

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

THE UNITED STATES OF AMERICA

Plaintiffs,

v.

A-L PROCESSORS  
f.k.a. THE ATLAS-LEDERER COMPANY;  
GENERAL MOTORS CORP.;  
SENER METAL COMPANY, INC.;  
SIMS BROTHERS INC.;  
HERMAN STRAUSS, INC.;  
THE DAVID J. JOSEPH COMPANY;  
LIVINGSTON & COMPANY, INC.;  
CONSOLIDATED RAILROAD CORP.;  
NAVISTAR INTERNATIONAL CORP.; and  
BAILEN BROTHERS, INC.,

Defendants.

Case No. C-3-91-309

Chief Judge Walter Herbert Rice

**CONSENT DECREE WITH LIVINGSTON AND COMPANY, INC.**

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**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking, *inter alia*, reimbursement of costs incurred by EPA and the United States Department of Justice ("DOJ") in responding to the release and/or threatened release of hazardous substances at the United Scrap Lead Superfund Site in Concord Township, Miami County, Ohio (the "Site"), together with accrued interest.

B. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register of September 21, 1984 (49 Fed. Reg. 37,070).

C. In response to a release or a threat of a release of a hazardous substance at or from the Site, EPA, pursuant to 40 C.F.R. § 300.430, completed a Remedial Investigation ("RI") Report in February 1988, and completed a Feasibility Study ("FS") Report in August 1988.

D. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 29, 1988, in a major local newspaper of general circulation. EPA also published notice of the proposed plan for the amended remedial action on January 27, 1997, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on both the proposed original and amended plans for remedial action, and conducted public meetings to discuss the proposed remedial plans and obtain public comments. Copies of the transcripts of each public meeting are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

E. In 1988, EPA selected a remedial action plan for the Site, which was embodied in a Record of Decision (“ROD”) signed by the Regional Administrator on September 30, 1988. The ROD was amended on June 27, 1997.

F. In 1991, EPA and certain parties entered into an Administrative Order on Consent which required the performance of certain response actions at the Site, including the installation of a fence. The respondents to the Administrative Order have satisfactorily performed the response actions required under that Order in a manner consistent with the National Contingency Plan (“NCP”) and have satisfied all of the provisions of the Order.

G. The United States reached a separate settlement in this case with several of the Potentially Responsible Parties (“PRPs”) for the Site (herein referred to as the “Initial Settlement”), pursuant to which they have agreed to perform the Remedial Design/Remedial Action at the Site with EPA oversight and approval. This Initial Settlement is embodied in a Consent Decree entered by the court on September 28, 1998. The signatory defendants to the Initial Settlement, who are identified individually in Appendix B, shall herein be referred to as the “Respondent Group.”

H. In August 1998, the Court granted the Respondent Group’s motion to join new defendants in the United States’ cost recovery action pursuant to Fed. R. Civ. P. 20. Pursuant to the Second Case Management Order entered by the Court on September 15, 1998, the Plaintiff’s Complaint and contribution cross-claims were deemed to be asserted against each new defendant. The United States consented to joinder as defendants of thirty-five of the other PRPs sued by the Respondent Group, including Livingston joining in this Consent Decree. At the Court’s direction, on September 28, 2001, the Respondent Group filed formal claims against these PRPs seeking contribution toward the cleanup pursuant to Section 113(f)(1), 42 U.S.C. § 9613(f).

I. The United States and the Respondent Group previously settled with a number of PRPs joined in this case in Consent Decrees entered in this case on April 10, 2000, June 19, 2002, July 13, 2005, and July 9, 2007

J. Defendant Livingston and Company, Inc. (“Livingston”) does not admit any liability to Plaintiff or to the Respondent Group arising out of any alleged transactions or occurrences at the Site.

K. The owners and operators of Livingston, Larry and Roger Livingston (“Livingston Brothers”), agree to enter into and be bound by this Settlement for the purpose of guaranteeing Livingston’s obligations under this Consent Decree.

