UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Deer Park
Jeffery S. Goldenberg
Murdock & Goldenberg
Suite 400, 700 Walnut Street
Cincinnati, OH 45202-2015

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Blue Ash
Jeffery S. Goldenberg, Esq.
Murdock & Goldenberg
Suite 400, 700 Walnut Street
Cincinnati, OH 45202-2015

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Maderia
C. J. Schmidt, Esq.
Wood & Lamping
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, OH 45202-2409

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Mason
C.J. Schmidt, Esq
Wood & Lamping
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, OH 45202-2409

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Monroe
Stephen N. Haughey, Esq.
Kellye J. Bowers, Esq.
Frost & Jacobs
2500 PNC Center
Cincinnati, OH 45202-4182

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

City of Sharonville
Thomas T. Keating
Keating Ritchie & Swick
8050 Hosbrook, Ste 200
Cincinnati, OH 45236

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
C-14J

November 5, 1999

VIA FACSIMILE AND
U.S. MAIL

FEDERAL RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

RE: Proposed Consent Decree for the Skinner Landfill Superfund Site in West Chester, Ohio

Village of Lincoln Heights
Matthew W. Fellerhoff, Esq.
Manley, Burke, Lipton & Cook
225 West Court Street
Cincinnati, OH 45202-1053

Dear Sir or Madam:

Please find enclosed a proposed consent decree to settle your or your client's (Settling Municipal Solid Waste (MSW) Defendant) liability at the Skinner Landfill Superfund site located in West Chester, Ohio (Site). Upon the request of the Settling MSW Defendants, the United States Environmental Protection Agency (EPA) offers this proposed consent decree to settle any claim EPA may have against the Settling MSW Defendant pursuant to Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9606 and 9607, for response costs incurred or to be incurred at the Site. The proposed consent decree also provides the Settling MSW Defendant with contribution protection against claims by third parties.

The proposed settlement requires a cash payment by the Settling MSW Defendants which will go into the Skinner Landfill Special Account, and will, in part, fund implementation of the remedial action at the Site. The amount EPA is willing to accept from the Settling MSW Defendant in settlement is presented in Appendix A to the proposed consent decree. This settlement amount is based upon the Settling MSW Defendant's volumetric contribution which is also presented in Appendix A. The volumetric share is based upon the findings of John Barkett, the allocator in the alternative dispute resolution process in which the Settling MSW Defendant participated. This information was submitted to EPA by the Settling MSW Defendant as part of settlement discussions.

Also enclosed is EPA's summary of the allocator's findings and EPA's calculation of the settlement amount presented in Appendix A, as to you or your client only. This information is not part of the proposed consent decree. It is offered solely for the purpose of settlement, pursuant to Rule 408 of the Federal Rules of Evidence, and is included to help you evaluate the proposed settlement.

The proposed consent decree is based upon EPA's municipal solid waste settlement policy (MSW Policy). EPA has reviewed the Allocator's findings and has determined that the Settling MSW Defendant is eligible for a settlement pursuant to the MSW Policy. Please note that the settlement offer is conditioned upon the veracity and completeness of the information provided to EPA by the Settling MSW Defendant relating to the Settling MSW Defendant's involvement with the Site, and any other terms or conditions in the proposed consent decree. In addition, this proposed consent decree is contingent upon final approval by the duly authorized officials at EPA and the United States Department of Justice, and may be revoked any time prior to entry by the Court.

To accept these terms of settlement, please have the Settling MSW Defendant or authorized representative execute the proposed consent decree by signing the appropriate signature page of the proposed consent decree and returning the original signature page to:

Craig Melodia
Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590

If you choose to accept this settlement offer, the payment terms and instructions can be found in the proposed consent decree.

Please note that the legal description of the Site, set forth in Appendix B-1, may change slightly. EPA will forward the corrected legal description as soon as it is available, probably during the week of November 8, 1999.

Given the need to expedite settlements and proceed with the remedial action at the Site, **a response to this letter is required by November 24, 1999**. Please contact me by telephone at (312) 353-8870, with questions or comments, or to discuss this settlement offer.

Sincerely,

Sherry L. Estes

for Craig Melodia
Assistant Regional Counsel

Enclosures

cc: Elliot Rockler, U.S. DOJ (w/enclosures)
Doug Dixon, U.S. EPA (w/enclosures)
File, C-14J

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

City of Deer Park - By letter dated February 10, 1999, Deer Park responded to the Special Notice Letter. Deer Park submitted an excerpt from the Allocator's Preliminary Report discussing Deer Park's use of the Site, Deer Park's Position Paper, and its Response to the ADR Questionnaire. The Allocator found Deer Park's total waste-in was 6,802 cys, and Deer Park calculated its total liability at the Site as $1,802.

The Skinner log indicates that Deer Park paid $342 for disposal at the Site on 14 different dates between December 2, 1957 and August 8, 1960. The Skinner Log does not indicate the amount of waste Deer Park disposed of at the Site. Deer Park states that from June 1957 until August 1960 it brought MSW to the Landfill on an "emergency basis" only. Deer Park also admits that for five-weeks (June-July 1957) it used the Site as its primary disposal facility. At all other times Deer Park states that it took MSW to other locations.

Deer Park reported that it was unable to provide any information on the chemical constituents of its waste. Deer Park interviewed J. Henry Camp, the former Service Director, and David O'Leary, the current Safety Service Director, and believes that there were no commercial establishments occupying over 20,000 square feet or industrial establishments within the city. Deer Park states that from 1930 to 1984 it hauled its own waste. From 1977 to 1984 the City hauled its own waste to Clarke Incinerator, Inc. From 1985 until the early 1990s Deer Park contracted with Rumpke Waste, Inc. for collection and disposal service. Deer Park's contract required Rumpke to use the Rumpke landfill as the primary disposal facility.

