

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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|---------------------------|---|--------------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 12-cv-1233-NJR-SCW |
| v. |) | Consolidated with |
| |) | Case No. 3:14-cv-00102-JPG-SCW |
| |) | |
| |) | CJRA TRACK: C (Modified) |
| ILLINOIS TOOL WORKS Inc., |) | |
| |) | Presumptive Trial Month: |
| Defendant. |) | February, 2015 |
| |) | |
| |) | Judge Nancy J. Rosenstengel |
| |) | |
| |) | Magistrate Judge Stephen C. Williams |
| _____ |) | |

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Secretary of the Department of the Interior (“DOI”) filed an amended complaint (“Complaint”) on August 26, 2013 in the above-captioned lawsuit (the “Initial Lawsuit”), asserting a claim against Illinois Tool Works Inc. (hereinafter “Settling Defendant”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”). Doc. 24. The Complaint seeks 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 Site 14 of the Miscellaneous Areas Operable Unit (“MISCA OU”) at the Crab Orchard National Wildlife Refuge (“Refuge”) National Priorities List Site, near Marion, Illinois (“Site 14”).

B. During World War II, a major munitions operation known as the Illinois Ordnance Plant (“IOP”) was located on a portion of the area now occupied by the Refuge. In 1947, Congress established the Refuge, which encompasses over 40,000 acres located primarily in Williamson County, near Marion, Illinois. The enabling legislation assigned DOI, through the Fish and Wildlife Service (“FWS”), the responsibility of managing the area as a national wildlife refuge, with the additional mission of supporting private industrial activity using former IOP facilities at the Refuge.

C. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Refuge on the CERCLA National Priorities List in 1987, 52 Fed. Reg. 27,620, 27,631 (July 22, 1987). Since that time, seven operable units have been designated at the Refuge, including the MISCA OU.

D. Site 14 of the MISCA OU covers approximately 3.5 acres in the southeast part of the Refuge. During World War II, the land comprising Site 14 was part of the IOP. The first

industrial occupant of Site 14 was the Sherwin Williams Defense Corporation (“SWDC”), which operated the IOP under the SWDC Contract with the predecessor agency to the Department of Defense. SWDC operated a munitions assembly line, including painting and cleaning operations, in an area called the “Group III Load Line,” which included Building 3. A building that was sometimes referred to as “the Paint Service Building” during the IOP operations was attached to Building 3.

E. Diagraph Corporation (“Diagraph”), a predecessor to Settling Defendant, leased and used the Site from 1947 through approximately 2003 to manufacture stencils, hand operated stencil machines, and related marking products. For part of that time period, Diagraph’s operations involved ink repackaging, ink production, and storage of inks, solvents, lubricants and other liquid manufacturing supplies. During its operations at the Site, Diagraph used the building that had previously been called the Paint Service Building, referring to it instead as “the Former Repour Building.”

F. Pursuant to Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), as amended, the President delegated to DOI CERCLA Section 104 authority to respond to releases and threatened releases of hazardous substances on or from property under DOI’s jurisdiction, custody, or control. Exercising this authority, DOI performed a Remedial Investigation/Baseline Risk Assessment (“RI”) of the MISCA OU between 1993 and 1995, and issued an RI report in 1996. DOI completed a Feasibility Study Report (“FS”) for the MISCA OU in August 2000. In October 2001, EPA and DOI issued a Record of Decision (“ROD”) selecting a remedial action for Site 14.

G. The ROD identified volatile organic compounds (“VOCs”) and metals including toluene, benzene, ethylbenzene, xylene, methylene chloride, lead, and chromium, among other contaminants of concern at Site 14.

H. The remedy for Site 14 selected in the ROD included the removal of the Former Repour Building and the excavation and removal of contaminated soil.

I. In August 2002, EPA, with the concurrence of DOI, issued a Unilateral Administrative Order (“UAO”) to Diagraph. Settling Defendant performed remedial actions at Site 14 under the UAO, and in May 2012, EPA certified completion of the Site 14 Remedial Action.

J. In the Complaint, the United States alleges it has incurred unreimbursed past response costs in excess of \$2.14 million performing response actions associated with Site 14. Of that total, DOI alleges it has incurred past response costs of more than \$1.75 million, paid for out of the Central Hazardous Materials Fund. EPA alleges it has incurred more than \$390,000 in past response costs. Settling Defendant alleges it has incurred approximately \$3.65 million in past response costs performing response actions associated with Site 14. AIG Specialty Insurance Company (“AIG Specialty”), as Settling Defendant’s insurer, has reimbursed certain response costs covered by an insurance policy issued to Settling Defendant by AIG Specialty’s predecessor.

K. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for Site 14 response costs incurred and to be incurred.

L. On September 3, 2013, Settling Defendant answered the Complaint and asserted a counter-claim against the United States, alleging that the United States, through the DOI and

Department of the Army, is liable as a responsible party under Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607, 9613(f), for contribution to response costs incurred or to be incurred by Settling Defendant at Site 14. Doc. 25.

M. On January 30, 2014, AIG Specialty filed a separate proceeding and complaint (“AIG Specialty Complaint”) against both The Sherwin-Williams Company (“Sherwin-Williams”), as successor to SWDC, and the United States alleging that, pursuant to CERCLA Section 112(c)(2), 42 U.S.C. § 9612(c)(2), AIG is subrogated to Settling Defendant’s claims under Section 113(f) of CERCLA, 42 U.S.C. § 9613 (the “AIG Specialty Lawsuit”). Case 3:14-cv-00102-JPG-SCW, Doc. 2. The Court consolidated the Initial Lawsuit and the AIG Specialty Lawsuit under the Initial Lawsuit’s case number, on April 18, 2014. Doc. 46.

N. Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint. The United States does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendant in the Initial Lawsuit or any claims in the AIG Specialty Complaint, nor does the United States admit any liability arising out of any contracts with Sherwin-Williams or SWDC. Sherwin-Williams does not admit any liability to the United States, Settling Defendant or AIG Specialty arising out of the transactions or occurrences alleged in the Complaint or the AIG Specialty Complaint, or to the United States or any other person or entity in respect to conditions that presently exist or ever existed at Site 14.

O. AIG Specialty is not alleged to be a potentially responsible party under CERCLA, nor is AIG Specialty entering into this Consent Decree as a potentially responsible party under CERCLA.

P. Through this Consent Decree, Settling Defendant agrees to pay a portion of the Past Response Costs and Future Response Costs incurred by the United States as outlined in Paragraph 4. In addition, the United States, on behalf of Settling Federal Agencies, agrees to pay portions of the Past Response Costs and Future Response Costs incurred by Settling Defendant or reimbursed by AIG Specialty as outlined in Paragraph 8.

Q. The Parties agree that this Consent Decree resolves all claims raised in both the Initial Lawsuit and the AIG Specialty Lawsuit.

R. The Parties 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 Sections 9607 and 9613(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying Complaint and AIG Specialty Complaint, the Parties waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. The Parties shall not challenge 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 Parties, and their predecessors, 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 the Parties 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 meanings 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. “Central Hazardous Materials Fund” shall mean the Fund established by Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332, 108 Stat 2500 (1994) for costs incurred by DOI and its component Offices and Bureaus in responding, pursuant to CERCLA, to the presence of hazardous substances on public lands managed by DOI.

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

c. “Consent Decree” shall mean this Consent Decree. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

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

e. “DOI” shall mean the United States Department of the Interior and its successor departments, agencies, or instrumentalities, including but not limited to the Fish and Wildlife Service and the Bureau of Reclamation.

f. “DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

g. “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

h. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

j. “Future Response Costs” shall mean all costs of response, including all direct and indirect costs, plus accrued Interest on all such costs, other than Past Response Costs, that the Parties may incur after the date of lodging of this Consent Decree for response actions at or in connection with the Site 14 Remedial Action.

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. “Matters Addressed” shall mean Past Response Costs and Future Response Costs.

- m. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- n. “Parties” shall mean the United States, Settling Defendant, AIG Specialty, and Sherwin-Williams.
- o. “Past Response Costs” shall mean all costs of response, including but not limited to direct and indirect costs, that the Parties have incurred for response actions at or in connection with Site 14 through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.
- p. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- q. “Past Response Costs and Future Response Costs” shall mean all Past Response Costs and Future Response Costs incurred by the Parties.
- r. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- s. “Settling Defendant” shall mean Illinois Tool Works Inc., as successor by merger to Diagraph.
- t. “Settling Federal Agencies” shall mean the United States Department of Interior, the United States Department of the Army, and their predecessor or successor departments, agencies, or instrumentalities.
- u. “Signatories” shall mean AIG Specialty and Sherwin-Williams.
- v. “Site 14” shall mean Site 14 of the Miscellaneous Areas Operable Unit of the Crab Orchard National Wildlife Refuge, encompassing approximately 3.5 acres, located at the southeast

part of the Crab Orchard National Wildlife Refuge near Marion, Illinois, as generally shown on the map included in Appendix A.

