

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

Jack's Creek/Sitkin Smelting Site
Mifflin County, Pennsylvania

Diversified Industries, Inc.,

Theodore Sall, Inc.,

and

Scullin Steel Co. (formerly known
as Eastern Diversified Metals
Corporation)

Proceeding under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended
("CERCLA") 42 U.S.C. § 9622(g)(4)

17-3000
S22700-205
13520.33
EPA Docket No. III-95-02-DC

Entry date:
5/25/95

Dec 180 days = Nov 21-95

**ADMINISTRATIVE ORDER
BY CONSENT**

DE MINIMIS SETTLEMENT

ADMINISTRATIVE ORDER BY CONSENT

IFMS
9-8-95

Verified entry
date
9-7-95

See
ST085
for addl.
de minimis
settlements

Received
9-1-95
w/ Finance

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JACK'S CREEK/SITKIN SMELTING SITE

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I. JURISDICTION

1.1 **THIS ADMINISTRATIVE ORDER BY CONSENT** ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, ("CERCLA") as amended, 42 U.S.C. § 9622(g)(4), to reach de minimis settlements in actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2,923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (Sept. 13, 1987).

1.2 This Consent Order concerns the reimbursement of response costs which have been or which may be incurred by the United States in responding to releases or threatened releases of hazardous substances at the Jack's Creek/Sitkin Smelting Site in Mifflin County, Pennsylvania (hereinafter the "Jack's Creek Site" or the "Site"), more specifically identified on the Site map attached as Appendix A.

1.3 This Consent Order is entered into voluntarily by and between the EPA and Theodore Sall, Inc., Scullin Steel Co. (formerly known as Eastern Diversified Metals Corp.), and Diversified Industries, Inc. ("de minimis Settlers" or "Settlers"). Settlers agree to undertake all actions required by

the terms and conditions of this Consent Order. Settlers consent to and will not contest EPA's jurisdiction to issue and enter into this Order or to enforce its terms.

1.4 This Consent Order was negotiated and executed by EPA and the de minimis Settlers in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order.

1.5 EPA and Settlers agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in the Order. The participation of Settlers in this Order shall not be considered an admission of liability and shall not be admissible in evidence against Settlers in any judicial or administrative proceeding other than in proceedings to implement or enforce this Order or a judgment relating to it.

II. STATEMENT OF PURPOSE

By entering into this Consent Order, the mutual objectives of the EPA and the de minimis Settlers are:

A. to reach agreement between EPA and the de minimis Settlers which allows Settlers to make a cash payment toward response costs that the EPA has incurred or may incur at or in connection with the Site, including claims for natural resource damages under the trusteeship of the Department of Interior ("DOI") in exchange for a covenant not to sue as is provided in Section XI of this Order thereby avoiding difficult, prolonged

and complicated litigation among EPA, the de minimis Settlers and other potentially responsible parties;

B. to simplify the remaining enforcement activities concerning the Site by eliminating a party from further involvement in the case;

C. to reimburse the Hazardous Substance Superfund for a portion of the response costs incurred or to be incurred in connection with the Site without waiving EPA's assertion of joint and several liability against parties other than the Settlers.

III. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon EPA, DOI, and Settlers and their successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the party he or she represents. Any change in ownership, corporate or other legal status of Settlers, including, but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settlers under this Consent Order.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Order, including the appendices attached hereto,

the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

B. "Commonwealth" or "State" shall mean the Commonwealth of Pennsylvania.

C. "Consent Order" or "Order" shall mean this Administrative Order by Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

D. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Order, 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 any successor departments or agencies of the United States.

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

G. "Future Response Costs" shall mean any further response costs, including but not limited to direct and indirect costs, including recoverable costs of oversight of removal or

remedial actions, that may be incurred by EPA at the Site and which are not included on the cost summary attached hereto as Appendix C.

H. "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, as set forth at 55 Fed. Reg. 8,666 (Mar. 8, 1990), and codified at 40 C.F.R. Part 300, including any amendments thereto.

I. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral or an upper case letter.

J. "Past Response Costs" shall mean all response costs, including but not limited to, direct and indirect costs that EPA has incurred and paid and which are reflected in the cost summary report attached hereto as Appendix C.

