OF RECORDS

24. Until six (6) years after the entry of this Consent Decree, Settling Defendants 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 response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff 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 this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling

Defendants shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

26. By signing this Consent Decree, each of the Settling Defendants certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against Settling Defendants regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

27. 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. 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, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-1620/2)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Craig Melodia
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

As to Settling Defendants:

Gary Franke
120 E. Fourth St.
Suite 560
Cincinnati, OH 45202

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION/APPENDIX

29. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among 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 (legal description of the Site); Appendix B (survey of the Site); and Appendix C (Skinner Landfill Site Group members).

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XVI. EFFECTIVE DATE

32. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

33. The undersigned representatives of Settling Defendants and the undersigned delegate of the Attorney General of the United States each certify 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.

34. Settling Defendants hereby agree 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 Defendants in writing that it no longer supports entry of the Consent Decree.

35. Settling Defendants 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 behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree 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.

XVII. FINAL JUDGMENT

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling 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.

SO ORDERED THIS _____ DAY OF _____, 200__.

_____
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Aeronca, et al., Civil Action No. C-1-01-439 (S.D. Ohio), relating to the Skinner Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

_____

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

_____

ANNETTE M. LANG
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-4213

GREGORY G. LOCKHART
United States Attorney
Southern District of Ohio

GERALD F. KAMINSKI
(Ohio Bar No. 0012532)
Assistant United States Attorney
Southern District of Ohio
220 U.S.P.O. & Courthouse
100 E. 5th Street
Cincinnati, Ohio 45202
(513) 684-3711

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Aeronca, et al., Civil Action No. C-1-01-439 (S.D. Ohio), relating to the Skinner Landfill Superfund Site.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

_____

WILLIAM E. MUNO
Director, Superfund Division, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

_____

CRAIG MELODIA
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Aeronca, et al., Civil Action No. C-1-01-439 (S.D. Ohio), relating to the Skinner Landfill Superfund Site.

FOR SETTLING DEFENDANTS
RICHARD M. CLARKE, CLARKE'S COMPLETE COLLECTION, DICK CLARKE TRASH REMOVAL AND DEMOLITION, CLARKE'S SERVICES, INC., AND CLARKE, INC.

Date: _____

_____
Signature

Typed Name: _____

Title: _____

Address: _____

_____

_____

_____

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: _____

Title: _____

Address: _____

_____

_____

_____

Appendix A to Consent Decree

Legal Description of Site

DESCIPTION OF
71.436 ACRES
CINCINNATI DAYTON ROAD

Situate in the State of Ohio, County of Butler, Township of Union, lying in Section 22, Township 3, Range 2, Miami River Survey, being part of the 41.938 acre tract conveyed as "TRACT ONE", part of the 11.507 acre tract conveyed as "TRACT TWO" to Elsa M. Skinner-Morgan by deed of record in Deed Book 1702, Page 581 and all of the 24.852 acre tract conveyed to Elsa M. Skinner by deed of record in Deed Book 773, Page 438, records of the Recorder's Office, Butler County, Ohio and being more particularly described as follows:

BEGINNING at a railroad spike set in the centerline of Cincinnati Dayton Road (St. Rte. 25) (60 feet in width) at a common corner of said 11.507 acre tract and the 1.425 acre tract conveyed to the United States Postal Service by deed of record in Deed Book 1664, Page 568;

Thence the following two (2) courses and distances along the line common to said 11.507 and 1.425 acre tracts:

1. Thence S 49°49'16" E, a distance of 363.65 feet, to an iron pin set at a common corner of said 11.507 and 1.425 acre tract;

2. Thence N 39°59'08" E, a distance of 171.00 feet, to an iron pin set a common corner of said 1.425 acre tract and the 1.599 acre tract conveyed to the United States Postal Service by deed of record in Deed Book 1179, Page 264;

