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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

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

**1:99 CV 11 53**  
CASE NO.

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

GENCORP, INC., et al.,

Defendants.

JUDGE DAVID D. DOWD, JR.

CONSENT DECREE

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, has filed the Complaint in this action against Defendants for reimbursement of response costs incurred by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. §9601 et seq. ("CERCLA") and Ohio Revised Code ("R.C.") Chapter 3745.

NOW, THEREFORE, without trial and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## DEFINITIONS

Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

- A. **"Consent Decree"** means this Decree.
- B. **"Hazardous substance"** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- C. **"National Contingency Plan"** shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605.
- D. **"Ohio EPA"** means the Ohio Environmental Protection Agency, its Director, and its designated representatives.
- E. **"Response Costs"** means all direct and indirect costs incurred by the State of Ohio related to the response and remedial actions conducted at the Fields Brook Site by the Settling Defendants, other PRPs, U.S. EPA, and Ohio EPA, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, costs of reviewing or developing plans, report or other items, and costs of the Ohio Attorney Generals Office in representing Ohio EPA in this action.
- F. **"Settling Defendants"** means GenCorp, Inc., Millennium Inorganic Chemicals, Inc.; Consolidated Rail Corporation; The Sherwin-Williams Company; Union Carbide Corporation, Detrex Corporation; Viacom International Inc.; RMI Titanium Company; Occidental Chemical Corporation; Cabot Corporation; Ohio Power Company; Olin Corporation; FirstEnergy Corporation; ASHTA Chemicals, Inc.; Bee Jay Construction Co., Inc.; C.H. Heist Corp.; Elkem Metals Company, L.P.; Greenleaf Motor Express, Inc.; The Koski Construction Company; Luntz Services Corporation; Mallinckrodt, Inc.; Millennium Petrochemicals, Inc.; Motta's Body and Frame Shop, Inc.; Plasticolors, Inc.; and Reserve Environmental Services, Inc.
- G. **"Settling Federal Agencies"** means the General Services Administration (as successor to the Defense Plant Corporation) and the Department of Energy.
- H. **"Site" or "Fields Brook Site"** shall mean, solely for the purposes of this Consent Decree, the Fields Brook, with its surrounding watershed and tributaries that is located in or near Ashtabula, Ohio, and as specifically shown on the map attached as Appendix A.

- I. "State" means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.
- J. "U.S. EPA" means the United States Environmental Protection Agency,

### BACKGROUND

1. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the Fields Brook Site in Ashtabula County in Ohio on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

2. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, U.S. EPA has performed a Remedial Investigation and Feasibility Study ("RI/FS") for the Site.

3. Upon completion of the RI/FS, U.S. EPA selected a remedial action embodied in a Sediment Operable Unit Record of Decision ("SOU ROD"), executed on September 30, 1986.

4. After issuing the SOU ROD, U.S. EPA issued, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, an administrative order (EPA Docket No. V-W-89-C-008) and entered into an administrative order by consent (EPA Docket No. V-W-89-C-026) requiring certain Settling Defendants and certain other PRPs to perform the design of the remedy selected in the SOU ROD and to implement a second phase Source Control Unit RI/FS ("SCU RI/FS").

5. In designing the SOU remedy, Settling Defendants also were required to conduct studies concerning contamination of the floodplain and wetlands at the Site adjacent to the Fields Brook and its tributaries, and upon completion of those studies, U.S. EPA selected another

remedial action to be implemented at such areas at the Site, and that remedial action is embodied in a Floodplain and Wetlands Operable Unit record of Decision ("FWA ROD"), executed on June 30, 1997.

6. The Settling Defendants completed the SCU RI/FS in May, 1997, and U.S. EPA selected a remedial action embodied in a SCU Record of Decision ("SCU ROD"), executed on September 29, 1997.

7. On December 17, 1997, U.S. EPA issued another administrative order to the Settling Defendants to design and implement the FWA ROD remedy and to implement the SOU ROD remedy as amended by an Explanation of Significant Differences ("ESD").

8. In response to further studies performed in 1988, on April 8, 1999, U.S. EPA issued another Explanation of Significant Differences ("Site Wide ESD") from the SOU ROD, the FWA ROD, and the SCU.

