

**UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS  
TOPEKA DIVISION**

UNITED STATES OF AMERICA and the  
STATE OF KANSAS, by and through the  
KANSAS DEPARTMENT OF HEALTH AND  
ENVIRONMENT,

Plaintiffs,

V.

BLUE TEE CORP.

Defendant.

NO. 11-4004-EFM

## CONSENT DECREE

This Consent Decree (“Consent Decree”) is made and entered into by and among the United States of America (“the United States”), on behalf of itself and the Department of the Interior (“DOI”) in its capacity as trustee for federal Natural Resources, and the State of Kansas by and through the Kansas Department of Health and Environment (“KDHE”) and John W. Mitchell Secretary of KDHE in their capacity as trustee for state Natural Resources in Kansas (collectively, the “Plaintiffs”), and Blue Tee Corp. (“Blue Tee”).

## **INTRODUCTION**

A. The United States, on behalf of DOI in its capacity as natural resource trustee for federal Natural Resources, and the State of Kansas, KDHE and the Secretary of KDHE in their capacity as trustee for state Natural Resources in Kansas, concurrently with the filing of this Consent Decree, have joined in filing a Complaint in this action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606, et. seq. and K.S.A. 65-3430, 65-171, and K.S.A. 65-161, seeking the recovery of damages, including damage assessment costs, for injury to, destruction of, and loss of Natural Resources resulting from releases of hazardous substances into the environment.

B. The Complaint alleges that Settling Defendant is the successor in interest to or otherwise legally responsible for the acts and omissions of various entities that owned and operated three ore smelters and related operations located in Caney, Dearing and Neodesha, Kansas (hereinafter collectively the “Blue Tee Smelters”).

C. Investigations have concluded that hazardous substances including heavy metals, have been released at and from the Blue Tee Smelters in such amounts as to cause injury to natural resources under the Trusteeship of the Plaintiffs.

D. The Settling Defendant does not admit any liability arising out of the occurrence alleged in the Complaint, including the alleged release of hazardous substances and Natural Resource Damages.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED AND DECREED:

#### **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 1345, and 1367, Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607, 9613(b) and K.S.A. 65-3430, 65-171, and K.S.A. 65-161 *et seq.*, and the Court has personal jurisdiction over Settling Defendant. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), (c) and § 1395(a) and Section 113(b) of CERCLA. For purposes of this Consent Decree only, Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

## **II. PARTIES BOUND**

2. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs and their departments, agencies and instrumentalities, and upon Settling Defendant and its respective successors and assigns. Any change in ownership or corporate status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

## **III. DEFINITIONS**

3. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601, and in Section 11.14 of the Natural Resource Damages ("NRD") regulations, 43 CFR § 11.14. In addition, whenever the following terms are used in this Decree, they shall have the following meanings:

a. "Blue Tee Smelters" shall mean the ore smelters owned and/or operated by the American Lead Zinc & Smelting Company in Neodesha, Caney, and Dearing, Kansas and as depicted in Appendix A.

b. "Damage Assessment Costs" shall mean all costs associated with the planning, design, implementation, and oversight of the Plaintiffs' damage assessment process. The damage assessment process addresses the extent and quantification of the injury to, destruction of, or loss of Natural Resources and the services provided by those resources resulting from the release of hazardous substances, and the planning of restoration or replacement of such Natural Resources and the services provided by those resources, or the planning of the acquisition of equivalent resources or services, and any

other costs necessary to carry out the Plaintiffs' responsibilities with respect to those Natural Resource injuries resulting directly or indirectly from the releases of hazardous substances, including all related enforcement costs.

c. "Date of Lodging" shall mean the date on which the Plaintiffs give the Court notice of the Consent Decree, subject to the public comment period referred to in Section XIII.

d. "Day" means a calendar day unless expressly stated to be a "Working Day." "Working Day" shall mean a day other than a Saturday, Sunday or a Federal holiday. 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. "Defendant", "Settling Defendant" or "Blue Tee" shall mean Blue Tee Corp.

f. "Effective Date" shall mean the date that the District Court signs the Consent Decree and enters it as a judicial order.

g. "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.

h. "KDHE" shall mean the Kansas Department of Health and Environment.

i. “Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Kansas.

j. “Natural Resource Damages” shall mean any past and future damages recoverable by the United States or the State on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of the services or functions of Natural Resources resulting from the Blue Tee Smelters Releases, including, but not limited to (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable requirements of the State of Kansas.

k. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

l. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

m. “Parties” shall mean the Plaintiffs and Blue Tee.

n. “Plaintiffs” shall mean the United States on behalf of DOI, and the State of Kansas, by and through KDHE and the Secretary of KDHE.

o. “Specified Native Prairie” shall mean the approximately 80 acres of Kansas native prairie located at W2 of the NE/4 of Section 33, Township 21 South, Range 19 East Anderson County, Kansas and as more particularly described in Appendix B.