Thence N 29°34'04" E, a distance of 280.08 feet, along the line common to said 11.507 and 1.599 acre tracts, to an iron pin set in the southerly line of a 1.886 acre tract conveyed to Marcellus & Jessie Osner by deed of record in Deed Book 6063, Page 0052 at a common corner of said 11.507 and 1.599 acre tract;

Thence S 49°50'29" E, a distance of 173.99 feet, along a line common to said 11.507 and 1.886 acre tracts, to an iron pin set at a common corner of said 11.507 and 1.886 acre tracts;

Thence N 22°45'12" E, a distance of 330.00 feet, along a westerly line of said 11.507 acre tract and the easterly lines of said 1.886 acre tract and the 1.49 acre tract conveyed to Floyd Gadberry & Sara Saville by deed of record in Deed Book 6061, Page 0763, to an iron pin found in the southerly line of a 0.903 acre tract conveyed to Marian Fern Anderson by deed of record i Deed Book 974, Page 557 at a common corner of said 11.507 and 1.49 acre tracts;

Thence S 86°23'42" E, a distance of 67.50 feet, along the line common to said 11.507 and 0.903 acre tracts, to an iron pin found at a common corner of said 0.903 acre tract and the 71.41 acre tract conveyed as Parcel #1 to Helen Bruson Frankel by deed of record in Deed Boo 1404, Page 201;

Thence S 85°43'26" E, a distance of 1394.25 feet, along the northerly lines of said 11.507, 41.938 and 24.852 acre tracts and the southerly line of said 71.41 acre tract, to an iron pin found at a common corner of said 24.852 and 71.41 acre tracts;

Thence the following two (2) courses and distances along the lines common to said 24.852 and 71.41 acre tracts:

1. Thence N 04°29'40" E, a distance of 726.21 feet, to an iron pin set;
2. Thence S 85°36'23" E, a distance of 408.57 feet, to an iron pin found in the westerly line of a 3.59 acre tract at a common corner of said 24.852 and 71.41 acre tracts;

Thence S 14°18'38" E, a distance of 161.30 feet, along the line common to said 24.852 and 3.59 acre tracts, to an iron pin set in the westerly line of a 300 foot wide railroad right-of-way conveyed to the C.C.C. & St. Louis Railroad at a common corner of said 24.852 and 3.59 acre tracts;

Thence S 12°01'50" W, a distance of 1865.15 feet, along the line common to said 24.852 acre tract and the 300 foot wide railroad right-of-way, to an iron pin found at a common corner of said 24.852 acre tract and the 73.857 acre tract conveyed to Steven L. & Linda L. Binder by deed of record in Deed Book 5436, Page 408;

Thence S 89°19'46" W, a distance of 1161.04 feet, along the southerly line of said 24.852 acre tract, partly along the southerly line of said 41.938 acre tract, partly along the northerly line of said 73.857 acre tract and partly along the northerly line of a 1.38 acre tract conveyed to Maria Elsa Skinner Roy & Dean Roy by deed of record in Deed Book 1384, Page 631, to an iron pin found at a common corner of said 41.938 acre tract and the 0.449 acre tract conveyed to Ray A. Skinner by deed of record in Deed Book 1475, Page 655;

Thence the following three (3) courses and distances along the common lines to said 41.938 and 0.449 acre tracts:

1. Thence N 07°19'46" E, a distance of 58.61 feet, to an iron pin set;
2. Thence N 75°15'44" W, a distance of 225.36 feet, to an iron pin found;
3. Thence S 07°03'31" W, a distance of 118.98 feet, to an iron pin set in the aforesaid northerly line of the 1.38 acre tract at a common corner of said 41.938 and 0.449 acre tracts;

Thence S 82°18'08" W, a distance of 530.95 feet, along a southerly line of said 41.938 acre tract and the northerly lines of said 1.38 and 73.857 acre tracts, to an iron pin set at a common corner of said 41.938 acre tract and the 5.976 acre tract conveyed to Ray A. Skinner by deed of record in Deed Book 1475, Page 657;

Thence the following two (2) courses and distances along the lines common to said 41.938 and 5.976 acre tracts:

