

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NL INDUSTRIES, INC.,

Plaintiff,

v.

CITY OF CHICAGO,

Defendant.

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No. 06 CH 15363

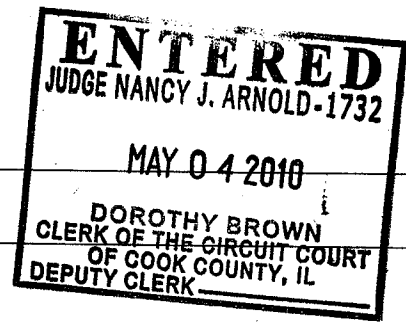
AGREED ORDER OF DISMISSAL

This cause coming to be heard for the entry of an Agreed Order of Dismissal upon stipulation of the parties hereto and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT

1. The ~~Amended~~ Consent Decree dated May 4, 2010 settles and compromises disputed claims between Plaintiff NL Industries, Inc. and Defendant City of Chicago, and is approved by this Court.

2. Pursuant to the terms of the ~~Amended~~ Consent Decree, NL Industries, Inc.'s Complaint against the City of Chicago, and the Counterclaims asserted by the City of Chicago against NL Industries, Inc. in this cause, No. 06 CH 15363 are hereby dismissed with prejudice, each party to bear its own costs and attorneys' fees.



ENTER: _____

DATE: _____

CITY OF CHICAGO

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Senior Counsel
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Firm No. 21725

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NL INDUSTRIES, INC.,

Plaintiff,

v.

CITY OF CHICAGO,

Defendant.

No. 06 CH 15363

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This case coming before the Court on the joint application of Plaintiff, NL Industries, Inc. ("NL") and Defendant, City of Chicago ("City"), for entry of this Consent Decree ("Consent Decree"), due notice having been given, and the Court being fully advised of the premises;

WHEREAS, Plaintiff NL is a New Jersey corporation, which owned and operated a paint manufacturing facility located at 12000 to 12054 South Peoria Street and 901 to 935 West 120th Street in Chicago, Illinois (the "Site") from in or about 1937 until 1976; and

WHEREAS, Defendant City is a municipal corporation incorporated under the laws of the State of Illinois; and

WHEREAS, the City currently holds title to the Site, which the City acquired through the tax reactivation process on November 20, 1997; and

WHEREAS, on May 16, 1991, the City filed a complaint against NL and ARTRA Group, Inc. in the Circuit Court of Cook County, Illinois, in a case captioned City of Chicago v. NL Industries, Inc., et al., case number 91 CH 4534 (the "1991 Lawsuit"), alleging various claims against NL related to the environmental condition of the Site; and

WHEREAS, NL denied the allegations in the 1991 Lawsuit; and

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WHEREAS, the City and NL agreed to settle the 1991 Lawsuit via a consent decree, which was entered on June 30, 1999 by the Honorable Sidney A. Jones III of the Circuit Court of Cook County, Illinois (the “1999 Consent Decree”);

WHEREAS, on August 18, 2006, NL filed a complaint against the City in the Circuit Court of Cook County, Illinois, case number 06 CH 15363, (the “Lawsuit”), alleging that the City had failed to comply with its obligations set forth in the 1999 Consent Decree; and

WHEREAS, the City denies the allegations in the Lawsuit; and

WHEREAS, NL and the City wish to avoid the costs and uncertainties involved in further litigation and to resolve, as provided herein, NL’s claims against the City related to the Site; and

WHEREAS, the existence of this Consent Decree and the provisions contained herein shall not be deemed an admission of or constitute evidence by or against either party or an admission of liability by the City with regard to any of the allegations set forth in the Lawsuit;

NOW therefore, it is hereby agreed, adjudged, and ordered as follows:

TERMS AND CONDITIONS

1. **NL’s Satisfaction of its 1999 Consent Decree Obligations.** The Parties agree that NL has fulfilled all of its obligations under the 1999 Consent Decree and has met or exceeded its \$400,000 and \$50,000 caps on supplemental expenditures provided for in that 1999 Consent Decree.
2. **Completion of Remedial Work by the City.** The City shall complete, at its sole cost, all investigation and remedial work at the Site undertaken pursuant to: a) the Stockpile and Soil Removal Plan dated June 8, 2007 and approved by the United States Environmental Protection Agency (“USEPA”) on June 11, 2007; and b) the Resource Conservation and Recovery Act

("RCRA") Remedial Action Plan Permit issued by the Illinois Environmental Protection Agency ("IEPA") on June 18, 2009. The City also will complete, at its sole cost, any other environmental investigation or remedial work required by any regulatory agency as a result of the City's construction activities at the Site or the City's disturbance of the USEPA-approved remedial measures implemented pursuant to the 1999 Consent Decree.