Deer Park submitted two City Council meeting minutes from 1957 which reference dumping at Westchester, Ohio. The City Council minutes do not reference the particular location in Westchester, but do state that the waste was brought to Westchester after Deer Park's primary disposal site was closed. Deer Park used a 13 cy packer truck (3.9 tons per load) and a 7 cy open bed dump truck (.35 tons per load). The Allocator accepted the City's estimate of 18 loads per week, split evenly between the packer and the open bed dump truck. The City's estimate of 18 loads per week was based upon a contract it had with another landfill for an average of 20-22 loads per week.

The Allocator concluded that during the five week period in 1957 when Deer Park used the Site as its primary disposal facility, the City brought 1,800 cys to the Landfill, plus another 3,206 cys for the period 1957 through 1960, for a total of 5,006 cys. Because a portion of the waste hauled to the Site was compacted, the Allocator "uncompacted" the waste for a total of 6,775 uncompacted cys. In uncompacting the packer waste, the Allocator used a 2:1 ratio, unlike the MSW Policy which multiplies the waste by 600 pounds to reach a waste-in weight.

Of the 5006 cys the Allocator attributed to the Skinner Log, the Allocator found that 13/20 (or 3,254 cys.) of the waste was compacted and had to be "uncompacted". Following the MSW Policy, the compacted waste is converted to weight by multiplying by 600 lbs., resulting in a total of 1,952,00 lbs. The 1,752 uncompacted cys. is converted to weight by multiplying by 100 lbs., resulting in a total of 175,200 lbs.

Finally, the Allocator considered testimony, especially that of Rodney Miller, discussing Deer Park's use of the Site, and added another 27 uncompacted cys, which when converted to weight is 2,700 lbs. Accepting the Allocator's findings, we add 1,952,000 and 175,200 and 2,700 lbs. for a total weight of 2,129,900 lbs., or 1,065 tons.

There is no indication in the information submitted by Deer Park, including the Allocator's Report, that Deer Park disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Deer Park to the Site, Deer Park is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. For purposes of calculating the City of Deer Park's total liability at the Site, EPA accepts the Allocator's findings and calculates a total weight of 1,065 tons. The calculation to determine Deer Park's total liability for purposes of settlement is presented below.

Settlement Calculation for the City of Deer Park

9 loads per week x 13 compacted cys. = 117 compacted cys. per week
9 loads per week x 7 uncompacted cys. = 63 uncompacted cys. per week
total of 180 cys. per week/ 117 compacted cys. = 13/20 compacted cys. of total waste

1,800 cys. from five weeks in 1957 + 3,206 cys. for 1957 through 1960 = 5,006 cys
13/20 of 5,006 = 3,254 compacted cys.
3,254 compacted cys. x 600 lbs. = 1,952,400 lbs.
1,952,400 lbs./2000 tons = 976.2 tons

3,254 compacted cys. - 5,006 cys. = 1,752 uncompacted cys.
1,752 uncompacted cys. + 27 uncompacted cys. = 1,779 uncompacted cys.
1,779 uncompacted cys. x 100 lbs. = 177,900 lbs.
177,900 lbs./2000 tons = 88.95 tons

976.2 tons + 88.95 tons = 1,065.15 tons
1,065.15 tons x $5.30 = $5,645.29

Skinner Landfill Settlement
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

City of Blue Ash - By letter dated February 10, 1999, Blue Ash responded to the Special Notice Letter. Blue Ash submitted an excerpt from the Allocator's Preliminary Report discussing Blue Ash's use of the Landfill, Blue Ash's Position Paper for the ADR, and its Response to the ADR Questionnaire. The Allocator found that Blue Ash's total waste-in was 948 uncompacted cubic yards, and Blue Ash calculated its total liability at the Site as $251.22

Blue Ash states that it never used the Skinner Landfill. Blue Ash claims it only accepted household waste and commercial waste including office waste, plastic bottles, cardboard, glass and scrap wood, and that it never collected or disposed of sludge or containerized waste. According to the Allocator's Report, Maria, Ray and Elsa Skinner and Charles Ringel identified Blue Ash as a user of the Skinner Landfill. The Allocator discounted Maria Skinner's testimony, partially credited Ray and Elsa Skinner's testimony, and credited Charles Ringel's testimony.

Blue Ash described its waste as MSW and nothing in the evidence submitted indicates that Blue Ash brought anything other than MSW to the Site. Ray Skinner stated that Blue Ash hauled road side cleanup waste (guardrails, black top, shop waste/rags, cans, buckets and tires) as well as "salt waste" from a facility near Crosley Field to the Landfill. The Allocator partially credited Ray Skinner's testimony. Charles Ringell, whose statements the Allocator fully credited, stated that he saw Blue Ash haul garbage to the Site. Ringell also stated that Blue Ash used the Marrow Landfill before and after it used the Site, although there is also no indication of the type of waste sent to that landfill.

There is no indication in the information submitted by Blue Ash, including the Allocator's Report, that Blue Ash disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Blue Ash to the Site, Blue Ash is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. For purposes of calculating the City of Blue Ash's total liability at the Site, EPA accepts the Allocator's findings but differs on the approach used for converting compacted cubic yards to uncompacted cubic yards. In order to "uncompact" the waste, the Allocator used a 2:1 ratio, whereas EPA's MSW Policy calls for multiplying each compacted cy of waste by 600 pounds as a conversion factor for purposes of settlement.

Based upon Mr. Ringell's testimony, the Allocator found Blue Ash responsible for one load per month in an 18 cy packer truck over a period of 1.5 years. This finding amounts to 324 compacted cubic yards of waste. Using the Allocator's ratio to uncompact the waste results in a total of 648 uncompacted cys attributed to Mr. Ringell's testimony. Using the MSW Policy, however, results in a total of 194,400 lbs., or 97.2 tons. In addition to the testimony of Charles Ringell, the Allocator attributed 300 uncompacted cys to Elsa and Ray Skinner's testimony.

