

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

Civil No. 97-cv-1704 (TJM)

v.

BOISE CASCADE CORPORATION, et al.,

**SECOND AMENDMENT
TO CONSENT DECREE**

Defendants.

WHEREAS Defendants Boise Cascade Corporation, Labelon Corporation, Miller Brewing Company, Niagara Mohawk Power Corporation, and The Stroh Brewery Company (collectively, the "Settling Defendants") and Plaintiff United States of America entered into a Consent Decree in this action regarding the Sealand Restoration Superfund Site located in Lisbon, New York (the "Site"), which this Court approved and entered in February of 1998;

WHEREAS the 1998 Consent Decree provided for the Settling Defendants to perform, jointly and severally, a cleanup action at the Site that had been selected by the U.S. Environmental Protection Agency ("EPA") and to reimburse EPA for its costs at the Site in accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 - 9675;

WHEREAS in June 2005, this Court approved and entered the First Amendment To Consent Decree, which provided for Settling Defendants to perform, jointly and severally, a modified cleanup action selected by EPA at the Site;

WHEREAS Labelon Corporation dissolved in 2015, Boise Cascade Corporation changed its name to OfficeMax Incorporated in 2004 and OfficeMax Incorporated changed its name to OfficeMax, LLC in 2022, Miller Brewing Company changed its name to Anheuser-Busch Brewing Company in 2016, and The Stroh Brewery Company changed its name to SBC Holdings, Inc. in 1999;

WHEREAS SBC Holdings, Inc. has ceased to participate with the other Settling Defendants in funding the cleanup at the Site;

WHEREAS the United States has reviewed Financial Information submitted by SBC Holdings, Inc. and has determined that it has limited financial ability to pay for cleanup actions at the Site and to reimburse EPA for its response costs at the Site; and

WHEREAS the United States and the Settling Defendants agree, and this Court by entering this Second Amendment To Consent Decree finds, that this Second Amendment To

Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Second Amendment To Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED**:

1. The following definitions apply solely to this Second Amendment To Consent Decree:

“Consent Decree” means the Consent Decree entered by the Court in this matter in February 1998.

“Effective Date” means the date that approval of this Second Amendment To Consent Decree is entered on the Court’s docket.

“Financial Information” means the financial documents identified in Appendix A.

“First Amendment” means the First Amendment To Consent Decree entered by this Court in this matter in June 2005.

“Paragraph” means a paragraph of this Second Amendment To Consent Decree unless expressly defined to be a paragraph of the Consent Decree.

“Second Amendment” means this Second Amendment To Consent Decree.

“SBC” means SBC Holdings, Inc., formerly known as The Stroh Brewery Company.

2. The definition of “Settling Defendants” under Paragraph 4 of the Consent Decree is amended to mean OfficeMax, LLC, Anheuser-Busch Brewing Company, and Niagara Mohawk Power Corporation.

3. **Payment.** SBC shall pay the United States \$150,000 within 30 days after the Effective Date. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of New York shall send SBC instructions for making the payment, including a Consolidated Debt Collection System (“CDCS”) reference number. SBC shall make its payment by Fedwire Electronic Fund Transfer (“ETF”), in accordance with the FLU’s instructions, including reference to the CDCS Number. SBC shall send notices of the payment to DOJ at eescdcopy.enrd@usdoj.gov referencing DJ No. 90-11-3-1144/1 and Site/Spill ID No. 022M.

4. **Late Payment.** If SBC fails to or is late in making payment under Paragraph 3, it shall pay a stipulated penalty of \$1,000 for each day that the payment is late, plus interest accrued at the rate of 4.0% per annum on the unpaid balance from the date of lodging of this Second Amendment until the date of payment.

5. **Covenants by United States.** The United States covenants not to sue or take administrative action against SBC under Sections 106 and 107(a) of CERCLA regarding the Site. These covenants: (a) take effect on the Effective Date; (b) are conditioned on SBC's performance by its obligations under this Second Amendment; and (c) do not extend to any other person.

6. **Reservations by United States.** The covenants under Paragraph 5 are conditioned upon the veracity and completeness of the Financial Information and the certification under Paragraph 11. If the Financial Information or the certification under Paragraph 11 is subsequently determined by EPA to be false or, in any material respect, inaccurate, SBC shall forfeit all payments made under this Second Amendment and the covenants and the contribution protection provided to SBC under this Second Amendment will be null and void. Such forfeiture does not constitute liquidated damages and does not foreclose the United States' right to pursue any other causes of action arising from SBC's false or materially inaccurate information. The United States reserves, and this Second Amendment 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 Second Amendment regarding SBC if the Financial Information or the certification under Paragraph 11 is false or, in any material respect, inaccurate.

