

FILED

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

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GENCORP, INC. et al., )  
 )  
Defendants and Third- )  
Party Plaintiffs, )  
 )  
v. )  
 )  
DETREX CORPORATION et al., )  
 )  
Third-Party Defendants. )  
 )  
STATE OF OHIO, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GENCORP, INC. et al., )  
 )  
Defendants. )

CONSOLIDATED ACTIONS  
CASE NO. 5:89-CV-1866

JUDGE DAVID D. DOWD, JR.

RECEIVED

MAY 14 1999

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
CLERK OF COURTS  
U.S. DISTRICT COURT, N.D.O.  
CLEVELAND

CASE NO.

RECEIVED

MAY 17 1999

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
CLERK OF COURTS  
U.S. DISTRICT COURT, N.D.O.  
AKRON

CONSENT DECREE WITH ARCHER DANIELS MIDLAND COMPANY

Date lodged by Court May 14, 1999

Date entered by Court July 7, 1999

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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 and an amended complaint against the Defendants in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its amended complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for certain response actions at the Fields Brook Superfund Site in Ashtabula, Ohio ("Site"), together with accrued interest; and (2) damages for injury to, destruction of, or loss of natural resources at the Site belonging to, managed by, held in trust by, controlled by, or appertaining to the United States as trustee for those resources, including the costs of assessing such injury, destruction or loss pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

C. The State of Ohio (the "State"), on behalf of the Ohio Environmental Protection Agency, has also filed a complaint in this Court alleging that ADM, among other defendants, is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607 and Ohio Revised Code § 3745.12. The State in its complaint seeks damages for injury to, destruction of, or loss of natural

resources at the Site belonging to, managed by, held in trust by, controlled by, or appertaining to the State as trustee for those resources, including the costs of assessing such injury, destruction or loss pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

D. ADM has been sued by certain defendants for contribution and indemnity pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under state statutory and common law. ADM does not admit any liability to Plaintiffs or to the third-party plaintiffs or to any other person or company arising out of the transactions or occurrences alleged in the complaints or in any way related to the Fields Brook Site.

E. The Plaintiffs and ADM 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 ADM.

ADM consents 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, the State and upon ADM and its 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 ADM 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. "ADM" shall mean Archer Daniels Midland Company, a Delaware corporation with its principal place of business in Illinois, and its successors and assigns.

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

c. "Consent Decree" or "ADM 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.

d. "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.

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

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

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

h. "FWA Record of Decision" or "FWA ROD" shall mean the U.S. EPA Record of Decision relating to the Floodplains/Wetlands Area (FWA or OU4) at the Site, signed on June 30, 1997 by the Director of the Superfund Division, EPA Region 5, and all attachments thereto, and the Explanation of Significant Differences relating to the SOU ROD, and the Site Wide Explanation of Significant Differences.

i. "Interest" 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).

j. "Natural Resources Trustees" refers to the designated Federal and State officials who may act on behalf of the public as trustees for natural resources at the Fields Brook Site. These include, but are not limited to: the United States Department of the Interior; the United States Department of Commerce, National Oceanic and Atmospheric Administration; and the Ohio Environmental Protection Agency.

k. "Natural Resource Damages" shall mean damages, including costs of damage assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of any and all natural resources at the Site.

l. "OEPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the Ohio Environmental Protection Agency, and shall also include the Director of the Ohio Environmental Protection Agency.

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

n. "Parties" shall mean the United States, the State of Ohio and ADM.

o. "Plaintiffs" shall mean the United States and the

State of Ohio.

p. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through entry of this Consent Decree, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. Response Costs also includes costs that the United States has paid at or in connection with the Site in negotiating the Natural Resource Damages and "Source Control" issues. Response costs shall also include costs that the United States will incur in the future in overseeing the implementation of the remedies EPA selected in the SOU ROD, the FWA ROD, the SOU ESD and the Site Wide ESD, which remedies are the subject of a separate Consent Decree with other defendants. Response Costs shall also include those costs incurred in connection with the Ashtabula River Contamination Investigation through January 31, 1997.

q. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

r. "Site" or "Fields Brook Site" shall mean, solely for 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.

s. "SOU Record of Decision" or "SOU ROD" shall mean



the U.S. EPA Record of Decision relating to the Sediment Operable Unit (SOU or OU1) at the Site, signed on September 30, 1986 by the Regional Administrator, EPA, Region 5, and all attachments thereto, and the Explanation of Significant Differences relating to the SOU ROD, signed on August 15, 1997 by the Director of the Superfund Division.

t. "State" shall mean the State of Ohio, by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.

u. "United States" shall mean the United States of America, including all its departments, agencies and instrumentalities.

v. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

w. "Work" shall mean all activities that will be performed by the settling defendants in the Fields Brook RD/RA Consent Decree, and that have been performed under EPA's 1997 Administrative Order issued to certain defendants in this action.

