

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Civil No. _____
v.	:	
	:	
VERSATILE METALS, INC.,	:	
	:	
Defendant.	:	
	:	
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**CONSENT DECREE FOR SETTLEMENT OF CLAIMS INVOLVING
VERSATILE METALS, INC.**

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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 of 1980, as amended, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Metal Bank of America, Inc. Superfund Site in the City and County of Philadelphia, Pennsylvania (“the Site”).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA has undertaken response actions at the Site pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, and may undertake additional response actions in the future. EPA has selected and has overseen performance of a removal action at the Site to address the release and threatened release of polychlorinated biphenyls (“PCBs”). EPA’s removal action included, *inter alia*, site assessment, the installation of an impermeable liner in an underground sewer that discharges to the Delaware River, the repair and replacement of an asphalt cover over areas of PCB contamination, and enforcement activities.

C. In performing response actions at and in connection with the Site, EPA has incurred response costs and may incur additional response costs in the future.

D. 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 response costs incurred and to be incurred at the Site.

E. [Reserved]

F. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

H. The United States and Settling 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 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.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant 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 Settling Defendant 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 Settling Defendant 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 in any appendix attached hereto, the following definitions shall apply:

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

“Consent Decree” shall mean this Consent Decree and all appendixes 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 U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

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

“EPA” shall mean the U.S. 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.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Insurance Information” shall mean those insurance documents identified in Appendix B.

“Insurance Policies” shall mean the policies listed in Appendix B and all other property, casualty, and/or liability insurance policies that were issued to or for the benefit of Settling Defendant and/or any predecessor in interest to Settling Defendant between January 1, 1984 and December 31, 1985, including all policies for which Settling Defendant is an “insured,” “named insured,” or “additional insured,” and including but not limited to all policies for general, public, comprehensive, primary, excess, excess/umbrella, pollution legal liability, cleanup cost cap, or stop-loss policies, Institutional Controls and Past Remediation Care Insurance, and environmental impairment liability insurance.

“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>.

“Monetary Judgment” shall mean the final judgment, which is entered pursuant to Paragraph 9 of this Consent Decree, in the amount of \$1,442,174.47.

“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.

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

“Parties” shall mean the United States and the Settling Defendant.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and DOJ on behalf of EPA has paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Removal Action” shall mean the response action EPA conducted at the Site to address the release of polychlorinated biphenyls (“PCBs”) at and from the Site.

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

“Settling Defendant” shall mean Versatile Metals, Inc.

“Site” shall mean the Metal Bank of America, Inc. Superfund Site, which includes approximately six acres of real property, located at 6801 New State Road in Philadelphia,

Pennsylvania, and other areas where hazardous substances released from this real property have come to be located.

“The Metal Bank of America, Inc. Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and in accordance with the Settlement Respecting Environmental Objections to Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Case No. 03-45870-399).

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment and to assign to the United States its rights to claim proceeds from the Insurance Policies, as defined above, including but not limited to all proceeds under the Insurance Policies to resolve its alleged civil liability for the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, as provided in the Covenants by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT OF RESPONSE COSTS

5. **Payment of Response Costs.** Settling Defendant shall pay to EPA the principal amount of \$42,000. The payment shall be made within 30 days after the Effective Date and, if timely paid, shall include no interest.

6. Settling Defendant shall make payment by Fedwire Electronic Funds Transfer EFT to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the Eastern District of Pennsylvania 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:

Terry Brown
Versatile Metals, Inc.
913 Plum Grove Rd., Suite A
Schaumburg, IL 60173
(847) 605-1177
versatilemetals@sbcglobal.net

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XVI (Notices and Submissions).

7. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 5 (Payment of Response Costs) shall be deposited by EPA in the Metal Bank of America, Inc. Site Special Account 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.

8. **Notice of Payment.** At the time of payment, Settling Defendant shall send notice that payment has been made (a) to EPA in accordance with Section XVI (Notices and Submissions); (b) to DOJ in accordance with Section XVI; and (c) to the EPA Cincinnati Finance Center (CFC) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by 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 A3DE, and DJ Number 90-11-3-11890.

VII. CONFESSION AND SATISFACTION OF JUDGMENT AS TO SETTLING DEFENDANT

9. Upon the Effective Date of this Consent Decree, Settling Defendant hereby agrees and confesses to entry of a Monetary Judgment against itself and in favor of Plaintiff in the amount of \$1,442,174.47. Upon approval and entry, this Consent Decree shall constitute the final Monetary Judgment for resolution of the Plaintiff's claims in the Complaint for reimbursement of response costs against Settling Defendant, and no other form of Monetary Judgment shall be required or entered. This Monetary Judgment shall be satisfied solely through recovery of proceeds from any Insurance Policies, as defined in Paragraph 3. This Monetary Judgment shall remain in effect until Settling Defendant has complied with all of its obligations under this Consent Decree.

