

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RECEIVED
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at o'clock M
CLERK OF COURTS
U. S. District Court, N.D.O.

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SHARON STEEL CORPORATION,)
)
Defendant.)

CIVIL ACTION NO. C87-7501
JUDGE JOHN M. MANOS

CONSENT DECREE

1. Plaintiff, United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed the complaint in this action on March 30, 1987, against Defendant, Sharon Steel Corporation ("Sharon Steel" or "Corporation"). This complaint states that Sharon Steel violated Section 301(a) of the Clean Water Act ("the Act"), 33 U.S.C. §1311(a). Plaintiff and Defendant have agreed that settlement is in the public interest and that entry of this Consent Decree without further litigation is an appropriate means of resolving this matter.

2. Defendant is a corporation engaged in the production of steel and related specialty steel products. The Corporation's Brainard Strapping Division operated a plant ("plant" or "facility") located in Warren, Trumbull County, Ohio. The plant has discharged pollutants to the Red Run Creek which is a tributary of the Mahoning River. At the present time, operations at the plant by the Defendant have been temporarily suspended.

3. On April 17, 1987, Sharon Steel filed a voluntary

90-5-14-2770

DEPARTMENT OF JUSTICE
FEB 12 1990

petition for reorganization pursuant to the Bankruptcy Code, Bankruptcy Case Number 87-00207E ("Bankruptcy Case"), in the United States Bankruptcy Court for the Western District of Pennsylvania.

4. Sharon Steel, as a debtor-in-possession, is entering into this Consent Decree in the ordinary course of its business to resolve its violations of the Act.

5. Section 301 of the Act, 33 U.S.C. §1311(a), provides that it is unlawful to discharge pollutants into the waters of the United States, except in conformance with the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit, properly issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.

6. An NPDES permit was issued by the Ohio Environmental Protection Agency (OEPA) to Sharon Steel effective August 31, 1987, with an expiration date of August 28, 1992, for its Warren, Ohio plant. This permit, OEPA Permit No. 3ID00059*AD, issued pursuant to Application No. OH0083852, governs discharges from the Warren plant to the tributary of Red Run Creek in Ohio. Prior to the issuance of the NPDES permit on August 31, 1987, Sharon Steel operated without a permit. The Permit establishes final effluent limitations, monitoring requirements, and other requirements.

7. In a Memorandum Opinion dated July 12, 1989, the Court held that Defendant Sharon Steel is liable for discharge of pollutants to navigable waters of the United States in violation

of the Act from March 30, 1982 until August 31, 1987. The Court also decided that Defendant Sharon Steel is liable for violations of the Act from October 1, 1987 until January 31, 1988, for discharges of pollutants to navigable waters of the United States in violation of the limits set forth in its NPDES permit, issued on August 31, 1987. Plaintiff has found these violations in fact continued past January 31, 1988, and continued until Defendant Sharon Steel shut down the operations of its Warren, Ohio, steel-making facility in July, 1989.

8. The Court being fully advised, upon the pleadings, after adjudication of partial summary judgment for Plaintiff in this matter, and upon consent of the parties, it is hereby ORDERED, AND DECREED as follows.

I. JURISDICTION AND VENUE

9. The Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. §§1331, 1345 and 1355; and under 33 U.S.C. §1319. The Complaint states a claim upon which the Court may grant relief. Venue is proper in this Court pursuant to 33 U.S.C. §1319(b) and 28 U.S.C. §§1319(b) and (c).

II. APPLICABILITY

10. This Consent Decree shall apply to and be binding upon the parties, including Sharon Steel as a reorganized debtor, and upon the successors and assigns of each party, as well as any officers, directors, agents, employees, and servants thereof. Sharon Steel shall provide a copy of this Consent Decree to each

contractor that it retains to perform work pursuant to this Consent Decree. The phrase "Sharon Steel" as used in any subsequent paragraph of this Decree means the Defendant Sharon Steel, including Sharon Steel as a reorganized debtor, or any successors-in-interest, or assigns. The phrase "Defendant Sharon Steel" or "Defendant" as used in any subsequent paragraph of this Decree means the Defendant Sharon Steel Corporation as named in the complaint filed in this action on March 30, 1987, and any reorganized debtor of the Corporation.

11. In the event that Defendant Sharon Steel proposes to sell, assign or transfer property or operations to anyone who may start-up operations at the plant subject to this Consent Decree, it shall, ten days before any such sale, assignment, transfer or start-up, simultaneously notify U.S. EPA, Region V and the Assistant Attorney General of the Land and Natural Resources Division of the United States Department of Justice of the sale, assignment, transfer, or start-up and include, among other things, the identity and business address of operator, successor-in-interest, or assign, and the fact that notice of this Consent Decree was given to the operator, successor-in-interest, or assign. Defendant agrees not to sell, transfer or assign Defendant's property or operations that are subject to this Decree to anyone who may start-up operations at the plant, unless the operator, successor-in-interest, or assign, agrees in writing to fulfill the obligations of this Consent Decree and submits a signed copy of the agreement in Attachment A to the

United States before commencing operations at the plant. Nothing in this Consent Decree or Attachment A shall prevent a bona fide purchaser from seeking to have the governmental parties modify the obligations which this Consent Decree imposes upon it.

III. PLANT OPERATIONS ENJOINED

12. Sharon Steel shall be enjoined from any steel-making operations at the Warren, Ohio, facility which generate process wastewaters which are discharged to navigable waters until treatment equipment has been installed, which equipment is sufficient to produce and maintain compliance with the Act. Further, thirty (30) days before commencing any steel-making operations that would generate such process wastewater discharges, Defendant Sharon Steel shall provide written notification to U.S. EPA and Ohio EPA that it has adequate treatment equipment installed and that it will fully operate this equipment. Sharon Steel shall be enjoined from discharging any process wastewaters to a publicly owned treatment works until treatment equipment has been installed, which equipment is sufficient to produce and maintain compliance with all applicable pretreatment standards and requirements of the Act.

IV. SALE TO A BONA FIDE PURCHASER

13. Notwithstanding any other provision of this Consent Decree, a bona fide purchaser (hereinafter, "purchaser") of the plant may resume operation of the plant prior to achievement of compliance with the final effluent limitations of the NPDES

permit, provided the purchaser complies with the following compliance schedule:

1. Submit final design engineering plans and specifications no later than 3 months after start-up;
2. Begin construction no later than 6 months after start-up;
3. Complete construction no later than 9 months after start-up;
4. Achieve compliance with the final effluent limitations in the applicable NPDES permit by no later than 12 months after start-up.

14. If the purchaser fails to comply with any of the first three milestones of the compliance schedule in paragraph 13, then the stipulated penalties as set forth in paragraph 28 shall apply and three months after the applicable milestone date has passed, the purchaser shall immediately cease all process wastewater discharges until such time as that milestone is achieved. This injunction on operations is not subject to any force majeure claim.