#### V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Response Costs to the EPA Hazardous Substance Superfund. Within 30 days of entry of this Consent Decree, ADM

shall pay to the EPA Hazardous Substance Superfund Seven-Hundred-Thousand Dollars (\$700,000) in reimbursement of Response Costs, plus Interest on that amount calculated from April 22, 1998 to the date of payment. Payment 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 1987V22034, the EPA Region and Site Spill ID Number 0546, and DOJ Case Numbers 90-11-2-210, 90-11-2-210A and 90-11-2-210C. Payment shall be made in accordance with instructions provided to ADM by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern 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. ADM shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions) and to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

#### VI. PAYMENT OF NATURAL RESOURCE DAMAGES

5. Within sixty (60) days of the entry of this Consent Decree, ADM shall pay Ten-Thousand Dollars (\$10,000) for payment of Natural Resource Damages to the United States and to the State. ADM shall pay as follows:

i. ADM shall pay by electronic funds transfer ("EFT") the amount of \$10,000 to the Clerk of the Court of the United States District Court for the Northern District of Ohio for deposit into the Registry of the Court. Instructions for EFT payment shall be provided to ADM upon lodging of this Consent Decree. Such deposit into the Registry of the Court shall be made in accordance with the accompanying Order Directing the Deposit of Natural Resource Damages Payment into the Registry of the Court (Appendix B). The Natural Resource Damages Payment into the Registry of the Court shall be managed pursuant to the Order Directing Deposit of Natural Resource Damages Payment into the Registry of the Court and the Natural Resource Trustees' Memorandum of Understanding addressing Natural Resource Damages at the Fields Brook Site (Appendix C).

ii. The Fields Brook Natural Resources Damages Court Registry Account shall only be accessible to and administered by the members of the Trustee Council, or its duly authorized representatives. Disbursements from the Fields Brook Natural Resource Damages Court Registry Account, and membership in the Trustee Council, shall be in accordance with the Fields Brook Trustees Memorandum of Understanding which is attached hereto as Appendix C. The Trustee Council shall coordinate and authorize all Natural

Resources Trustee activities and matters related to Natural Resource Damages with respect to the Site. The funds in the Fields Brook Natural Resource Damages Court Registry Account shall be used solely to address injuries to, destruction of, or loss of Natural Resources with respect to the Site, including but not limited to, the restoration, replacement, or acquisition of habitat, the payment of assessment costs, and the funding of Trustee studies.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Interest on Late Payments. In the event that any payment[s] required by Section V (Reimbursement of Response Costs), Section VI (Payment of Natural Resource Damages), or Section VII, Paragraph 7 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on any unpaid balance through the date of payment.

7. Stipulated Penalty.

a. If any amounts due to EPA or to the Natural Resource Damages Court Registry under this Consent Decree are not paid by the required dates, ADM shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 6, \$1,500 per violation 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:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference ADM, the EPA Region and Site Spill ID Number 0546, USAO File Number 1987V22034, and DOJ Case Numbers 90-11-2-210, 90-11-2-210A, and 90-11-2-210C. 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 XII (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or DOJ has notified ADM 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, and shall continue to accrue through the final day of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States or the State brings an action to enforce this Consent Decree, ADM shall reimburse the United States and the State 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 Plaintiffs by virtue of ADM'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.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

11. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 12 (Reservation of Rights by United States) and Paragraph 15 (Reservation of Rights by the Natural Resource Trustees), the United States covenants not to sue ADM pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs and for payment of Natural Resource Damages, and pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for performance of the Work, as provided in this Consent Decree. This covenant not to sue shall take effect upon receipt by EPA and receipt by the Clerk of the Court of the Natural Resource Damages Payment of all payments required by Section V, Paragraph 4 (Payment of Response Costs to the United States), Section VI Paragraph 5 (Payment of Natural Resource Damages), Section VII, Paragraphs 6 (Interest on Late Payments), and 7 (Stipulated Penalty for Late Payment). This covenant not

to sue is conditioned upon the satisfactory performance by ADM of its obligations under this Consent Decree. This covenant not to sue extends only to ADM and does not extend to any other person.