10. **Assignment of Insurance Rights.** Settling Defendant agrees to irrevocably assign to the United States all of Settling Defendant's rights to proceeds under the Insurance Policies, including, but not limited to, all rights to insurance proceeds relating to the Monetary Judgment as well as all rights to insurance proceeds relating to amounts previously spent, or to be spent, in connection with the Site by Settling Defendant. Upon request of the United States, Settling Defendant shall reasonably cooperate with and assist the United States in (i) asserting and pursuing claims for coverage under those policies, and (ii) negotiating or litigating to obtain the most favorable resolution of claims under those policies as is reasonable. Settling Defendant further agrees to execute all necessary documentation to effectuate this assignment and to allow the pursuit and collection by the United States, including EPA, or a designee of any insurance claims proceeds. Settling Defendant shall not be required by this Consent Decree or the assignment to fund any litigation against the insurers. In the event an insurer brings a declaratory action on an Insurance Policy and names Settling Defendant in this declaratory action, Settling Defendant shall provide the United States with written notice no later than ten days after Settling Defendant learns of any such declaratory action. The United States may, in its sole discretion, either seek to dismiss the action as to Settling Defendant or to substitute itself for Settling

Defendant as party to the action on the basis of the assignment of rights conferred by this Paragraph. Settling Defendant shall not be required to defend itself or otherwise participate at its own expense in any such declaratory action beyond the level of cooperation required in this Paragraph.

11. **Payment of Insurance Proceeds.** Settling Defendant agrees that 100% of any recovery from applicable Insurance Policies for claims relating to the Site shall be paid to the United States or its designee. Settling Defendant shall use best efforts to have these insurance proceeds paid to the United States or its designee in accordance with the procedures specified in Paragraph 6 or pursuant to an alternate payment procedure agreeable to the United States. In the event any insurance proceeds are paid directly to Settling Defendant, Settling Defendant shall provide the United States with written notice no later than three business days after Settling Defendant receives such insurance proceeds. Settling Defendant will pay any insurance proceeds that it receives from applicable Insurance Policies for claims relating to the Site to the United States within 30 days of receipt.

12. **Deposit of Insurance Proceeds.** All payments of Insurance Proceeds shall either be deposited by EPA in the Metal Bank of America, Inc. Site Special Account or be transferred by EPA to the EPA Hazardous Substance Superfund in accordance with Paragraph 7.

13. **Notice of Payment of Insurance Proceeds.** At the time of Settling Defendant's payment of Insurance Proceeds to the United States or its designee, Settling Defendant shall send notice that payment has been made to EPA in accordance with Paragraph 8.

VIII. FAILURE TO COMPLY WITH CONSENT DECREE

14. **Interest on Payments.** If Settling Defendant fails to make the payments required by Paragraph 5 (Payment of Response Costs) and Paragraph 11 (Payment of Insurance Proceeds) by the respective required due dates, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

15. **Stipulated Penalty**

a. If any amounts due to EPA under Paragraph 5 (Payment of Response Costs) or Paragraph 11 (Payment of Insurance Proceeds) are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 14 (Interest on Payments), \$500.00 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"

Each payment shall reference the CDCS Number, Site/Spill ID Number A3DE, and DJ Number 90-11-3-11890.

c. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Paragraph 8 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling 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 in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

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

18. 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 Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

IX. COVENANTS BY PLAINTIFF

19. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding 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 Settling 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 Paragraph 11 (Payment of Insurance Proceeds), and any Interest or stipulated penalties due thereon under Section VIII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information

provided to EPA by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Paragraph 38. These covenants extend only to Settling Defendant and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

20. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 19 (Covenants by Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling 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 on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- f. 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.

21. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 38, is false or, in any material respect, inaccurate.

XI. COVENANTS BY SETTLING DEFENDANT

22. Settling 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 and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any 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, as amended, 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.

23. Except as provided in Paragraph 25 (Claims Against Other PRPs) and Paragraph 30 (Res Judicata and Other Defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section X (Reservations of Rights by United States), other than in Paragraph 20.a (liability for failure to meet a requirement of the Consent Decree) or 20.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. 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).

25. Claims Against Other Potentially Responsible Parties ("PRPs"). Settling Defendant 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 other person who is a PRP under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Except as provided in Paragraph 25 (Claims Against Other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XI (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site 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 (f)(3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (f)(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).

27. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is 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 Commonwealth of Pennsylvania; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 20.a (liability for failure to meet a requirement of

Consent Decree) or 20.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.

28. 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 Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

29. Settling Defendant 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. Settling Defendant also shall, with respect to any suit or claim brought against it 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, Settling Defendant 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.

30. Res Judicata and other Defenses. 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 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 Covenants by Plaintiff set forth in Section IX.

XIII. PROPERTY REQUIREMENTS

31. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls at the Site, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

32. Settling Defendant 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) (hereinafter referred to as “Records”) 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.