15. Commencing with the start-up of the plant, the purchaser shall provide quarterly progress reports on the compliance schedule to the U.S. EPA, signifying all schedule dates which have been met and projecting dates for accomplishing those steps which are not timely met. Failure to provide the quarterly reports shall be subject to a stipulated penalty of \$500 per day of violation pursuant to paragraphs 31 and 33. Reports shall be submitted as provided in paragraphs 24 and 25 of this Decree.

16. U.S. EPA may establish a schedule of interim effluent limitations which shall be incorporated by reference into this Consent Decree. Commencing 60 days after start-up of operations, the purchaser shall pay stipulated penalties for violations of the interim limits as follows:

Daily (concentration or loading) \$375 per day per
parameter

Monthly (concentration or loading) \$3,750 per month per
parameter

17. Notwithstanding the provisions of paragraph 19 of this decree, the purchaser need not submit the Best Management Practice Plan required under Section V until 13 months after start-up of operations at the plant.

18. Nothing in this Section of the Consent Decree shall prevent a purchaser from completing installation and construction of all necessary treatment equipment or doing whatever else is necessary to comply with the effluent limitations in the applicable NPDES permit prior to start-up of operations. If the purchaser elects this option, then the stipulated penalties in paragraph 30 shall apply beginning the fourth full month after start-up of operations.

V. BEST MANAGEMENT PRACTICES PLAN

19. Thirty (30) days after the start-up of the operations of its Warren, Ohio, facility, Sharon Steel shall submit to U.S. EPA and to the Ohio Environmental Protection Agency ("OEPA"), a Best Management Practices ("BMP") Plan for the

control of toxic pollutants which may be discharged from Sharon Steel's Warren facility. For the purposes of this section, toxic pollutant means any pollutant listed as toxic under Section 307(a)(1) of the Act and any pollutant listed as hazardous under Section 311 of the Act.

20. The BMP plan shall be consistent with 40 C.F.R. §§125.100 et seq. The Plan shall be developed in accordance with good engineering practices, and shall conform with the following requirements:

A. The Plan shall be documented in narrative form, and shall include any necessary plot, plans, drawings, or maps.

B. The Plan shall establish specific objectives for the control of toxic and hazardous wastes, including but not limited to the following elements:

i. Each facility component or system shall be examined for its potential for causing a release of toxic or hazardous pollutants to the waters of the United States due to equipment failure, improper operation, natural phenomena such as snowfall, storms, etc.

ii. Where experience indicates a reasonable potential for equipment failure (for example, tank overflow or leakage), or other conditions and circumstances which may result in toxic or hazardous pollutants reaching surface waters, the plan should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could

be discharged from the facility as a result of each condition or circumstance.

iii. Monitoring of internal wastewater streams and non-contact cooling water shall be included as necessary to isolate sources of toxic and hazardous pollutants.

C. The BMP Plan shall establish specific best management priorities for each component or system capable of causing a release of toxic or hazardous pollutants to the waters of the United States.

D. The Plan shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended. Management practices required under RCRA regulations shall be expressly incorporated into the BMP Plan.

E. The Plan shall address and include provisions for each of the following elements:

- i. Statement of Policy
- ii. Spill Control Committee
- iii. Material Inventory
- iv. Material Compatibility
- v. Employee Training
- vi. Reporting and Modification Procedures
- vii. Visual Inspections
- viii. Preventive Maintenance
- ix. Housekeeping
- x. Security

F. The Plan may reflect requirements of the Corporation's Spill Prevention Control and Countermeasure (SPCC) plan under Section 311 of the Act and 40 C.F.R. Part 112, and may incorporate any part of such plans into the BMP Plan by reference.

21. Sharon Steel shall immediately implement the BMP Plan upon notification of approval of the plan by U.S. EPA and OEPA. In the event U.S. EPA or OEPA does not approve the Corporation's BMP Plan in its entirety, Sharon Steel shall implement those portions of the Plan approved by U.S. EPA and OEPA, and shall submit a revised Plan for review to U.S. EPA and OEPA no later than thirty (30) days after notification by U.S. EPA and OEPA. Sharon Steel shall implement any revised plan immediately upon approval.

VI. REPORTING REQUIREMENTS

22. For the month following start-up of the operations of the Warren, Ohio facility, and monthly thereafter until this Consent Decree terminates, Sharon Steel shall submit to U.S. EPA, OEPA, and the U.S. Attorney no later than the twenty-eighth (28th) day of the following month, a copy of the required NPDES monthly Discharge Monitoring Report ("DMR").

23. Submission of any report required by this section in no way excuses any violation of this Consent Decree.

24. Reports required to be submitted to the U.S. EPA, OEPA, and the U.S. Attorney pursuant to Sections IV and VI of this Consent Decree shall be sent to the following addresses:

U.S. Environmental Protection Agency
Region V
Water Division (5WQC-TUB-8)
Compliance Section
230 South Dearborn Street
Chicago, Illinois 60604

United States Attorney
Northern District of Ohio
1404 East Ninth Street
Suite 500
Cleveland, Ohio 44114

Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216

25. Each report shall be signed by a duly authorized representative of Sharon Steel having knowledge of the report's contents and shall be certified as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. RIGHT OF ENTRY

26. The U.S. EPA and its authorized representatives and contractors shall have authority at any reasonable time, upon the presentation of credentials, to enter the Warren, Ohio facility to perform the following actions:

A. Monitor the progress of activities required by this Consent Decree.

B. Verify any data or information submitted to U.S. EPA.

C. Obtain samples of influent and effluent from the treatment facility.

D. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or for compliance with the NPDES Permit and the Act.

This paragraph 26 in no way limits any right of entry provided to the U.S. EPA pursuant to any federal, state or local law, regulation or permit.

VIII. STATE APPROVAL OF FACILITY CONSTRUCTION

27. This Consent Decree does not authorize or approve the construction of any physical structures or facilities, the modification of any existing treatment works, or the undertaking of any work in any navigable waters. Approval for such construction shall be by permit issued by the proper local, state, or federal agency or such other permits as may be required by applicable local, county, or state laws, rules or regulations. Sharon Steel shall comply with all applicable federal, state and local statutes and regulations regarding the construction of these facilities.

IX. STIPULATED PENALTIES

28. If Sharon Steel fails to meet any requirement of this Consent Decree, except any effluent limitations, Sharon

Steel shall pay stipulated penalties in the amounts below.

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st Day to 30th Day	\$ 1,000
31st Day to 60th Day	\$ 2,000
61st Day to 90th Day	\$ 3,000
91st Day to 120th Day	\$ 5,000
Each Day Beyond 120th Day	\$10,000

If a purchaser has ceased operations pursuant to paragraph 14 of this Decree, the stipulated penalties in this paragraph shall cease accruing during that time in which operations are ceased.

