

**IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	C.A. No. 97-1863
)	
v.)	Judge Conti
)	
AK STEEL CORPORATION, <i>et al.</i> ,)	Magistrate Judge Lenihan
)	
Defendants,)	
)	
-----)	
BRESLUBE-PENN PERFORMING)	
TRUST,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
BUCK'S OIL COMPANY, INC., <i>et al.</i> ,)	
)	
Third-Party Defendants.)	
_____)	

CONSENT DECREE

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I. BACKGROUND

A. On June 3, 2009, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a fourth amended complaint in this matter, (“Complaint”) (Dkt. #477), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. § 9607.

B. The United States in the Complaint sought, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Breslube-Penn Superfund Site in Moon Township, Pennsylvania (“Site”), together with accrued interest; (2) performance of studies and response work by the defendants at the Site in accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended); and (3) a declaratory judgment of liability for all unreimbursed response costs incurred or to be incurred by the United States that will be binding on any subsequent action or actions to recover such further response costs.

C. Together with the Complaint, the United States lodged a Remedial Design/Remedial Action Consent Decree, which the Court entered on September 2, 2009 (the “2009 Consent Decree”) (Dkt. #491). The 2009 Consent Decree resolves EPA’s claims against thirty-seven defendants, including eight Settling Performing Defendants and twenty-nine Settling Non-Performing Defendants. The Settling Non-Performing Defendants subsequently assigned all of their cost recovery and contribution rights to the Breslube-Penn PRP Group, an unincorporated association consisting of the eight Settling Performing Defendants. The members of the Breslube-Penn PRP Group then assigned all such rights, including their own, to the Breslube-Penn Performing Trust (the “Trust”).

D. On February 1, 2010, this Court granted the Trust’s motion to join as a crossclaim plaintiff for the purpose of (1) pursuing the cross-claims asserted or deemed asserted by the Settling Performing Defendants and the Settling Non-Performing Defendants (as identified in the 2009 Consent Decree) against the remaining defendants in this action who did not enter into the 2009 Consent Decree, and (2) asserting, as third-party plaintiff, similar claims against third parties (Dkt. #517). Also on February 1, 2010, the Trust filed a third-party complaint against nine third-party defendants.

E. This Consent Decree resolves the claims asserted by the United States in the Complaint against defendants Clean Harbors, Inc., Estate of Joseph Wiseman, Estate of Ruth Wiseman, Executrix of the Estate of Joseph Wiseman, Executrix of the Estate of Ruth Wiseman, Kipin Industries, Inc., Robert Snedegar, Robert Wiseman, and William Snedegar (collectively the “Settling Defendants”). This Consent Decree also resolves the Trust’s cross-claims against these same defendants, and the Trust’s third-party claim against Woodington Systems Inc. (the “Settling Third-Party Defendant”).

F. The Settling Defendants and the Settling Third-Party Defendant do not admit any liability to the Plaintiff or Third-Party Plaintiff arising out of the transactions or occurrences alleged in the Complaint or third-party complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. The United States has reviewed the Financial Information submitted by the Estate of Joseph Wiseman, the Estate of Ruth Wiseman, the Executrix of the Estate of Joseph Wiseman, the Executrix of the Estate of Ruth Wiseman, Kipin Industries, Inc., Robert Snedegar, Robert Wiseman, and William Snedegar (collectively, the "ATP Settling Defendants") to determine whether each ATP Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that each ATP Settling Defendant is able to pay the amounts specified in Section VI.

H. The United States, the Trust, and each Settling Defendant and the Settling Third-Party Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter 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 each Settling Defendant and the Settling Third-Party Defendant. Each Settling Defendant and the Settling Third-Party Defendant consents 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, the Trust, and upon each Settling Defendant and the Settling Third-Party Defendant, and each of their heirs, 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 each Settling Defendant or the Settling Third-Party Defendant 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. "2009 Consent Decree" shall mean the Remedial Design/Remedial Action Consent Decree in this matter, which the Court entered on September 2, 2009 (Dkt. #491).

b. "ATP Settling Defendants" shall mean the Estate of Joseph Wiseman, the Estate of Ruth Wiseman, the Executrix of the Estate of Joseph Wiseman, the Executrix of the Estate of Ruth Wiseman, Kipin Industries, Inc., Robert Snedegar, Robert Wiseman, and William Snedegar.

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

d. "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.

e. "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.

