

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

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UNITED STATES OF AMERICA and :
STATE OF INDIANA, :
 :
Plaintiffs, :
 :
v. :
 :
FLEXSTEEL INDUSTRIES, INC. :
 :
Defendant. :
----- X

Civil Action No. 3:22-cv-00893

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA) and the State of Indiana (“State”), on behalf of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, and pursuant to the Indiana Hazardous Substances Response Trust Fund at Indiana Code “IC” 13-25-4-8 through IC 13-25-4-10 seeking injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Lane Street Groundwater Superfund Site in Elkhart, Indiana (“the Site”).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and IC 13-25-4-8 and will undertake additional response actions in the future.

C. In performing response actions at the Site, EPA and IDEM have incurred response costs and will incur additional response costs in the future.

D. The United States and the State allege that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and IC 13-25-4-8 and is liable for response costs incurred and to be incurred at the Site.

E. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, EPA commenced on September 14, 2009, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

F. EPA completed a Remedial Investigation (“RI”) Report in August 2015, and EPA completed a Feasibility Study (“FS”) Report in March 2016.

G. 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 April 4, 2016, 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, EPA Region 5, based the selection of the response action.

H. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on August 25, 2016, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

I. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State on May 23, 2017, of negotiations with potentially responsible parties (“PRPs”), and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree and the State has chosen to be a party.

J. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified on May 3, 2017, the appropriate federal and state natural resource trustees—the U.S. Department of Interior, the Indiana Department of Environmental Management, and the Indiana Department of Natural Resources—of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendant that entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

G. The United States, the State, and Settling Defendant 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 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 Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or 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 is binding upon the United States and the State, and upon the Settling Defendant and its successors. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, 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 CERCLA or in such regulations. Whenever 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, as amended, 42 U.S.C. § 9601 *et seq.*

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “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 or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency.

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

“IDEM” shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.

“Interest” shall mean interest at the 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). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Lane Street Ground Water Contamination Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), in the Administrative Settlement Agreement and Order on Consent (ASAOC), signed on May 9, 2019.

“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, the State of Indiana, and Settling Defendant.

“Plaintiffs” shall mean the United States and the State.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean Flexsteel Industries, Inc.

“Site” shall mean the Lane Street Ground Water Contamination Superfund Site, encompassing approximately 65 acres, located in Elkhart, Elkhart County, Indiana, and depicted generally on the map attached as Appendix A.

“State” shall mean the State of Indiana.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Defendant to make a cash payment of \$9,800,000 to resolve its alleged civil liability with regard to the Site under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and under IC 13-25-4-8 through IC 13-25-4-10 as provided in the Covenants by Plaintiffs in Section VIII, subject to the Reservations of Rights by the Plaintiffs in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. **Payment by Settling Defendant for Response Costs.** Within 45 days of the date on which the Court enters an order in this action authorizing payment of the Settling Defendant into the Court Registry Account, Settling Defendant shall deposit \$9,800,000 into an interest-bearing Court Registry Account of the United States District Court of the Northern District of Indiana. Payment shall be made to the Clerk of Court by check written to the "Clerk, U.S. District Court of the Northern District of Indiana" or by any other means acceptable to the Clerk of the Court.

6. **Disbursement from Court Registry.** After entry of this Consent Decree by the District Court and either affirmation on appellate review of such entry or the expiration of time to appeal such entry, the \$9,800,000 deposited into the Court Registry Account under this Consent Decree (and all accrued interest) shall be disbursed to the United States pursuant to a separate Withdrawal Order of the Court as follows: The total amount disbursed shall be deposited into the EPA Hazardous Superfund, for Site/Spill ID Number B5LH, and DJ Number 90-11-3-11767. In the event Plaintiff withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, or entry of the Consent Decree is reversed on appellate review, the funds deposited into the Court Registry Account (and all accrued interest) shall be returned to the Settling Defendant pursuant to a separate Withdrawal Order of the Court.

7. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 5 shall be deposited by EPA in the Lane Street Ground Water Contamination Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit all or a portion of the payment directly into the EPA Hazardous Substance Superfund if, at any time in the future, EPA estimates that the Lane Street Groundwater Contamination Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Settling Defendant.