3. **Operation and Maintenance of Site by the City.** The Parties agree that the City is responsible, at its sole cost, for operation and maintenance of remediation at the Site performed pursuant to the 1999 Consent Decree and as further provided in paragraph 2 above. Without limitation of the foregoing:

A. The City shall maintain the Site in a manner consistent with the USEPA-approved Remedial Design/Remedial Action Work Plan dated March 9, 1999, and the City-approved Supplemental Remedial Action Work Plan dated July 1, 1999, including maintenance of the existing engineered barriers at the Site, and maintenance of surface soils in the unpaved areas of the Site to the USEPA's risk-based cleanup standard for lead of 1,400 milligrams per kilogram ("mg/kg");

B. The City may allow construction relating to a renewable energy project on the Site or other activity, which construction or other activity may entail the partial and temporary impairment of the engineered barriers for purposes of Site preparation, but the City shall replace the disturbed remedial measures and ensure that the Site is returned to a condition in compliance with paragraph 3.A above at the sole cost and expense of the City, its tenant, purchaser of the property, or other third party funding source, and the City, its tenant, purchaser of the property, or other third party funding source shall not seek reimbursement for such costs and expenses from NL. To effectuate the intent of this

paragraph 3.B, the City agrees that any written agreement it enters into with such tenant or purchaser of the property shall include a provision under which such tenant or purchaser of the property agrees that it will not seek reimbursement of such costs from NL. In addition, for any written agreement the City enters into with such third party funding source, the City shall make a reasonable good faith effort to include a provision under which such third party funding source agrees that it will not seek reimbursement of such costs from NL; and,

C. In the event that the City redevelops the Site in a manner that requires the permanent removal of the existing engineered barriers, then the City shall obtain a no further remediation (“NFR”) letter from the IEPA for the entire Site, or a focused NFR letter for the portion of the Site where the engineered barriers are permanently removed. For purposes of this Consent Decree, “maintenance of the existing engineered barriers” shall mean that the engineered barriers shall not be impaired or removed such that the soils underneath are exposed. The City shall not, however, be deemed to have violated its “maintenance” obligations under this Consent Decree if it: undertakes the temporary impairment specified in paragraph 3.B above; bores temporary holes in the engineered barriers for soil sampling or other environmental assessments; or, temporarily removes or impairs the engineered barriers for the purpose of replacing or enhancing the engineered barriers, or removing underground storage tanks.

4. **Payment.** Within 30 days of the date of entry of this Consent Decree, the City shall pay to NL a total settlement payment of one hundred thousand dollars (\$100,000.00).

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5. **Jurisdiction and Venue.** The parties agree that the Circuit Court of Cook County, Illinois shall have jurisdiction and venue with respect to any action commenced by any party for the purposes of interpreting or enforcing any of the terms and conditions of this Consent Decree.

6. **Mutual Release from Liability.** For good and valuable consideration, including the actions that NL shall take pursuant to this Consent Decree, the City releases, waives, and discharges NL, its past and present affiliates, parents, subsidiaries, divisions, branches, departments, agencies, predecessors, successors, and the heirs, principals, employees, associates, owners, stockholders, assigns, devisees, agents, directors, officers, representatives, insurers, lawyers, and predecessors in interest, of each of them, and all persons acting by, through, under, or in concert with them from any and all claims, demands, damages, or losses, whether known or unknown, absolute or contingent, made or asserted or those that could be asserted by the City against NL related to the Site, including any claims arising out of any action NL has taken or failed to take with respect to the Site.

For good and valuable consideration, including the actions that the City shall take pursuant to this Consent Decree, NL releases, waives, and discharges the City itself and its elected and appointed officials, officers, agents, and employees from any and all claims, demands, damages, or losses, whether known or unknown, absolute or contingent, made or asserted or those that could be asserted by NL against the City related to the Site, including any claims arising out of any action the City has taken or failed to take with respect to the Site.

However, nothing in this Consent Decree shall be construed as a waiver, release, or discharge by either party of any of its rights to enforce this Consent Decree or the 1999 Consent Decree. Additionally, nothing in this Consent Decree shall be construed as a waiver, release, or discharge by either Party of any rights it may have at law or in equity to seek relief from the

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other in the event that any governmental entity or third party asserts claims in the future seeking fines, penalties, recovery of costs, or other equitable or legal relief relating to new conditions at the Site that were not addressed by this Consent Decree or the 1999 Consent Decree.

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If the City transfers title to the Site to another party and the City obtains any protections from the party acquiring the Site in regard to environmental conditions, the City shall make a reasonable good faith effort to obtain the same environmental protections provided to the City for NL.

If the City transfers title to the Site to another party, then any activities and costs incurred under ¶¶2 or 3 shall be borne by either the City or any successor in interest at the Site and not by NL. Part of the City's transfer of property must be conditioned on the other party agreeing to provide the City access to the property to complete its remaining obligations, if any, under this Consent Decree.