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

q. “Smelter Releases” shall mean the release of hazardous substances including but not limited to lead, zinc, cadmium and arsenic, that have occurred at and from the Blue Tee Smelters into area soils and sediments.

r. “State” shall mean the State of Kansas, including its departments, agencies, and instrumentalities.

s. “Trustees” shall mean the Natural Resource Damages Trustees who are the Secretary of the Kansas Department of Health and Environment and the United States Department of the Interior, Fish and Wildlife Service.

t. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

#### **IV. STATEMENT OF PURPOSE**

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide herein for the payment by Settling Defendant of the costs of acquisition and management of property equivalent to the Natural Resources allegedly injured, destroyed, or lost as a result of the Smelter Releases; (ii) to provide for the conveyance of the Specified Native Prairie as provided in Section VI, representing some

equivalent Natural Resources and paid for by Settling Defendant, to The Nature Conservancy; (iii) to provide for the grant of a conservation easement to the Plaintiffs for the property provided for in Section VI; (iv) to provide for payment in advance by Settling Defendant to KDHE for the benefit of The Nature Conservancy in accordance with a final restoration plan developed by KDHE and the Department of the Interior, Fish and Wildlife Service of all costs of future Natural Resource Damages relating to the Smelter Releases, including but not limited to the long-term management of such Natural Resources; (v) to provide for reimbursement by Settling Defendant of past Natural Resource Damage Assessment Costs incurred by the United States and the State of Kansas; (vi) to resolve Settling Defendant's liability for Natural Resource Damages as provided herein; and (vii) to avoid potentially costly and time-consuming litigation.

## **V. PAYMENTS**

5. Settling Defendant shall pay a total of \$180,298.27 plus Interest as indicated below to Plaintiffs in three separate payments as follows:

a. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall make a payment of \$88,989.27 plus Interest calculated from the Date of Lodging to the United States to reimburse the DOI for past costs associated with assessing federal Natural Resource Damages arising from Smelter Releases. Settling Defendant shall make this payment by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-06280/4, NRDAR Account No. 14X5198, and "United States Natural Resource Damages Past Costs re: Blue Tee Kansas Smelters."



Payment shall be made in accordance with written instruction provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office of the District of Kansas after the Date of Lodging.

b. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall make a further payment of \$58,041 plus Interest calculated from the Date of Lodging to the United States and KDHE for Natural Resource Damages. The \$58,041 shall be used jointly by DOI and KDHE for the assessment, planning, restoration, acquisition and/or rehabilitation of the equivalent of the injured Natural Resources resulting from the Smelter Releases and long-term management of such Natural Resources in accordance a final restoration plan to be developed by the KDHE and DOI. This amount shall be managed as part and held in a distinct account within DOI's NRDAR Fund (NRDAR Account No. 14X5198) designated as "Blue Tee Kansas Smelters." Settling Defendant shall make this payment by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-06280/4, NRDAR Account No. 14X5198, and "United States Natural Resource Damages re: Blue Tee Kansas Smelters." Payment shall be made in accordance with written instruction provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office of the District of Kansas after the Date of Lodging.

c. Within thirty (30) days of the Effective Date, Settling Defendant shall pay at total of \$33,268 to KDHE. Of this amount, (1) \$16,000 shall be for KDHE payment to The Nature Conservancy for operation and maintenance of the Restoration

Plan developed by Trustees for the Specified Native Prairie to be transferred thereto pursuant to Section VI below and (2) \$17,268 shall be to reimburse KDHE for past costs. Settling Defendant shall make this payment by certified or cashier's check payable to the "Kansas Department of Health and the Environment" and delivered to:

Bureau of Environmental Field Services  
Attn: Leo Henning  
Charles Curtis Building  
1000 SW Jackson, Suite 430  
Topeka, KS 66612-1367

## **VI. PROPERTY ACQUISITION**

6. Within ninety (90) days of the Effective Date, Settling Defendant shall cause the current owner of the Specified Native Prairie to convey fee simple title to the Specified Native Prairie by warranty deed ("Deed") to The Nature Conservancy without payment from The Nature Conservancy free and clear of all liens and encumbrances except the Exceptions from Coverage as set forth in Schedule B of the Commitment for Title Insurance (hereinafter "Exceptions from Coverage"), a copy of which is attached as Appendix C hereto. The Plaintiffs acknowledge that Settling Defendant has not made, nor does Settling Defendant hereby make, any representations or warranties as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Specified Native Prairie except as expressly set forth in this Section.