8. **Notice of Payment.** At the time of payment, Settling Defendant shall send to EPA and DOJ in accordance with Section XIV (Notices and Submissions), a notice of this

payment including references to the CDCS Number, Site/Spill ID Number B5LH, and DJ Number 90-11-3-11767.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. **Interest on Late Payments.** If Settling Defendant fails to make the payment required by Paragraph 5 (Payment by Settling Defendant for Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty

a. If the amount due under Paragraph 5 (Payment by Settling Defendant for Response Costs) is not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9 (Interest on Late Payments), \$3,500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. Settling Defendant shall make all payments at <https://www.pay.gov> in accordance with the procedures under Paragraph 6 and shall send notice of such payments in accordance with the procedures under Paragraph 8 (Notice of Payment). Settling Defendant shall indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY PLAINTIFFS

14. **Covenants for Settling Defendant by Plaintiffs.** Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or pursuant to IC 13-25-4-8 through IC 13-25-4-10

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 Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY THE PLAINTIFFS

15. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 14 (Covenants for Settling Defendant by the Plaintiffs). Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant 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 resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;
- e. liability based on Settling Defendant's 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 Consent Decree by Settling Defendant; 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.

16. Plaintiffs' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform response actions relating to the Site or (2) to reimburse the Plaintiffs for additional costs of response if, prior to Certification of Completion of the Remedial Action at issue:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
 - b. information, previously unknown to EPA, is received, in whole or in part,
- and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action at issue is not protective of human health or the environment.

17. Plaintiffs' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform response actions relating to the Site or

(2) to reimburse the Plaintiffs for additional costs of response if, subsequent to Certification of Completion of the Remedial Action at issue:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
- b. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action at issue is not protective of human health or the environment.

18. For purposes of Paragraph 16, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree. For purposes of Paragraph 17, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of EPA's Certification of Completion of the Remedial Action at the Site.

19. As soon as reasonably practicable after such a certification is possible, EPA will certify in writing that the Remedial Action has been performed fully and that the performance standards have been attained. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of Paragraphs 16 and 17 above.

X. COVENANTS BY SETTLING DEFENDANT

20. **Covenants by Settling Defendant.** Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or its contractors or employees, with respect to the Site and 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 actions at or in connection with the Site, including any claim under the United States Constitution, the Indiana 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.

21. Except as provided in Paragraph 23 (claims against other PRPs) and Paragraph 28 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by the Plaintiffs), other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Decree) or 15.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

22. 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).

23. Settling Defendant agrees 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) and 113 of CERCLA and IC 13-25-4-8 and IC 13-25-4-27) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

24. Except as provided in Paragraph 23 (claims against other PRPs), 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. Except as provided in Section X (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613 and IC 13-25-4-27), 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 Consent Decree diminishes the right of the United States or the State, pursuant to Section 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).

25. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and 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 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, at or in connection with the Site, by the United States or any other person, including the State; provided, however, that if the United States or the State exercise rights under the reservations in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Decree) or 15.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

26. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the Plaintiffs in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

27. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ and the State 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 Consent Decree. This Paragraph 27 shall not apply to any insurance coverage litigation between the Settling Defendant and any insurer of the Settling Defendant.

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

XII. ACCESS TO INFORMATION

29. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information held in or converted to electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

30. Privileged and Protected Claims

a. Settling Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 30.b, and except as provided in Paragraph 30.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall provide the record to EPA in redacted form to mask the privilege or protection only. Settling Defendant shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendant's favor.

c. Settling Defendant may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendant is required to create or generate pursuant to this Settlement Agreement.

31. **Business Confidential Claims.** Settling Defendant may assert that all or part of a Record submitted to EPA under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records that Settling Defendant claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.

32. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RETENTION OF RECORDS

33. Until 10 years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

34. At the conclusion of the document retention period, Settling Defendant shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, except as provided in Paragraph 30 (Privileged and Protected Claims), Settling Defendant shall deliver such Records to EPA.

35. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site, since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site 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.

XIV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a

change to the other Parties in writing. 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 is preferred and satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-3-11767

As to EPA: Jamie D. Getz
Attorney, Office of Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590
Getz.Jamie@epa.gov

As to the State: Office of the Attorney General
Chief Counsel of Litigation
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204

Justin Hodgson
State Project Coordinator
Federal Programs Section, Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
IGCN—1101
Indianapolis, IN 46204-2251
jhodgson@idem.in.gov

As to Settling Defendant: Derek Schmidt
Chief Financial Officer
Flexsteel Industries, Inc.
358 Bell Street
Dubuque, IA 52001
dschmidt@flexsteel.com

And

Kelly Hartzler
Attorney, Barnes & Thornburg, LLP

201 S. Main Street, Suite 400
South Bend, IN 46601-2130
Kelly.hartzler@btlaw.com

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

38. This Consent Decree and its appendices constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

40. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

41. Each undersigned representative of the Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his designee, Douglas Ballotti, Director Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region 5, Peggy Dorsey certifies that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

42. Settling Defendant 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 or State has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

43. 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 Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

44. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 20__.