9. The State has incurred costs in addressing releases or the substantial threat of releases of hazardous substances at and from the Site.

10. Settling Defendants have consented to the entry of this Consent Decree without acknowledging liability of any type, and the entry of this Decree shall not represent an admission or adjudication of liability.

11. The Parties agree, and the Court by entering this Consent Decree finds, that entry of this Consent Decree is in the public interest and will avoid prolonged and complicated litigation between the Parties.

### JURISDICTION

12. This Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Settling Defendants and Settling Federal Agencies shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. The Settling Defendants and Settling Federal Agencies waive service of the complaint and summons in this action.

### PARTIES BOUND

13. This Consent Decree applies to and is binding upon the Settling Defendants and Settling Federal Agencies their successors in interest, assigns, receivers, officers, agents, servants, and employees. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it.

### REIMBURSEMENT

14.a. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendants shall pay to the State One Hundred Sixty-Eight Thousand, Three Hundred Dollars (\$168,300.00) in settlement of all claims the State has against the Settling Defendants for Response Costs incurred by the State prior to the entry of this Consent Decree.

14.b.i. Within a reasonable time, the United States, on behalf of the Settling Federal Agencies, shall pay to the State Eleven Thousand, Nine Hundred, Twelve Dollars (\$11,912.00) in settlement of all claims the State has against the Settling Federal Agencies for Response Costs incurred by the State prior to the entry of this Consent Decree.

ii. In the event that payments required by Paragraph 15.b. are not made within 120 days of the effective date of this Consent Decree, interest shall be paid on the unpaid balance at the rate specified by section 107 of CERCLA, 42 U.S.C. § 9607. The interest to be paid under this Paragraph shall begin to accrue on the 121st day following the effective date of this Consent Decree and shall accrue through the date of payment.

iii. The Parties agree that in any judicial proceeding to enforce the monetary terms of this Consent Decree, the Settling Federal Agencies may raise as a defense their obligation to comply with the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. While the State disagrees that such defenses exist, the Parties agree that it is premature at this time to raise and adjudicate the existence of such defenses.

15. The payments made pursuant to Paragraphs 14.a. and 14.b. above shall be made in the form of a certified or cashier's check or a Treasury check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front St., Lazarus Government Center, Columbus, Ohio 43215, ATTN: Edith Long, or her successor. Settling Defendants and Settling Federal Agencies shall send a copy of the transmittal letter and copy of the check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front St., Lazarus Government Center, Columbus, Ohio 43215, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

### COVENANT NOT TO SUE

16. In consideration of the payments made by Settling Defendants and Settling Federal Agencies pursuant to Paragraphs 14.a. and 14.b. above, the State covenants not to sue or take administrative action against Settling Defendants and Settling Federal Agencies or their officers, directors, employees, successors or agents pursuant to Section 107(a) of CERCLA and R.C. Section 3745.12 for any Response Costs related to the Site which were incurred by the State prior to the entry of this Consent Decree. Such covenant not to sue is effective for the Settling Defendants and Settling Federal Agencies upon payment of their separate payment obligations. For purposes of this paragraph, areas outside the Site, include, but are not limited to, the Ashtabula River and Lake Erie even though those areas may have been contaminated or may be contaminated by some areas within the Site.

### STATE RESERVATION OF RIGHTS

17. The State reserves, and this Consent Decree is without prejudice to, any other State claim. The Settling Defendants and Settling Federal Agencies reserve their defenses to any such claim.

18. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site, including but not limited to, liability for any Response Costs unreimbursed by this Consent Decree. The State expressly reserves the right to sue any person other than Settling Defendants and Settling Federal Agencies, in connection with the Site.

### CONTRIBUTION PROTECTION

19. This Consent Decree provides Settling Defendants and Settling Federal Agencies with contribution protection for the Response Costs incurred by the State prior to the entry of the Consent Decree as provided in Section 113(f) of the Superfund Amendments and Reauthorization Act of 1986.

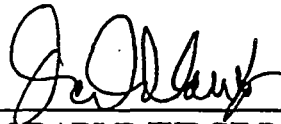
### DISCLAIMER OF LIABILITY

20. This Consent Decree shall not constitute an admission or adjudication with respect to any allegation in the State's Complaint, or any admission of any wrongdoing or misconduct or liability on part of Settling Federal Agencies and Settling Defendants or their officers, directors, employees, successors or agents.