Skinner Landfill Settlement
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

Converted to weight, 300 uncompacted cys is 30,000 lbs., or 15 tons, giving Blue Ash a total waste-in amount of 112.2 tons. Under the MSW Policy 112.2 tons at $5.30 per ton, results in $595 in total liability at the Site. The calculation is presented below.

Settlement Calculation for the City of Blue Ash

1 load at 18 compacted cys per month x 1.5 years = 324 compacted cys
324 cys x 600 lbs. = 194,400 lbs.
194,400 lbs./ 2000 tons = 97.2 tons
+
300 uncompacted cys. x 100 lbs. = 30,000 lbs.
30,000 lbs./2000 tons = 15 tons
97.2 *tons* + 15 *tons* = 112.2 *tons*
112.2 tons x $5.30 = $594.66

Skinner Landfill Settlement -
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

City of Maderia - Maderia submitted its response to the Special Notice Letter on February 15, 1999. Maderia denies any connection to the Site, but has requested a settlement pursuant to the MSW Policy. Maderia submitted its Response to the ADR Questionnaire, its Response to the Follow-Up Questions, the City of Maderia and Mason's Joint Supplemental Position, its Initial Position Paper, and an excerpt of the Allocator's Preliminary Findings. The City of Maderia and Mason's Joint Supplemental Position Paper argues that the Allocator should adopt the settlement approach laid out in EPA's MSW Policy when allocating the municipalities' share of liability at the Site. The Allocator found that Maderia's total waste-in was 4,180 uncompacted cys, and following the MSW Policy, Maderia calculated its total liability at the Site as $1,107.70

In its Response to the ADR Questionnaire, Maderia stated that to the best of its knowledge the waste that each of its haulers picked up and disposed of under contract was "typical household/residential waste" such as foodstuffs, paper products, plastics, etc. Maderia stated that it did not provide waste collection services to commercial establishments greater than 20,000 square feet or to industrial establishments during the period in question. Maderia also stated that it has no record of using the Skinner Landfill and should be allocated a zero (0) share of liability at the Site.

Maderia states that the only evidence linking it to the Site is the testimony of Rodney Miller. Mr. Miller stated that Maderia used the Site in the 1950's and 1960's through its hauler, Estella and Proctor Spaulding. Maderia argues that Mr. Miller's testimony is unreliable because he had no connection to the Site until he began living there in 1978. Further, Maderia argues that its name, and that of the Spauldings, appears nowhere in the Skinner Log. Maderia also points out that the Spauldings have records indicating that they used other landfills, and contracts with the Spauldings refer to a landfill in or near Morrow. Finally, Roger Ludwick stated in his deposition with U.S. EPA that he did not recall Maderia using the Site. In addition to the Spauldings, Rumpke and Clermont Waste Collection hauled waste for Maderia and both are alleged to have used the Site for disposal.

The Allocator credited Mr. Miller's testimony that Maderia brought waste to the Site. Maderia is reported to have used a landfill in the 1950s which was owned and operated by Mr. Miller's father. That landfill was closed in December of 1951. Mr. Miller's father told him that Maderia also used the Skinner Landfill. The Spauldings collected and transported waste for Maderia from 1944-1952 and 1955-1959. Maderia acknowledged in its Responses to the ADR Questionnaire that while it had located records for the years 1955-1959 showing that the Spauldings were supposed to have transported Maderia's waste to a location other than Skinner, the records it located for the earlier period did not indicate where the waste was to be taken.

Following the testimony of Mr. Miller, Maderia reasoned that even if its waste was brought to the Skinner Landfill, there was only a six month period from January 1, 1952 to July 30, 1952, after Mr. Miller's father's landfill had closed, that the Spauldings could have brought its waste to the Site.

The Allocator accepted many of Maderia's assumptions and found that the total amount of waste which the Spauldings could have transported to the Site during this six month period in 1952 was 624 tons (26 weeks x 1,200 residences x 40 pounds per week per residence). The Allocator then converted the tons into compacted cubic yards (624 tons x 2000 lbs/600 lbs. = 2080 compacted cys.), and then "uncompacted" the cubic yards using a 2:1 ratio to arrive at a total of 4,180 uncompacted cubic yards.

There is no indication in the information submitted by Maderia, including the Allocator's Report, that Maderia disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Maderia to the Site, Maderia is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. For purposes of calculating the City of Maderia's total liability at the Site, EPA accepts the Allocator's findings, including limiting the City's use of the Site to the six month period in 1952. Unlike the allocator who converted the tonnage to cubic yards and then "uncompacted" the waste using a 2:1 ratio, EPA will follow the MSW Policy which calls for multiplying the tonnage by $5.30 to determine Maderia's total liability for purposes of settlement. Under this approach, EPA's settlement offer is presented below.

Settlement Calculation for the City of Maderia

40 lbs. per week x 1,200 residences = 48,000 lbs. per week
48,000 lbs. x 26 weeks = 1,248,000 lbs.
1,248,000 lbs./2000 tons = 624 tons
624 tons x $5.30 = $3,307.20

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

City of Mason - The City of Mason submitted its response to the Special Notice Letter on February 15, 1999. Mason denies any connection to the Site, but has requested a settlement pursuant to the MSW Policy. Mason submitted its Response to the ADR Questionnaire, its Initial Position Paper, the City of Maderia and City of Mason's Joint Supplemental Position, and an excerpt of the Allocator's Preliminary Findings. The City of Maderia and Mason's Joint Supplemental Position Paper argues that the Allocator should adopt the settlement approach laid out in EPA's MSW Policy when allocating the municipalities' share of liability at the Site. The Allocator found that Mason's total waste-in was 1,800 uncompacted cubic yards, and following the MSW Policy, Mason claims its total liability at the Site is $477.