United States District Judge


Signature Page for Consent Decree Regarding Lane Street Groundwater Contamination
Superfund Site, Flexsteel Industries, Inc.

FOR THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20044-7611

October 13, 2022

Dated



Matthew Indrisano
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding Lane Street Groundwater Contamination
Superfund Site, Flexsteel Industries, Inc.

**FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:**

September 8, 2022

Dated

**DOUGLAS
BALLOTTI**

Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.09.08
15:23:25 -05'00'

Douglas Ballotti, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590



8/25/2022

Jamie D. Getz
Attorney, Office of Regional Counsel
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604-3590

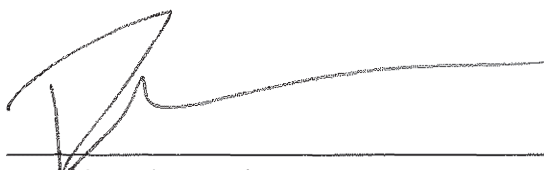
Signature Page for Consent Decree Regarding Lane Street Groundwater Contamination
Superfund Site, Flexsteel Industries, Inc.

FOR THE STATE OF INDIANA



Peggy Dorsey

Assistant Commissioner
Office of Land Quality
Indiana Department of Environmental Management
100 N. Senate Ave. (IGCN-1101, MC 66-30)
Indianapolis, IN 46204-2251



Patricia Orloff-Erdmann
Chief Counsel of Litigation
Office of Indiana Attorney General Todd Rokita
302 W. Washington St. (IGCS Fifth Floor)
Indianapolis, IN 46204

Signature Page for Consent Decree Regarding Lane Street Groundwater Contamination
Superfund Site, Flexsteel Industries, Inc.

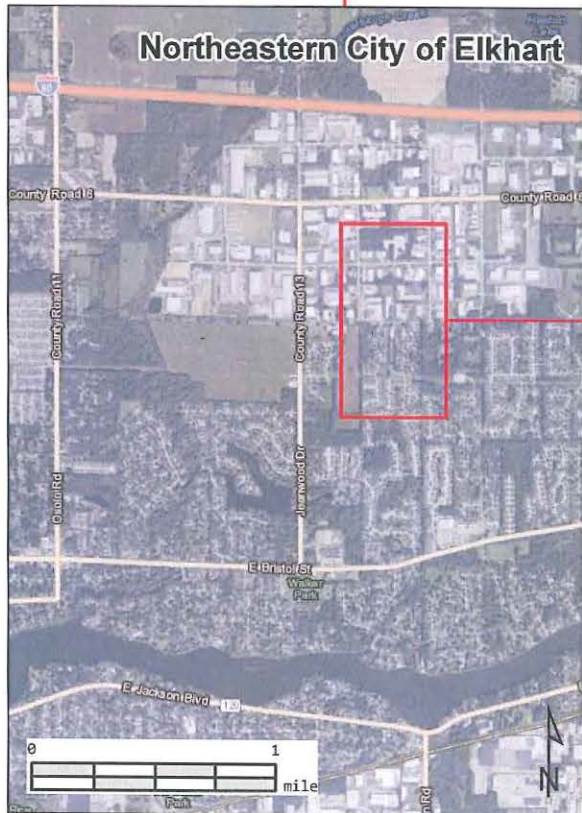
FOR FLEXSTEEL INDUSTRIES, INC.:

May 18, 2022
Dated

A handwritten signature in black ink, appearing to read "Derek Schmidt", written over a horizontal line.

Derek Schmidt
Chief Financial Officer
Flexsteel Industries, Inc.
358 Bell Street
Dubuque, IA 52001
dschmidt@flexsteel.com

Appendix A



Approximate site boundary

Basemaps source: Esri



LANE STREET GROUND WATER CONTAMINATION SITE
ELKHART, ELKHART COUNTY, INDIANA

RECORD OF DECISION

FIGURE 1
LANE STREET SITE LOCATION MAP