

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 1:17-cv-124
	)	
NL INDUSTRIES, INC.,	)	
ACF INDUSTRIES, LLC,	)	
AMERICAN PREMIER UNDERWRITERS, INC.,	)	
DII INDUSTRIES LLC,	)	
EXIDE TECHNOLOGIES, AND	)	
GOULD ELECTRONICS INC.,	)	
	)	
DEFENDANTS.	)	

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**CONSENT DECREE**

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## 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 in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the NL Industries Depew Superfund Site in Depew, Erie County, New York (“the Site”).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA oversaw and implemented response activities at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. A removal action was performed at the Site in three phases:

1. In Phase 1, starting in 2004, NL Industries, Inc. removed lead-contaminated soils from approximately 36 residential properties located west of Transit Road and north of Walden Avenue pursuant to the Phase 1 Administrative Order on Consent.

2. In Phase 2, starting in 2008, EPA removed lead-contaminated soils from approximately 70 residential properties east of Transit Road and north of Walden Avenue.

3. In a third phase, NL Industries, Inc. removed and capped lead-contaminated soils in a right-of-way (“ROW”) that is approximately 25 feet wide and 1,500 feet long, and located adjacent to its former facility along Walden Avenue. NL Industries, Inc. performed this work pursuant to the ROW Administrative Order on Consent.

C. In performing response activities at the Site, EPA has incurred unreimbursed response costs.

D. In a Complaint filed concurrently with this Consent Decree, the United States alleges that NL Industries, Inc. is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred at the Site.

E. NL Industries, Inc. does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

F. The United States and NL Industries, Inc. 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 the admission or adjudication of any issue of fact or law is appropriate and 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 NL Industries, Inc. Solely for the purposes of this Consent Decree and the underlying complaint, NL Industries, Inc. waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. NL Industries, Inc. 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 NL Industries, Inc. 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 NL Industries, Inc. 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 its appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 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 United States Department of Justice and its successor departments, agencies, or instrumentalities.

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

“EPA” shall mean the United States 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.

“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 <https://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.

“NL ROW” shall mean the right-of-way adjacent to a former facility owned and/or operated by NL Industries, Inc. or its predecessors, located in Depew, Erie County, New York, as depicted in Appendix A.

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

“Party” or “Parties” shall mean the United States or NL Industries, Inc. or the United States and NL Industries, Inc., respectively.

“Phase 1 Administrative Order on Consent” shall mean the Administrative Order on Consent Index Number: CERCLA-02-2004-2024 relating to the Phase 1 portion of the Site, and all appendices attached thereto.

“Phase 2 Action Memorandum” shall mean the EPA action memorandum relating to the Phase 2 portion of the Site signed on September 11, 2008 by the Regional Administrator, EPA Region 2, or his/her delegate, and all attachments thereto.

“Plaintiff” shall mean the United States.

“Records” shall mean reports, documents, or other information, except for identical copies. Records shall include records, reports, documents, and other information in electronic form.

“Removal Action” shall mean, either individually or collectively, the three phases of the removal action undertaken at the Site pursuant to the Phase 1 Administrative Order on Consent, the Phase 2 Action Memorandum, and the ROW Administrative Order on Consent.

“ROW Administrative Order on Consent” shall mean the Administrative Order on Consent Index Number: CERCLA-02-2012-2007 relating to the NL ROW, and all appendices attached thereto.

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

“Settling Defendant” shall mean NL Industries, Inc., a New Jersey Corporation.

“Site” shall mean the NL Industries Depew Superfund Site, comprised of the NL ROW and the residential properties that were investigated and/or remediated for lead contamination in Phase 1 and Phase 2 of the Removal Action, located in Depew, Erie County, New York, as depicted in Appendix A, or listed in Appendix B.

“State” shall mean the State of New York.

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

## V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendant for Response Costs. Within 30 days after the Effective Date, NL Industries, Inc. shall pay to EPA \$3,677,000.00, plus an additional sum for Interest on that amount calculated from the Effective Date through the date of payment.

5. NL Industries, Inc. shall make payments by Fedwire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions that will be provided to NL Industries, Inc. by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Western District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Ms. Courtney J. Riley  
NL Industries, Inc.  
General Counsel and VP Environmental Affairs  
5430 LBJ Freeway, Suite 1700  
Dallas, Texas 75240

NL Industries, Inc. may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices and Submissions).