w. “Site 14 Remedial Action” shall mean the remedial action at Site 14, as identified in the October 2001 Record of Decision for the Miscellaneous Areas Operable Unit at the Crab Orchard National Wildlife Refuge National Priorities List Site, the UAO, the RI, the FS or the approved Remedial Design/Remedial Action Workplan for Site 14.

x. “SWDC Contract” shall mean Contract No. W-ORD-522-DA-W-ORD-18 between Sherwin-Williams Defense Corporation and the United States War Department, dated August 18, 1941, as amended.

y. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including the Settling Federal Agencies, EPA, and the Department of Defense as successor to the War Department.

V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendant for Past Response Costs and Future Response Costs. Within 30 days after the Effective Date, Settling Defendant shall pay or cause to be paid to the United States \$78,617, plus an additional sum for Interest on that amount calculated from the date of lodging through the date of payment.

5. Payment by Settling Defendant shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant and AIG Specialty by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of Illinois. The payment instructions provided by the FLU shall 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 shall provide the

payment instructions to: 1) Robin R. Lunn, Neal, Gerber, & Eisenberg LLP, Two North LaSalle Street, Suite 1700, Chicago, IL, 60602-3801, or by email at rlunn@ngelaw.com, on behalf of Settling Defendant; and 2) Matthew Schroeder, Gardere Wynne Sewell LLP, 1601 Elm Street, Suite 3000, Dallas, TX, 75201, or by email at mschroeder@gardere.com, on behalf of AIG Specialty. Settling Defendant may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ, EPA, and DOI in accordance with Section XII (Notices and Submissions).

6. At the time of payment, Settling Defendant shall notify, in writing, EPA, DOI, and DOJ in accordance with Section XII (Notices and Submissions), and shall notify EPA, DOI, and DOJ by email at acctsreceivable.cinwd@epa.gov, courtney_hoover@ios.doi.gov, and EESCaseManagement.ENRD@usdoj.gov, or by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; Courtney Hoover, Department of the Interior, OEPC - Denver Region, Denver Federal Center, Building 67, Room 118, Denver, CO 80225-0007; and EES Case Management Unit, Environment and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044-7611. Such notice shall reference the CDCS Number, Site/Spill ID Number 05P2 OU 08 and DOJ case numbers 90-11-3-643/1 and 90-11-3-643/2.

7. Of the total amount to be paid by or on behalf of Settling Defendant pursuant to Paragraph 4, the United States shall deposit the following amounts, subject to the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1994, Pub. L. No. 103-121, 107 Stat. 1164 (1993), as follows:

- a. \$62,739, plus accrued interest on that amount pursuant to Paragraph 4, into the Central Hazardous Materials Fund as follows:

Receiver name: Central Hazardous Materials Fund
ALC 14010001

Receiver Tax ID Number: 53-0196949

Receiver address: 7401 West Mansfield Ave.
Mailstop D-2777
Lakewood, CO 80235

Receiver bank: Federal Reserve Bank
New York, NY
ABA # 051036706

Receiver ACH Account No.: 312024

- b. \$15,878, plus accrued interest on that amount pursuant to Paragraph 4, into the EPA Hazardous Substance Superfund.

8. Payment by the United States on behalf of Settling Federal Agencies for Past Response Costs and Future Response Costs.

- a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall deposit in the DOI Central Hazardous Materials Fund \$1,338,745 in payment of Past Response Costs and Future Response Costs.
- b. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall deposit in the EPA Hazardous Substance Superfund \$338,804 in payment of Past Response Costs and Future Response Costs.

- c. Payments made pursuant to 4, 8.a, and 8.b take into account the fact that Settling Defendant has already incurred \$3,655,282 in Past Response Costs. Settling Defendant is receiving a credit in the amount of \$3,655,282 toward its negotiated allocated share of Past Response Costs and Future Response Costs, and therefore the total payment of \$78,617 that Settling Defendant is paying to the United States represents the net unpaid portion of the Settling Defendant's negotiated allocated share of Past Response Costs and Future Response Costs.
- d. In the event that any payment required by Paragraphs 8.a or 8.b is not made within 120 days after the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.
- e. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

- 9. Interest on Late Payments. If Settling Defendant fails to make the payment under Paragraph 4 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