29. If Defendant Sharon Steel exceeds any NPDES permit limitations for any parameter, Defendant Sharon Steel shall pay stipulated penalties in the amounts specified below:

- Daily (concentration or loading) \$750 per day
per parameter
- Monthly (concentration or loading) \$7,500 per month
per parameter

30. Commencing 12 months after the start-up of operations at the plant by a purchaser subject to the requirements of Section IV, if the purchaser exceeds any NPDES permit limitations for any parameter, the purchaser shall pay stipulated penalties in the amounts specified below:

- Daily (concentration or loading) \$375 per day
per parameter
- Monthly (concentration or loading) \$3,750 per month
per parameter

31. Penalties paid under this Consent Decree shall be paid by check payable to "Treasurer, United States of America," and tendered to:

The United States Attorney
1404 East Ninth Street
Suite 500
Cleveland, Ohio 44114

Payment shall be tendered by the fifteenth (15th) day of the month following the month in which the penalty accrued. A copy of the check shall be mailed to U.S. EPA, Water Division, Attn: Chief, Compliance Section.

32. Any stipulated penalties that arise after the date that any Chapter 11 bankruptcy reorganization plan is confirmed, shall be obligations of the reorganized debtor, and shall be paid in accordance with this Section IX.

33. Nothing herein shall prevent the United States from pursuing, in addition to stipulated penalties, any equitable remedies or sanctions for any violation by Sharon Steel of this Consent Decree.

X. CIVIL PENALTY

34. This Consent Decree resolves the civil violations by Defendant Sharon Steel of the Act, and is necessary to preserve and maintain the continued business operations of Defendant Sharon Steel and to ensure Defendant's compliance with the Act. Defendant Sharon Steel shall be obligated to pay the United States, as civil penalties, the sum of One Hundred Seventy-Five Thousand Dollars (\$175,000.00). The sum of Fifty Thousand Dollars (\$50,000.00) shall be considered a pre-petition

penalty expense attributable to all violations alleged in the Complaint which occurred on or before April 17, 1987, and be paid as a general, unsecured claim in accordance with the plan of reorganization of Defendant Sharon Steel. The sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) shall be considered a post-petition penalty expense in satisfaction of Plaintiff's claims for civil penalties for all violations alleged in the Complaint which occurred after April 17, 1987. Defendant Sharon Steel shall pay such amount within thirty (30) days of the entry of this Consent Decree. Any payments hereunder shall be made by certified check, payable to "Treasurer, United States of America," and shall be tendered to:

United States Attorney
Northern District of Ohio
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114

A copy of the check shall be mailed to U.S. EPA, Region V, Water Division, Attention: Chief, Compliance Section. The U.S. EPA shall assess interest and penalties for any late payment according to Chapter 7 of the U.S. EPA Financial Management Manual, including the following: (1) interest at the percentage rate established by the Department of Treasury pursuant to 31 U.S.C. §3717, for any period after the due date; (2) a handling charge of \$20.00 at the end of each thirty (30) day late period; and (3) a six percent per annum penalty charge if the penalty is not paid within ninety (90) days of the due date. Any interest

or penalties due hereunder shall be considered as post-petition expenses.

XI. FORCE MAJEURE

35. A. If any event occurs that causes or may cause a violation of any provision of this Decree by Sharon Steel, Sharon Steel shall notify U.S. EPA and OEPA in writing within ten (10) days of the date of which Sharon Steel first knew of, or should have known by exercise of due diligence that such event would cause the delay. The notice shall describe in detail the anticipated length of time of the violation, the measures taken or to be taken by Sharon Steel to prevent or minimize the violation and the timetable by which those measures will be implemented. Sharon Steel shall adopt any reasonable measure(s) to avoid or minimize any such violation. Failure by Sharon Steel to comply with the notice requirements of this Section shall constitute a waiver of Sharon Steel's right to obtain an extension of time for its obligation under this Section based upon such incident, and such waiver leaves this Section without any force or effect as to that particular incident.

B. If the United States and Sharon Steel agree that the violation has been or will be caused entirely by circumstances beyond the control of Sharon Steel or any entity controlled by or under the common control of Sharon Steel and that Sharon Steel could not have foreseen and prevented such violation by the exercise of due diligence, the time for performance of such requirement may be extended for a period not

to exceed the actual delay resulting from such circumstances. In the event the parties are unable to agree, the matter may be submitted by either the United States or Sharon Steel to the Court for resolution. If the Court determines that the violation was caused by circumstances beyond the control of Sharon Steel and that Sharon Steel could not have foreseen and prevented such violation by the exercise of due diligence, Sharon Steel may be excused as to that violation for the period of time the violation continues due to such circumstances.

C. Sharon Steel shall bear the burden of proving that any delay or effluent violation was caused by circumstances beyond the control of Sharon Steel or any entity controlled by or under the common control of Sharon Steel.

D. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. An extension of one compliance date or similar requirement based on a particular incident that is agreed upon pursuant to this Section does not automatically mean that Sharon Steel qualifies for an extension of a subsequent compliance date or dates. Sharon Steel must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

E. Unanticipated or increased costs shall not serve as a basis for relief under this Section.

XII. RETENTION OF JURISDICTION

36. The Court shall retain jurisdiction of this matter after entry of this Consent Decree, to enforce compliance with the Decree or to take any action necessary or appropriate for its construction, execution or modification.

XIII. GENERAL PROVISIONS

37. This Consent Decree is neither a permit nor a modification of any existing permit.

38. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

39. By entering this Consent Decree, the United States does not waive any rights or remedies available to it for any violation of this Consent Decree, or for any past, present or future violation by Sharon Steel of any federal or state laws, regulations, or permit conditions, other than for those CWA violations that were the subject of the original and supplemental complaint which occurred prior to July 14, 1989.

40. Each party in this action shall bear its own costs.

41. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including Sharon Steel, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare or the environment.

42. This Consent Decree does not limit the rights of the United States against any third parties.

43. Nothing in this Consent Decree shall be construed to limit the authority of the United States to act under Section 308 of the Clean Water Act, 33 U.S.C. §1318.

44. The consent of the United States to this Consent Decree is subject to the public notice provisions of 28 C.F.R. §50.7.

45. The parties intend that the provisions of this Consent Decree shall be severable. If any provisions are found unenforceable, the remaining clauses shall remain in full force and effect.