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

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

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

i. "Estates" shall mean the Estate of Ruth Wiseman, the Estate of Joseph Wiseman, the Executrix of the Estate of Ruth Wiseman, the Executrix of the Estate of Joseph Wiseman, Wiseman Oil Corp. (and its predecessor corporations including Wiseman Road Oil ("Wiseman Oil")), and all officers and shareholders of Wiseman Oil except Robert Wiseman.

j. "Financial Information" shall mean those financial documents submitted to EPA by each ATP Settling Defendant.

k. "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.

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, the Trust, the Settling Defendants and the Settling Third-Party Defendant.

n. "Plaintiff" shall mean the United States.

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

p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

q. "Settling Defendants" shall mean Clean Harbors, Inc., Estate of Joseph Wiseman, Estate of Ruth Wiseman, Executrix of the Estate of Joseph Wiseman, Executrix of the Estate of Ruth Wiseman, Kipin Industries, Inc., Robert Snedegar, Robert Wiseman, and William Snedegar.

r. "Settling Third-Party Defendant" shall mean Woodington Systems Inc.

s. "Site" shall mean the Breslube-Penn Superfund Site, encompassing approximately 7 acres, located on both Ewing Road and at 84 Montour Road in Moon Township, Allegheny County, Pennsylvania and depicted in the August 2007 Record of Decision, and any areas to which hazardous substances deposited or released on the 7-acre parcel have come to be located.

t. "Trust" shall mean the Breslube-Penn Performing Trust.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for each Settling Defendant and the Settling Third-Party Defendant to make one or more cash payments to

address its liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. The Settling Defendants and the Settling Third-Party Defendant shall pay the amounts specified in the following Table 1, subject to the terms of the remaining Paragraphs in this Section:

TABLE 1

PARTY	AMOUNT DUE TO THE UNITED STATES	AMOUNT DUE TO THE TRUST
Clean Harbors, Inc.	\$22,744	\$178,168
Estates	\$350,000	\$350,000
Kipin Industries, Inc.	\$20,000	\$0
Robert Snedegar	\$20,000	\$0
Robert Wiseman	\$2,500	\$0
William Snedegar	\$175,000	\$0
Woodington Systems Inc.	\$17,500	\$262,500
TOTAL	\$607,744	\$790,668

6. Unless otherwise provided herein, each payment to the United States and the Trust shall be made as a lump-sum payment within 30 days of entry of this Consent Decree, including an additional sum for Interest on that amount calculated from the date the Consent Decree is entered by the Court.

7. The Estates are jointly and severally liable for the payments set forth in Table 1, and as specified in this Paragraph. The Estates shall pay to the United States the principal sum of \$350,000, plus an additional sum for Interest as set forth below. In addition, the Estates shall pay to the Trust the principal sum of \$350,000, as set forth below. These payments shall be made in six installments, as follows. Each installment paid to the United States, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date this Consent Decree is entered by the Court. Provided, however, that the Interest rate applicable to the Estates' payments shall be capped at 2%. A first payment of \$100,000 shall be due to the United States within 60 days of entry of this Consent Decree. A second payment of \$150,000 plus Interest shall be due to the United States within one year of the date of entry of this Consent Decree. A third payment of \$100,000 plus Interest shall be due to the United States within two years of the date of entry of this Consent Decree. A fourth payment of \$50,000 shall be due to the Trust within two years of the date of entry of this Consent Decree. A fifth payment of \$150,000 shall be due to the Trust within three years of the date of entry of this Consent Decree. A sixth

payment of \$150,000 shall be due to the Trust within four years of the date of entry of this Consent Decree. The Estates may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

8. Kipin Industries, Inc. shall pay to the United States the principal sum of \$20,000, plus an additional sum for Interest as set forth below. Payment shall be made in four installments. Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date of entry of this Consent Decree. The first payment of \$5,000 shall be due within 30 days of the date of entry of this Consent Decree. Three subsequent payments of \$5,000 plus Interest shall be due within 6 months, 1 year, and 18 months, respectively, of the date of entry of this Consent Decree. Kipin Industries, Inc. may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

9. Payments to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1997V01636, EPA Site/Spill ID No. 03BD, and DOJ Case Number DJ#90-11-3-1762. Payment shall be made in accordance with instructions provided to each Settling Defendant and the Settling Third-Party Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. At the time of payment, the Settling Defendant or Settling Third-Party Defendant making the payment shall send notice that such payment has been made to the United States as specified in Section XIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, the Settling Defendant or the Settling Third-Party Defendant making the payment shall send copies of the check(s) or other confirmatory documentation to the United States as specified in Section XIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by each Settling Defendant pursuant to Section VI shall be deposited in the Breslube-Penn Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