K. "Record of Decision" or "ROD" shall mean the EPA Record of Decision, not yet issued, relating to the Site.

L. "Remedial Action" shall mean those activities, except for Operation and Maintenance, which EPA will undertake, or which one or a group of potentially responsible parties will undertake in cleaning up the Site, and which will be set forth in the upcoming ROD(s).

M. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

N. "Settlers" or "de minimis Settlers" shall mean

Theodore Sall, Inc., Scullin Steel Co., and Diversified Industries, Inc. and their officers, directors, employees and agents, to the extent that the liability of said individuals is derived from the liability of the Settlers for the same cause of action, their successors and assigns.

O. "Site" shall mean the Jack's Creek/Sitkin Smelting Superfund Site, including areas defined in 40 C.F.R. § 300.400(e), encompassing 105 acres, located approximately 1/2 mile west of Maitland, Mifflin County, Pennsylvania and more particularly identified on the map attached as Appendix A.

P. "Total Response Costs" shall mean the sum of the Past and Future Response Costs incurred and to be incurred at the Site.

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

R. "Final Volumetric Ranking Summary" (or "VRS") shall mean the list prepared by EPA for the Site of all parties' volumetric share including cost share and premium, attached as Appendix B.

V. EPA'S STATEMENT OF FACTS

5.1 The Jack's Creek Site is a 105-acre metals reclamation facility located approximately 1/2 mile west of Maitland, Mifflin County, Pennsylvania. The Site is located on the 100-year floodplain of Jack's Creek and is bordered by Jack's Creek on the north and Maitland Road on the south. An adjacent plant lies

northwest of the Site and a home and a church are located to the east. The Site is more particularly identified on the map attached as Appendix A.

5.2 The Site operated as a nonferrous metal smelting and precious metal reclamation facility from 1958 until 1977. A portion of the Site is still used for a metal scrap yard operation.

5.3 Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed the Site for listing on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, in June 1988 by publication in the Federal Register. Final listing was in October 1989.

5.4 On August 28, 1990, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the National Contingency Plan ("NCP").

5.5 The final FS, submitted in November 1993, identified the following types of contamination: inorganic contamination, pesticides, dioxins, PCB contamination, and semi-volatile contamination.

5.6 EPA has not yet issued a proposed plan for remedial action pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, upon which the Record of Decision will be based.

5.7 In performing the required response actions at the

Site, EPA has incurred and will continue to incur response costs at or in connection with the Site. As of July 26, 1994, EPA has incurred \$5,376,424.45 in Past Response Costs, excluding prejudgment interest, which still remains unreimbursed. EPA will incur Future Response Costs at the Site. EPA anticipates approximately \$38 million will be spent in the future on Site remediation.

5.8 Scullin Steel Co., which is the successor to Eastern Diversified Metals Corp., is a wholly-owned subsidiary of Diversified Industries, Inc. Theodore Sall, Inc, is a wholly-owned subsidiary of Diversified Industries, Inc. Diversified Industries, Inc. is currently in Chapter 11 bankruptcy proceedings before the United States Bankruptcy Court, Eastern District of Missouri, Eastern Division (Case No. 93-41173-293) ("Bankruptcy Court").

5.9 EPA has reviewed records describing the transactions of the potentially responsible parties, including Settlers', in relation to the Site. These records include information describing the amount and nature of materials contributed to the Site. Based upon that review, EPA has determined that Eastern Diversified Metals and Theodore Sall, Inc. arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of a hazardous substance owned or possessed by it, at the Site.

5.10 Information currently known to EPA indicates that

Eastern Diversified Metals (Scullin Steel Co.) contributed to the Site approximately 154,000 pounds of scrap materials which contained hazardous substances, and that the toxic or other hazardous effects of the hazardous substances contributed by Eastern Diversified Metals to the Site are not significantly more toxic than the other hazardous substances at the Site.