XIV. TERMINATION

46. This Consent Decree shall terminate after the plant resumes operations and achieves 12 months of compliance with the applicable NPDES permit limits provided Sharon Steel complied with all other terms of this Consent Decree. If operations are never resumed at the plant, this Consent Decree shall terminate when the applicable NPDES permit expires provided Sharon Steel has complied with all terms of this Consent Decree. Sharon Steel shall provide written certification of that fact to the United States, and the parties will then jointly move for termination of this Consent Decree. Termination of this Consent Decree shall be by Order of the Court upon motion by the United States and Sharon Steel.

FOR PLAINTIFF,
UNITED STATES OF AMERICA:



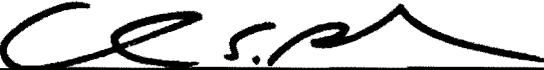
RICHARD B. STEWART
Assistant Attorney General
Land & Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

1-29-90
Date



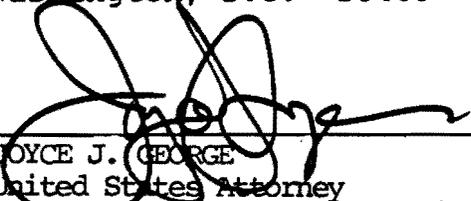
JAMES J. BROWN
Trial Attorney
Land & Natural Resources Division
Environmental Enforcement Section
United States Department of Justice
Washington, D.C. 20530

11/29/89
Date



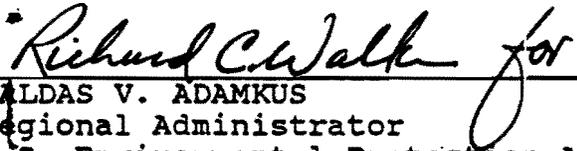
EDWARD E. REICH
Acting Assistant Administrator for
Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.c. 20460

11/20/89
Date



JOYCE J. (GEORGE)
United States Attorney
Northern District of Ohio
1404 East Ninth Street
Suite 500
Cleveland, Ohio 44114

2-5-90
Date



VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

11/1/89
Date

Dorothy M. Attermeyer

DOROTHY M. ATTERMAYER
Associate Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

10/25/89
Date

FOR DEFENDANT,
SHARON STEEL CORPORATION

F. E. Agnew, III

F. E. AGNEW, III
Bankruptcy Trustee
Sharon Steel Corp.

10/5/89
Date

Malvin G. Sander

MALVIN G. SANDER
Sr. Vice President, General
Counsel & Secretary
Sharon Steel Corp.

Oct 5, 1989
Date

Blair S. McMILLIN

BLAIR S. MCMILLIN
Reed, Smith, Shaw & McClay
James H. Reed Building
Mellon Square
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219

October 9, 1989
Date

IT IS SO ORDERED, as agreed by the parties, and as
set forth in the attached Consent Decree.

Date

HONORABLE JOHN M. MANOS
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

AGREEMENT OF PURCHASER OF SHARON STEEL FACILITY, WARREN, OHIO

[name of entity purchasing Sharon Steel, Warren, Ohio, facility], hereby consents to be fully bound to the terms and conditions of the Consent Decree entered in the case of United States of America v. Sharon Steel Corporation, United States District Court, Northern District of Ohio, Eastern Division, Civil Action No. C87-750Y.

[name of entity] acknowledges that it has read the Consent Decree and understands that as an explicit condition of the Consent Decree, Sharon Steel may not sell, assign, or otherwise transfer property or operations at its Warren, Ohio facility without obtaining the full agreement of the new owner or operator (who may start-up operations of the plant) to comply with the terms of the Consent Decree in the above referenced case.

[name of entity] hereby acknowledges and agrees that it is purchasing the facility subject to the condition that it comply with the Consent Decree, and, in particular, that it is the bona fide purchaser of the plant referred to in Section IV of the Consent Decree.

[name of entity] hereby acknowledges that the United States may enforce the terms of the Consent Decree against it if it fails to fully and timely comply with each and every provision.

Executed by:

Responsible corporate officer
of purchaser

Legal Counsel for purchasing corporation

Notarized by:

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
SHARON STEEL CORPORATION,)	Civil Action Nos. 86-C-924J
UV INDUSTRIES, INC.,)	
UV INDUSTRIES, INC.)	
LIQUIDATING TRUST, and)	
THE ATLANTIC RICHFIELD)	
COMPANY, INC.,)	
)	
Defendants.)	

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
SHARON STEEL CORPORATION,)	Civil Action Nos. 89-C-136J
UV INDUSTRIES, INC.,)	
UV INDUSTRIES, INC.)	
LIQUIDATING TRUST, VALLEY)	
MATERIALS CORPORATION,)	
LITTLESON, INC., CENTURY)	
TERMINALS, INC., and)	
BLACKHAWK SLAG PRODUCTS, INC.,)	
)	
Defendants.)	

PARTIAL CONSENT DECREE

This Partial Consent Decree ("Decree") is made and entered into by and among the Plaintiff United States of America

("United States" or "Plaintiff"), on behalf of the United States Environmental Protection Agency ("EPA"); the Defendant UV Industries Inc. Liquidating Trust ("the Trust"), on behalf of itself and, to the extent required or permitted by law, UV Industries, Inc. ("UV"); and the State of Utah ("the State"), pursuant to the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9101 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA");

WHEREAS, the United States, on behalf of the Administrator of EPA, filed complaints in the above captioned actions pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, for injunctive relief alleging imminent and substantial endangerments to public health, welfare or the environment at two facilities located in Midvale, Utah, and for reimbursement of costs incurred by the United States in response to the alleged release or threatened release of hazardous substances from these facilities, which have been named by EPA as the "Sharon Steel/Midvale Tailings Site" ("Tailings Site") and the "Midvale Slag Site" ("Slag Site") (collectively, the "Sites");

WHEREAS, the Tailings Site and the Slag Site both have been nominated for inclusion, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on the National Priorities List ("NPL");

WHEREAS, the United States alleges that, from approximately 1906 to 1971, UV (then known as "United States Smelting Refining and Mining Company" and hereinafter referred to as "USSRM") owned and operated certain ore beneficiation and processing establishments at the two Sites;

WHEREAS, the Tailings Site (as hereinafter defined) is located approximately twelve miles southwest of Salt Lake City and contains an estimated fourteen million tons of tailings generated from milling operations and processing conducted between approximately 1906 and 1971;

WHEREAS, the tailings from the operations at the Tailings Site remain in the form of piles, ponds and impoundments, which measure up to forty or fifty feet in height and allegedly contain elevated levels of such hazardous substances as arsenic, cadmium, chromium, lead and zinc;

WHEREAS, during the period from approximately 1906 to 1971, USSRM owned and operated various milling facilities at the Tailing Site;

WHEREAS, the Slag Site is located to the north of the Tailings Site, is comprised of approximately three hundred nineteen (319) acres formerly owned and operated by USSRM, and was used for smelting, refining, and other metals processing operations and for the disposal of slag and other waste products of such operations;