33. Privileged and Protected Claims.

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 33.b, and except as provided in Paragraph 33.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiff 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, Settling Defendant shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendant shall retain all Records that it claims 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 Settling Defendant's favor.

c. Settling Defendant may make no 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 Settling Defendant is required to create or generate pursuant to this Consent Decree.

34. "Business Confidential" Claims. Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section or Section XV (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). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts a "business confidentiality" claim. Records that Settling Defendant claims to be confidential business information 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 Settling Defendant that the 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 Settling Defendant.

35. 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.

XV. RETENTION OF RECORDS

36. Until five (5) years after the Effective Date, Settling Defendant 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 liability under CERCLA with respect to the Site, provided, however, that if Settling Defendant is potentially liable as an owner or operator of the Site, Settling Defendant must retain, in addition, all Records that relate to the liability of any

other person 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.

37. After the conclusion of the record retention period, Settling 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, except as provided in Paragraph 33 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

38. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B);

b. 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 Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XVI. NOTICES AND SUBMISSIONS

39. 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 regular 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 # 90-11-3-11890

As to EPA: Robert S. Hasson (3RC41)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Hasson.robert@epa.gov

As to Settling Defendant: Terry Brown
Versatile Metals, Inc.
913 Plum Grove Rd., Suite A
Schaumburg, IL 60173
versatilemetals@sbcglobal.net

XVII. RETENTION OF JURISDICTION

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

XVIII. INTEGRATION/APPENDIXES

41. This Consent Decree and its appendixes constitute the final, complete and exclusive agreement 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. The following appendixes are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of the financial documents submitted to EPA by Settling Defendant.

“Appendix B” is a list of the insurance documents submitted to EPA by Settling Defendant.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

42. 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 any comments, which are received from the public regarding the Consent Decree, disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

43. 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.

XX. SIGNATORIES/SERVICE

44. Each undersigned representative of Settling Defendant and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources Division, Environmental

Enforcement Section, 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.

45. Settling Defendant 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 Defendant in writing that it no longer supports entry of the Consent Decree.

46. Settling 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. Settling Defendant 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 Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

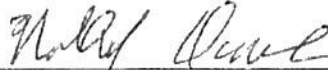
47. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Decree Regarding the Metal Bank of America, Inc. Superfund Site

FOR THE UNITED STATES OF AMERICA:

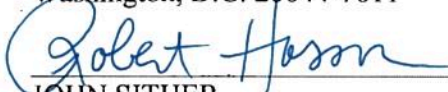


Date

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

09/24/18

Date



JOHN SITHER
Senior Trial Attorney
ROBERT S. HASSON
Special Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611


WILLIAM M. McSWAIN
United States Attorney
Eastern District of Pennsylvania

GREGORY DAVID
Chief, Civil Division
Eastern District of Pennsylvania

STACEY L. B. SMITH
Assistant United States Attorney
Eastern District of Pennsylvania


Signature Page for Consent Decree Regarding the Metal Bank of America, Inc. Superfund Site

9/11/18
Date



COSMO SERVIDIO
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

9/6/18
Date



MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

09/06/2018
Date



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

Signature Page for Consent Decree Regarding the Metal Bank of America, Inc. Superfund Site

FOR Terrence M Brown :
VERSATILE METALS, INC.

8/30/2018
Date

TERRENCE M BROWN
Name (print):
Title: PRESIDENT
Address: 913 PLUM GROVE ROAD
SUITE A
SCHAUMBURG, IL 60173

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

Name (print): TERRENCE M BROWN
Title: PRESIDENT
Company: VERSATILE METALS INC
Address: 913 PLUM GROVE ROAD
SUITE A
Phone: 847-605-1177
email: VERSATILEMETALS@
SBCGLOBAL.NET

**APPENDIX A
(FINANCIAL INFORMATION)**

The United States has considered the following Financial Information, provided by Settling Defendant, in its analysis of Settling Defendant's ability to pay response costs incurred by the United States for the Site.

1. Settling Defendant's U.S. Corporate Income Tax Returns (Form 1120) for fiscal years ended April 30, 2011, through April 30, 2017, inclusive;
2. Correspondence between Settling Defendant and its insurers;
3. Settling Defendant's June 8, 2015 response to EPA's request for information under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), and various supplements and updates to this response; and
4. A telephone call/interview with the corporate president of Settling Defendant; and Several telephone calls with Settling Defendant's counsel.

APPENDIX B

Northbrook Property and Casualty Insurance Co., Policy No. BPP0136177 (August 29, 1984, to August 29, 1985).

Northbrook Property and Casualty Insurance Co., Policy No. UEL0136179 (August 29, 1984, to August 29, 1985).

Northbrook Property and Casualty Insurance Co., Policy No. BPP0136177 (August 29, 1985, to August 29, 1986).

Northbrook Property and Casualty Insurance Co., Policy No. UEL0136179 (August 29, 1985, to August 29, 1986).