
IN THE MATTER OF:)
)

Bautsch Gray Mine Superfund Site)
Jo Daviess County, Illinois)

)
Joan D. Pecina and Trust 2000)
SETTLING PARTIES)

SETTLEMENT AGREEMENT

U.S. EPA Region 5

CERCLA Docket No. V-W-22-C-010

PROCEEDING UNDER SECTION
122(h)(1) OF CERCLA,
42 U.S.C. § 9622(h)(1)

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and re-delegated to the Director, Superfund and Emergency Management Division by EPA Delegation No. 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Section Chief and Deputy Section Chiefs of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

2. This Settlement Agreement is made and entered into by EPA, Joan D. Pecina, (“Ms. Pecina”) and Trust 2000. Ms. Pecina and Trust 2000 are referred to collectively herein as “Settling Parties.” Settling Parties consent to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Bautsch Gray Mine Superfund Site (“Site”) located at approximately 798 Blackjack Road, in Jo Daviess County, Illinois. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. The Site consists of a series of properties containing open and uncontrolled mine tailings piles. The mine tailings piles contain hazardous levels of lead, zinc, and arsenic. Due to heavy rainstorms in 2009 and 2010, releases occurred on and across a county highway, and on a residential property adjacent to the Site. Prior to those rainstorms in 2009 and 2010, other releases occurred from the tailings piles, onto other parcels in the area. The contaminated tailings releases have also threatened nearby waterways. Illinois EPA referred the case to EPA in September 2009. Since November 2009, EPA has expended CERCLA funds on both removal and remedial activities. The Site was placed on the National Priorities List (40 CFR Part 300, App. B) in September 2012.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that the Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and, as owners of a portion of the above-referenced Site, are jointly and severally liable for response costs incurred and to be incurred at the Site. EPA has reviewed the Financial Information submitted by Ms. Pecina and Trust 2000 to determine whether they are financially able to pay response costs incurred and to be incurred at the Site. A list of the Financial Information received and reviewed appears in Appendix A. Based upon this Financial Information, EPA has determined that Ms. Pecina and Trust 2000 have no financial ability to pay for response costs incurred and to be incurred at the Site.

7. EPA and the Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Ms. Pecina and her heirs, successors, and assigns, and upon Trust 2000, including Joan D. Pecina, its current trustee, future and successor trustees, and beneficiaries (current and future). Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Settlement Agreement. Settling Parties certify that they are authorized to enter into the terms and conditions of this Settlement Agreement and to be legally bound by it.

IV. STATEMENT OF PURPOSE

9. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Parties to implement land use restrictions and Proprietary Controls to address their alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that 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 Settlement Agreement or its appendices, the following definitions shall apply:

- a. "Affected Property" shall mean the real property located on the eastern side of the Site in Jo Daviess County, Illinois which is designated as Jo Daviess County Recorder No. 14-000-18-00.
- b. "Bautsch Gray Mine Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and originally established pursuant to EPA's March 3, 2010 CERCLA Administrative Settlement Agreement and Order on Consent for Removal Action, No. V-W-10-C-945.
- c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.
- d. "Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.
- e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

- f. “EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- g. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. “Financial Information” shall mean those financial documents identified in Appendix A.
- i. “Illinois EPA” shall mean the Illinois Environmental Protection Agency and any successor departments of agencies of the State.
- j. “Institutional Controls” shall mean state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.
- k. “Interim Record of Decision” or “IROD” shall mean the April 22, 2020 CERCLA decision document issued by EPA for initial response actions at the Site.
- l. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- m. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- n. “Parties” shall mean EPA and Settling Parties.
- o. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights, and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.
- p. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- q. “Remedial Action” or “RA” shall mean the Superfund Site response action taken at the Site to implement the April 2020 IROD.
- r. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- s. “Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.
- t. “Settling Parties” shall mean Joan D. Pecina and Trust 2000, including Joan D. Pecina as current trustee.