### COSTS

21. Settling Defendants and Settling Federal Agencies shall pay the costs of this action. These costs do not include the \$150 filing fee for the State's Complaint. Such fee has been added to the past response costs and is being paid pursuant to paragraphs 14.a. and 14.b. of this Decree.

Entered this 7<sup>th</sup> day of July, 1999.

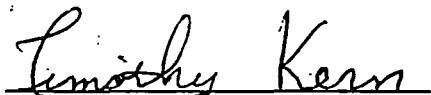


HONORABLE JUDGE DAVID D. DOWD, JR.  
United States District Judge



The Parties whose signature appear below and on the attached signature pages hereby consent to the terms of this Consent Decree in the matter of State of Ohio v. GenCorp, Inc., et al.

**BETTY D. MONTGOMERY**  
**ATTORNEY GENERAL OF OHIO**



**TIMOTHY J. KERN (0034629)**  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
(614) 466-2766

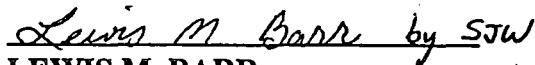
**JOSEPH LONARDO**  
**VORYS, SATER, SEYMOUR AND**  
**PEASE**

1828 L Street NW, 11<sup>th</sup> Floor  
Washington, D.C. 20036-5109

Attorney for Settling Defendants

The Parties whose signature appear below and on the attached signature pages hereby consent to the terms of this Consent Decree in the matter of State of Ohio v. GenCorp, Inc., et al.

**LOIS J. SCHIFFER**  
Assistant Attorney General  
Environment and Natural Resources  
Division



**LEWIS M. BARR**  
Environmental Defense Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 23968  
L'Enfant Plaza Station  
Washington, D.C. 20026-3986  
(202) 514-4206

Attorney for Settling Federal Agencies

The Parties whose signature appear below and on the attached signature pages hereby consent to the terms of this Consent Decree in the matter of State of Ohio v. GenCorp, Inc., et al.

**BETTY D. MONTGOMERY**  
**ATTORNEY GENERAL OF OHIO**

---

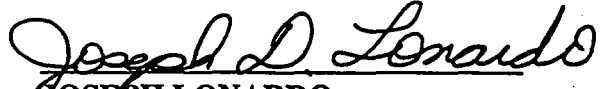
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Attorney for Settling Federal Agencies

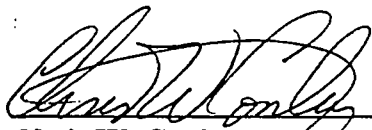
  
**JOSEPH LONARDO**  
VORYS, SATER, SEYMOUR AND  
PEASE  
1828 L Street NW, 11<sup>th</sup> Floor  
Washington, D.C. 20036-5109

Attorney for Settling Defendants

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

**GenCorp Inc.  
175 Ghent Rd.  
Fairlawn, OH 44333-3300**

By:



WG, Jr.

**Chris W. Conley  
Director, Environmental Health & Safety  
GenCorp Inc.**

5/11/99

**Date**

Millennium Inorganic Chemicals Inc.

**Name of Defendant**

200 International Circle  
Suite 5000  
Hunt Valley, MD 21030

**Address**

By: Samuel Friedman  
Signature of Representative

Samuel Friedman

**Name of Representative (Print or Type)**

Vice President

# Title

April 26, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

CONSOLIDATED RAIL CORPORATION

**Name of Defendant**

2001 Market Street 16-A  
Two Commerce Square  
Philadelphia, PA 19103

\_\_\_\_\_  
**Address**

By:

Thomas P. Pendergast  
**Signature of Representative**

Thomas P. Pendergast

**Name of Representative (Print or Type)**

Senior Director-Superfund Sites  
Environmental Quality Department

\_\_\_\_\_  
**Title**

5-3-99  
**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

The Sherwin-Williams Company

**Name of Defendant**

101 Prospect Avenue, N.W.  
Cleveland, Ohio 44115  
(216) 566-2000

\_\_\_\_\_  
**Address**

By: 