WHEREAS, USSRM operated a metal smelter at the Slag

Site which, until 1958, refined copper, gold, lead and silver and from which wastes were disposed of on the Slag Site;

WHEREAS, the United States alleges that each of the Sites is a "facility," as defined in Sections 101(9) and 101(20) of CERCLA, 42 U.S.C. §§ 9601(9) and 9601(20), at or from which hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been released;

WHEREAS, the shareholders of UV voted on March 26, 1979 to adopt a Plan of Liquidation and Dissolution (the "Plan") and, as a part of that Plan, authorized the establishment of the Trust for the purpose of receiving on their behalf, prior to dissolution, a distribution of any remaining assets of UV not then reasonably susceptible to pro rata distribution to them;

WHEREAS, liquidation of UV was accomplished by the sale of all of UV's businesses and other transferable assets in three separate transactions, culminating in the sale of all then remaining transferable assets (including the Tailings Site and a portion of the Slag Site) to Sharon Steel Corporation on November 26, 1979, pursuant to the terms of an Agreement for Purchase of Assets bearing that date;

WHEREAS, on March 24, 1980, UV distributed, within the meaning of applicable provisions of the Internal Revenue Code, all its remaining assets to the Trust;

WHEREAS, the Trust is a person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

WHEREAS, the United States alleges that hazardous substances at or from the Sites have been or are being released, or threatened to be released, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the environment through, inter alia, ground water flow, surface water flow, direct deposition into soils, and wind dispersion into the air;

WHEREAS, the United States alleges that it has responded and will continue to respond to the release and threatened releases of hazardous substances at the Sites and thereby has incurred and will continue to incur response costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a);

WHEREAS, the United States alleges that the Trust has succeeded to the liabilities of UV;

WHEREAS, the United States alleges that the Trust and UV are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and thereby liable under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for releases and threatened releases of hazardous substances at or from the Sites into the surface water, ground water, land surface, subsurface strata, and the ambient air in the vicinity of the Sites;

WHEREAS, the Trust contends that the Plan which was adopted by UV's shareholders was designed to satisfy, and did in all respects satisfy, the requirements of federal and state law governing liquidations and dissolutions of this type, including Section 337 of the Internal Revenue Code of 1954, as it then

existed, and the Maine Business Corporation Act, which the Trust contends applied because UV was a Maine corporation;

WHEREAS, the Trust contends that, pursuant to the Plan, UV wound up its business affairs and liquidated by means of the sale of its businesses and other assets during the succeeding twelve month period and, on March 24, 1980, distributed all of its remaining assets to its shareholders in a final liquidating distribution by transferring those assets to the Trust;

WHEREAS, the Trust contends that since March 25, 1980, the date on which UV was legally dissolved, UV has not existed, has had no assets, has conducted no business, and has had no corporate organization, officers, directors, or employees;

WHEREAS, the Trust contends that, under governing principles of Federal and Maine law, no actions could be brought against UV unless commenced within two years of its legal dissolution;

WHEREAS, the Trust contends that any responsibility or liability which it might have for the acts of omissions of UV would be entirely derivative and would not be valid or enforceable unless an action thereon was commenced within two years of UV's dissolution;

WHEREAS, the Trust contends that it is not liable in these actions by reason of the fact, among others, that no proceeding of any kind was initiated by the United States against UV or the Trust until more than five years after UV dissolved;

WHEREAS, the Trust has raised numerous other defenses and has contested, and continues to contest, allegations made by the United States;

WHEREAS, a victory by the United States on the principal defenses raised by the Trust would, in all likelihood, ultimately result in judgments which would completely exhaust the remaining assets of the Trust;

WHEREAS, a victory by the Trust on the principal defenses which it has raised would bar recovery by the United States and third parties in the present actions and in any other pending or future actions brought under environmental statutes;

WHEREAS, the United States and the Trust each recognize and acknowledge that continuing litigation not only imposes significant litigation risks but also would inevitably increase costs, delay resolution, and substantially diminish the effective worth of victory to the party which ultimately prevails;

WHEREAS, the United States and the Trust wish to compromise and settle all claims relating to these actions, without admitting or conceding the validity of the allegations, claims, and contentions advanced by the other party, and to do so in a way which will permit an immediate recovery of substantial monies by the United States while at the same time permitting a distribution, after payment of Trust expenses, of the remaining monies to beneficial unitholders of the Trust and a final winding up of the affairs of the Trust and termination of the Trust's existence;

WHEREAS, the Trust and the United States agree to undertake all activities and complete all actions required of them respectively by this Decree;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, and intending to be legally bound hereby, the Trust, the United States, and the State, by their authorized representatives, have agreed to entry of this Decree, subject to the provisions of Section XIII.A. hereof and 28 C.F.R. § 50.7;

WHEREAS, settlement of these matters governed by this Decree is in the public interest and an appropriate means of resolving these matters;

THEREFORE, without adjudication of any issue of law or fact and upon the consent of the parties thereto, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I.

DEFINITIONS

In this Decree, the following terms shall have the following meanings:

A. "Actions" means Civil Nos. 86-C-924J and 89-C-136J, presently pending in this Court.

B. "Cash" means United States dollars in immediately available funds.

C. "Court" means the United States District Court for the District of Utah, Central Division.

D. "Tailings Site" means the mill site (including tailings and mill buildings), as described in Exhibit "A" annexed hereto, and soils and ground water beneath and down gradient of the mill site, any impacted area adjacent to and in the vicinity of the mill site, and any other areas necessary for the performance of the remedy.¹

E. "Slag Site" means the former smelting and refinery site (including smelting and refining waste piles, buildings and other structures), as described in Exhibit "B" annexed hereto, and soils and ground water beneath and down gradient of the smelting and refinery site, the impacted areas adjacent to and in the vicinity of the smelting and refinery site, and any other areas necessary for the performance of the remedy.²

F. "Non-Settling Defendants" means Atlantic Richfield Company, Inc., Valley Materials Corporation, Littleton, Inc., Century Terminals, Inc., and Blackhawk Slag Products, Inc.

G. For purposes of Section IV C. 2. of this Decree, the phrase "legal fees and expenses incurred by the Trust in

¹ The vertical and lateral extent of the Tailings Site and the impacted area of the Tailings Site will be determined in one or more Records of Decision for the Tailings Site, to be issued in the future.

² The vertical and lateral extent of the Slag Site and the impacted area of the Slag Site will be determined in one or more Records of Decision or Action Memoranda for the Slag Site, to be issued by EPA in the future.

obtaining such payment" shall include any payment to Sharon Steel Corporation to obtain a release of its actual or potential claims against the insurance carriers who are parties in Civil Action Nos. C-87-2306 and C-88-04792 in the Third Judicial District Court of Salt Lake County, Utah.