- u. “Site” shall mean the Bautsch Gray Mine Superfund Site, encompassing approximately 120 acres, located at approximately 798 Blackjack Road, in Jo Daviess County, Illinois, and generally shown on the map included in Appendix C.
- v. “State” shall mean the State of Illinois.
- w. “Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- x. “Trust 2000” is an Illinois land trust (“Land Trust Agreement Number 2000”) created on June 30, 1996 in which Vincent A. Varsek has served as trustee until approximately 2022, and in which Joan D. Pecina currently serves as trustee, holding title to the Affected Property, as defined above, and in which Ms. Pecina is the sole beneficiary.
- y. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- z. “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) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under 415 Illinois Compiled Statutes (“ILCS”) 5/3.215.

VI. ZERO PAYMENT OF RESPONSE COSTS

11. Based upon an assessment of the Settling Parties’ financial information, EPA has determined that Settling Parties have no ability to pay response costs.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

12. In addition to any remedies or sanctions available to the United States by virtue of Settling Parties’ failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, they shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

VIII. COVENANTS BY EPA

13. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against the Settling Parties, either individually or collectively, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Ms. Pecina and Trust 2000 of their obligations under this Settlement Agreement, including but not limited to, performance of the obligations in Section XII (Property Requirements). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Ms. Pecina and/or Trust

2000 and the financial and indemnity certification made by them in Paragraph 42. These covenants extend only to Settling Parties and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

14. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Ms. Pecina and/or Trust 2000 with respect to all matters not expressly included within Paragraph 13 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Ms. Pecina and Trust 2000 with respect to:

- a. Liability for their failure to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment;
- d. liability based on the ownership or operation of the Site by Ms. Pecina or Trust 2000, including Ms. Pecina as current trustee, when such ownership or operation commences after their signatures on this Settlement Agreement;
- e. liability based upon Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by them; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

15. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Ms. Pecina and/or Trust, 2000 or the financial or indemnity certifications made by them in Paragraph 42 is false or, in any material respect, inaccurate.

16. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING PARTIES

17. Settling Parties 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 and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

18. Settling Parties further covenant that the sole beneficiary of Trust 2000, and holder of the power of direction, at the time of their signature to this Administrative Order on Consent is Joan D. Pecina, and that no other beneficiaries, or holders of the power of direction, shall be designated as beneficiaries, or holders of the power of direction, of Trust 2000.

19. Except as provided in Paragraph 21 (claims against other PRPs) and Paragraph 26 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 14.a (liability for failure to meet a requirement of the Settlement Agreement) or 14.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

20. Nothing in this Settlement Agreement 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).

21. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. These waivers shall not apply with respect to any defense, claim, or cause of action that Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Parties.

XI. EFFECT OF SETTLEMENT CONTRIBUTION

22. Except as provided in Paragraph 21 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Parties), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each of the Settling Parties has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or

to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 14.a (liability for failure to meet a requirement of the Settlement Agreement) or 14.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

24. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

25. Settling Parties shall, with respect to any suit or claim brought by them for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Parties also shall, with respect to any suit or claim brought against them for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon them. In addition, Settling Parties shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

26. 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, Ms. Pecina and/or Trust 2000 shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

27. Effective upon signature of this Settlement Agreement by Settling Parties, Settling Parties agree that the time period commencing on the date of their signatures and ending on the date the United States initiates any enforcement action under Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 23 and that, in any action brought by the United States related to the “matters addressed,” Settling Parties will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Ms. Pecina and/or Trust 2000 that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. PROPERTY REQUIREMENTS

28. **Proprietary Controls.** With respect to the Affected Property, Settling Parties shall execute and record, in accordance with the procedures of this Paragraph 28, Proprietary Controls that: (i) grant a right of access to conduct those activities listed in Paragraph 29, and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 30.

29. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- a. Performing the remedial action set forth in the Interim Record of Decision issued by EPA in April 2020;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement;
- g. Assessing Settling Parties' compliance with the Settlement Agreement;
- h. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls related to the Affected Property; and
- i. As otherwise provided in the form of Environmental Covenant attached hereto as Appendix C.