6. Deposit of Payment. The total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

7. Notice of Payment. At the time of payment, NL Industries, Inc. shall send notice that its payment has been made (1) to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and (2) to the EPA Cincinnati Finance Center by email or by regular mail at:

**Email:** cinwd\_acctsreceivable@epa.gov

**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 A203, and DOJ Case Number 90-11-3-11341.

## VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If NL Industries, Inc. fails to make the payment required under Paragraph 4 (Payment of Response Costs) within 30 days following the Effective Date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 4 (Payment of Response Costs) are not paid within 30 days following the Effective Date, NL Industries, Inc. shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 8 (Interest on Late Payments), \$1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”

and shall reference the CDCS Number, Site/Spill ID Number A203, and DOJ Case Number 90-11-3-11341.

c. At time of payment, NL Industries, Inc. shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified NL Industries, Inc. of the violation or made a demand for payment, but they need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree 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 against NL Industries, Inc., NL Industries, Inc. shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of NL Industries, Inc.’s failure to comply with the requirements of this Consent 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. Payment of stipulated penalties shall not excuse NL Industries, Inc. from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

## **VII. COVENANTS BY PLAINTIFF**

13. Covenants for Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants

not to sue or to take administrative action against NL Industries, Inc. pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with regard to 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 NL Industries, Inc. of its obligations under this Consent Decree. These covenants extend only to NL Industries, Inc. and do not extend to any other person.

### **VIII. RESERVATION OF RIGHTS BY UNITED STATES**

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against NL Industries, Inc. with respect to all matters not expressly included within Paragraph 13 (Covenants for Settling Defendant by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against NL Industries, Inc. with respect to:

- a. liability for failure of NL Industries, Inc. 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; and
- d. 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.

15. United States Unknown Conditions Reservation. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to the Effective Date, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the response activities that have been performed at the Site are not protective of human health or the environment.

### **IX. COVENANTS BY SETTLING DEFENDANT**

16. Covenants by Settling Defendant. NL Industries, Inc. 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 EPA 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 Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, 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.

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 by Settling Defendant.

a. Except for any defense, claim, or cause of action that NL Industries, Inc. has asserted in the pending action entitled *NL Industries, Inc. v. ACF Industries, LLC, et al.*, 10-cv-00089 (W.D.N.Y.), NL Industries, Inc. 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 person who is a potentially responsible party under CERCLA at the Site. Should the Court enter a consent decree with all defendants in *NL Industries, Inc. v. ACF Industries, LLC, et al.*, NL Industries, Inc. agrees to cooperate with those defendants to bring about dismissal with prejudice of all claims and counterclaims in that case. The United States shall include requirements analogous to those found in this Section 18.a in all settlements with other parties to *NL Industries, Inc. v. ACF Industries, LLC, et al.* NL Industries, Inc.'s obligations in this Section 18.a are conditioned and dependent upon the waiver and dismissal of all counterclaims asserted by any other party against NL in *NL Industries, Inc. v. ACF Industries, LLC, et al.*, 10-cv-00089 (W.D.N.Y.).

b. Exception to Waiver. Other than the claims in *NL Industries, Inc. v. ACF Industries, LLC, et al.*, 10-cv-00089 (W.D.N.Y.), the waiver in Paragraph 18.a shall not apply with respect to any defense, claim, or cause of action that NL Industries, Inc. may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against NL Industries, Inc.

**X. EFFECT OF SETTLEMENT/CONTRIBUTION**

19. Except as provided in Paragraph 18 (Waiver of Claims by Settling Defendant), 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. 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)-(3), to pursue any persons not a Party to this Consent Decree 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).

20. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which NL Industries, Inc., as of the Effective Date, will have resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are 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 VIII (Reservations of Rights by United States), other than in Paragraph 14.a (liability for failure to meet a requirement of the Consent Decree) or 14.c (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.

21. 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 NL Industries, Inc. will have, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

22. NL Industries, Inc. 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 60 days prior to the initiation of such suit or claim. NL Industries, Inc. shall, with respect to any suit or claim brought against it after the Effective Date for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, NL Industries, Inc. shall notify EPA and DOJ within 10 days after service or receipt of any motion for summary judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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, NL Industries, Inc. 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 Plaintiff set forth in Section VII.

## **XI. ACCESS TO INFORMATION**

24. NL Industries, Inc. shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

### **25. Privileged and Protected Claims.**

a. NL Industries, Inc. may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If NL Industries, Inc. asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each

recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, NL Industries, Inc. shall provide the Record to EPA in redacted form to mask the privileged or protected information only. NL Industries, Inc. shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the NL Industries, Inc.'s favor.

c. NL Industries, Inc. agrees not to make any claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that NL Industries, Inc. is required to create or generate pursuant to this Consent Decree.