Information currently known to EPA indicates that Theodore Sall, Inc. contributed to the Site approximately 37,314 pounds of scrap materials which contained hazardous substances, and that the toxic or other hazardous effects of the hazardous substances contributed by Theodore Sall, Inc. to the Site are not significantly more toxic than the other hazardous substances at the Site. Attached hereto and incorporated by reference is the Final Volumetric Ranking Summary ("VRS") which is listed as Appendix B and lists the estimated volume of scrap materials containing the hazardous substances contributed to the Site by other Potentially Responsible Parties, as well as the total estimated volume of scrap materials containing hazardous substances received and processed at the Site. The VRS reflects, for those parties which EPA deemed eligible for a de minimis settlement (those parties who contributed between 10,000 and 1,000,000 pounds of materials containing hazardous substances), allocated Site cash-out amounts, or Grand Total, comprised of payments to be made to both EPA and DOI. The VRS shows Eastern Diversified Metal's (Scullin Steel Co.) allocated Site payments

to both EPA and DOI totalling \$48,913.58. The VRS shows Theodore Sall, Inc.'s allocated Site payments to both EPA and DOI totalling \$11,851.69. However, based on the representations and information provided to EPA by Settlers and Settlers' certification regarding their financial condition provided in Section X of this Order, EPA finds that Diversified Industries, Inc., Scullin Steel Co., and Theodore Sall, Inc. do not have the ability to pay these amounts.

5.11 Payment required to be made by Settlers pursuant to this Consent Order is a minor portion of the Total Response Costs at the Site. Total Response Costs include both past and projected future costs and are estimated to be approximately \$43,376,424.45.

5.12 EPA has identified persons other than Settlers who owned or operated the Site, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by such persons.

VI. EPA'S DETERMINATIONS

Based upon EPA's Statement of Facts set forth above, and upon the administrative record for this Site, EPA has determined that:

6.1 The Jack's Creek/Sitkin Smelting Site is a "facility" as the term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6.2 Settlers are "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6.3 Settlers are potentially responsible parties within the meaning of § 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6.4 The materials sent to the Site include "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

6.5 The past, present or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

6.6 The Past Response Costs incurred and Future Response Costs to be incurred in connection with the Site are removal and remedial response costs within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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

6.8 As to Settlers, this Consent Order involves only a minor portion of the response costs at the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6.9 Settlers are eligible for a de minimis settlement pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), since both the amount and toxic or other hazardous effects of the hazardous substance(s) contributed to

the Site by Settlers is minimal in comparison to the other hazardous substances at the Site.

6.10 Settlers inability to pay the amounts reflected in the Volumetric Ranking Summary makes them eligible for a reduced settlement amount.

VII. ORDER

Based upon the foregoing Statement of Facts and Determinations by EPA, and in order to reach an expedited de minimis settlement in connection with the Jack's Creek Site, in consideration of, and in exchange for, the promises, mutual undertakings, and covenants set forth herein, and intending to be legally bound hereby, EPA and Settlers agree, that Settlers shall pay \$14,478.00. This payment does not reflect either the \$47,214.29 payment due by Eastern Diversified Metals (Scullin Steel Co.) to EPA or the \$11,439.96 due by Theodore Sall, Inc. to EPA, as reflected in the Volumetric Ranking Summary (Appendix B), but rather reflects a reduced amount based on Settlers' inability to pay the entire amount as supported by the documentation provided by Settlers.

VII.A. NATURAL RESOURCES DAMAGES

In order to resolve its potential liability to DOI for injury to, destruction of, or loss of natural resources and the cost of assessing such injury, destruction or loss, Settlers will pay DOI \$522.00. This payment does not reflect either the \$1,699.29 payment due by Eastern Diversified Metals (Scullin

Steel Co.) to DOI or the \$411.73 due by Theodore Sall, Inc. to DOI as reflected in the Volumetric Ranking Summary (Appendix B), but rather reflects a reduced amount based on Settlers' inability to pay the entire amount as supported by the documentation provided by Settlers.

VIII. PAYMENT BY DE MINIMIS SETTLORS

8.1 Within one hundred and eighty (180) calendar days of the effective date of this Consent Order, Settlers shall pay a total of \$15,000.00. Settlers, collectively, shall remit a cashier's or certified check made payable to the "EPA-Hazardous Substance Superfund". Interest shall begin to accrue on the unpaid balance from one calendar day following the date payment is due. The check should specifically identify the Jack's Creek/Sitkin Smelting Site Special Account, the EPA Region, the CERCLA Site/Spill ID Number 032W, and the docket number of this Order and be forwarded to:

United States Environmental Protection Agency,
Region III
Attention: Superfund Accounting, P.O. Box 360515,
Pittsburgh, PA 15251-6515.