1. Thence N 05°52'37" W, a distance of 108.95 feet, to a point;

2. Thence N 46°47'35" W, a distance of 303.64 feet, passing an iron pin set at a distance of 10.00 feet, to an iron pin set;

Thence N 42°59'08" E, a distance of 129.69 feet, partly across said 41.938 acre tract and partly along the line common to said 41.938 and 11.507 acre tracts, to an iron pin set at a common corner of said 41.938 and 11.507 acre tracts;

Thence the following two (2) courses and distances continuing along the lines common to said 41.938 and 11.507 acre tracts:

1. Thence N 35°52'38" E, a distance of 269.24 feet, to an iron pin set;

2. Thence N 35°18'33" E, a distance of 212.79 feet, to an iron pin set;

Thence the following two (2) courses and distances, across said 11.507 acre tract;

1. Thence S 85°10'44" W, a distance of 241.56 feet, to an iron pin set;

2. Thence N 49°49'16" W, a distance of 500.00 feet, to railroad spike set in the aforesaid centerline of Cincinnati Dayton Road and westerly line of said 11.507 acre tract;

Thence N 39°59'08" E, a distance of 60.00 feet, along said centerline of Cincinnati Dayton Road and westerly line of said 11.507 acre tract, to the POINT OF BEGINNING. Containing 71.436 acres, more or less, and being subject to all easements, restrictions and rights-of-way of record.

The bearings in the above description are based on the bearing of N 39°59'08" W, for the centerline of Cincinnati Dayton Road, of record in Deed Book 1702, Page 581, Recorder's Office, Butler County, Ohio.

STATE OF OHIO
JAMES M. PEARSALL 7840
REGISTERED PROFESSIONAL SURVEYOR

R.D. ZANDE & ASSOCIATES, INC.