Mason states that it reviewed ordinances passed during the relevant period and interviewed former employees. In its Response Mason claims it was unable to locate any documentation relating to waste collection and disposal for the years 1930 to 1965, but was able to interview former employees about this period. Mason states that the waste generated, collected and transported for disposal was typical household/residential waste (solids and liquid but no sludge) such as food products, paper and other residential waste. Waste was collected once a week from residences and twice weekly from commercial establishments.

Mason's contracts do not specify whether waste from commercial establishments occupying over 20,000 square feet and/or from industrial establishments was collected, but by City ordinance these facilities were limited to one 2 cubic yard container or five garbage cans, with any excess required to be collected and disposed of under private contract. Mason also had "several small package plants prior to 1962." Based upon information in the City's possession and interviews of former employees, Mason claims that these package plants did not generate solids or sludge and that none was transported to the Site. In addition, Mason states that its wastewater treatment facility was opened in 1962, and that sludge from this facility was not transported or disposed of at the Site. Mason claims that until 1973 the plant operated under an extended aeration plan in which solids were burned as they were processed. Mason states that from 1973 until approximately 1981 sludge was disposed of on Village property, and from 1981 continuing until the end of the applicable period the plant operated under a sludge management plan and no sludge was taken to the Site.

From 1939-1969 Mason collected, transported and disposed of its own waste at two sites within the boundaries of the City. The City was unable to determine the number and size of the trucks it used to collect waste. Mason claims it did not take any waste to the Skinner Site. The City did contract with Rumpke and Rumpke Waste from 1970-1990, except for 1978 when an unknown contractor (possibly from Mariemont, Ohio) provided the waste disposal services for

Mason. Mason stated that its contracts with Rumpke and the unknown contractor did not specify, and the City was unable to determine, where its waste was disposed of under these contracts, but that it assumed Rumpke used its own landfill.

Ray Skinner testified that Mason used the Site for 30-40 years to dispose of road cleanup debris including leaves and asphalt. Mr. Skinner stated that Mason hauled into the Site once a month in an 11 cubic yard dump truck. In its Initial Position Paper, Mason estimated that if Mr. Skinner's testimony was fully credited, the most it could have brought to the Site was 3,960 cubic yards (11 cubic yards x 12 months x 30 years). The Allocator found 11 cubic yards to be an atypical size, and instead used 10 cubic yards in calculating Mason's volumetric share. After considering all of the evidence, the Allocator discounted by half Mr. Skinner's testimony and assigned Mason a waste in total of 1,800 cubic yards. Because the Allocator does not discuss "uncompacting" the waste, it is fair to assume that the Allocator found that the waste was uncompacted when hauled to the Site, and that the 1,800 cubic yards represents uncompacted waste.

There is no indication in the information submitted by Mason, including the Allocator's Report, that Mason disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Mason to the Site, Mason is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. The following calculation is prepared using the Allocator's findings and the MSW Policy in order to determine Mason's total liability at the Site for purposes of settlement.

Settlement Calculation for the City of Mason

1,800 uncompacted cys. x 100 lbs. = 180,000 lbs.
180,000 lbs./2000 tons = 90 tons
90 tons x $5.30 = $477

Skinner Landfill Settlement -
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

Village of Monroe - On February 12, 1999, Monroe responded to EPA's Special Notice Letter. Monroe claims it sent only municipal solid waste such as residential trash to the Site and has requested a settlement pursuant to the MSW Policy. Monroe submitted to EPA its Response to the ADR Questionnaire, Supplemental Response, Village Counsel minutes approving payments to Albert Skinner for waste disposal, a memorandum calculating the settlement amount Monroe believes it is entitled to under EPA's municipal settlement policy, and an excerpt from the Allocator's Preliminary Findings. Monroe estimated its total waste in at 2,521.5 cys and based upon the MSW Policy calculated its total liability at $655.58. The Allocator assigned Monroe a total waste in amount of 3,518 cys, based upon a 7 cy load which represents a compromise between Monroe's estimate and the testimony of Ray Skinner who claimed Monroe's loads were 8-12 cy.

Monroe used the Site for the disposal of trash collected from residences on a weekly basis. Monroe used the Site from approximately September 1966 until February 1968. It submitted copies of minutes of meetings indicating that Monroe approved payments to Albert Skinner for waste disposal. Prior to September 1966, Monroe used the New Miami Landfill. After February 1968, Monroe contracted with Rumpke for waste collection and disposal. Ray Skinner testified that Monroe used the Site for a couple of years in the late 1960s. Mr. Skinner recalled that Monroe used an 8-12 cy dump truck to haul its MSW to the site. After reviewing available records and interviewing former employees, Monroe claims that it sent MSW to the Site in a one ton truck with a capacity of approximately 5 cubic yards of uncompacted waste.

Monroe estimates it sent MSW to the Site from December 1966 to February 1968. Monroe stated that this was an eighteen month period, but clearly meant fourteen month period. Monroe was only able to locate records indicating the number of shipments to the Site for five of these fourteen months. During those five months Monroe sent a total of 137.5 loads to the Site at $6.00 per load. For the other nine months it was unable to locate any records, but Monroe estimated it sent 357.5 loads. The total estimated number of loads, therefore, is 495. The Allocator stated that he accepted Monroe's estimate of the number of loads sent to the Site, but incorrectly stated that Monroe estimated 502.5 loads. Instead, Monroe estimated it sent 495 loads to the Site. Monroe estimated each load had a capacity of 5 cys, but the Allocator adopted 7 cys per load. Monroe's total waste-in amount, therefore, is either 2,475 based upon 5 cys per load, or 3,465 cys based upon the Allocator's finding of 7 cys per load.

There is no indication in the information submitted by Monroe, including the Allocator's Report, that Monroe disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Monroe to the Site, Monroe is eligible for a settlement resolving its liability

at the Site pursuant to the MSW Policy. For purposes of calculating the Village of Monroe's total liability at the Site, EPA accepts the Allocator's findings and calculates a total waste in figure of 3,465 uncompacted cys. Based upon this total waste-in figure and the MSW Policy, EPA calculates the following settlement.