**Signature of Representative**

Louis E. Stellato

**Name of Representative (Print or Type)**

Vice-President, General Counsel & Secretary

**Title**

April 27, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

UNION CARBIDE CORPORATION

**Name of Defendant**

39 Old Ridgebury Road  
Danbury, CT 06817-0001

**Address**

By: 

**Signature of Representative**

J.C. Hovious

**Name of Representative (Print or Type)**

Director, Environment

**Title**

May 4, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Detrex Corporation  
Name of Defendant

24901 Northwestern Highway, Suite 500  
Address Southfield, MI 48075

By: Robert M. Currie  
Signature of Representative

Robert M. Currie  
Name of Representative (Print or Type)

General Counsel & Secretary  
Title

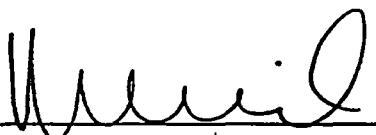
April 26, 1999  
Date



The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Viacom International Inc.  
Name of Defendant

1515 Broadway  
New York, NY 10036  
Address

By:   
Signature of Representative

Mark C. Morril  
Name of Representative (Print or Type)

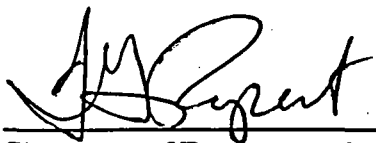
Vice President and Deputy General Counsel  
Title

May 3, 1999  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

RMI TITANIUM COMPANY  
**Name of Defendant**

1000 WARREN AVENUE  
NILES, OHIO 44446  
**Address**

By:   
**Signature of Representative**


TIMOTHY G. RUPERT  
**Name of Representative (Print or Type)**

Executive Vice President &  
Chief Financial Officer  
**Title**

May 6, 1999  
**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

**Occidental Chemical Corporation**  
5005 LBJ Freeway  
Dallas, TX 75244

By:   
Keith McDole  
Senior Vice President and  
General Counsel

May 6, 1999  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Cabot Corporation  
**Name of Defendant**

75 State Street  
Boston, MA 02109  
**Address**

By:   
**Signature of Representative**

Robert Rothberg  
**Name of Representative (Print or Type)**

Vice President and General Counsel  
**Title**

Apr. 12, 1999  
**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Ohio Power Company

**Name of Defendant**

301 Cleveland Ave. S.W.  
Canton, Ohio 44701

**Address**

By: 

**Signature of Representative**

J.H. Vipperman  
Vice President

John F. DiLorenzo

**Name of Representative (Print or Type) For Service and Correspondence**

Vice President

American Electric Power Service Corporation

1 Riverside Plaza

Columbus, OH 43215

**Title**

April 27, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Olin Corporation  
**Name of Defendant**

501 Merritt 7  
P.O. Box 4500  
Norwalk, CT 06856-4500  
**Address**

CS. By: Curt M. Richards  
**Signature of Representative**

Curt M. Richards  
**Name of Representative (Print or Type)**

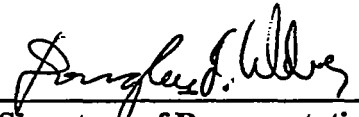
Corporate Director, Environment  
Health and Safety  
**Title**

5/3/99  
**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

FirstEnergy Corp.  
Name of Defendant

76 S. Main Street  
Akron, OH 44308  
Address

By:   
Signature of Representative

Douglas J. Weber  
Name of Representative (Print or Type)

Attorney  
Title

May 11, 1999  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

ASHTA Chemicals Inc.  
**Name of Defendant**

P.O. Box 858  
Ashtabula, OH 44005-0858  
**Address**

By: Reginald R. Baxter  
**Signature of Representative**

Reginald R. Baxter  
**Name of Representative (Print or Type)**

CEO  
**Title**

May 3, 1999  
**Date**



The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

BEE JAY CONSTRUCTION CO., INC. (F/K/A BRENKUS EXCAVATING, INC.)  
Name of Defendant

759 EAST 15TH STREET, ASHTABULA, OHIO 44004  
Address

By: *Ben Brenkus*  
Signature of Representative

BEN BRENKUS  
Name of Representative (Print or Type)

PRESIDENT  
Title

4/27/99  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v.  
GenCorp, Inc., et al.