The payment received by EPA pursuant to this Consent Order for amounts due to it shall be retained by EPA and shall be applied first towards reimbursing the Hazardous Substance Superfund for Past Response Costs incurred at or in connection with the Site. Costs incurred first shall be reimbursed first.

* The payment received by EPA pursuant to this Consent

for amounts due to DOI shall be transferred by EPA from the Jack's Creek/Sitkin Smelting Special Account to the Department of the Interior.

8.2 When sending the cashier or certified check referred to in paragraph 8.1 above, Settlers shall also send a copy of their check along with the transmittal letter(s) to:

EPA Regional Docket Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

and

Bowen Hosford (3HW11)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

8.3 Amounts due and owing pursuant to the terms of this Consent Order but not paid in accordance with the terms of this Consent Order shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

IX. CIVIL PENALTIES

In addition to any other remedies or sanctions available to EPA, if Settlers fail or refuse to comply with any term or condition of this Consent Order, Settlers shall be liable for up to \$25,0000 in penalties per day for each failure or refusal to comply pursuant to CERCLA § 122(1), 42 U.S.C. § 122(1).

X. CERTIFICATION OF DE MINIMIS SETTLORS

Settlors certify that, to the best of their knowledge and belief, they have conducted a good faith search for documents concerning the Site and have fully and accurately disclosed to EPA all materially significant information currently in their possession, or in the possession of their officers, directors, employees, contractors or agents, which relates in any way to the generation, treatment, transportation or disposal of hazardous substances at, or in connection with the Site. Diversified Industries, Inc. certifies that, to the best of its knowledge and belief, the aggregate amount of scrap materials which contained hazardous substances sent to the Site by its subsidiaries (including its subsidiary Diversified Metals, which is not a party to this settlement) does not exceed 1,000,000 pounds.

In addition, Settlers certify that documents submitted to EPA from Diversified Industries, Inc.'s bankruptcy proceedings fairly and accurately reflect Settlers' financial condition, that no other documents exist that would give an accurately different picture of Settlers' financial condition, and that Settlers' financial condition has not significantly changed since the submission of the documents. Furthermore, Settlers certify that the payment called for in this Order has been approved by the Bankruptcy Court and that no further approval from the Bankruptcy Court is necessary.

If this certification is subsequently determined to be false

or materially inaccurate, Settlers shall forfeit all payments made pursuant to Section VII and VII.A. of this Consent Order and the Covenant Not to Sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from such Settlers' false or materially inaccurate certification.

XI. COVENANTS NOT TO SUE BY EPA AND DOI

11.1 Subject only to the rights reserved in Section XII (Reservation of Rights) of this Consent Order and upon receipt of payment from Settlers of the amount specified in Sections VII of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Settlers for civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), or for injunctive relief pursuant to Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, with regard to the Site. Subject only to the rights reserved in Section XII (Reservation of Rights) of this Consent Order and upon receipt of payment from Settlers of the amount specified in Sections VII.A of this Consent Order, DOI covenants not to sue or take any other civil or administrative action against Settlers for civil liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury,

destruction, or loss resulting from such a release pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), with regard to the Site.

11.2 EPA's and DOI's Covenant Not to Sue is conditioned upon the complete and satisfactory performance by Settlers of their obligations under this Consent Order. These covenants not to sue extend only to Settlers and do not extend to any other person.

XII. RESERVATION OF RIGHTS

12.1 The EPA and DOI expressly reserve, and nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for, any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which EPA or DOI may have against Settlers for:

- (1) Any liability as a result of failure to make the payments required by Section VII and VII.A, or otherwise comply with the terms of this Consent Order;
- (2) criminal liability;
- (3) any liability for any claim or cause of action not expressly included within Section XI, above; and
- (4) any liability for any claim or cause of action against any subsidiary of Diversified Industries, Inc., other than Scullin Steel Company and Theodore Sall, Inc.