- a. If any amounts due to the United States under Paragraph 4 (Payment by Settling Defendant for Past Response Costs and Future Response Costs) are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA and DOI a stipulated penalty, in addition to the Interest required by Paragraph 9, of \$250 per day that such payment is late. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by DOI and EPA.
- b. Of the total stipulated penalty demanded, payment of 80% of such amount shall be identified as “stipulated penalties for DOI” and shall be paid by automated clearing-house, known as the Department of the Treasury’s Automated Clearing House (ACH)/Remittance Express program, to the DOI Central Hazardous Materials Fund in accordance with the instructions in Paragraph 7.a, above.
- c. Of the total stipulated penalty demanded, payment of 20% of such amount shall be identified as “stipulated penalties for EPA” and shall be made to EPA by Fedwire Electronic Funds Transfer (“EFT”) in accordance with the information below:

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 05P2 OU 08, and DOJ Case Numbers 90-11-3-643/1 and 90-11-3-643/2.

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

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

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Paragraph 4 or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY THE UNITED STATES

14. Covenants for Settling Defendant and Signatories by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue and agrees not to assert any claims or causes of action or to take administrative action against Settling Defendant and Signatories pursuant to Sections 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9607(a) or 9613, to recover Past Response Costs or Future Response Costs that it has incurred in association with the Site 14 Remedial Action and this Consent Decree. These covenants shall take effect for the Settling Defendant and AIG Specialty upon the United States' receipt of the payment required by Paragraph 4 (Payment by Settling Defendant for Past Response Costs and Future Response Costs) and any Interest or stipulated

penalties due thereon under Paragraph 9 (Interest on Late Payments) or 10 (Stipulated Penalty). These covenants shall take effect for Sherwin-Williams upon the receipt by DOI and EPA of the payments required by Paragraphs 8.a and 8.b (Payment by the United States on behalf of Settling Federal Agencies for Past Response Costs and Future Response Costs) and any Interest due thereon under Paragraph 8.d. Sherwin-Williams has no obligation to make any monetary payment to the United States, Settling Defendant, Settling Federal Agencies or AIG Specialty under this Consent Decree. These covenants extend only to Settling Defendant and Signatories and do not extend to any other person.

15. Covenant for Settling Federal Agencies. In consideration of the payments that will be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, EPA and DOI each covenant not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs or Future Response Costs. DOI's and EPA's covenants shall take effect upon the receipt by DOI and EPA of the payments required by Paragraphs 8.a and 8.b (Payment by the United States on behalf of Settling Federal Agencies for Past Response Costs and Future Response Costs) and any Interest due thereon under Paragraph 8.d. DOI's and EPA's covenants extend only to Settling Federal Agencies and do not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

16. Reservations. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant, and EPA and DOI reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within the Covenants by the United States in Paragraphs 14 and 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights

against Settling Defendant and Sherwin Williams, and EPA and DOI reserve all rights against Settling Federal Agencies, with respect to:

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

IX. COVENANTS BY SETTLING DEFENDANT, SIGNATORIES, AND SETTLING FEDERAL AGENCIES

17. Covenants by Settling Defendant and Signatories. Settling Defendant and Signatories covenant not to sue and agree not to assert any claims or causes of action against the United States, its employees, or its contractors who performed work in connection with the Site 14 Remedial Action, for any Past Response Costs or Future Response Costs incurred by Settling Defendant or Signatories in association with the Site 14 Remedial Action and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund or the Central Hazardous Materials Fund 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 the Site 14 Remedial Action, including any claim under the United States Constitution, the Constitution of the State of Illinois, 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;

- c. any claim pursuant to Section 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, related to Site 14 Past Response Costs or Future Response Costs; or
- d. any claim for indemnification by Sherwin-Williams, as successor to SWDC, for Past Response Costs or Future Response Costs, pursuant to any contract including but not limited to the SWDC Contract, or any statute, regulation, or any other basis or theory, except to the extent related to any claims reserved by the United States pursuant to Section VIII of this Consent Decree (Reservation of Rights by the United States).

The covenants set forth above shall take effect for Sherwin-Williams upon receipt by DOI and EPA of the payments required by Paragraphs 8.a, 8.b, and 8.d (Payments by the United States on behalf of the Settling Federal Agencies for Past Response Costs and Future Response Costs).

Further, Sherwin-Williams releases, waives, and otherwise terminates any right it has or may have to make a claim from the United States under the SWDC Contract for Past Response Costs and Future Response Costs, including attorney fees and court costs incurred by Sherwin-Williams in connection with the Site 14 Remedial Action through the date of entry of this Consent Decree, which release and waiver shall be effective upon payment by the United States on behalf of the Settling Federal Agencies.