30. **Activity and Use Limitations** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- a. **Restricted land use:** All uses of the Affected Property are prohibited except those compatible with industrial land use. Examples of land uses that are prohibited include: residential uses; occupancy on a 24-hour basis; and uses to house, educate, or provide care for children, the elderly, the infirm, or other sensitive subpopulations.
- b. **Restricted ground water use:** Except as required as part of an EPA or Illinois EPA approved response activity, construction of wells and activities that extract, consume, or otherwise use any ground water are prohibited on the Affected Property. For purposes of this restriction "ground water" shall have the meaning as in Section 101(12) of CERCLA.
- c. **No interference with hazardous waste cap:** Except as provided in a plan approved in writing by EPA and Illinois EPA, the following activities are prohibited in any areas of the Affected Property that have been capped, including but not limited to:

- i. Any excavation or other intrusive activity that could affect the integrity of the cap that has been placed over the mine tailings waste pile located on the Affected Property as depicted on Appendix C (Site diagram showing cap);
 - ii. Any disturbance of the mine tailings, other waste, or contaminated soil underneath the cap; and/or
 - iii. Any interference with or covering of the “capped iron (set)” permanent markers or engineered cap delineation posts currently placed at the boundaries of the cap at the locations identified in Appendix C, or subsequently placed on the Affected Property.
- d. **No interference with remedial action:** There shall be no use of, or activity at the Affected Property that would interfere with or adversely affect the integrity or protectiveness of the remedial action or the operation, maintenance, or monitoring of any remedial action component, including, but not limited to any cap system, soil cover, vegetative cover, erosion protection features, storm water management system, leachate collection system, any other component of the containment system, or the function of the monitoring systems, including but not limited to the monitoring wells, or the on-going ground water monitoring.

31. **Grantees/holders.** The Proprietary Controls must be granted to Illinois EPA and any other representative as determined by EPA or Illinois EPA. Proprietary Controls in a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that EPA is an “agency” allowing it to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

32. **Initial Title Evidence.** Settling Parties shall, within forty-five (45) days after the Effective Date:

- a. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that:
 - (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Settling Parties, or “To Be Determined;”
 - (ii) covers the Affected Property that is to be encumbered;
 - (iii) demonstrates that the person(s) or entity(ies) that will execute and record the Proprietary Controls are the owner(s) of such Affected Property;
 - (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and
 - (v) includes complete, legible copies of such Prior Encumbrances; and
- b. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

33. **Release or Subordination of Prior Liens, Claims, and Encumbrances.**

- a. Settling Parties shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or

otherwise known to the Settling Parties, unless EPA waives this requirement as provided under Paragraph 33.b.

- b. Settling Parties may, by the deadline under Paragraph 32, submit an initial request for waiver of the requirements of Paragraph 33.a. regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the Remedial Action or result in unacceptable exposure to Waste Material.
- c. Settling Parties may, within ninety days after the Effective Date, or if an initial waiver request has been filed, within forty-five days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 33.a. regarding any particular Prior Encumbrance on the grounds that Settling Parties could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.
- d. The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.
- e. Settling Parties shall complete their obligations under Paragraph 33.a. regarding all Prior Encumbrances within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within ninety days after EPA's determination on the final waiver request.

34. Update to Title Evidence and Recording of Proprietary Controls.

- a. Settling Parties shall submit to EPA and IEPA for review and approval, by the deadline specified in Paragraph 33.e, all draft Proprietary Controls and draft instruments addressing Prior Encumbrances. The Proprietary Controls must be in substantially the form attached hereto as Appendix C.
- b. Upon EPA's and IEPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Settling Parties shall, within fifteen days, update the original title insurance commitment (or other evidence of title acceptable to EPA and IEPA) under Paragraph 32. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Parties shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records office. Otherwise, Settling Parties shall secure the release, subordination, modification, or relocation under Paragraph 33.a., or the waiver under Paragraph 33.b., regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

- c. If Settling Parties submitted a title insurance commitment under Paragraph 32, then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Settling Parties shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, Settling Parties, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.
- d. Settling Parties shall, within thirty days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.
- e. Settling Parties shall monitor, maintain and enforce all Proprietary Controls required under this Settlement Agreement.
- f. Settling Parties shall not Transfer the Affected Property until they have executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding the Affected Property in accordance with this Paragraph 34.