7. **Dismissal of Litigation.** Promptly after entry of this Consent Decree, the City and NL shall execute a Stipulation to Dismiss all claims and counterclaims in the Lawsuit with prejudice in the form attached hereto as Exhibit A and shall submit to the Court the Stipulation and an Agreed Order of Dismissal in the form attached as Exhibit B. The Parties acknowledge and intend that such dismissal with prejudice constitutes a determination of a court of competent jurisdiction that is final, and that neither Party will appeal that final determination.

8. **Counterparts.** This Consent Decree may be executed in counterparts, each of which will be deemed to be an original, and all such counterparts together shall constitute one agreement.

9. **Notice.** Whenever, under the terms of this Consent Decree, notice, correspondence, payment, or other written communication or information is required to be submitted or forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or other respective successors give written notice to the other party of another individual designated to receive such communications:

As to NL:

Courtney Riley
Executive Director, Environmental Affairs
NL Industries, Inc.
5430 LBJ Freeway
Suite 1700
Dallas, TX 75240-2620
Fax: 972-934-5358

As to the City:

Diane M. Pezanoski
Deputy Corporation Counsel
City of Chicago Department of Law
Aviation, Environmental, Regulatory & Contracts Division
30 N. LaSalle St., Suite 1400
Chicago, IL 60602
Fax: (312) 742-3832

Notice shall be effective when received. Notice by fax is acceptable.

10. **Entire Agreement.** This Consent Decree and the 1999 Consent Decree represent the entire agreement and understanding among the parties. Except as modified by this Consent Decree, the 1999 Consent Decree remains in full force and effect. To the extent of any conflict between this Consent Decree and the 1999 Consent Decree, the terms of this Consent Decree shall control. They may not be modified in any way without written agreement of the parties and Court approval. Each party has read this Consent Decree, understands it and agrees to be bound

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by its terms and conditions. There are no understandings or representations with respect to the subject matter hereof, express or implied, that are not stated herein.

11. **Headings**. All headings in this Consent Decree are provided as a matter of convenience only, and shall not govern or be used to interpret the meaning of any provisions in this Consent Decree.

12. **No Waiver**. No forbearance, failure or delay in exercising any right power or privileges is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

13. **Governing Law**. This Consent Decree shall be governed by the laws of the State of Illinois.

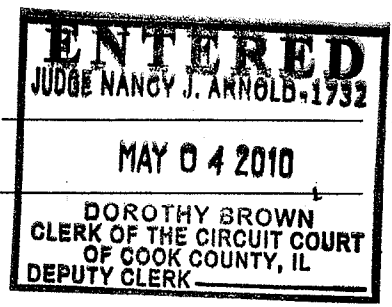
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RUB 14. **Enforcement**. The provisions in section X, including paragraph 11 of the 1999 Consent Decree relating to enforcement shall remain in full force and effect and shall apply to enforcement of the 1999 Consent Decree and this Consent Decree.

15. **Warranty as to Authority**. Each party represents and warrants that to the extent necessary, the Consent Decree has been duly and validly authorized and approved by all requisite corporate or other official action, that no further action is necessary to make this Consent Decree valid and binding on that party, and that the party representative who signs this Consent Decree is authorized to bind that party through his or her signature below.

The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, and to legally bind the party he or she represents to this Consent Decree.

ENTER:

JUDGE:



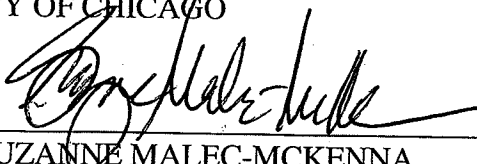
ACKNOWLEDGED AND AGREED TO:

NL INDUSTRIES, INC.

By: *Courtney Riley*
COURTNEY RILEY
Executive Director Environmental Management

THE CITY OF CHICAGO

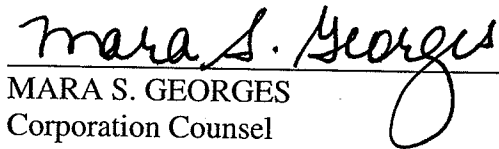
By:



SUZANNE MALEC-MCKENNA
Commissioner
Department of Environment

THE CITY OF CHICAGO

By:



MARA S. GEORGES
Corporation Counsel
Department of Law

EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

NL INDUSTRIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 06 CH 15363
)	
CITY OF CHICAGO,)	
)	
Defendant.)	