18. The covenants by Settling Defendant and Signatories do not include any covenants not to assert any claim for contribution or indemnification from the United States for damages for injury to, destruction of, or loss of resources, or the costs of any natural resources assessments at Site 14.

19. As of the Effective Date, the Settling Defendant and the Signatories hereby release, covenant not to sue and agree not to assert any direct or indirect claims against each other or against each other's owners, officers, directors, employees, or agents with respect to Matters Addressed in this Consent Decree for Site 14, except as necessary to enforce the terms of any agreement by or between them relating to Matters Addressed in this Consent Decree.

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. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund or Central Hazardous Materials Fund through Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611 and 9613, or any other provision of law with respect to Past Response Costs, Future Response Costs, and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

X. EFFECT OF SETTLEMENT/CONTRIBUTION

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. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to Site 14 against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United

States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant, each of the Signatories, and each Settling Federal Agency is entitled, as of the Effective Date, 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.

24. Settling Defendant and Signatories shall, with respect to any suit or claim brought by them for Matters Addressed by this Consent Decree after the Effective Date, notify EPA, DOI, and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant and each of the Signatories also shall, with respect to any suit or claim brought against any of them for matters related to this Consent Decree after the Effective Date, notify EPA, DOI, and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant and Signatories shall notify EPA, DOI 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.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs other than Past Response Costs or Future Response Costs, or other relief relating to Site 14, neither Settling Defendant nor Signatories shall assert nor maintain any defense or claim based upon the principles of waiver, *res judicata*,

collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section VII of this Consent Decree. Further, nothing in this Paragraph affects any potential claim for contribution from Settling Federal Agencies for damages for injury to, destruction of, or loss of resources, or the costs of any natural resources assessments.

26. Nothing in this Consent Decree is intended to alter or affect any rights or obligations established under: 1) the August 15, 1991 Federal Facility Agreement Under CERCLA Section 120 between the U.S. EPA, Illinois EPA, U.S. Department of the Interior and U.S. Department of the Army and 2) the U.S. Department of Interior and U.S. Department of the Army Memorandum of Agreement for Crab Orchard National Wildlife Refuge, signed August 1, 1991.

XI. RETENTION OF RECORDS

27. Until ten years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at Site 14 or the liability of any person under CERCLA with respect to Site 14, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the ten-year document retention period in the preceding Paragraph, Settling Defendant shall notify EPA, DOI and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA, DOI or DOJ, Settling Defendant shall deliver any such Records to EPA and DOI. Settling Defendant may assert that certain Records are

privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide EPA and DOI with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address 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. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to DOI and EPA in redacted form to mask the privileged information only. Settling Defendant shall retain all Records 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 Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

29. Settling Defendant 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 information (other than identical copies) relating to its potential liability regarding Site 14 since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding Site 14 and that it has fully complied with any and all EPA and DOI requests for information 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.

30. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA and DOI requests for information 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.

XII. 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOI, DOJ, Settling Defendant, and Signatories, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #s 90-11-3-643/1 and 90-11-3-643/2

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Re: DJ # 90-11-6-122

As to DOI:

Chief, Environmental Compliance and Enforcement Branch
Office of the Solicitor
Department of the Interior,
1849 C Street, NW
Washington, DC 20240

Fund Manager, Central Hazardous Materials Fund
Office of Environmental Policy and Compliance
Department of the Interior
1849 C Street, NW

Washington, DC 20240

As to EPA:

Nanjunda Gowda
Remedial Project Manager
U.S. Environmental Protection Agency
Mail Code SR-6J
77 W. Jackson Blvd.
Chicago, IL 60604

Mary L. Fulghum
Associate Regional Counsel
U.S. Environmental Protection Agency
Mail Code C-14J
77 W. Jackson Blvd.
Chicago, IL 60604

As to Settling Defendant:

Robin R. Lunn, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
Counsel for Illinois Tool Works Inc.

As to AIG:

MariKay Fish
AVP – AIG Claims, Inc.
101 Hudson Street, 31st Floor
Jersey City, New Jersey 07302

As to Sherwin-Williams:

Ralph E. Cascarilla, Esq.
Walter Haverfield LLP
1301 E. Ninth Street, Suite 3500
Cleveland, OH 44114-1821
Counsel for The Sherwin-Williams Company

XIII. 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.

XIV. INTEGRATION/APPENDIX

33. This Consent Decree and its appendix 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 this settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: “Appendix A”, which is the map of Site 14.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. If no objections are made to the Consent Decree during the 30-day public comment period, the United States will, as soon as practicably possible, take the actions necessary to seek final approval of the Consent Decree from the Court. 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 Defendant and Signatories consent 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, the agreements in this Consent Decree are voidable at the sole discretion of any Party and the terms of the proposed Consent Decree may not be used as evidence in any litigation or other proceeding by and between the Parties.