H. "Person" shall have the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

I. "Remedial Action" means those actions consistent with permanent remedy(ies) at the Tailings Site and the Slag Site, to be set forth in the final Records of Decision for each of the Sites, as described in Section 117 of CERCLA, 42 U.S.C. § 9617, or any modifications thereof consistent with CERCLA.

J. "Response" shall have the meaning set forth in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

K. "Response Costs" means any costs which the United States has sought in the Actions.

L. "State" means the State of Utah and its agencies.

M. "Trustees" means the Liquidating Trustees of the UV Industries, Inc., Liquidating Trust.

N. "UV Industries, Inc. Liquidating Trust" ("the Trust") means that entity the creation of which was authorized by a vote of the shareholders of UV Industries, Inc. on March 26, 1979, and the creation of which was effectuated by the UV Industries, Inc. Liquidating Trust Agreement executed on March 24, 1980; provided, however, that for purposes of Sections

VI and VII of this Decree, it shall also mean the Liquidating Trustees and the employees, agents and beneficial unitholders of the Trust, solely in their respective capacities as such. This definition of the term "the Trust" shall not include any past or present parent, subsidiary, or business affiliate of UV Industries, Inc., or of the Trust.

O. "UV Industries, Inc." ("UV") means UV Industries, Inc. as it existed on March 24, 1980; provided, however, that for purposes of Sections VI and VII, it shall also mean the former officers, directors, employees, agents and shareholders of UV, solely in their respective capacities as such. This definition of the term "UV" does not include any past or present parent, subsidiary, or business affiliate of UV Industries, Inc., or of the Trust.

II.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, and 28 U.S.C. §§ 1331 and 1345.

III.

PARTIES BOUND

This Decree applies to and is binding upon the Trust, UV, the State, and the United States. Each undersigned

representative certifies that he or she is or will be, on or before the effective date of this Decree, fully authorized by the party whom he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind the party hereto. The Trust, UV, and the State agree not to contest the jurisdiction of the United States to maintain the Actions.

IV.

PAYMENT OF THE UNITED STATES' RESPONSE COSTS

In full and complete satisfaction of all of UV's and the Trust's alleged liabilities, duties, and responsibilities arising out of or relating to the Actions and the Sites (except as limited by Section VII B., C., and D and in consideration of the Covenant not to Sue set forth in Section VII A. hereof, the United States shall receive the following consideration:

A. Subject to the provisions of paragraph B. of this Section, on the first business day following the day sixty (60) days after the date of entry of this Decree, the Trust shall pay to the United States an amount equal to sixty (60) percent of the "adjusted value" of all cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and any cash equivalents under the control of the Trustees.³

³ It is agreed by the Parties that monies held in Account no. 101-65E by the Mellon Bank Trust Department, as Exchange Agent for the Trust, are not under the control of the Trustees
(continued...)

B. For purposes of calculating the amount of the payment required by paragraph A. of this Section, the "adjusted value" of cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and cash equivalents shall be determined as provided in this paragraph and in paragraph C.

1. If this Decree receives final approval and is not subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the Court, the "adjusted value" of cash, direct United States Treasury Obligations, accumulated interest receivable on such United States Treasury Obligations, and cash equivalents shall be the total value of such assets, fixed as of the day twenty-five (25) business days from the date of entry of this Decree, minus the sum of \$750,000, and payments shall be made as provided in sub-paragraph D.1. of this Section.

2. If this Decree receives final approval and is subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the court, and provided that any such challenge or appeal is finally resolved prior to the expiration of twelve (12) months from the date of entry by the Court, the "adjusted value" of cash, direct United States Treasury Obligations, and cash equivalents shall be the total

³(...continued)
and shall not be considered a part of the Trust estate for any purposes related hereto.

value of such assets, fixed as of the day twenty-five (25) business days from the date of entry of this Decree, minus the sum of \$750,000, and payments shall be made as provided in sub-paragraph D.2. of this Section.

3. If, because of the pendency of litigation initiated or maintained by a Non-Settling Defendant or any intervenor or other party or third party, this Decree does not receive final approval and remains subject to further challenge or appeal on or after the expiration of twelve months from the date of entry by the Court, then the "adjusted value" as set forth in sub-paragraph B.2. of this Section, shall also be deemed to exclude the additional sum of \$50,000 for each month subsequent to the first anniversary date of the entry of the Decree by this Court, until final approval, and payments shall be made as provided in sub-paragraph D.2. of this Section.

C. Following the payment required by paragraph A. of this Section, the Trust shall make or cause to be made further payments to the United States pursuant to the provisions of this paragraph C.

1. Within ten (10) business days of the date that any additional cash is deposited with any financial institution, into any account under the control of the Trustees or for the benefit of the Trust, the Trust shall pay or cause to be paid to the United States in cash an amount equal to sixty (60) percent of such deposited amount; provided, however, that no such payment shall be made upon the deposit or accrual of

interest paid to or earned by the Trust on assets which have already been subject to the valuation and payment provided for in paragraphs A, B, and C of this Section, and provided further that no such payment shall be made upon (a) monies received pursuant to sub-paragraphs B.3. and D.2 of this Section; or (b) monies received from any insurance carrier in reimbursement of the Trust's defense costs in the Actions or any other actions, unless such costs had been paid by the Trust prior to the calculation of the "adjusted value" pursuant to sub-paragraphs B.1. and B.2. of this Section.

2. In the event that any cash deposited into any such account constitutes a payment to the Trust by Sharon Steel Corporation or by one or more insurance carriers that issued comprehensive general liability policies to UV, then prior to calculating the amount equal to sixty (60) percent of such deposited amount to be paid to the United States, the Trust may subtract the reasonable costs of collection, including legal fees and expenses incurred by the Trust in obtaining such payment.

D. Payments required under the provisions of paragraphs A, B, and C of this Section shall be made by the Trust as follows:

1. If this Decree receives final approval by the Court and is not subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of entry by the Court, then the Trust shall make the required payments by wire transfer to the "Hazardous Substances Superfund." The wire

transfer shall reference the name UV Industries, Inc. Liquidating Trust and the Sites, and shall be directed to the following address:

Mellon Bank
EPA Region VIII
ATTN: Superfund Accounting
P. O. Box 360859M
Pittsburgh, PA 15251

2. If this Decree receives final approval by the Court, but is subject to further challenge or appeal prior to the expiration of sixty (60) days from the date of the entry by the Court, then, until all challenges or appeals are finally resolved, the Trust shall make required payments into an interest-bearing escrow account with a financial institution to be named in writing by the United States. The instructions to the escrow account trustee, which shall be signed by representatives of the United States and the parties, shall provide, inter alia, (i) that in the event the Decree is upheld after all challenges and appeals are exhausted, the entire balance of the account, including accrued interest, shall be delivered to the Hazardous Substances Superfund, at the address set forth in sub-paragraph D.1. of this Section; (ii) that in the event the order of this Court entering this Decree is finally reversed and set aside, the entire balance in the account, including accrued interest, shall be delivered to the Trust, at the address and in the manner the Trust shall direct; (iii) that in the event that any appeal or challenge continues beyond twelve

(12) months from the date of entry of this Decree, the escrow account agent shall withdraw \$30,000 on the first day of the month following the anniversary date of the entry of this Decree, and on the first day of each month thereafter until such appeal or challenge is finally resolved, and shall deliver this sum to the Trust at the address and in the manner the Trust shall direct, in accordance with the provisions of sub-paragraph B.3. of Section IV; and (iv) such other terms as the United States and the Trust shall agree to in writing.