10. Payments to the Trust shall be made pursuant to the following wire transfer instructions:

Citibank, N.A.
ABA: 021000089
FBO: Citigroup Global Markets/Smith Barney
A/C: 30604518
New York, NY 10004

Further Credit to: Breslube-Penn Performing Trust
 #726-74475-19 210

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments.

a. If Clean Harbors, Inc., Robert Snedegar, Robert Wiseman, William Snedegar, or Woodington Systems Inc., fails to make any payment due under Section VI, Interest shall continue to accrue on the unpaid balance through the date of payment.

b. If the Estate of Joseph Wiseman, the Estate of Ruth Wiseman, the Executrix of the Estate of Joseph Wiseman, the Executrix of the Estate of Ruth Wiseman, or Kipin Industries, Inc., fails to make any payment, due under Section VI by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

12. Stipulated Penalty.

a. If any amounts due under Section VI are not paid by the required date, the Settling Defendant or Settling Third-Party Defendant that fails to pay shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11, the following amounts per day that such payment is late.

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 3,500.00	1 st through 14 th day
\$ 5,000.00	15 th through 30 th day
\$ 8,000.00	31 st day and beyond

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 identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund,” shall be mailed to the United States Environmental Protection Agency, Superfund Payment, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000; shall indicate that the payment is for stipulated penalties; and shall reference the EPA Region and Site/Spill ID No. 03BD, the DOJ Case Number DJ#90-11-3-1762, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Docket Clerk

(3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

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

13. Enforcement.

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

b. If the Trust brings an action to enforce this Consent Decree, Settling Defendant or the Settling Third-Party Defendant shall reimburse the Trust for all costs of such action, including but not limited to reasonable attorneys' fees.

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

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

VIII. COVENANT NOT TO SUE BY PLAINTIFF

16. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or the Settling Third-Party Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA and the Trust of (i) all amounts required by Section VI, Paragraph 6 (Payment of Response Costs), or (ii) the first payment required by Section VI, Paragraphs 7 or 8 (Payment of Response Costs), as the case may be, and (iii) any amount due under Section VII (Failure to Comply with Consent Decree). This Covenant Not to Sue is conditioned upon the satisfactory performance by each Settling Defendant and the Settling Third-Party Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response

Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). As to the ATP Settling Defendants, this Covenant Not to Sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by each ATP Settling Defendant. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, that Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this Covenant Not to Sue and the contribution protection herein shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from that Settling Defendant's false or materially inaccurate information. This Covenant Not to Sue extends only to the Settling Defendants and the Settling Third-Party Defendant and does not extend to any other person. Following the entry of this Consent Decree, the United States will notify the probate court in a form acceptable to that court that the Estates will satisfy the United States' claims by complying with this Consent Decree. The Estates shall provide the United States with a first draft of this notification and will ensure that the final agreed form of notification is in a form acceptable to the probate court.

IX. RESERVATION OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against each Settling Defendant and the Settling Third-Party Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section VIII. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against each Settling Defendant and the Settling Third-Party Defendant with respect to:

a. liability for failure of Settling Defendant or the Settling Third-Party Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

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

d. liability, based upon Settling Defendant's or the Settling Third-Party Defendant's ownership or operation of the Site, or upon Settling Defendant's or the Settling Third-Party Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, arising after signature of this Consent Decree by Settling Defendant or the Settling Third-Party Defendant; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

18. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action as to any ATP Settling Defendant, or to commence a new action against any ATP Settling Defendant seeking relief other than as provided in this Consent Decree, if the Financial Information provided by that ATP Settling Defendant, or the financial certification made by that ATP Settling Defendant in Paragraph 28.b, is false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS AND SETTLING THIRD-PARTY DEFENDANT

19. Each Settling Defendant and the Settling Third-Party Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or 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 Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 17 (c) - (e), but only to the extent that Settling Defendant's or Settling Third-Party Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. 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).

21. Each Settling Defendant and the Settling Third-Party Defendant agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. Nothing in this Consent Decree shall be construed to bar the Estates from pursuing claims for insurance benefits or from bringing any claims against any insurance company.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a Party to this Decree may have under applicable law.

23. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), that each Settling Defendant and the Settling Third-Party Defendant is entitled, as of the date of entry 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), or as may be otherwise provided by law, for “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 provided, however, that if the United States exercises rights against Settling Defendants and the Settling Third-Party Defendant under the reservations in Section IX, other than in Paragraph 17.a. (claims for failure to meet a requirement of this Consent Decree), or 17.b. (criminal liability), the matters addressed in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

24. Each Settling Defendant and the Settling Third-Party Defendant agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant and the Settling Third-Party Defendant shall notify EPA and DOJ 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, for matters related to this Consent Decree.