26. Business Confidential Claims. NL Industries, Inc. may assert that all or part of a Record submitted to EPA under this Section or Section XI (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). NL Industries, Inc. shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which it asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified NL Industries, Inc. that such Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to NL Industries, Inc.

27. 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

## **XII. RETENTION OF RECORDS**

28. Until 5 years after the Effective Date, NL Industries, Inc. shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its potential liability under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

29. After the conclusion of the document retention period in the preceding paragraph, NL Industries, Inc. shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, if requested by EPA or DOJ during such 90-day period, NL Industries, Inc. shall deliver any such Records to EPA, except to the extent they are privileged or protected as provided in Paragraph 25 (Privileged and Protected Claims).

30. NL Industries, Inc. certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any

Records relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for information regarding the Site 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 state law.

### **XIII. NOTICES AND SUBMISSIONS**

31. 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. 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 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 # 90-11-3-11341

**As to EPA by mail:** Jocelyn Scott, Esq.  
New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007

**As to EPA by email:** Scott.Jocelyn@epa.gov

**As to Settling Defendant  
NL Industries, Inc:** Ms. Courtney J. Riley  
NL Industries, Inc  
General Counsel and VP Environmental Affairs  
5430 LBJ Freeway, Suite 1700  
Dallas, Texas 75240

And

Mr. Christopher R. Gibson  
Archer & Greiner, P.C.  
One Centennial Square  
Haddonfield, NJ 08033

#### **XIV. RETENTION OF JURISDICTION**

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

#### **XV. INTEGRATION/APPENDICES**

33. 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, a map of the Site, and Appendix B, a list of all residential properties included in the Site.

#### **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

34. 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. NL Industries, Inc. consents to the entry of this Consent Decree without further notice.

35. 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 any Party, and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

#### **XVII. SIGNATORIES/SERVICE**

36. The undersigned representative of NL Industries, Inc. and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his/her designee 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.

37. NL Industries, Inc. 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 NL Industries, Inc. in writing that it no longer supports entry of the Consent Decree.

38. NL Industries, Inc. 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 NL Industries, Inc. with respect to all matters arising under or relating to this Consent Decree. NL Industries, Inc. 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. The Parties agree that NL Industries, Inc. need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XVIII. FINAL JUDGMENT**

39. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Settling Defendant. 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 \_\_\_\_\_, 20\_\_.

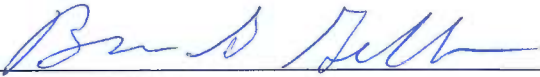
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United States District Judge

Signature Page for Consent Decree Regarding NL Industries Depew Superfund Site

**FOR THE UNITED STATES OF AMERICA:**

February 8, 2017  
Dated

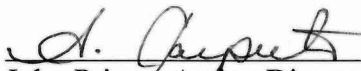
  
\_\_\_\_\_  
Bruce S. Gelber  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

s/ Rachel Evans King  
\_\_\_\_\_  
Rachel Evans King  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding NL Industries Depew Superfund Site

**FOR THE ENVIRONMENTAL PROTECTION AGENCY:**

1.20.17  
Dated

  
\_\_\_\_\_  
for John Prince, Acting Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007



Signature Page for Consent Decree Regarding NL Industries Depew Superfund Site

FOR NL INDUSTRIES, INC.:

December 15, 2016  
Dated

Courtney J. Riley  
NAME Courtney J. Riley  
TITLE General Counsel and VP Environmental  
Affairs

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

Name: Courtney J. Riley  
Title: General Counsel and VP  
Address: 5430 LBJ Frwy  
Suite 1700  
Dallas TX 75240

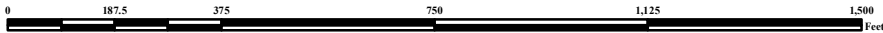


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Image courtesy of USGS Earthstar Geographics. SIO © 2016 Microsoft Corporation

**Legend**

- Phase I Area
- Right-Of-Way (ROW) Area
- Phase II Area
- Tax Parcel



**Weston Solutions, Inc.**  
 In Association With  
 Scientific and Environmental Associates, Inc.,  
 Environmental Compliance Consultants, Inc.,  
 Avatar Environmental, LLC, On-Site Environmental,  
 Inc., and Sovereign Consulting, Inc.