12. General Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 11 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 ADM with respect to all other matters, including but not limited to:

a. liability for failure of ADM to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;

d. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and

e. liability for future disposal of Waste Material at the Site, other than as provided in the RODs, the SOW, or otherwise ordered by EPA.

13. Covenants Not to Sue by State of Ohio. In consideration of the payments that will be made by ADM under the terms of this Consent Decree, and except as specifically provided

in Paragraph 14, the State covenants not to sue ADM pursuant to Section 107(a) of CERCLA for the damages for injury to, destruction of, and/or loss of Natural Resources within the Site.

14. State Reservation of Rights. The State reserves, and this Consent Decree is without prejudice to, any other State claim.

15. Natural Resources Trustees Reservation of Rights.

a. Additional General Reservation of Rights.

Notwithstanding other provisions of this Consent Decree, the United States and the State, on behalf of their designated Natural Resources Trustees, each also reserves the right to institute proceedings against ADM in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the Natural Resources Trustees as of the date EPA signed the FWA ROD, SOU ESD, and the Site-Wide ESD, which conditions result in or contribute to injury to, destruction of, or loss of natural resources; or (2) information received by the Natural Resources Trustees after the date EPA signed the FWA ROD, SOU ESD, and the Site Wide ESD which information indicates that there is injury to, destruction of, or loss of natural resources of a type previously unknown, or a magnitude greater than was known, to the Natural Resources Trustees, prior to EPA signing the FWA ROD, SOU ESD, and the Site Wide ESD. The Natural Resources Trustees shall



be deemed to know all information and conditions contained in the Administrative Records for the SOU ROD, the FWA ROD, the SOU ESD and Site Wide ESD as of the date of lodging of this Consent Decree.

b. Additional Specific Reservation of Rights.

Notwithstanding other provisions of this Consent Decree, the United States and the State do not covenant not to sue ADM for injury to, destruction of, or loss of natural resources (i) for any area outside the Site, even though those areas may have been contaminated or may in the future be contaminated, from areas within the Site; or (ii) due to the future disposal of Waste Materials at the Site, other than as provided in the RODs, the SOW, or otherwise ordered by EPA. The areas considered to be outside the Site for purposes of (i), above, include, but are not limited to, the Ashtabula River and Lake Erie.

IX. COVENANT NOT TO SUE BY ADM

16. ADM covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their 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 for which the Response Costs were incurred or will be incurred; and

c. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613, related to the Site.

17. Nothing in this Consent Decree shall be construed to prohibit ADM from enforcing the terms of this Consent Decree.

18. 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).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. 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.

20. The Parties agree, and by entering this Consent Decree this Court finds, that ADM 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. The "matters addressed" in this Consent Decree are i) Response Costs; ii) the costs incurred and to be incurred by other defendants in their Consent Decree lodged concurrently with this Court, for performance of the Work under that Consent Decree; and iii) costs incurred and to be incurred by the United States and any other person in connection with Source Control Operable Units at the Site.

21. ADM 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. ADM 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, ADM 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.

22. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive

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

#### XI. RETENTION OF RECORDS

23. Until 10 years after the entry of this Consent Decree, ADM shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

24. After the conclusion of the document retention period in the preceding paragraph, ADM shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, ADM shall deliver any such records or documents to EPA. ADM may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by

federal law. If ADM asserts such a privilege, it shall provide the United States with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. ADM shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in ADM's favor.

25. By signing this Consent Decree, ADM certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or

agents, which 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. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of any suit against ADM regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## XII. NOTICES AND SUBMISSIONS

26. 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 State, and ADM, respectively.