STIPULATION TO DISMISS AND AGREED MOTION FOR GOOD FAITH FINDING

Plaintiff NL Industries, Inc. ("NL") and Defendant City of Chicago ("City") (jointly, the "Parties"), by and through their respective counsel, hereby stipulate and respectfully move this Court for: a) entry of the attached Agreed Order of Dismissal, which shall dismiss NL's cause of action against the City with prejudice, each party to bear its own costs and attorneys' fees; and, b) a finding that under the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/1 *et seq.* ("Joint Tortfeasor Contribution Act"), the settlement between the Parties, as contained in the attached Amended Consent Decree, is fair, reasonable, and in good faith. In support of their motion, the Parties state as follows:

1. On May 16, 1991, the City filed a complaint against NL and ARTRA Group, Inc. in the Circuit Court of Cook County, Illinois, in a case captioned *City of Chicago v. NL Industries, Inc., et al.*, case number 91 CH 4534 (the "1991 Lawsuit"), alleging various claims against NL related to the environmental condition at the property located at 12000 to 12054 South Peoria Street and 901 to 935 West 120th Street in Chicago, Illinois (the "Site").

2. The City and NL agreed to settle the 1991 Lawsuit via a consent decree, which was entered on June 30, 1999, by the Honorable Sidney A. Jones III of the Circuit Court of Cook County, Illinois (the "1999 Consent Decree").

3. On June 30, 1999, Judge Jones entered an order finding that the settlement as reflected in the 1999 Consent Decree was approved by the Court as fair, reasonable and made in good faith under the Joint Tortfeasor Contribution Act.

4. The Parties agree that NL has fulfilled all of its obligations under the 1999 Consent Decree and has met or exceeded its \$400,000 and \$50,000 caps on supplemental expenditures provided for in that 1999 Consent Decree.

5. On August 18, 2006, NL filed a complaint against the City in the Circuit Court of Cook County, Illinois, case number 06 CH 15363, (the "Lawsuit"), alleging that the City had failed to comply with its obligations set forth in the 1999 Consent Decree.

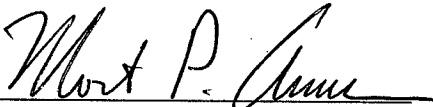
6. NL and the City have agreed to settle the claims brought by NL against the City, and confirm that the settlement was made in good faith. Under the Amended Consent Decree embodying the settlement, the City has agreed to complete, at its sole cost, all investigation and remedial work at the Site undertaken pursuant to: a) the Stockpile and Soil Removal Plan dated June 8, 2007 and approved by the United States Environmental Protection Agency on June 11, 2007; and, b) the Resource Conservation and Recovery Act Remedial Action Plan Permit issued by the Illinois Environmental Protection Agency on June 18, 2009. The City also will complete, at its sole cost, any other environmental investigation or remedial work required by any regulatory agency as a result of the City's construction activities at the Site or the City's disturbance of the USEPA-approved remedial measures implemented pursuant to the 1999 Consent Decree. The Parties further agree, as set forth in the Amended Consent Decree that the City is responsible, at its sole cost, for operation and maintenance of remediation at the Site performed pursuant to the 1999 Consent Decree. In addition, the City has agreed to pay to NL a total settlement payment of one hundred thousand dollars (\$100,000.00).

7. Attached hereto is the Parties' proposed Agreed Order of Dismissal, dismissing NL's cause of action against the City with prejudice and the Counterclaims asserted by the City against NL with prejudice, and finding, as set forth in the Joint Tortfeasor Contribution Act, that the Parties' settlement is fair, reasonable, and in good faith.

WHEREFORE, the Parties pray for the relief as requested herein.

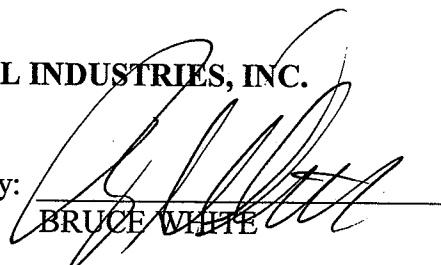
Respectfully submitted,

CITY OF CHICAGO

By: 
MORT P. AMES

Mort P. Ames
Senior Counsel
City of Chicago Department of Law
30 N. LaSalle St., Suite 1400
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NL INDUSTRIES, INC.

By: 
BRUCE WHITE

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EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NL INDUSTRIES, INC.,

Plaintiff,

v.

CITY OF CHICAGO,

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No. 06 CH 15363

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IT IS HEREBY ORDERED THAT

1. The ~~Amended~~ Consent Decree dated MAY 4, 2010 settles and compromises disputed claims between Plaintiff NL Industries, Inc. and Defendant City of Chicago, and is approved by this Court.

2. Pursuant to the terms of the ~~Amended~~ Consent Decree, NL Industries, Inc.'s Complaint against the City of Chicago, and the Counterclaims asserted by the City of Chicago against NL Industries, Inc. in this cause, No. 06 CH 15363 are hereby dismissed with prejudice, each party to bear its own costs and attorneys' fees.

ENTER: _____

DATE: _____

CITY OF CHICAGO

Mort P. Ames
Senior Counsel
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Graham G. McCahan
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