**NL Industries Depew NY**

NL INDUSTRIES DEPEW SITE  
 DEPEW, NEW YORK

U.S. ENVIRONMENTAL PROTECTION AGENCY  
 REMOVAL SUPPORT TEAM 3  
 CONTRACT # EP-S2-14-01

GIS ANALYST: F CAMPBELL  
 EPA OSC: I LOPEZ  
 RST SPM: M. GARIBALDI  
 PROJECT #: 00010171

DATE MODIFIED: 10/31/2016

## Appendix B: List of lots included in the NL Depew Site

7	BOSTWICK PL	3135	GEORGE URBAN BLVD
8	BOSTWICK PL	234	HARVARD AVE
14	BOSTWICK PL	243	HARVARD AVE
15	BOSTWICK PL	244	HARVARD AVE
	LOT EAST OF 15 BOSTWICK PL (block 4, lot 4)	249	HARVARD AVE
		252	HARVARD AVE
22	BOSTWICK PL	15	LINCOLN ST
26	BOSTWICK PL	19	LINCOLN ST
30	BOSTWICK PL	20	LINCOLN ST
33	BOSTWICK PL	23	LINCOLN ST
	LOT WEST OF 33 BOSTWICK PL (block 4, lot 5)	25	LINCOLN ST
		28	LINCOLN ST
34	BOSTWICK PL	29	LINCOLN ST
37	BOSTWICK PL	30	LINCOLN ST
40	BOSTWICK PL	31	LINCOLN ST
41	BOSTWICK PL	38	LINCOLN ST
46	BOSTWICK PL	39	LINCOLN ST
50	BOSTWICK PL	56	LINCOLN ST
17	BREWSTER ST	59	LINCOLN ST
20	BREWSTER ST	34	PRINCETON AVE
25	BREWSTER ST	40	PRINCETON AVE
28	BREWSTER ST	44	PRINCETON AVE
33	BREWSTER ST	50	PRINCETON AVE
34	BREWSTER ST	67	PRINCETON AVE
38	BREWSTER ST	87	PRINCETON AVE
41	BREWSTER ST	137	PRINCETON AVE
44	BREWSTER ST	16	RUMFORD ST
53	BREWSTER ST	17	RUMFORD ST
57	BREWSTER ST	21	RUMFORD ST
65	BREWSTER ST	22	RUMFORD ST
66	BREWSTER ST	24-26	RUMFORD ST
68	BREWSTER ST	25	RUMFORD ST
69	BREWSTER ST	31	RUMFORD ST
20	BREWSTER ST TENNIS COURT	32	RUMFORD ST
3131	GEORGE URBAN BLVD	33	RUMFORD ST



## Appendix B: List of lots included in the NL Depew Site

38	RUMFORD ST	87	TYLER ST
39	RUMFORD ST	3192	WALDEN AVE (Right of Way only)
44	RUMFORD ST	3214	WALDEN AVE
48	RUMFORD ST	3224	WALDEN AVE
49	RUMFORD ST	3232	WALDEN AVE
50	RUMFORD ST	3236	WALDEN AVE
60	RUMFORD ST	3242	WALDEN AVE
61	RUMFORD ST	3244	WALDEN AVE
66	RUMFORD ST	3246	WALDEN AVE
67	RUMFORD ST	3248	WALDEN AVE
72	RUMFORD ST	3294	WALDEN AVE
75	RUMFORD ST	3296	WALDEN AVE
88	RUMFORD ST	3300	WALDEN AVE
5774	TRANSIT RD	3302	WALDEN AVE
5798	TRANSIT RD	3312	WALDEN AVE
5798A	TRANSIT RD (block 3, lot 23)	3314	WALDEN AVE
16	TYLER ST	3316	WALDEN AVE
21	TYLER ST	3318	WALDEN AVE
26	TYLER ST		LOT ON WEST 1st STREET (block 3, lot 6)
29	TYLER ST		
32	TYLER ST	23	WEST 2nd STREET
34	TYLER ST	26	WEST 2nd STREET
35	TYLER ST	32	WEST 2nd STREET
39	TYLER ST	45	WEST 2nd STREET
44	TYLER ST	10	WEST 3rd STREET (block 6, lot 36)
45	TYLER ST	21	WEST 3rd STREET
50	TYLER ST	22	WEST 3rd STREET
51	TYLER ST	27	WEST 3rd STREET
56	TYLER ST	33	WEST 3rd STREET
65	TYLER ST		
68	TYLER ST		
72	TYLER ST		
73	TYLER ST		
81	TYLER ST		
82	TYLER ST		