XVI. SIGNATORIES/SERVICE

36. Each undersigned representative of a Settling Defendant and Signatories to this Consent Decree and the Assistant Attorney General, Environment and Natural Resources Division,

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.

37. Settling Defendant and Signatories 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 Defendant in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendant and Signatories 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 Defendant and Signatories 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.

XVII. FINAL JUDGMENT

39. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the Parties in the consolidated Initial Lawsuit and AIG Specialty Lawsuit. 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 _____, 2015.

United States District Judge

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site and United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

FOR PLAINTIFF UNITED STATES OF AMERICA:

DATE: 5/19/2015



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

DATE: 5/19/2015



KATHERINE A. ABEND
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) 514-2463 (Tel.)
(202) 616-6584 (Fax)
Katherine.Aabend@usdoj.gov

DATE: 5-19-15



DANIEL DERTKE
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
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P.O. Box 7611
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(202) 514-0994 (Tel.)
(202) 514-8865 (Fax)
Daniel.dertke@usdoj.gov

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

STEPHEN R. WIGGINTON
United States Attorney
Southern District of Illinois

DATE: 5/21/2015

A handwritten signature in black ink, appearing to read "Nathan D. Stump", written over a horizontal line.

NATHAN D. STUMP
Assistant United States Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208-1344
(618) 628-3700 (Tel.)
(618) 628-3730 (Fax)
Nathan.Stump@usdoj.gov

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

FOR THE U.S. DEPARTMENT OF THE INTERIOR:

DATE: 3/11/15



LAURA B. BROWN
Associate Solicitor
Division of Land and Water Resources
Office of the Solicitor
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 3-27-15



RICHARD C. KARL
Director, Superfund Division Region 5
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

4/2/15
Date

FOR ILLINOIS TOOL WORKS INC.:



Robin R. Lunn, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8420 (Tel.)
(312) 980-0859 (Fax)
Rlunn@ngelaw.com

Counsel for Illinois Tool Works Inc.
(Authorized Signatory)

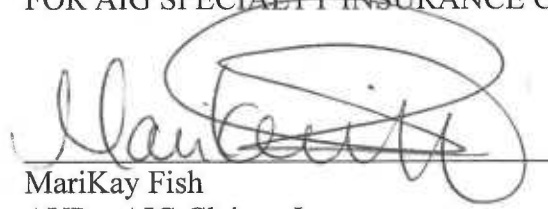
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Robin R. Lunn, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

FOR AIG SPECIALTY INSURANCE COMPANY:

3/19/15
Date

A handwritten signature in black ink, appearing to read "MariKay Fish", is written over a horizontal line. The signature is somewhat stylized and loops back.

MariKay Fish
AVP – AIG Claims, Inc.
101 Hudson Street, 31st Floor
Jersey City, New Jersey 07302
(201) 631-4135 (Tel.)
(866) 573-0556 (Fax)
Marikay.fish@aig.com

AIG Claims, Inc., as authorized representative of
AIG Specialty Insurance Company

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

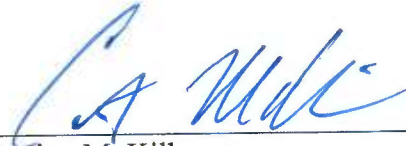
Matthew Schroeder
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

Signature Page for Consent Decree Regarding the *Crab Orchard Site 14 Superfund Site* and *United States v. Illinois Tool Works Inc.*, 3:14-cv-1233-NJR-SCW (S.D. Ill.)

FOR THE SHERWIN-WILLIAMS COMPANY:

3/11/2015

Date



Catherine M. Kilbane
The Sherwin-Williams Company
Midland Building
101 Prospect Avenue, NW
Cleveland, OH 44115-1075

Senior Vice President, General Counsel and Secretary

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

Ralph E. Cascarilla, Esq.
Walter Haverfield LLP
1301 E. Ninth Street, Suite 3500
Cleveland, OH 44114-1821
(216) 928.2908 (Tel.)
rcascarilla@walterhav.com

Appendix A