Settlement Calculation for Monroe:

495 loads x 7 uncompacted cys = 3,465 cys
3,465 cys. x 100 lbs. = 346,500 lbs.
346,500 lbs/2000 per ton = 173.25 tons
173.25 tons x $5.30 = $918.22

Skinner Landfill Settlement -
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

City of Sharonville - The City of Sharonville responded to the Special Notice Letter on February 9, 1999. Sharonville claims it did not send any hazardous substances to the Site and has requested a settlement pursuant to the MSW Policy. Sharonville submitted its Response to the ADR Questionnaire, Answers to the Follow-Up Questions, its Position Paper and Response to Plaintiff Comments, an excerpt of the Allocator's Report, Sharonville's Comments to the Allocator's Preliminary Report, and two Affidavits supporting Sharonville's position that it took only MSW to Skinner.

Sharonville stated that until 1978 it collected waste from residences and approximately 15 to 18 service stations, but did not collect waste from any other commercial establishments. In 1978 the City stopped its collection service and contracted with Clarke, then American Waste/BFI, and finally Rumpke. In the 1950s and 1960s residential trash was taken to Sanders landfill in Sharonville. In the late 1960s and 1970s residential trash and "special pickup items" were taken to the Clarke facility in Sharonville. Sharonville stated that larger items from the service stations, such as headlights, oil filters and tires, were taken to the Sanders landfill on Wyscarver Road until the mid 1960s, the Clarke facility on Kemper Road in the late 1960s, and then to American Waste in Stubbs Mill. While smaller items from the service stations were collected and disposed of with the general municipal waste. Sharonville stated that it did not collect or dispose of used oil or "other chemicals" from the service stations.

Sharonville admits that it took "special pickups" to the Site for a short period in the 1960s. These special pickups were not collected as part of the regular residential trash or service station waste, and included yard and tree clippings, some household construction debris, and an occasional item of whiteware (e.g. water heater). In its Comment to the Allocator's Preliminary Report, Sharonville claims that by 1973 all special pickups were going to Stubs Mill and not to the Site. The City had no regular schedule for its special pickups which apparently were initiated by phone calls from residents to the City requesting collection. The City estimated that it would make 2 to 3 trips a week to the Site during the spring and summer when construction and yard/tree care are more prevalent. Sharonville further states that it only brought waste to the Site for 2 to 3 years in the mid-1960s, and that it had no further contact with the Skinners except for on one occasion in 1974 when it hauled a significant amount of debris created by a tornado to the Site (e.g. fallen trees, roof and other house debris). The City claims that the debris from the tornado is exempt under the Act of God defense at Section 107(b)(1), 42 U.S.C. §9607(b). Sharonville points to the Skinner Log, which only has entries for the City in 1967 and 1974, as support for these claims. The Skinner Log indicates the City was billed a disposal fee of $844.81 in 1967, and $117.00 in 1974.

Skinner Landfill Settlement -
Not Admissible Pursuant to Rule 408, Federal Rules of Evidence

Deposition testimony refers to lime from the City of Sharonville's water facility being disposed of at the Site, however, the City's Response to the ADR Questionnaire states that there is no Sharonville water facility. Instead, the Village of Glendale owns a water facility on Sharon Road in the Village of Evendale. Based upon Sharonville's Response, it was Glendale that hired one of the Skinners to clean out the lime and dispose of it at the Site.

Sharonville states that the "special pickups" were hauled to the Site in a 5-yard dump truck (uncompacted waste), and that the truck was not always filled to capacity when taken to the Site. Sharonville estimated that in a 12-month period it might have disposed of 380 cys at the Site, or approximately 1,140 cys over three years. All of the normal residential waste was hauled to other landfills in a packer or garbage truck.

The Allocator considered the testimony of witnesses in determining the amount of waste Sharonville disposed of at the Site. Ray Skinner testified that Sharonville was a major hauler to the Site and that Clarke would divert loads to the Site when its facility was unable to handle Sharonville's waste. Mr. Skinner stated that both open top dump trucks (with a capacity of approximately 5-7 cys) and compactor trucks (with a capacity of approximately 12 cys) used the Site. The open or dump trucks came to the Site on a regular basis through the 1970s and 1980s according to Mr. Skinner. The Allocator also considered testimony of Maria Roy who stated that Sharonville used the Site about once a month during the same time frame as that described by Mr. Skinner. In addition, Charles Lee, an employee of Dick Clarke, stated in an affidavit that he saw Sharonville at the Site in the late 1980s.

The Allocator found that Sharonville had disposed of a total of 5,440 uncompacted cubic yards at the Site. This total includes 5,200 uncompacted cubic yards hauled to the Site in the dump truck. The 5,200 uncompacted cubic yards also includes the debris the Allocator attributed to the 1974 tornado. In arriving at the total for the dump truck, the Allocator credited Mr. Skinner's testimony and found that Sharonville brought one load per week at 5 cys per load over 20 years (5cys x 1 load/wk x 52 wks on average x 20 years). The total waste in amount also includes 240 uncompacted cys hauled to the Site in garbage trucks. The Allocator estimated the garbage trucks made 10 trips and had a capacity of 12 compacted cys. The Allocator took the 120 compacted cubic yards and used a 2:1 ratio to "uncompact" the waste for 240 uncompacted cubic yards. Under the Allocator's approach the settlement amount would be calculated as follows:

10 trips x 12 compacted cys = 120 compacted cys.
120 compacted cys x 2 = 240 uncompacted cys.
240 uncompacted cys. + 5,200 uncompacted cys. = 5,440 cys.
5,440 cys. x 100 = 544,000 lbs.
544,000 lbs./ 2000 lbs. = 272 tons
272 tons x $5.30 = $1,441.60

SUMMARY OF EVIDENCE AND SETTLEMENT CALCULATION

Village of Lincoln Heights - On February 10, 1999, Lincoln Heights responded to EPA's Special Notice Letter and requested a settlement pursuant to EPA's MSW Policy. In its response Lincoln Heights admits to "certain limited activity" at the Site, but contends the "Village primarily hauled MSW to the landfill." Lincoln Heights submitted its Response to the ADR Questionnaire, a supplemental response to the Questionnaire, its Response to Follow-Up Questions, its Initial Position Paper, and the Allocator's Preliminary Findings. Lincoln Heights has requested that EPA adopt the Allocator's findings.