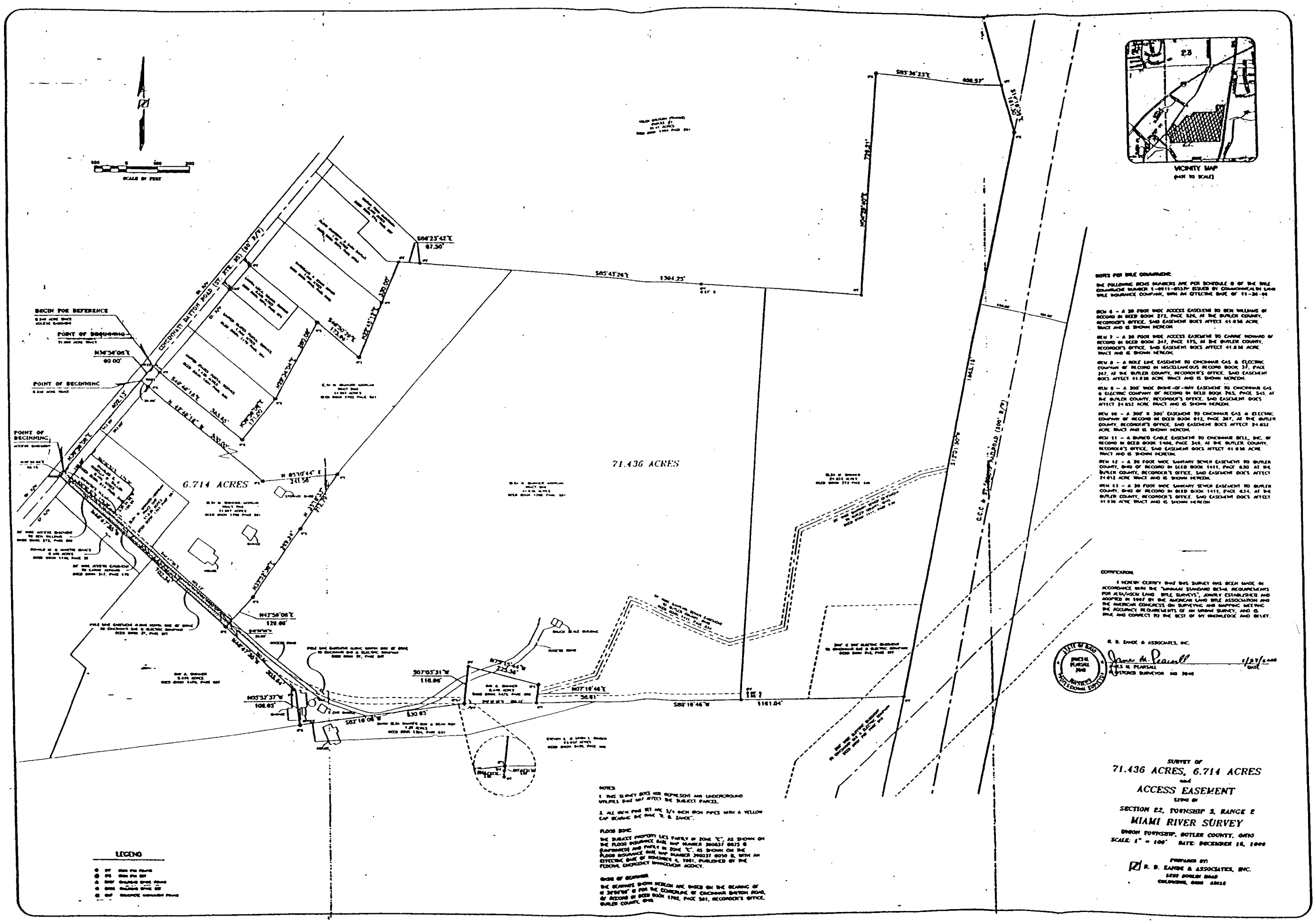
James M. Pearsall 1/27/2000

James M. Pearsall Date
Registered Surveyor No. 7840

jp\C734B-D-001a doc

Appendix B to Consent Decree

Site Survey


SCALE IN FEET
VICINITY MAP
(NOT TO SCALE)
23
CINCINNATI DAYTON ROAD (STATE ROUTE 63) (100' R/W)
BEGIN FOR REFERENCE
POINT OF BEGINNING
POINT OF BEGINNING
POINT OF BEGINNING
N34°54'00"E
60.00'
6.714 ACRES
71.436 ACRES
S84°23'42"E
67.30'
S85°41'26"E
1304.25'
S85°34'23"E
406.57'
N47°56'06"E
120.00'
N05°53'37"W
108.65'
S07°03'31"W
110.86'
S07°10'06"W
130.93'
N07°19'44"E
36.61'
S89°19'46"W
1161.04'
LEGEND
NOTES
1. THIS SURVEY DOES NOT REPRESENT ANY UNDERGROUND UTILITIES THAT MAY AFFECT THE SUBJECT PARCEL.
2. ALL IRON PINS SET ARE 5/8" INCH IRON PIPES WITH A YELLOW CAP BEARING THE NAME "R. D. EANDE".
FLOOD ZONE
THE SUBJECT PROPERTY LIES PARTLY IN ZONE "C", AS SHOWN ON THE FLOOD INSURANCE RATE MAP NUMBER 390437 0025 B (UNPRINTED) AND PARTLY IN ZONE "X", AS SHOWN ON THE FLOOD INSURANCE RATE MAP NUMBER 390037 0050 B, WITH AN EFFECTIVE DATE OF NOVEMBER 4, 1981; PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
BASIS OF BEARINGS
THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING OF N 39°54'00" E FOR THE CENTERLINE OF CINCINNATI DAYTON ROAD, AS RECORDED IN DEED BOOK 1765, PAGE 561, RECORDER'S OFFICE, BUTLER COUNTY, OHIO.
NOTES FOR TITLE COMMITMENT:
THE FOLLOWING ITEMS NUMBERS ARE FOR SCHEDULE B OF THE TITLE COMMITMENT NUMBER 1-0011-0537P ISSUED BY COMMONWEALTH LAND TITLE INSURANCE COMPANY, WITH AN EFFECTIVE DATE OF 11-30-99
ITEM 6 - A 30 FOOT WIDE ACCESS EASEMENT TO BEN WILLIAMS AS RECORDED IN DEED BOOK 372, PAGE 526, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 41.836 ACRE TRACT AND IS SHOWN HEREON.
ITEM 7 - A 30 FOOT WIDE ACCESS EASEMENT TO CARRIE SOWARD AS RECORDED IN DEED BOOK 347, PAGE 175, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 41.836 ACRE TRACT AND IS SHOWN HEREON.
ITEM 8 - A POLE LINE EASEMENT TO CINCINNATI GAS & ELECTRIC COMPANY AS RECORDED IN MISCELLANEOUS RECORD BOOK 37, PAGE 247, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 41.836 ACRE TRACT AND IS SHOWN HEREON.