L. The United States, the Respondent Group, Livingston and the Livingston Brothers agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Livingston. Livingston and the Livingston Brothers consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, upon the Respondent Group and its heirs, successors and assigns, and upon Livingston and its heirs, successors and assigns and upon the Livingston Brothers and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Livingston or the Livingston Brothers under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. “Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

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

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Initial Settlement" shall mean the settlement reached between the United States on behalf of EPA and the Respondent Group embodied in a Consent Decree entered by the Court in this action on September 28, 1998.

h. "Interest" in relation to Sections V and VI shall mean interest at the current rate specified for interest on investments of the 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).

i. "Livingston" shall mean Livingston and Company, Inc., which is located at 2502 Galia Street in Portsmouth, Ohio.

j. "Livingston Brothers" shall mean (1) Larry Livingston, who lives at 475 Wamsley Road in Stout, Ohio (zip code 45684) and (2) Roger Livingston, who lives at 3361 Seneca Drive in Portsmouth, Ohio (zip code 45662)

k. "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to CERCLA Section 105, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States, the Respondent Group and Livingston, and the Livingston Brothers.

n. "Past United States Response Costs" shall mean all costs incurred by EPA and DOJ for response actions at or in connection with the Site not inconsistent with the National Contingency Plan, that EPA paid through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such dates.

- o. "Past Respondent Group Costs" shall mean all costs incurred by the Respondent Group at or in connection with the Site through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such date.
- p. "Plaintiff" shall mean the United States of America on behalf of EPA.
- q. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on June 27, 1997 by the Regional Administrator, EPA Region 5, all attachments thereto, and any amendments or Explanations of Significant Differences thereto.
- r. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.
- s. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- t. "Site" shall mean the United Scrap Lead Superfund site, encompassing approximately 25 acres, located at 2117 South County Road 25A, in Concord Township, Miami County, Ohio, and depicted more clearly on the map included in Appendix A.
- u. "Respondent Group" shall mean those parties identified in Appendix B.
- v. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## **V. REIMBURSEMENT OF COSTS**

4. Payment of United States Response Past Costs to the EPA Hazardous Substance Superfund. After entry of this Consent Decree, Livingston shall pay to the EPA Hazardous Substance Superfund the amount of one million six hundred nine thousand, seven hundred thirty-two dollars (\$1,609,732) to the United States of American in four installments, together with Interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, which is compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). Livingston shall pay the four installments in accordance with the following schedule:

- a. First Installment: Within 20 Days of entry of this Consent Decree, Livingston shall pay the First Installment of eight hundred forty-seven thousand, two hundred twenty-eight dollars (\$847,228).
- b. Second Installment: Within 365 Days of entry of the Consent Decree, Livingston shall pay the Second Installment of three hundred eighty-one thousand, two hundred fifty-two dollars (\$381,252), together with Interest accruing on the unpaid balance of

seven hundred sixty-two thousand, five hundred five dollars (\$762,505), from the date of payment of the First Installment through the date of payment of the Second Installment.

c. Third Installment: Within 730 Days after entry of the Consent Decree, Livingston shall pay the Third Installment of two hundred thirty-two thousand, nine hundred eighty-seven dollars (\$232,987), together with Interest accruing on the unpaid balance of three hundred eighty-one thousand, two hundred fifty-three dollars (\$381,253) from the date of payment of the Second Installment through the date of payment of the Third Installment.

d. Fourth Installment: Within 1095 Days after entry of the Consent Decree, Livingston shall pay the Fourth Installment of one hundred forty-eight thousand, two hundred sixty-five dollars (\$148,265), together with Interest accruing on the unpaid balance of dollars one hundred forty-eight thousand, two hundred sixty-six dollars (\$148,266), from the date of payment of the Third Installment through the date of payment of the Fourth Installment.

e. Payment Instructions: The installment payments under this Paragraph shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 9124845, the EPA Region and Site Spill ID Number 05H5, DOJ Case Number 90-11-3-279B, and the name and address of the party making the payment. Payment shall be made in accordance with instructions provided to Livingston by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Livingston shall send notice to EPA and DOJ that payment has been made in accordance with Section XIII (Notices and Submissions). The total amount to be paid pursuant to this paragraph shall be deposited in the United Scrap Lead Site Special Account within the EPA Hazardous Substance Superfund.