C.H. Heist Corp.

**Name of Defendant**

810 North Belcher Road  
Clearwater, Florida 33765

**Address**

By:

  
**Signature of Representative**

John L. Rowley

**Name of Representative (Print or Type)**

Vice President-Finance

**Title**

May 4, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

ELKEM METALS COMPANY L.P.

**Name of Defendant**

P.O. Box 266  
Pittsburgh, PA 15230-0266

**Address**

By:

  
**Signature of Representative**

Francis A. King

**Name of Representative (Print or Type)**

Vice President & General Counsel

**Title**

April 29, 1999

**Date**

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Greenleaf Motor Express, Inc.  
Name of Defendant

4606 State Road  
Ashtabula, OH 44004  
Address

By: Mark A. Jarvis Pres.  
Signature of Representative

Mark A. Jarvis  
Name of Representative (Print or Type)

President  
Title

April 28, 1999  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Koski Construction Company, Inc.  
Name of Defendant

5841 Woodman Ave. Ashtabula, OH 44004  
Address

By: Donald R. Koski  
Signature of Representative

Donald R. Koski  
Name of Representative (Print or Type)

Vice President  
Title

April 28, 1999  
Date

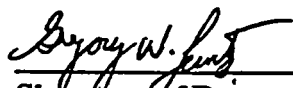
The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Luntz Services Corporation  
Successor in Interest to Luntz Corporation  
Name of Defendant

2351 Raintree St. N.E.  
Canton, OH 44705

\_\_\_\_\_  
Address

By:



\_\_\_\_\_  
Signature of Representative

Gregory W. Luntz

\_\_\_\_\_  
Name of Representative (Print or Type)

Vice President, Secretary & Treasurer  
Title

April 29, 1999

\_\_\_\_\_  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Luntz Services Corporation  
Successor in Interest to Luntz Corporation  
Name of Defendant

2351 Raintree St. N.E.  
Canton, OH 44705  
Address

By:

William G. Williams, Eng.  
Signature of Representative

Buckingham Poolittle & Barroughs

William G. Williams

Name of Representative (Print or Type)

Attorney at Law  
Title

April 29, 1999  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

MALLINCKRODT INC.

**Name of Defendant**

675 McDonnell Blvd.  
Hazelwood, MO 63042

**Address**

By:

Roger A. Keller  
Signature of Representative

Roger A. Keller

**Name of Representative (Print or Type)**

Vice President, General Counsel & Secretary

**Title**

May 4, 1999  
Date



The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Millennium Petrochemicals Inc.  
**Name of Defendant**

11500 Northlake Drive  
Cincinnati, OH 45249  
**Address**

By: Charles F. Daly  
**Signature of Representative**

Charles F. Daly  
**Name of Representative (Print or Type)**

Vice President & CFO  
**Title**

\_\_\_\_\_  
**Date**



The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Gencorp., Inc., et al.

Plasticolors, Inc.

2600 Michigan Avenue  
Ashtabula, OH 44004

Address

By:

  
Stephen J. Walling

STEPHEN J. WALLING  
Name of Representative (Type or Print)

PRESIDENT / CEO  
Title

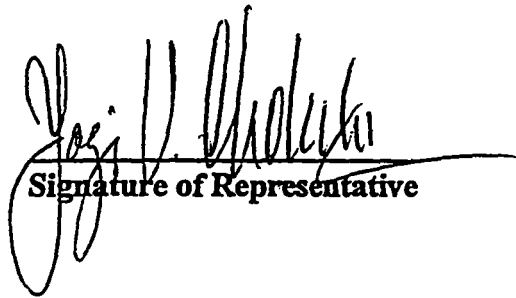
4/23/99  
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. GenCorp, Inc., et al.

Reserve Environmental Services, Inc.  
**Name of Defendant**

4633 Middle Rd. Ashtabula, OH 44005  
**Address**

By:

  
**Signature of Representative**

Yogi V. Chokshi  
**Name of Representative (Print or Type)**

Vice President  
**Title**

April 28, 1999  
**Date**

• • • • •