7. Defendant shall pay the current owner of the Specified Native Prairie the purchase price and related costs necessary to effect conveyance of the Specified Native Prairie to The Nature Conservancy as described in this Section, and neither Plaintiffs nor

The Nature Conservancy shall have any liability for payment of said purchase price or related costs. Settling Defendant shall pay for an Owner's ALTA Title Insurance Policy ("Policy") insuring fee simple title to the Specified Native Prairie in The Nature Conservancy in the amount of the purchase price as of the time and date of recording of the Deed, subject only to the "Exceptions from Coverage."

8. At the same time as the transfer of the Specified Native Prairie, Settling Defendant shall record or cause to be recorded a conservation easement ("Easement") on the Specified Native Prairie with the Register of Deeds of Anderson County, Kansas, in accordance with the Uniform Conservation Easement Act, K.S.A. 58-3810 *et seq.* that is enforceable under the laws of the State of Kansas by KDHE, and that substantially conforms with Appendix D.

9. Prior to the transfer of the Specified Native Prairie, Settling Defendant shall ensure that all real estate and other taxes applicable to Specified Native Prairie up to the date of transfer are paid in full and that no liens or encumbrances exist on Specified Native Prairie other than the Exceptions from Coverage. Settling Defendant shall direct the title insurance company to provide the Policy to The Nature Conservancy, with a copy to the Plaintiffs, and a certified copy of the original recorded Easement showing the clerk's recording stamps, as soon as each are available (which Settling Defendant anticipates being no more than fifteen days after the transfer of title to the Specified Native Prairie to The Nature Conservancy).

10. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their authorities and rights to obtain access and information under CERCLA and any other applicable statute or regulations.

## **VII. STIPULATED PENALTIES**

11. If any payment required by Sections V (Payments) is not made by the date specified in that Section, Settling Defendant shall be liable for Interest and for the following stipulated penalties for each day such payment is late:

<u>Days Late</u>	<u>Penalty</u>
1 – 30	\$1,000/day
31 – 60	\$2,000/day
Beyond 60 days	\$3,000/day

12. If Defendant does not perform the obligations set forth in Section VI above, including causing the conveyance of the Specified Native Prairie and placement of a conservation easement thereon, within ninety (90) days of the Effective Date, Settling Defendant shall be liable for a Natural Resource Damages in the amount of \$50,000 to be payable by the method specified in Paragraph 5.b. unless Settling Defendant demonstrates that it undertook its best efforts to comply the requirements of Section VI but was nonetheless unable to do so for reasons beyond its control.

13. Penalties shall accrue as provided in this Section regardless of whether Plaintiffs have notified Settling Defendant of the payment delinquency or made a demand for payment but Penalties are not required to be paid until thirty (30) days following receipt by Settling Defendant of a written demand by any of the Plaintiffs for payment of such stipulated penalties. Any such written notice and demand shall identify

to which Plaintiff payment shall be made, with a copy to all parties to this Consent Decree.

14. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

15. All stipulated penalties owed by Settling Defendant with respect to late payment of past costs to the United States shall be paid to the United States Department of Justice by the method specified below. All stipulated penalties owed by Settling Defendant with respect to late payment of past costs to the State shall be paid to the State by the method specified below. All other stipulated penalties owed by Settling Defendant shall be paid to the DOI's NRDAR Fund as specified in Paragraph 5a. All payments of stipulated penalties shall be made as follows:

a. To the State:

By certified or cashier's check payable to the "Kansas Department of Health and Environment" and delivered to:

Bureau of Environmental Field Services  
Attn: Leo Henning  
Charles Curtis Building  
1000 SW Jackson, Suite 430  
Topeka, Kansas 66612-1367

b. To the U.S. Department of Justice:

By certified or cashier's check payable to the "U.S. Department of Justice" and delivered to:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
re: DOJ # 90-11-2-06280/4, Blue Tee Kansas Smelters

16. In addition to the stipulated penalties and Interest on late payments as provided in this Section, if the payments required by Section V or VI of this Consent Decree or the stipulated penalties provided for by this Section are not made, Settling Defendant shall be liable for Interest on such penalties and any costs and attorneys fees incurred by Plaintiffs in collecting any amounts owing.

17. Payments due under this Section shall be in addition to any other remedies or sanctions that may be available to the Plaintiffs on account of Settling Defendant's failure to comply with the terms of this Consent Decree.