5. Payment of Past Respondent Group Past Costs to the Respondent Group. After entry of this Consent Decree, Livingston shall pay to the Respondent Group the amount of two hundred ninety thousand, two hundred sixty-eight dollars (\$290,268), in two installments, together with Interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, which is compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). Livingston shall pay the two installments in accordance with the following schedule:

a. First Installment: Within 20 Days of entry of this Consent Decree, Livingston shall pay the First Installment of one hundred forty-five thousand, one hundred thirty-four dollars (\$145,134).

b. Second Installment: Within 365 Days of entry of the Consent Decree, Livingston shall pay the Second Installment of one hundred forty-five thousand, one hundred thirty-four dollars (\$145,134), together with Interest accruing on the unpaid balance of one hundred forty-five thousand, one hundred thirty-four dollars (\$145,134), from the date of payment of the First Installment through the date of payment of the Second Installment.



c. Payment Instructions: Amounts to be paid under this Paragraph to the Respondent Group shall be made by certified check or checks or cashier's check or checks made payable to "United Scrap Lead PRP Group Trust Fund, Account No. 75-0046-005" referencing USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B, and the name and address of Livingston. Livingston shall send the check, together with a transmittal letter, to:

Respondent Group  
c/o Ben L. Pfefferle, III, Esq.  
Baker & Hostetler, LLP.  
Capitol Square, Suite 2100  
65 E. State Street  
Columbus, OH 43215-4260

Livingston shall send a copy of the check and transmittal letter to the Department of Justice and EPA as specified in Section XIII (Notice and Submissions).

## **VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

6. Interest on Late Payments. In the event that any payments required by Paragraphs 4.a or 5.a. of Section V (Reimbursement of Response Costs) or Section VI, Paragraph 7 (Stipulated Penalty), are not received when due, Interest shall accrue on the unpaid balance through the date of payment. All interest shall be paid at the same time that the payment is made under Paragraphs 4.a or 5.a of Section V (Reimbursement of Response Costs) or Section VI, Paragraph 7 (Stipulated Penalty).

### 7. Stipulated Penalty.

a. If any amount due to be paid under this Consent Decree is not paid by the required date, Livingston shall pay as a stipulated penalty (in addition to the Interest required by Paragraphs 4.b - 4.d, 5.b - 5.d, and 6) \$500 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and

Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Livingston or the Livingston Brothers of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs, and shall continue to accrue until receipt by EPA of the payment due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

9. Payments made under Paragraphs 6-8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Livingston's failure to comply with the requirements of this Consent Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

## **VII. GUARANTY BY LIVINGSTON BROTHERS**

11. The Livingston Brothers fully guarantee all payments owed by Livingston under Section V (Reimbursement of Costs) and under Section VI (Failure to Comply with the Requirements of Consent Decree). In the event that any payments required under these sections are not received when due, each of the Livingston Brothers shall immediately become jointly and severally liable (together with Livingston) for the full amount of the late payment and shall be jointly and severally liable for interest accruing on the late payment at the rate specified in 28 U.S.C. § 1961.

12. Payments for which the Livingston Brothers are liable are due and payable by the Livingston Brothers, either individually or collectively, within 15 days of the date of the demand for payment by EPA or DOJ, unless the payment has been made by Livingston within 15 days of the date of the demand for payment by EPA or DOJ. The Livingston Brothers shall be jointly and severally liable for the late payment regardless of whether EPA or DOJ has notified the Livingston Brothers or Livingston of the violation or made a demand for payment, but need only be paid by the Livingston Brothers upon demand by EPA or DOJ.

13. All payments required by Section V (Reimbursement of Costs) and Section VI (Failure to Comply with the Requirements of Consent Decree) paid by the Livingston Brothers under this Section shall be paid in the manner set forth and with the confirmation notices required by Paragraphs 4.e, 5.c or 7.b, except that the transmittal letter for payment of stipulated

penalties shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

### **VIII. CERTIFICATIONS BY LIVINGSTON**

14. In order to induce the Plaintiff to enter into this settlement, Livingston, by its signature hereto, affirms, to the best of its knowledge and belief, the following:

- a. Livingston has conducted a thorough, comprehensive, good-faith search for, and has fully and accurately disclosed to EPA, all information currently in the possession, custody or control of it or its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;
- b. Livingston has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to Livingston and Company, Inc.'s potential liability regarding the Site, after notification of potential liability or the filing of a suit against Livingston regarding the Site;
- c. Livingston has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);
- d. Livingston has provided to EPA all material information of which it is aware relating to the finances, assets, insurance coverage, and all other matters related the resources available to Livingston to reimburse the Plaintiff's and the Respondent Group's response costs at the Site;
- e. The information described in Subparagraphs a, c, and d above is true and accurate; and
- f. Livingston neither possesses nor knows of any other documents or information that would suggest that Livingston and Company, Inc. has in its possession, custody or control, other assets, income or any interests at all in property of any kind that could be used to reimburse the EPA Hazardous Substances Superfund or the Respondent Group for response costs incurred or to be incurred at the Site.