35. Modification of Proprietary Controls: Settling Parties shall consent to, sign, and record all amendments of the Proprietary Controls to add land-use restrictions that are determined by EPA or the State to be necessary to protect and/or maintain the Remedial Action. In the event that the Settling Parties no longer own the Affected Property at the time that EPA or the State determine the need to add land-use restrictions to the Proprietary Controls, Settling Parties hereby consent to the Amendment of the Proprietary Controls without need for their signature as provided under 765 ILCS § 122/10.

36. Agreements Regarding Access and Non-Interference.

- a. With respect to the Affected Property, Settling Parties shall:
 - i. Provide EPA and the State and their representatives, employees, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement Agreement, including those listed in Paragraph 29 (Access Requirements); and
 - ii. Refrain from using such Affected Property in any manner that EPA determines will: (i) pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions include those listed in Paragraph 30 (Activity and Use Limitations).
 - iii. Settling Parties shall not Transfer the Affected Property in accordance with Paragraph 40, below, without first securing EPA's approval of, and the proposed New

Owner's consent to, an agreement that: (i) is enforceable by EPA and the State and (ii) requires the proposed New Owner to provide access to and to refrain from using the Affected Property to the same extent as is provided under Paragraphs 29-30.

37. Institutional Controls: On April 15, 2020, EPA signed the IROD for the BGM Site, selecting a remedial action. The IROD requires that Institutional Controls be applied to the Affected Property. Settling Parties shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

38. Environmental Covenant Requirement: Upon the completion of the remedial action on Parcel No. 14-000-18-00, Settling Parties shall enter into (or modify, if necessary, an existing) Environmental Covenant in accordance with 765 ILCS 122/1, *et seq.* as a grantor in a form modeled after Appendix C hereto, and acceptable to EPA, USDOJ and the Illinois EPA, in accordance with under UECA (765 ILCS 122/1 *et seq.*).

39. Maintenance of the Affected Property: Until the Affected Property is transferred in accordance with Paragraph 40, below, Settling Parties shall (1) keep the property insured against loss from casualty and liability and (ii) timely pay or cause to be paid all real property taxes.

40. Transfer of the Affected Property: In the event that the Settling Parties want to Transfer the Affected Property, or any portion thereof, they shall do so in accordance with the following procedures:

- a. Settling Parties may propose to EPA a person or entity who is interested in becoming an owner of the Affected Property or any portion thereof ("New Owner"). In making such a proposal, the Settling Parties shall identify (i) the New Owner's intended use of the property, (ii) the proposed purchase price to be paid by the New Owner, (iii) the estimated fair market value ("FMV") of the parcel (or parcels) as of the date, if known, that the construction of the Remedial Action was (or will be) completed, and (iv) any and all affiliations or connections between the New Site Owner and one or more of the Settling Parties. In addition, in the event that the Settling Parties are aware of any facts or circumstances that would support an allegation that the New Owner is potentially liable for contamination at the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, the Settling Parties shall disclose such facts and circumstances when submitting the proposal to EPA under this subparagraph. The Settling Parties shall estimate the FMV of the property to be transferred by analyzing the sales price of comparable properties in Jo Davies County, Illinois.
- b. EPA, after consultation with the State, may approve or disapprove the proposed Transfer to the New Owner, may approve the Transfer with conditions, or may require that additional information be provided. EPA may require, among other things, that the Settling Parties (i) provide a new or revised appraisal as to the FMV value of the property prepared by an appraiser certified to meet the Uniform Standards of Professional Practice by a nationally recognized organization of professional real estate appraisers, and/or (ii) publish notice of the proposed Transfer in a newspaper of general circulation in Jo Davies County soliciting comments and competing offers from the public.
- c. Upon receipt of EPA's written approval or conditional approval, and after completion of the requirements in Paragraphs 41, Settling Parties may Transfer the Affected Property, or any portion thereof, in accordance with this paragraph. In the event that the agreement for

transfer generates any sale proceeds, and in the event that the sale price reflects the value of the Affected Property after it has been remediated in accordance with the IROD, the Settling Parties shall pay 75% of the net proceeds of the sale to the United States. For the purposes of this Paragraph 40.c, the term “net proceeds” shall mean any proceeds remaining after the Settling Parties subtract the reasonable costs incurred in (i) complying with the requirements of Paragraph 40.b. (ii) advertising the sale of the Affected Property, and (iii) completing the transfer. Settling Parties shall make payment to EPA by official bank check made payable to “EPA Hazardous Substances Superfund.” EPA, at its discretion, may deposit the check in the Bautsch Gray Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or deposited directly into the EPA Hazardous Substance Superfund.