25. 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 and the Settling Third-Party Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XII. RETENTION OF RECORDS

26. Until 10 years after the entry of this Consent Decree, each Settling Defendant and the Settling Third-Party Defendant shall preserve and retain all records 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 under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding paragraph, each Settling Defendant and the Settling Third-Party Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, each Settling Defendant and the Settling Third-Party Defendant shall deliver any such records to EPA. Each Settling Defendant and the Settling Third-Party Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Settling Defendant or the Settling Third-Party Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

28. Certifications

a. Each Settling Defendant and the Settling Third-Party Defendant hereby 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, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's and Settling Third-Party Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

b. In addition, each ATP Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time the ATP Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

29. 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, the Trust, the Settling Defendants, and the Settling Third-Party Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ #90-11-3-1762)
P.O. Box 7611
Washington, D.C. 20044-7611

Jefferie Garcia
Senior Assistant Regional Counsel (3RC42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Bhupendra Khona (3HS22)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
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Linda Dietz
Alternate EPA Project Coordinator
United States Environmental Protection Agency
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As to the Trust:

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de maximis, Inc.
450 Montbrook Lane
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Andrew Thiros, Esq.
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U.S. Steel Tower

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As to Clean Harbors, Inc.:
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As to the Estates:
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As to Kipin Industries, Inc.:
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Kipin Industries, Inc.
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As to Robert Wiseman:

Robert P. Ging Jr. J.D.
2095 Humbert Road
Confluence, PA 15424

As to Settling Third-Party Defendant:

William S. D. Cravens
Bingham McCutchen LLP
2020 K Street, NW
Washington, D.C. 20006

XIV. RETENTION OF JURISDICTION

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

XV. INTEGRATION

31. This Consent Decree constitutes the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. 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. Each Settling Defendant and the Settling Third-Party Defendant consents to the entry of this Consent Decree without further notice.

33. 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 or among the Parties.

XVII. SIGNATORIES/SERVICE

34. Each undersigned representative of a Settling Defendant and the Settling Third-Party Defendant to this Consent Decree, the Trust, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice 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.

35. Each Settling Defendant and the Settling Third-Party Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and the Settling Third-Party Defendant in writing that it no longer supports entry of the Consent Decree.

36. Each Settling Defendant and the Settling Third-Party Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Each Settling Defendant and the Settling Third-Party Defendant hereby 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 Settling Defendants and the Settling Third-Party Defendant need not file answers to the Complaint or third-party complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States, the Trust, each Settling Defendant, and the Settling Third-Party 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 _____, 2__.

Honorable Joy Flowers Conti
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube-Penn Superfund Site.

FOR THE UNITED STATES OF AMERICA

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

2/7/11
DATE

MARCELLO MOLLO
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2757

2/1/11
DATE

DAVID J. HICKTON
United States Attorney
Western District of Pennsylvania

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant United States Attorney
Western District of Pennsylvania
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7418

2/1/11
DATE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube-Penn Superfund Site.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SHAWN M. GARVIN
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

2/23/11
DATE

MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

2/17/11
DATE

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

2/15/11
DATE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR CLEAN HARBORS, INC., AS INDEMNITOR AND ON BEHALF OF GSX CHEMICAL SERVICES OF OHIO, INC. AND SAFETY-KLEEN, INC.:

[Signature]

Name:

James M. Rutledge

Title:

SVP & CFO

Address:

42 Longwater Drive, Norwell, MA 02061

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

Timmery Donahue, Esq.
c/o Clean Harbors, Inc.
42 Longwater Drive
PO Box 9149
Norwell, MA 02061-9149
(781) 792-5172

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR WILLIAM SNEDEGAR:

[Signature]

Name: William Snedegar

Title: owner

Address: 4608 Central College Rd.
Westerville, Ohio 43081

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

Name: Robert J. Schmidt

Title: Esq.

Address: Porter, Wright, Morris & Arthur
41 South High Street

Columbus, OH 43215
Telephone: 614-227-2028

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.

FOR WOODINGTON SYSTEMS INC.:

[Signature]

John Fisher
President
Woodington Systems Inc.
2800 Thorold Townline Road
Thorold, Ontario
L2V 3Y8

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

William S. D. Cravens
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2020 K Street, NW
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