## **IX. COVENANT NOT TO SUE BY PLAINTIFF**

15. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 16 (Reservation of Rights by United States), the United States covenants not to sue Livingston pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Site. This covenant not to sue shall take effect upon receipt of all payments required of Livingston by Section V, Paragraphs 4 (Payment of Past Response Costs to the EPA Hazardous Substance Superfund) and 5 (Payment of Costs to the Respondent Group) and Section VI, Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalty). This covenant not to sue is conditioned upon the satisfactory performance by Livingston of its obligation under this Consent Decree. This covenant not to sue extends only to Livingston and does not extend to any other person.

16. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 15 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Livingston with respect to all other matters, including but not limited to:

- a. liability for failure of Livingston to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Decree.

17. The covenant set forth in Paragraph 15 is contingent upon the veracity of the certifications made by Livingston in Paragraph 14. Any misrepresentation, misstatement or material omission by Livingston in the certification made in Paragraph 14, upon written notice by the United States to Livingston, renders the covenant not to sue void. Following the voiding of any covenant not to sue pursuant to this Paragraph, in any action brought by the United States against Livingston, Livingston shall not raise any defenses based in whole or in part on the time elapsed between the entry of this Consent Decree and the commencement of such action by the United States, including but not limited to defenses based upon any statute of limitations, laches, waiver, estoppel, or lack of jurisdiction.

## **X. COVENANT NOT TO SUE BY LIVINGSTON AND LIVINGSTON BROTHERS**

18. Livingston and the Livingston Brothers covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

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

b. any claim arising out of response actions at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Livingston and the Livingston Brothers covenant not to sue and agree not to assert any claims or causes of action against the Respondent Group, or its contractors, with respect to the Site or this Consent Decree, including but not limited to:

a. any claim arising out of response actions at the Site; and

b. any claim against the Respondent Group pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

20. Livingston and the Livingston Brothers agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Livingston or the Livingston Brothers with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

21. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Livingston or the Livingston Brothers may have against any person if such person asserts a claim or cause of action relating to the Site against Livingston or the Livingston Brothers.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

## **XI. COVENANT NOT TO SUE BY RESPONDENT GROUP**

23. The Respondent Group covenants not to sue Livingston pursuant to Section 107(a) or Section 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, with respect to the Site. This covenant not to sue shall take effect as to Livingston upon receipt of all payments required of Livingston by Section V, Paragraph 5 (Payment of Costs to the Respondent Group) and Section VI, Paragraph 6 (Interest on Late Payments). This covenant not to sue is conditioned upon the satisfactory performance by Livingston of its obligation under this Consent Decree. This covenant not to sue extends only to Livingston and does not extend to any other person.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

24. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, except as provided in Paragraph 20.

25. The Parties agree, and by entering this Consent Decree this Court finds, that Livingston is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. For purposes of this Section, and except as provided in Paragraph 16, the "matters addressed" in this Consent Decree shall be Livingston's liability pursuant to CERCLA for Response Costs incurred or to be incurred by the United States, or by any other responsible person with respect to the Site.

26. Livingston agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Livingston also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Livingston shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Livingston and the Livingston Brothers shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

28. This Consent Decree shall not alter in any way the terms and conditions of the Initial Settlement which shall remain in full force and effect, except to the extent that Paragraph 23 of this Consent Decree modifies Paragraph 99 of the Initial Settlement.

### **XIII. NOTICES AND SUBMISSIONS**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Respondent Group, and Livingston, respectively.