- d. At the time of payment under Paragraph 40(c), Settling Parties shall send notice that payment has been made (a) to EPA in accordance with Section XV (Notices and Submissions), and (b) to the EPA Cincinnati Finance Center (CFC) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number B5TS.

- e. In the event of any Transfer of the Affected Property, Settling Parties shall continue to be subject to all terms and conditions of this Settlement Agreement, unless and until the United States consents otherwise in writing.

41. Notice to Successors-in-Title.

- a. Settling Parties shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of the Bautsch Gray Mine Superfund Site; (ii) that EPA will perform a response action for the Site and (iii) that any proposed Transfer of the Affected Property, or any portion thereof, is subject to approval by EPA, and that EPA may perfect a windfall lien on the property in accordance with Section 107(r) of CERCLA, 42 U.S.C. § 9607(r). Settling Parties shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.
- b. Settling Parties shall, prior to entering into a contract to Transfer the Affected Property or any portion thereof, or 60 days prior to Transferring the Affected Property or any portion thereof, whichever is earlier:

- i. Notify the proposed New Owner that EPA has performed a response action at Parcel 14-000-026-10 which is part of the Bautsch Gray Mine Superfund Site; and
 - ii. Provide EPA with a copy of the above notice that it provided to the proposed New Owner.
- c. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Settling Parties shall continue to comply with its obligations under the Settlement Agreement.
 - d. Notwithstanding any provision of this Settlement Agreement, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. CERTIFICATION

42. Settling Parties certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (including records, reports, documents and other information in electronic form) (other than identical copies) relating to their potential liability regarding the Site since notification of potential liability by the United States or the State and that they have fully complied with any and all EPA and State requests for information regarding the Site and Settling Parties' financial circumstances, including but not limited to indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;
- b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Ms. Pecina and Trust 2000 execute this Settlement Agreement; and
- c. fully disclosed any information regarding the existence of any indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such indemnity agreements and information.

XIV. SIGNATORIES/SERVICE

43. Each undersigned representative of Settling Parties and EPA certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

44. Settling Parties shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service by mail on its behalf with respect to all matters arising under or relating to this Settlement Agreement. Settling Parties agree to accept service in that manner.

XV. NOTICES AND SUBMISSIONS

45. Whenever, under the terms of this Settlement Agreement, 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 Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA: Tom Turner, Assoc. Regional Counsel (C-14J)
U.S. EPA, Office of Regional Counsel, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Turner.Thomas@epa.gov
(312) 886-6613

As to the State of Illinois: Charlene Falco
Illinois Environmental Protection Agency
1021 North Grand Ave. East
Bureau of Land, #24
PO Box 19276
Springfield, IL 62794-9276

As to Joan Pecina and Trust 2000: Joan D. Pecina
2348 North Lewis Avenue
Waukegan, IL 60087

and

Vincent, Roth, Toepfer & Leinen, P.C.
11406 Route 20 West
P.O. Box 6346
Galena, IL 61036
Phone: (815)777-0533
Fax: (815)777-0549

XVI. INTEGRATION /APPENDICES

46. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- a. "Appendix A" list of the financial documents submitted to EPA by Ms. Pecina and Trust 2000.
- b. "Appendix B" map of the Site.

- c. "Appendix C" Environmental Covenant Form to be further completed before recording.

XVII. PUBLIC COMMENT

47. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

48. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 47 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

August 9, 2022

Dated

**DOUGLAS
BALLOTTI**

Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.08.09
10:35:34 -05'00'

DOUGLAS BALLOTTI

Director, Superfund & Emergency Management Division
U.S. EPA Region 5

Signature Page for Settlement Agreement Regarding Bautsch Gray Mine Superfund Site

6/21/22

Dated

Joan D. Pecina
JOAN D. PECINA
In Her Individual Capacity and as Trustee of Trust 2000