12.2 Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of

the EPA and DOI, to seek or obtain further relief from Settlers, and the covenant not to sue set forth above and the contribution protection provided below will become null and void as to Settlers, if:

(1) Settlers contributed greater than 1,000,000 lbs. of the materials containing hazardous substances at the Site or contributed hazardous substances which contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site; and/or

(2) Settlers' certification in Section X of this Order is false or materially inaccurate.

12.3 Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

XIII. COVENANTS BY DE MINIMIS SETTLORS

Settlers hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, its contractors, employees, and authorized representatives, with respect to the Site or this Consent Order, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections

106(b)(2), 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, related to the Past Response Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Order shall be deemed to constitute 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).

XIV. CONTRIBUTION PROTECTION

14.1 Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order. Nothing in this Order affects or limits any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

14.2 EPA and DOI agree that Settlers by entering into and complying with the terms of this Consent Order, will have resolved their liability for matters addressed in this Consent Order and are entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 113(f)(2) and 9622(g)(5) and

therefore, shall not be liable for claims for contribution barred by those sections.

14.3 In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, attorneys shall not assert, and may not maintain, any defense or c...ed upon the principles of waiver, res iudicata, col... 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 not to sue set forth in Section XI (Covenants Not to Sue by EPA).

IV. APPENDICES

The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is the map of the Site.

"Appendix B" is the Volumetric Ranking Summary.

"Appendix C" is the Past Response Costs summary report.

XVI. OPPORTUNITY FOR PUBLIC COMMENT

This Administrative Order By Consent shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw its

consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

In accordance with CERCLA Section 122(g)(4), 42 U.S.C. § 9622(g)(4), this Consent Order shall not become effective without prior written approval of the Assistant Attorney General for the Environment and Natural Resources Division.

XVIII. COSTS AND FEES

Settlers shall bear their own costs and attorney's fees regarding this action.

XIX. EFFECTIVE DATE

The effective date of this Consent Order shall be the date upon which EPA issues written notice to Settlers that the Assistant Attorney General has approved the Consent Order in accordance with Section XVII, above, and that the public comment period pursuant to Section XVI of this Consent Order has closed and that comments received, if any, do not require modification of, or EPA withdrawal from this Consent Order.

THE UNDERSIGNED PARTY enters into this De Minimis Consent Order relating to the Jack's Creek/Sitkin Smelting Site (U. S. EPA Docket No. III--95-02-DC).

FOR Diversified Industries, Inc

Date: 1/25/95

Signature: Richard Beldner

Name--Please Type: RICHARD BELDNER

Title: VICE PRESIDENT

Address: 1001 CRAIG ROAD

SUITE 355

ST. LOUIS, MO 63146

THE UNDERSIGNED PARTY enters into this De Minimis Consent Order relating to the Jack's Creek/Sitkin Smelting Site (U. S. EPA Docket No. III-95-02-DC).

FOR Scullin Steel Co.

Date: 1/25/95

Signature: Richard Beldner

Name--Please Type: RICHARD BELDNER

Title: VICE PRESIDENT

Address: 1001 CRAIG ROAD

SUITE 355

ST. LOUIS, MO 63146

THE UNDERSIGNED PARTY enters into this De Minimis Consent Order relating to the Jack's Creek/Sitkin Smelting Site (U. S. EPA Docket No. III-95-02-DC).

FOR Theodore Ball, Inc.

Date: 1/25/95

Signature: Richard Beldner

Name--Please Type: RICHARD BELDNER

Title: VICE PRESIDENT

Address: 1001 CRAIG ROAD

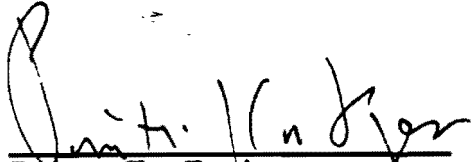
SUITE 355

ST. LOUIS, MO 63146

Jack's Creek/Satin Smelting Site
Administrative Order By Consent
U.S. EPA Docket No. 88-02-02

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY:



**Peter H. Kostmayer
Regional Administrator
Region III
U.S. Environmental Protection
Agency**

Date: MAR 3 1995