#### As to the United States:

##### As to DOJ

Bruce Gelber  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ #90-11-3-279B

##### As to EPA

Sherry L. Estes  
Associate Regional Counsel  
ATTN: United Scrap Lead Superfund Site  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604

Richard C. Karl  
Director, Superfund Division  
Remedial Project Manager  
ATTN: United Scrap Lead Superfund Site  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604

As to the Respondent Group:

Ben L. Pfefferle, III, Esq.  
Baker & Hostetler, LLP.  
Capitol Square, Suite 2100  
65 E. State Street  
Columbus, OH 43215-4260

As to Livingston and the Livingston Brothers:

Jonathan P. Saxton  
Steven Hengehold  
Rendigs, Fry, Keily & Dennis, L.L.P.  
5 West Fourth Street  
Cincinnati, Ohio 45202

**XIV. RETENTION OF JURISDICTION**

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

**XV. INTEGRATION/APPENDICES**

31. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; and "Appendix B" is the complete list of the Respondent Group.

**XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Livingston and the Livingston Brothers consent to the entry of this Consent Decree without further notice.



33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVII. EFFECTIVE DATE**

34. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

#### **XVIII. SIGNATORIES/SERVICE**

35. The undersigned representative of Livingston and the Livingston Brothers to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Livingston and the Livingston Brothers hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Livingston and the Livingston Brothers in writing that it no longer supports entry of the Consent Decree.

37. Livingston and the Livingston Brothers agree to accept service of process with respect to all matters arising under or relating to this Consent Decree through mail sent to the following authorized agent:

JONATHAN P. SAXTON  
Rendigs, Fry, Keily & Dennis, L.L.P.  
5 West Fourth Street  
Cincinnati, Ohio 45202

Livingston and the Livingston Brothers hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

38. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

---

WALTER HERBERT RICE  
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree with Livingston & Company, Inc. in the matter of United States v. The Atlas-Lederer Co. et al, relating to the United Scrap Lead Superfund Site.

FOR THE UNITED STATES

Date: 2/19/08

RONALD J. TENPÁS  
Assistant Attorney General  
Environment and Natural  
Resources Division

JOSEPH W.C. WARREN  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
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Washington, DC 20044  
(202) 514-4113/616-6584 (FAX)

GREGORY G. LOCKHART  
United States Attorney  
Southern District of Ohio


PATRICK D. QUINN  
Assistant U.S. Attorney  
Southern District of Ohio  
Federal Building, 602  
200 W. Second Street  
Dayton, OH 45400  
(937) 225-2910/2564 (FAX)

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FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY


---

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

SHERRY  ESTES  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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FOR THE UNITED SCRAP LEAD  
RESPONDENT GROUP

  
Ben L. Pfefferle III (0024297)  
Baker & Hostetler, LLP.  
Capitol Square, Suite 2100  
65 E. State Street  
Columbus, OH 43215-4260  
(614) 462-2601/2616 (Fax)