7. **Covenants by SBC.** Subject to Paragraph 8, SBC covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, Section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Site.

8. **SBC's Reservation.** The covenants in Paragraph 7 do not apply to any claim or cause of action brought, or order issued by the United States after the Effective Date, to the extent such claim, cause of action, or order is within the scope of a reservation addressed under Paragraph 6.

9. **Waiver by SBC.** SBC waives and shall not assert any claims or causes of action (including claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for response costs regarding the Site against any person who is a potentially responsible party under CERCLA at the Site.

10. **Contribution Protection.** SBC is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Second Amendment. The "matters addressed" for purposes of this Second Amendment 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 of New York, provided, however, that if the United States exercises rights under the reservations in Paragraph 6, the "matters addressed" in this Second Amendment will no longer include those response costs or response actions that are within the scope of the exercised reservations.

11. **Certification.** SBC certifies that: (a) it has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the date that SBC signed this Second Amendment; and (b) it has no knowledge of any insurance policies that could provide coverage for the response actions to be performed or the response costs incurred by EPA at the Site.

12. **Additional Applicable Provisions.** SBC remains subject to the following Sections and provisions set forth in the Consent Decree: Section XXIV (Access to Information), the reservations under Paragraphs 82(2)-82(6) within Section XXI (Covenants Not to Sue), and Section XXVIII (Retention of Jurisdiction).

13. **Public Notice and Comment.** This Second Amendment will be lodged with this Court for a period of not less than 30 days for public notice and comment in accordance with CERCLA Section 122(d)(2) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments regarding this Second Amendment disclose facts or considerations which indicate that it is inappropriate, improper, or inadequate.

14. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this Second Amendment and to execute and legally bind such Party to this document.

15. All Parties to this Second Amendment consent to the entry of this Second Amendment without further notice.

SO ORDERED THIS ___ DAY OF _____, 2023.


United States District Judge

Signature Page for Second Amendment To Consent Decree:

FOR THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

6/30/23
Dated



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Signature Page for Second Amendment To Consent Decree:

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:**

**JOHN
PRINCE**

Digitally signed by JOHN
PRINCE
Date: 2023.04.07
10:53:15 -04'00'

Pat Evangelista
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

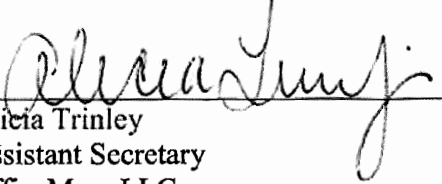
Of Counsel:

Margo Ludmer
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Signature Page for Second Amendment To Consent Decree:

FOR OFFICEMAX, LLC:

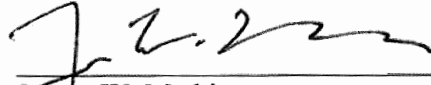
3/15/23
Dated


Alicia Trinley
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FOR ANHEUSER-BUSCH BREWING COMPANY:

1/3/2023
Dated

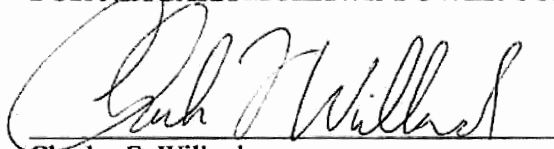


James W. Mathis
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Signature Page for Second Amendment To Consent Decree:

FOR NIAGARA MOHAWK POWER CORPORATION:

12/20/2022
Dated

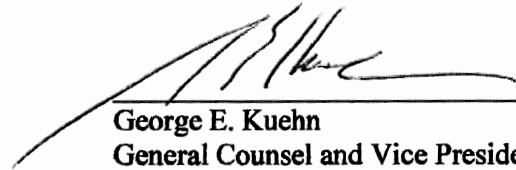


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Signature Page for Second Amendment To Consent Decree:

FOR SBC HOLDINGS, INC.:

12/5/2022
Dated



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APPENDIX A

SCI 2018 Tax Return

SCI 2019 Tax Return

SCI 2020 Consolidated Financial Statements – Year End

SCI Monthly Consolidated Financial Statements Jan. 2021

SCI Monthly Consolidated Financial Statements Feb. 2021

SCI Monthly Consolidated Financial Statements March 2021

SCI Monthly Consolidated Financial Statements April 2021

SCI Monthly Consolidated Financial Statements May 2021

SCI Monthly Consolidated Financial Statements June 2021

SCI Monthly Consolidated Financial Statements July 2021

Real Estate Purchase Agreement 1-19-21

1st Amendment to Real Estate Purchase Agreement 3-12-21

2nd Amendment to Real Estate Purchase Agreement 4-9-21

*SCI refers to The Stroh Companies, Inc.