3. Whenever any payment is made by the Trust pursuant to sub-paragraphs 1 or 2 of this Paragraph, the Trust shall simultaneously send or deliver documents evidencing such transfer to EPA at:

USEPA Region VIII (8RC)
999 - 18th Street, Suite 500
Denver, CO 80202-2405
ATTN: Assistant Regional Counsel
Sharon Steel Midvale Tailings
and
Remedial Cost Recover Coordinator (8HWM-SR)
999 - 18th Street, Suite 500
Denver, CO 80202-2405

and to the Department of Justice at:

Chief, Environmental Enforcement Section
P. O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

E. The Trust shall have the right to distribute to its unitholders, or to expend in any other manner consistent with the purposes of the Trust and the powers and duties of the Trustees, any and all monies not subject to payment to the United

States under this Section. The Trust may exercise this right at such time and in such manner as it chooses, on any date after entry of this Decree.

F. Should the Trust fail to make any payment to the United States required by this Decree on the date due, interest on the amount of such payment shall accrue and be payable to the United States on such amount at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the accepted auction price for the last auction of 52-week United States Treasury Bills settled immediately prior to the date when interest begins to accrue. In addition, should the Trust fail to make any required payment, the Trust shall pay in addition to amount required plus interest, stipulated penalties in the amount of \$5,000 per day for each day that any payment required by Paragraph A. of this Section is past due and in the amount of \$2,500 per day for each day that any other payment required by this Decree is past due; provided, however, that such penalty shall not accrue if the Trust is prohibited from making such payment by any order or law.

G. The Trust shall provide to the United States every two months, commencing with the month after entry of this Decree, financial statements disclosing the assets, liabilities, expenses, and cash flow of the Trust for such months.

V.

THE STATE

In full and complete satisfaction of all of UV's and the Trust's alleged liabilities, duties, and responsibilities arising out of or relating to the Actions and the Sites, the State hereby releases and agrees to hold UV and the Trust harmless for (i) any and all claims relating to the Tailings Site or the Slag Site, including, but not limited to, any claim for Response Costs incurred by the State, any claim or costs incurred by the State pursuant to any contract or cooperative agreement with the United States pursuant to Section 104(e)(3) of CERCLA, and any claim for damage to natural resources belonging to, managed by, appertaining to, or otherwise controlled by the State or under its trusteeship pursuant to Section 107(f)(2) of CERCLA, and (ii) any and all other claims regarding environmental matters as to the Sites or any other sites, regardless of whether such claims exist at the effective date of this Decree or come into existence after such effective date.

VI.

EFFECT OF SETTLEMENT

A. The compromise and settlement contained in this Decree was reached after extensive negotiations among the parties. This Decree represents a compromise between the parties with respect to the alleged liability of the Trust and UV arising out of or relating to the Actions.

B. By virtue of the payment of the amounts identified in Section IV of this Decree, the Trust and UV shall have finally and completely resolved all alleged liabilities of the Trust and UV to the United States for the matters covered by the Covenant Not to Sue in Section VII A. hereof and are hereby released therefrom. With regard to claims for contribution against the Trust or UV by the Non-Settling Defendants and Non-Settling Third Party Defendants in the Actions, and any other Person entitled to bring a claim against the Trust or UV under Section 107(a) of CERCLA relating to the matters covered by Section VII.A hereof, the parties hereto agree, and this Court hereby finds and concludes, that the statutory provisions of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall govern.

C. If the Trust fails to make any payment required by Section IV of this Decree, then, upon the expiration of 30 days from the date of the Trust's receipt of written notice of such failure, if such required payment then remains outstanding and unpaid, the Trust and UV shall lose the benefit of this Section VI; provided, however, that if the Trust fails to make a required payment as a result of the fact that the making of such payment would violate a law, rule of law, or an order applicable to the Trust or Trustees, then, subject to the provisions of Paragraph D. below, the Trust and UV shall not lose the benefit of this Section VI. If the Trust or Trustees believe that the making of any payment required pursuant to this Decree would violate a law, rule of law, or an order applicable to the Trust

or Trustees, then the Trust shall notify the United States as soon as the Trust learns of the circumstance leading to such impediment to such payment. The provisions of Section X on Dispute Resolution shall then apply.

D. If, as the result of the dispute resolution process referred to in Paragraph C., the Court finds that any payment required by this Decree would violate a law, rule of law, or order applicable to the Trust or Trustees, then the Trust shall lose the benefit of this Section VI and the Covenant Not to Sue contained in Section VII A. hereof, but only to the extent of any required payments not made as a result of such finding.

E. Nothing herein shall be deemed to adversely affect the Trust's or UV's rights against any Non-Settling Defendant, or any other potentially responsible party, other than the State.

F. Subject to the terms and conditions of this Decree, and upon this Decree becoming final and effective: (i) the complaint of the United States against UV and the Trust and the counterclaim asserted by UV and the Trust against the United States in Civil Action No. 86-C-924J shall be dismissed; and (ii) the complaint of the United States against UV and the Trust in Civil Action No. 89-C-136 shall be dismissed.

G. The United States and the State expressly reserve the right to bring actions, or continue to proceed with the present actions, against any Person other than UV or the Trust who or which has not resolved its liability to the United States or the State respecting the Tailings Site or the Slag Site.

H. The Trust agrees that with respect to any suit or claim for contribution brought against it for matters covered by this Decree, it will timely notify the United States, in conformance with Section VIII hereof, of the institution of such suit or claim.

I. No previous ruling of this Court in the Actions on any issue of law or fact shall be deemed to be binding upon the parties hereto for any purpose in any other action or legal proceeding of any type or kind.

VII.