Lincoln Heights claims that it only collected and disposed of residential and small business waste. Commercial establishments were apparently required to contract with third parties for waste collection services. Lincoln Heights states that through the 1960s until the mid-1970s, the Village primarily used the Morrow landfill in Morrow, Ohio. On occasion, when more than one load was collected in a single day, Lincoln Heights would dispose of its first load at the Skinner Site because it was closer to the Village. Leonard Lawson, a garbage truck driver and former fire chief, was interviewed and stated that the Skinner Site was utilized in this manner, but only to dispose of the first load of the day, any subsequent loads were taken to the Morrow landfill. At some point in the 1970s the Village began using the Rumpke landfill and perhaps the Clark incinerator. In 1982 Lincoln Heights contracted with Jennings Drayage, Inc. for trash collection and disposal services. In 1983 the Village downsized its work force and contracted with Rumpke for collection and disposal services. Lincoln Heights was unable to locate documents relating to Rumpke's performance under the contract and had assumed Rumpke was using its own landfill for disposal.

The Skinner Log indicates that Lincoln Heights periodically used the Site and the Allocator found that the Village used the Site for fourteen months, from December 1966 through January 1967. Mr. Lawson stated that the Village used the Site at most three times a week. The total amount of charges listed in the Skinner Log to the Village is $2,205, however, the Skinner Log contains little information about the number of shipments and no information about the volume of shipments. In order to calculate the total number of shipments, the Allocator divided the $2,205 total by $7 which is the amount of an invoice dated November 1, 1967, from the Skinners to the Village for one shipment. This $7 fee per load can be used as the price per load for all of Lincoln Heights' shipments to the Site. Under this approach Lincoln Heights brought 315 loads to the Site.

The next step is to figure out the volume of each shipment. Lincoln Heights indicated that at any one time it had a maximum of two dump trucks collecting waste, but was unable to determine the capacity of these trucks. Charles Ringell stated he saw 20 cy compactor trucks

from Lincoln Heights at the Site. Ray Skinner stated he saw trucks from Lincoln Heights at the Site around 1967 and estimated they had a capacity of 12 cy compacted. The Allocator decided to use a capacity factor of 15 cy compacted in determining a waste in total. In addition to the compactor trucks, Ray Skinner recalled that open trucks from Lincoln Heights occasionally brought road debris to the Site. Based upon this information, the Allocator assigned an additional 50 cys of uncompacted waste.

There is no indication in the information submitted by Lincoln Heights, including the Allocator's Report, that the Village disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Lincoln Heights to the Site, Lincoln Heights is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. For purposes of calculating the Village's total liability at the Site, EPA accepts the Allocator's findings and calculates a total waste in figure of 1,420 tons.

The Allocator found that 315 loads of compacted MSW was delivered to the Site with an average of 15 cys compacted per load for a total waste figure of 4,725 compacted cys. As previously explained, the Allocator used a 2:1 ratio to "uncompact" the waste, whereas EPA's MSW policy uses 600lbs./cy to "uncompact" the waste. It is important to note that these two approaches result in different settlement figures. While EPA accepts the Allocator's findings regarding the number of shipments and total volume of waste, it intends to follow its MSW Policy when calculating settlement offers.

Settlement Calculation for Lincoln Heights:

315 x 15 cys = 4,725 compacted cys.
4,725 compacted cys x 600 lbs. = 2,835,000 lbs.
50 uncompacted cys x 100 lbs. = 5,000 lbs.
2,835,000 + 5,000 = 2,840,000 lbs.
2,840,000 lbs./2000 = 1,420 tons
1,420 tons x $5.30 = $7,526

There is no indication in the information submitted by Sharonville, including the Allocator's Report, that the City disposed of anything other than MSW at the Site. Based upon a review of the evidence linking Sharonville to the Site, Sharonville is eligible for a settlement resolving its liability at the Site pursuant to the MSW Policy. For purposes of calculating the City's total liability at the Site, EPA accepts the Allocator's findings and calculates a total waste-in figure of 296 tons.

Unlike the Allocator's approach of using to 2:1 ratio to "uncompact" waste, under the MSW Policy compacted waste is converted into pounds by multiplying the compacted waste by 600 pounds. While EPA accepts the Allocator's finding's regarding the number of shipments and total volume of waste, EPA intends to follow the MSW Policy when calculating settlement offers.

We note in brief that Sharonville's proposed defense pursuant to Section 107(b) of CERCLA, 42 U.S.C. §9607(b), that the disposal of the debris generated by the 1974 tornado was an "act of God" as defined at Section 101(1) of CERCLA, 42 U.S.C. §9601(1), is untenable given the fact that Sharonville made the decision to dispose of the debris at the Site subsequent to the tornado. The act of disposal, therefore, was not caused by the tornado, but by the actions of the City of Sharonville. For this reason, the Allocator was correct in including this debris in his overall waste calculation for Sharonville.

Settlement Calculation for the City of Sharonville

120 compacted cys. x 600 lbs. = 72,000 lbs.
5,200 uncompacted cys x 100 = 520,000 lbs.
72,000 lbs. + 520,000 lbs. = 592,000 lbs.
592,000 lbs. / 2000 lbs. = 296 tons
296 tons x $5.30 = $1,568.80

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No. ___ Judge _____
City of Blue Ash, City of Deer Park, City of Maderia, City of Mason, City of Sharonville, Village of Lincoln Heights, Village of Monroe,	)	
Defendants.	)	

CONSENT DECREE

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 Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the Skinner Landfill Superfund site in West Chester, Ohio ("Site"), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site.