As to the United States:

As to DOJ:

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

Re: DJ # 90-11-2-210, 90-11-2-210A, and 90-11-2-210C

As to EPA:

Terese Van Donsel  
U.S. EPA (SR-6J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 353-6564

Peter Felitti  
U.S. EPA (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-5114

As to the Natural Resource Trustees:

Regan S. Williams  
Site Coordinator  
Ohio EPA  
Division of Emergency and Remedial Response  
2110 East Aurora Rd.  
Twinsburg, OH 44087  
(330) 963-1210

Frank J. Horvath, NRDA  
Coordinator, Fish and Wildlife Service,  
Region 3, BHW Federal Bldg.,  
1 Federal Drive  
Fort Snelling, MN 55121-4007  
(612) 713-5336

As to ADM:

Scott A. Roberts, Esq.  
Assistant General Counsel  
and Assistant Secretary  
Archer Daniels Midland Company  
Box 1470  
4666 Faries Parkway  
Decatur, Illinois 62526  
(217) 424-7244

Richard J. Kissel  
Deborah H. Bornstein  
Gardner, Carton & Douglas  
321 North Clark Street, Suite 3400  
Chicago, Illinois 60610-4795  
(312) 644-3000

**XIII. RETENTION OF JURISDICTION**

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

**XIV. INTEGRATION/APPENDICES**

28. 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 appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; "Appendix B" is the Order Directing the Deposit of Natural Resource Damages Payment into the Registry of the Court; and "Appendix C" is the NRD Trustees' Memorandum of Understanding.

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

29. 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. ADM consents to the entry of this Consent Decree without further notice. In addition, ADM agrees not to oppose entry by the Court of the Fields Brook RD/RA Consent Decree, lodged concurrently with this Consent Decree, or to challenge any provision of that Consent Decree.

30. If for any reason the 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.

**XVI. EFFECTIVE DATE**

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

**XVII. SIGNATORIES/SERVICE**

32. Each of the undersigned representatives of ADM, the State 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.

33. ADM hereby agrees 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 ADM in writing that it no longer supports entry of the Consent Decree.

34. ADM shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of ADM with respect to all matters arising under or relating to this Consent Decree. ADM hereby agrees 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.

**XVIII. FINAL JUDGMENT**

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and ADM. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

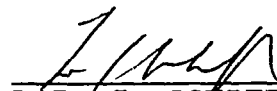
SO ORDERED THIS 7<sup>th</sup> DAY OF July, 1999.

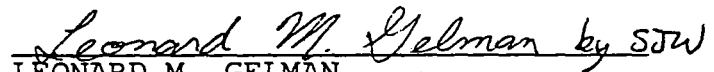
  
HONORABLE JUDGE DAVID D. DOWD, JR.  
United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the State of Ohio v. Gencorp, Inc. et al., Case No. 5:89-CV-1866, relating to the Fields Brook Superfund Site.

FOR THE UNITED STATES OF AMERICA

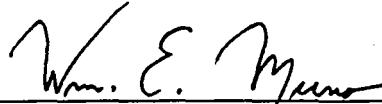
Date: 5/13/99

  
\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
\_\_\_\_\_  
LEONARD M. GELMAN  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
\_\_\_\_\_  
ARTHUR I. HARRIS  
Assistant United States Attorney  
Northern District of Ohio  
U.S. Department of Justice  
1800 Bank One Center  
600 Superior Avenue, East  
Cleveland, OH 44114-2600

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the State of Ohio v. Gencorp, Inc. et al., Case No. 5:89-CV-1866, relating to the Fields Brook Superfund Site.



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WILLIAM E. MUNO  
Director, Superfund Division  
U.S. Environmental Protection  
Agency - Region V  
77 West Jackson Blvd.  
Chicago, Illinois 60604



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PETER FELITTI  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency Region 5  
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Chicago, Illinois 60604

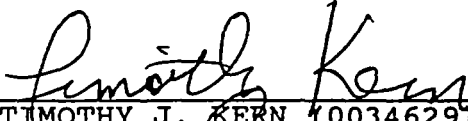
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the State of Ohio v. Gencorp, Inc. et al., Case No. 5:89-CV-1866, relating to the Fields Brook Superfund Site.

FOR THE STATE OF OHIO

BETTY D. MONTGOMERY  
Attorney General of Ohio

Date:

5/14/99

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

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the State of Ohio v. Gencorp, Inc. et al., Case No. 5:89-CV-1866, relating to the Fields Brook Superfund Site.

FOR Archer Daniels Midland Company

Date: \_\_\_\_\_

4/28/99



\_\_\_\_\_  
David J. Smith  
Vice President, Secretary and General  
Counsel  
4666 E. Faries Parkway  
Decatur, Illinois 62526

Agent Authorized to Accept Service on Behalf of ADM:

Name: David J. Smith  
Title: Vice President, Secretary and General Counsel  
Address: 4666 East Faries Parkway, Decatur, Illinois 62526  
Tel. Number: (217) 424-6183