COVENANT NOT TO SUE

A. Except as specifically provided hereafter in Section VII C. and D. hereof, the United States and the State hereby covenant not to sue UV, the Trust, or any Trustee thereof (in their capacity as trustee) regarding the following matters:

1. Any matter alleged in either or both of the Actions, including any future liability with regard to the Tailings Site or the Slag Site and any liability which might arise as a result of the redisposal of any hazardous substances as required by Remedial Action conducted at either of the Sites;

2. Any matter relating to the Re-Solve, Inc. Superfund site located in North Dartmouth, Massachusetts.

B. Beyond the matters addressed in Paragraphs A.1. and 2. of this Section, the United States is unaware of any other

claims against UV or the Trust which it now or in the future may assert on behalf of the Environmental Protection Agency pursuant to the following statutes: Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Clean Air Act, 42 U.S.C. § 7401 et seq.; Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; and Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. Beyond the matters addressed in Paragraphs A.1. and 2. of this Section, the United States is also unaware of any claims against UV or the Trust for damages to natural resources which it now or in the future may assert on behalf of the Department of the Interior pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C). Accordingly, to allow for the orderly liquidation and termination of the Trust in accordance with this Consent Decree, the United States agrees not to assert any such claims in the future on behalf of the Environmental Protection Agency or the Department of the Interior or to otherwise object to or oppose the distribution of assets remaining in the Trust to the unitholders thereof.

C. This Section shall not be construed as a Covenant not to Sue any other Person, other than UV, the Trust, or any Trustee thereof. This Covenant not to Sue applies only to UV, the Trust, the Trustees, the United States, and the State.

D. This Covenant not to Sue shall not apply to the following:

1. Claims based on criminal liability;
2. Claims based on the failure to comply with this Decree;

E. For and in consideration of the covenants and promises made herein, UV, the Trust and the Trustees covenant not to sue or otherwise assert any cause of action, claim or demand against the United States or the State, including any claim pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other provision of law, directly or indirectly, or against the Hazardous Substance Superfund established by 26 U.S.C. § 9507, or other claims against the United States or the State related to the Sites, the Actions, or this Decree; provided, however, that this Covenant not to Sue shall not apply to claims based on the failure of the United States to comply with this Decree.

F. Nothing in this Decree shall constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VIII.

NOTICES

Unless otherwise stated in this Decree, whenever the terms of this Decree require that notice be given, it shall be directed in writing, by certified or registered mail, return receipt requested, to the following individuals at the addresses

specified below, or to such other individual or address as such individual may from time to time designate by notice:

A. If to the United States:

1. United States Department of Justice
Chief, Environmental Enforcement Section
Land and Natural Resources Division
Room 1541 (EES DOCKETS)
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20044
2. Assistant Regional Counsel for the
Sharon Steel / Midvale Slag Sites 8RC
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405
3. Remedial Cost Recovery Coordinator (8HWM-SR)
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405
4. EPA Regional Project Manager -- 8HWM-SR
Sharon Steel/Midvale Tailings Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405
4. EPA Regional Project Manager -- 8HWM-SR
Midvale Slag Site
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

B. If to the State:

1. Fred G. Nelson, Esq.
Assistant Attorney General
State of Utah
124 State Capital
Salt Lake City, UT 84114
2. Kris D. Bicknell, Esq.
400 South Colorado Boulevard
Suite 700
Denver, CO 80222

C. If to the Trust:

1. Paul Kolton
Chairman
UV Industries, Inc. Liquidating Trust
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116
2. Kenneth A. Leach
Trust Officer
UV Industries, Inc. Liquidating Trust
1370 Avenue of the Americas
New York, N.Y. 10019
3. Norton F. Tennille, Jr.
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005
4. Roger D. Feldman
Gaston & Snow
1 Federal St.
Boston, MA 02110

IX.

MODIFICATION, SECTION HEADINGS

A. Except as specifically provided in this Decree or by the Federal Rules of Civil Procedure, no modifications shall be made to this Decree without notice to and prior written approval of the United States, the Trust, the State, and the Court.

B. All headings herein are for convenience only and are in no way to be construed as a part of this Decree or a limitation of the scope of the provisions to which they may refer.

X.

DISPUTE RESOLUTION

If any dispute arises between the parties with respect to any matter provided for by this Decree, such dispute shall in the first instance be the subject of good faith informal negotiations between the parties in an attempt to resolve such dispute. If such discussions fail to resolve the dispute, then the disputed matter shall be submitted to the Court for resolution.

XI.

RESPONSE AUTHORITY

Nothing in this Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority.

XII.

WITNESSES AND DOCUMENTS

Notwithstanding any other provision of this Decree, the Trust agrees to make adequate provision to maintain all records

relevant to the Actions and to cooperate fully with requests from the United States to provide access to such nonprivileged documents and to use its best efforts to encourage cooperation and testimony by the former employees, contractors, and potential witnesses of UV, and the Trust, that is relevant to the Actions and the Sites until both Actions have been fully resolved through the entries of final judgments and the resolution of any and all appeals therefrom. The Trust agrees that sixty days prior to any disposal or destruction of such nonprivileged documents, the Trust will notify the United States in writing and provide the opportunity to the United States to take custody of such documents.

XIII.

ENTRY, EFFECTIVE AND TERMINATION DATES

A. If determined to be appropriate, consistent with the provisions of 28 C.F.R. § 50.7, entry of this Decree by the Court shall be sought as soon as practicable after the expiration of the public notice and comment period provided with respect to this Decree.

B. This Decree shall not become final or effective until it has been unconditionally approved and finally entered by this Court.

C. After all of the Trust's payments to the United States have been made pursuant to Section IV above, the Trust shall notify the United States of its completion of such payments

and its intention to (i) finally liquidate and distribute all remaining assets in the Trust corpus after providing for such expenses as shall be necessary, and (ii) terminate its existence in accordance with applicable laws. Within thirty days after receipt of such notice this Decree shall terminate without further action by this Court or the parties unless the United States invokes the Dispute Resolution provisions of this Decree. Termination shall not affect the provisions of Sections I, III, IV, V, VI, VII, VIII, IX, XII, XIV, and XV hereof. Nothing in this Section shall limit the Trustees' authority to make distributions to unitholders prior to such termination, as provided in Section IV.

XIV.

COSTS

Each party hereto shall bear its own costs and attorney's fees except as otherwise provided herein.

XV.

RETENTION OF JURISDICTION

A. This Court shall retain jurisdiction of this Decree as it relates to the Actions for purposes of ensuring compliance with its terms and conditions.

B. The United States, the State and the Trust each retains the right to seek enforcement of the terms of this Decree and to take any action authorized by Federal Law not inconsistent

with the terms of this Decree to achieve compliance with the terms and conditions of this Decree.

THE PARTIES ENTER INTO THIS PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.

FOR UV INDUSTRIES, INC.
LIQUIDATING TRUST

By _____
PAUL KOLTON, Trustee as Trustee
of the UV Industries, Inc.
L^o e@iquidating Trust and not
individually

FOR THE STATE OF UTAH

By _____
FRED G. NELSON
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By _____
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By _____
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