B. As a result of the release or threatened release of hazardous substances at the Site, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site including:

1. Pursuant to Section 105 of CERCLA, 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 on September 8, 1983, 48 Fed. Reg. 40658.

2. In May of 1991, EPA completed a Remedial Investigation ("RI") at the Site; and, in April of 1992, EPA completed a Feasibility Study ("FS") of the Site. The RI and FS documented the release or threatened release of hazardous substances, pollutants, and contaminants at the Site. In accordance with Section 104(b) of CERCLA, the RI describes the EPA's findings on the nature and extent of contamination at the Site, while the FS Report considered alternatives necessary to address the conditions at the Site.

3. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 27, 1992, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, or his/her delegatee, based the selection of the interim response action.

4. EPA selected an "interim" remedial action to be implemented at the Site and embodied that decision in an interim Record of Decision ("interim ROD"), executed on September 30, 1992, on which the State had given its concurrence. The interim ROD includes EPA's explanation for any significant differences between the interim ROD and the proposed plan as well as a responsiveness summary to the public comments. Notice of the interim plan was published in accordance with Section 117(b) of CERCLA.

5. Subsequent to the issuance of the interim ROD, EPA issued a Unilateral Administrative Order ("UAO") to several potentially responsible parties at the Site, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for the performance of the remedial actions identified in the interim ROD. Several parties complied with and completed the remedial actions specified in the UAO.

6. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, in December of 1992, EPA published notice of the proposed plan for final remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed final plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, or his/her delegatee, based the selection of the response action.

7. The decision by EPA on the final remedial action to be implemented at the Site was embodied in a final ROD ("ROD"), executed on June 4, 1993, on which the state has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final remedial plan was published in accordance with Section 117(b) of CERCLA.

8. Subsequent to the issuance of the ROD, EPA and several potentially responsible parties at the Site entered into an Administrative Order by Consent ("AOC"), effective March 29, 1994, for the design of the remedial actions selected in the ROD. Pursuant to the AOC, the signatories to the AOC created the remedial design for the remedial action. EPA approved the remedial design on June 19, 1996.

C. The Regional Administrator of EPA, Region 5, or his/her delegatee, has determined the following:

1. Each Settling Defendant generated and/or transported only Municipal Solid Waste ("MSW") and/or Municipal Sewage Sludge ("MSS") to the Site.

2. Prompt settlement with each Settling Defendant is practicable and in the public interest.

3. The settlement amounts presented in Appendix A are based upon each Settling Defendant's contribution of waste to the Site, considering the volume and toxicity of the waste, and represent a fair and reasonable settlement of each Settling Defendant's liability at the Site for any claims the United States or any other person may have against each particular Settling Defendant arising from response actions taken or to be taken at the Site.

D. Based upon information provided by Settling Defendants, as determined pursuant to the Court-authorized ADR allocation process, and other relevant information, the United States estimates that Settling Defendants contributed Municipal Solid Waste or Municipal Sewage Sludge to the Site in the quantities shown in Appendix A.

E. Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

G. The Parties 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 Consent 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. §§ 9606, 9607, and 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in a Settling Defendant's status as a municipal corporation or in a Settling Defendant's home rule powers, including, but not limited to, any transfer of assets or real or personal property, shall not alter such Settling Defendant's responsibilities under this Consent Decree.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site that allows Settling Defendants to make a cash payment to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for Response Costs incurred and to be incurred at or in connection with the Site, whether incurred by the United States or by private parties, thereby reducing litigation and simplifying any remaining administrative and judicial enforcement activities concerning the Site; and

b. to obtain settlement with Settling Defendants for their appropriate share of Response Costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other responsible parties, and to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

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

"Consent Decree" or "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.

"Court-Authorized ADR Allocation Process" shall mean the alternative dispute resolution process mandated by the Court for the parties to the litigation, The Dow Chemical Company, et. al. v. Acme Wrecking Co., Inc. et al. (C-1-97-307) and The Dow Chemical Company,

et al. v. Sun Oil Company d/b/a Sunoco Oil Corp., et al. (C-1-97-0308) (S.D. Ohio), which process was also participated in voluntarily by other parties allegedly implicated at the Skinner Landfill Site that were not named in the litigation.

"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.

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

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

"Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §9607(a).

"Municipal Solid Waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage sludge, including sewage sludge containing residue removed during the treatment of wastewater from manufacturing or processing operations, if such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage sludge.

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

"Parties" shall mean the United States and the Settling Defendants.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on June 4, 1993, by the Regional Administrator, EPA Region 5, or his/her delegatee, and all attachments thereto.

"Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

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

"Settling Defendants" shall mean those persons, corporations or other entities listed in Appendix A.

"Site" shall mean the Skinner Landfill Superfund site, encompassing approximately 67 acres, located ½ mile east of Interstate 75 on the Cincinnati-Dayton Road in West Chester, Union Township, Ohio, and legally described in Appendix B-1 and depicted generally on the map attached as Appendix B-2.

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

VI. PAYMENT

5. Within 30 days of the effective date of this Consent Decree, each Settling Defendant shall pay to the Skinner Landfill Special Account, in reimbursement of Response Costs, the amount set forth in Appendix A.