ITEM 9 - A 300' WIDE RIGHT-OF-WAY EASEMENT TO CINCINNATI GAS & ELECTRIC COMPANY AS RECORDED IN DEED BOOK 765, PAGE 545, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 24.852 ACRE TRACT AND IS SHOWN HEREON.
ITEM 10 - A 300' & 300' EASEMENT TO CINCINNATI GAS & ELECTRIC COMPANY AS RECORDED IN DEED BOOK 812, PAGE 267, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 24.852 ACRE TRACT AND IS SHOWN HEREON.
ITEM 11 - A BURIED CABLE EASEMENT TO CINCINNATI BELL, INC. AS RECORDED IN DEED BOOK 1406, PAGE 349, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 41.836 ACRE TRACT AND IS SHOWN HEREON.
ITEM 12 - A 30 FOOT WIDE SANITARY SEWER EASEMENT TO BUTLER COUNTY, OHIO AS RECORDED IN DEED BOOK 1411, PAGE 630 AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 24.852 ACRE TRACT AND IS SHOWN HEREON.
ITEM 13 - A 30 FOOT WIDE SANITARY SEWER EASEMENT TO BUTLER COUNTY, OHIO AS RECORDED IN DEED BOOK 1411, PAGE 631, AT THE BUTLER COUNTY, RECORDER'S OFFICE. SAID EASEMENT DOES AFFECT 41.836 ACRE TRACT AND IS SHOWN HEREON.
CERTIFICATION
I HEREBY CERTIFY THAT THIS SURVEY HAS BEEN MADE IN ACCORDANCE WITH THE "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS", JOINTLY ESTABLISHED AND ADOPTED IN 1997 BY THE AMERICAN LAND TITLE ASSOCIATION AND THE AMERICAN CONGRESS ON SURVEYING AND MAPPING WITH THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.
R. D. EANDE & ASSOCIATES, INC.
JAMES M. PEARSALL
REGISTERED SURVEYOR NO. 7040
1/27/2000
DATE
JAMES M. PEARSALL
7040
REGISTERED
PROFESSIONAL SURVEYOR
SURVEY OF
71.436 ACRES, 6.714 ACRES
and
ACCESS EASEMENT
LYING IN
SECTION E2, TOWNSHIP 3, RANGE 2
MIAMI RIVER SURVEY
UNION TOWNSHIP, BUTLER COUNTY, OHIO
SCALE: 1" = 100' DATE: DECEMBER 16, 1999
PREPARED BY:
R. D. EANDE & ASSOCIATES, INC.
EAST DUBLIN ROAD
COLUMBUS, OHIO 43210

Appendix C to Consent Decree

Skinner Landfill Site Group Members

Anchor Hocking Corporation

Chemical Leaman

The Dow Chemical Company

Ford Motor Company

Formica Corporation

Henkel Corporation

GE Aircraft Engines

General Motors Corporation

King Wrecking Company, Inc.

King Container Services, Inc.

Monsanto Company

Oxy USA Inc.

Velsicol Chemical Corporation