Attorney for Respondent Group

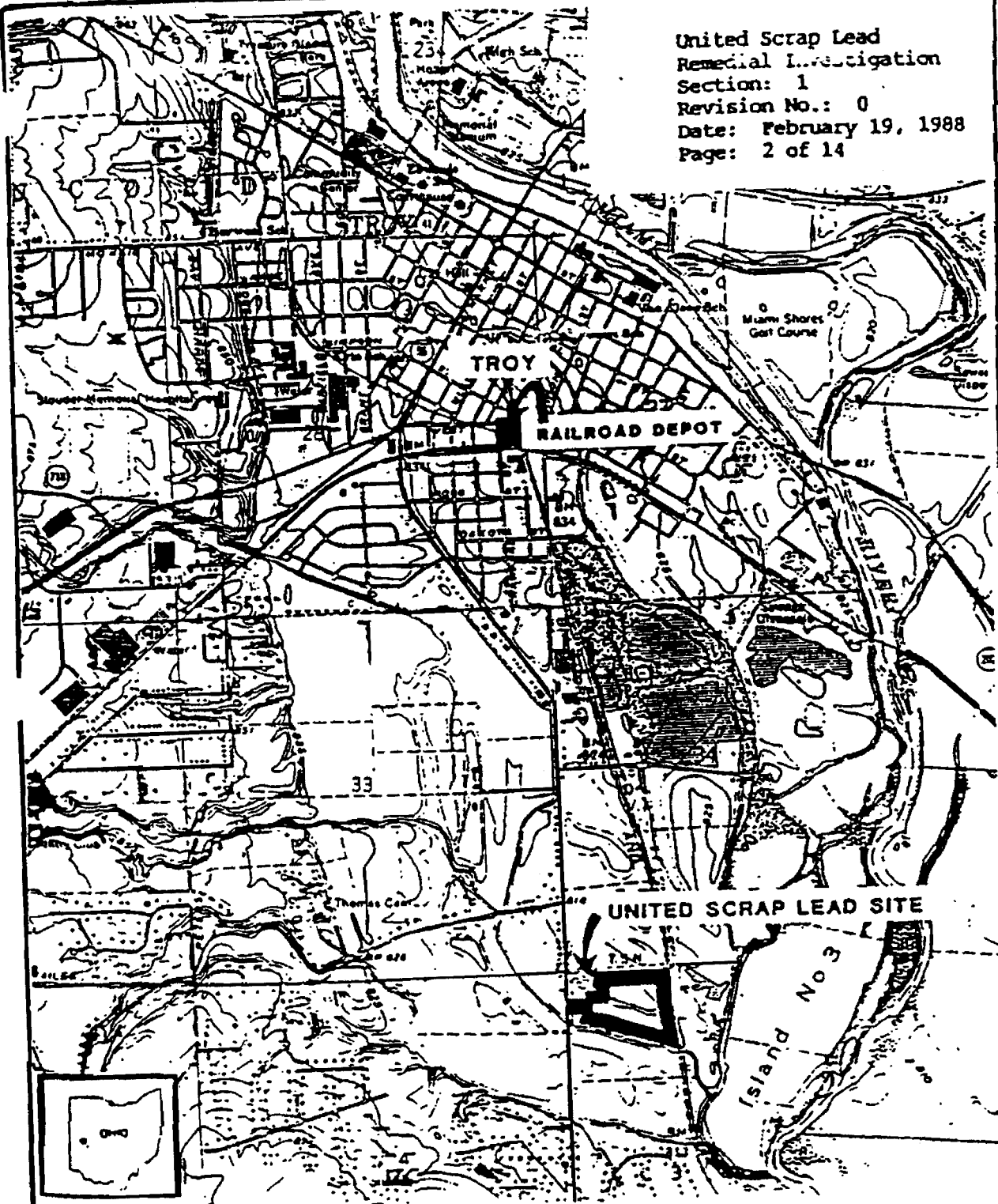
THE UNDERSIGNED PARTY enters into this Consent Decree with Livingston & Company, Inc. in the matter of United States v. The Atlas-Lederer Co. et al, relating to the United Scrap Lead Superfund Site.

FOR LIVINGSTON & COMPANY, INC.,  
LARRY LIVINGSTON AND ROGER LIVINGSTON

STEVEN D. HENGELHOLD  
RENDIGS, FRY, KIELY & DENNIS, LLP  
One West Fourth Street, Suite 900  
Cincinnati, Ohio 45202-3688

**APPENDIX A**

United Scrap Lead  
Remedial Investigation  
Section: 1  
Revision No.: 0  
Date: February 19, 1988  
Page: 2 of 14



Source: USGS- Troy, OHIO  
7 1/2 Min. Quadrangle Map  
Photorevised 1982

1000 0 1000 2000 feet

GENERAL SITE LOCATION



## APPENDIX B

### United Scrap Lead Respondent Group Members

AK Steel Corporation, Successor-in-Interest to the Eastern Steel Division of Armco, Inc.

The Atlas Lederer Company

Baker Iron & Metal Company, Inc.

Bill's Battery Company, Inc.

Cherrington Scrap Metals, Inc.

Cohen Brothers, Inc.

Commercial Metals Company

Consolidated Rail Corp.

D. Kirschner & Son, Inc., Wolf Company and  
David J. Joseph Company

Dobrow Industries, Inc.

Eagle Iron Co., Inc.

Herman Strauss, Inc.

J. Topy & Sons, Inc.

Midwest Corporation

Muskingum Iron & Metal Company

RMS Properties Corporation fka Chillicothe Iron & Metal Co.

Sims Brothers, Inc.

The Wilmington Iron & Metal Co., Inc.

Worly Steel & Supply Co., Inc.