6. Each Settling Defendant's payment is to address Response Costs incurred at or in connection with the Site.

7. Each payment shall be made by certified or cashier's check or checks made payable to the "Skinner Landfill Special Account," referencing USAO File Number _____, EPA Site-Spill Identification Number 0573, and DOJ Case Number 90-11-3-1620. Settling Defendants shall send the check to:

United States Attorney's Office
Southern District of Ohio
Attention: Collections
280 N. High Street, 4th Floor
Columbus, Ohio 43215

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

Chief, Environmental Enforcement Section
United States Department of Justice
DJ No. 90-11-3-1620
P.O. Box 7611
Washington, D.C. 20044-7611

Anthony Audia
U.S. EPA Region 5
Program Account and Analysis Section
Comptroller Branch, ML-10C
77 West Jackson
Chicago, Illinois 60604

Scott Hansen
Remedial Project Manager
Superfund Division, SR-6J
77 West Jackson
Chicago, Illinois 60604

Craig Melodia
Assistant Regional Counsel, C-14J
Office of Regional Counsel
77 West Jackson
Chicago, Illinois 60604

9. The total amount to be paid by Settling Defendants pursuant to Paragraph 5 shall be deposited in the Skinner Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to reimburse the United States for Response Costs incurred and paid at or in connection with the Site by the EPA Hazardous Substance Superfund. Any balance remaining in the Skinner Landfill Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO MAKE PAYMENT

10. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Section VI, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(*l*) of CERCLA, 42 U.S.C. 9622(*l*), for failure to make timely payment.

VIII. CERTIFICATION OF SETTLING DEFENDANT

11. By signing this Consent Decree, each Settling Defendant 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 any hazardous substance, pollutant, contaminant, or solid waste 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 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).

d. fully complied with any and all information disclosure and production obligations imposed upon or assumed by participants in the Court-Authorized ADR Allocation Process.

IX. COVENANT NOT TO SUE BY UNITED STATES

12. In consideration of the payments that will be made by each Settling Defendant under the terms of this consent decree, and except as specifically provided in Section X (Reservations of Rights by the United States), the United States covenants not to sue or take administrative action against any particular Settling Defendant pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by that Settling Defendant of all obligations under this Consent Decree, including, and not limited to, cash payment into the Skinner Landfill Special Account; and b) the veracity and completeness of the information provided to EPA by that Settling Defendant relating to its involvement with the Site, and c) the veracity of the information provided by that Settling Defendant in the Court-Authorized ADR Allocation Process. This covenant not to sue extends only to each Settling Defendant and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

13. The United States reserves, and this Agreement is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Section IX. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to:

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

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural damage assessments; or

d. liability, based upon the ownership or operation of the Site or any activity with respect to a hazardous substance or a solid waste at or in connection with the Site, arising after signature of this Consent Decree by Settling Defendants.

14. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. new information, previously unknown, is discovered which indicates that any Settling Defendant contributed at least 10% more Municipal Solid Waste or Municipal Sewage Sludge than the amount indicated in Appendix A; or

b. information, previously unknown to EPA, is discovered, which indicates that such Settling Defendant contributed material containing hazardous substances to the Site other than Municipal Solid Waste or Municipal Sewage Sludge; or

c. conditions at the Site, previously unknown to EPA, are discovered, or information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information, together with other relevant information, indicate that the Remedial Action is not protective of human health or the environment, and that the conditions supporting the determination that the Remedial Action is not protective are based primarily on the presence of Municipal Solid Waste or Municipal Sewage Sludge at the Site.

15. For purposes of Subparagraphs 14(a) and 14(b), the information known to EPA shall include only that information known to EPA as of the date the Consent Decree is entered. For purposes of Paragraph 14(c), the information and conditions known to EPA shall include only that information and those conditions known to EPA as of the effective date of this Consent Decree, as set forth in the interim ROD and the ROD for the Site and the administrative record supporting the interim ROD and the ROD, post-ROD administrative record, any information submitted to EPA pursuant to the Remedial Design AOC, including the approved Remedial Design or the UAO.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

16. Settling Defendants 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 EPA 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 activities 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.

17. 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).

18. Settling Defendants covenant not to sue and agree to not assert any claims or causes of action against each other or any other person for all matters relating to the Site, including contribution.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. Except as provided in Paragraph 18, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action it 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. 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, Settling Defendants 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 in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 12.

21. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry 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

all response actions taken or to be taken and all Response Costs incurred or to be incurred by the United States or any other person with respect to the Site.

XIII. RETENTION OF JURISDICTION

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

XIV. INTEGRATION/APPENDICES

23. 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 and incorporated into this Consent Decree:

"Appendix A" is the list of Settling Defendants, settlement amounts, and the estimated quantities of MSW and/or MSS contributed by each to the Site.

"Appendix B-1" is the legal description and "Appendix B-2" is the map of the Site.

XV. PUBLIC COMMENT

24. Pursuant to the provisions of CERCLA § 122(d)(2), 42 U.S.C. § 9622(d)(2), 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 shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVI. EFFECTIVE DATE

25. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 24.

XVII. SIGNATORIES/SERVICE

26. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or her delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

28. Each Settling Defendant 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

29. Each Settling Defendant 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 that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, 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.

30. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until 30 days after the United States withdraws or withholds its consent pursuant to Section XV (Public Comment) or the Court declines to enter this Consent Decree.

SO ORDERED THIS ___ DAY OF _____, _____.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States of America v. City of Blue Ash, City of Deer Park, City of Maderia, City of Mason, City of Sharonville, Village of Lincoln Heights, Village of Monroe*, relating to the Skinner Landfill in West Chester, Ohio:

FOR THE UNITED STATES OF AMERICA

Date: _____

_____
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Sharon J. Zealey
United States Attorney

By: _____
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_____
Craig Melodia
Assistant Regional Counsel
Office of Regional Counsel, C-14J
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. City of Blue Ash, City of Deer Park, City of Maderia, City of Mason, City of Sharonville, Village of Lincoln Heights, Village of Monroe*, relating to the Skinner Landfill Superfund Site.

FOR DEFENDANT _____

Date: _____

Names and address of Defendant's signatories

Name: _____

Title: _____

Address: _____

_____

_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

_____

_____