### **VIII. EFFECT OF SETTLEMENT**

18. Except as specifically provided in Paragraphs 19-20 of this Decree, the Plaintiffs covenant not to sue or to take civil or administrative action against Settling Defendant for Natural Resource Damages resulting from the Smelter Releases at the Blue Tee Smelters under CERCLA, 42 U.S.C. § 9607, or other applicable federal, State or common law. This covenant not to sue takes effect upon the Effective Date and is conditioned upon satisfactory performance by Settling Defendant of its obligations under this Consent Decree including the transfer of the Specified Native Prairie and placement of a conservation easement thereon as required by Section VI. This Covenant Not to Sue extends only to Settling Defendant and does not extend to any other person.

### **IX. RESERVATION OF RIGHTS**

19. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve their rights to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages based on injury to,

destruction of or loss of Natural Resources resulting from conditions not known to the Trustees at the Date of Lodging of this Consent Decree or if other information received by the Trustees after the Date of Lodging of this Consent Decree indicates that there is injury to, destruction of, or loss of Natural Resources of a type unknown or of a magnitude significantly greater than was known at the Date of Lodging of this Consent Decree for which Settling Defendant is legally responsible. Except as provided in Paragraph 24 below, Settling Defendant preserves all of its defenses in such proceedings.

20. Notwithstanding any other provision of this Consent Decree, the covenants not to sue in Paragraph 18 shall apply only to matters addressed in that paragraph and Plaintiffs reserve all other claims including but not limited to:

- a. claims based on a failure by Settling Defendant to satisfy any requirement imposed upon it by this Consent Decree;
- b. claims for criminal liability;
- c. claims for recovery of the costs of removal or remedial action, injunctive relief or administrative order enforcement under any provision of federal or state law including but not limited to: Section 311 of the Clean Water Act, 33 U.S.C. § 1321 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, including claims under Section 107(a)(4)(D) of CERCLA, 42 U.S.C. § 9607 (a)(4)(D), for the costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i); and
- d. claims for natural resource damages not resulting from the Smelter Releases at the Blue Tee Smelters.

## **X. COVENANT OF SETTling DEFENDANT**

21. Settling Defendant hereby covenants not to sue or to assert any judicial, administrative or legislative claims or causes of action against the United States or the State, or their contractors or employees, with respect to Natural Resource Damages resulting from the Smelter Releases or the payments required by this Consent Decree, including, but not limited to:

a. 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), 107, 111, 112, 113 or any other provision of law;

b. Any claims against the United States, including any department, agency or instrumentality of the United States or the state of Kansas, under CERCLA Sections 107 or 113, relating to Natural Resources Damages resulting from the Smelter Releases;

c. Any claims against the State of Kansas before the Kansas joint committee on special claims relating to Natural Resource Damages resulting from the Smelter Releases.

## **XI. CONTRIBUTION PROTECTION**

22. The Parties agree, and by entering this Consent Decree, this Court hereby finds, that Settling Defendant is entitled as of the Effective Date, to protection from contribution actions or claims provided by Section 113 (f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law for “matters addressed” by this Consent Decree.



The “matters addressed” in this Consent Decree are all Natural Resource Damages resulting from the Smelter Releases at the Blue Tee Smelters incurred by the United States, the State of Kansas or Settling Defendant.

23. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. This Consent Decree does not affect, waive or in any way impair any agreements that Settling Defendant may have with any third party. Except as provided by Paragraphs 18 & 21, each of the Parties, including Settling Defendant, expressly reserve any and all rights (including, but not limited to, any right to contribution) defenses, claims, demands and causes of action that it may have against any person not a signatory hereto.

24. In any subsequent administrative or judicial proceeding initiated by the United States pursuant to Section IX (Reservation of Rights) for injunctive relief, recovery of response costs, penalties, natural resource damages or other relief relating to the Smelter Releases, 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 or the State 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 by the United States and the State set forth in Section VIII of this Consent Decree.

25. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by them for matters related to Natural Resource Damages relating to the Smelter Releases or this Consent Decree, they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim, unless the giving of such advance notice would subject such suit or claim to a defense that it is barred by the statute of limitations or other time-related defense.

26. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States and the KDHE within ten (10) days of service of the complaint. In addition, Settling Defendant shall notify the United States and the KDHE within ten (10) days of receipt of any Motion for Summary Judgment with respect to such a claim, and within ten (10) days of receipt of any order from a court setting such a case for trial.

27. Nothing in this 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).

## **XII. CONSENT DECREE MODIFICATIONS**

28. Any material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree, in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree in writing.

Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

### **XIII. LODGING AND PUBLIC COMMENT**

29. The Parties acknowledge that this Consent Decree will be subject to a public comment period of not less than thirty (30) days. Consequently, entry of the Decree after lodging shall be deferred to allow the time necessary for the Plaintiffs to obtain and evaluate public comments on this Consent Decree. The Plaintiffs reserve the right to withdraw their consent to this Consent Decree if comments received disclose facts or considerations that show that this Consent Decree is inappropriate, improper, inadequate, or otherwise not in the public interest. Settling Defendant consents to the entry of this Consent Decree by the Court without further notice. Settling Defendant further agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless either the United States or the State of Kansas has notified the Defendant in writing that they no longer support entry of the Consent Decree.

### **XIV. NOTICE**

30. Any notice required hereunder shall be in writing and shall be delivered to the following:

**As to the United States:**

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

Restoration Fund Manager  
Natural Resource Damage Assessment and Restoration Program  
U.S. Department of the Interior  
1849 C Street, NW, MS - 4449  
Washington, D.C. 20240  
Re: Blue Tee Kansas Smelters

Field Supervisor  
Manhattan Ecological Services Field Office  
U.S. Fish and Wildlife Service  
2609 Anderson Ave.  
Manhattan, KS 66502

**As to the Kansas Department of Health and Environment:**

Leo Henning  
Bureau of Environmental Field Services  
Charles Curtis Building  
1000 SW Jackson, Suite 430  
Topeka, Kansas 66612-1367

**As to the Settling Defendant:**

Thomas J. Grever  
Shook, Hardy & Bacon LLP  
2555 Grand Blvd  
Kansas City, MO 64108

31. Each Party to this Consent Decree may change the person(s) it has designated to receive notice for that party, or the addresses for such notice, by serving a written notice of such change on each of the other Parties to this Consent Decree.

**XV. SIGNATORIES/SERVICE**

32. Each undersigned representative of each Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to legally execute this Consent Decree, and to bind the party he or she represents to this Consent Decree.

33. This Consent Decree may be signed in counterparts and such counterpart signature pages shall be given full force and effect.

34. Settling Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree 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 Civil Procedure and other 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 this Court expressly declines to enter this Consent Decree.

#### **XVI. ENTIRE AGREEMENT**

35. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Plaintiffs on the one hand and Settling Defendant on the other hand with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written between the Plaintiffs and Settling Defendant. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

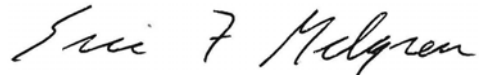
#### **XVII. JUDGMENT**

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and Settling

Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**IT IS SO ORDERED**

**DATED:** March 8, 2011

A handwritten signature in black ink, appearing to read "Eric F. Melgren". The signature is written in a cursive, flowing style.

**UNITED STATES DISTRICT JUDGE**

**DISTRICT OF KANSAS**

**FOR THE UNITED STATES OF AMERICA:**

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. Blue Tee Corp. subject to the public notice and comment requirements of Section XIII of this Consent Decree.

Dated: 3/3/2011

/s/ Ellen M. Mahan  
ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice

Dated: 3/3/2011

/s/ Elizabeth L. Loeb  
ELIZABETH L. LOEB  
Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-4180 fax  
(202) 616-8916 direct  
Elizabeth.Loeb@usdoj.gov

BARRY R. GRISSOM  
United States Attorney  
District of Kansas

/s/ Tanya Sue Wilson  
TANYA SUE WILSON  
Assistant United States Attorney  
Ks. S.Ct. No. 11116  
Federal Building, Suite 290  
444 S.E. Quincy Street  
Topeka, KS 66683-3592  
Telephone: (785) 295-2850  
Facsimile: (785) 295-2853  
E-mail: [Tanya.Wilson@usdoj.gov](mailto:Tanya.Wilson@usdoj.gov)



**FOR THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:**

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. Blue Tee Corp. subject to the public notice and comment requirements of Section XIII of this Consent Decree.

Dated: 3/3/2011

JOHN W. MITCHELL  
Acting Secretary  
Kansas Department of Health and  
Environment

/s/ Paul Gerard Marx  
PAUL GERARD MARX  
Special Assistant Attorney General  
Kansas Department of Health and Environment

**FOR SETTLING DEFENDANT BLUE TEE CORP.**

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. Blue Tee Corp.

Date 3/3/2011

/s/ Terrance Gileo Faye  
Terrance Gileo Faye  
Special Counsel  
1 N. Maple Avenue  
Greensburg, PA 15601 Title  
(724)837-0971  
Tfaye@comcast.net

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_