

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
ULTIMATE INDUSTRIES, INC. SITE)	
1702 Campbell Street, Sandusky, Ohio)	U.S. EPA Region 5
)	CERCLA Docket No. _____
CITIZENS BANKING CO. of Sandusky, Ohio,)	
)	
SETTLING PARTY.)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
_____)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This 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 of 1980, as amended ("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, and re-delegated to the Division Director of Superfund by EPA Region 5 Delegation No. 14-14-D.

2. This Agreement is made and entered into by EPA, and the Citizens Banking Company of Sandusky, Ohio ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Ultimate Industries, Inc. Superfund ("Site") located at 1702 Campbell Street, Sandusky, Erie County, Ohio. 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.

5. In performing response actions, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA developed a May 2010 Action Memorandum for a removal action at the Site. In June 2010, EPA issued a proposed voluntary CERCLA Administrative Settlement Agreement and Order on Consent for performance of the removal action and reimbursement of response costs to Settling Party and Ultimate Industries, Inc. Pursuant to subsequent negotiations between EPA and Settling Party, Settling Party has agreed to negotiate the present Agreement.

8. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

9. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

10. This Agreement shall be binding upon EPA and upon Settling Party and its heirs, successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

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

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

e. "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.

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA, and Settling Party, Citizens Banking Company of Sandusky, Ohio.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site for the removal action described in the action memorandum for the Site dated May 17, 2010, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "Settling Party" shall mean the "Citizens Banking Company" (or "Citizens Bank") of Sandusky, Ohio.

k. "Site" shall mean the Ultimate Industries, Inc. Superfund Site, encompassing approximately 0.5 acres, located at 1702 Campbell Street in Sandusky, Erie County, Ohio, and generally shown on the map included in Appendix A.

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

V. PAYMENT OF RESPONSE COSTS

12. Within 30 days of the Effective Date of this Settlement Agreement, Settling Party shall pay to EPA \$8,000.00.

13. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") with a Fedwire message in accordance with current EFT procedures that U.S. EPA Region 5 will provide Respondent, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number (B5VP). EFT Payments shall be sent to:¹

¹ If a Settling Party desires to make a payment under either Section V or VI through ACH (also known as REX or remittance express), www.pay.gov, or overnight mail, instead of by check or Electronic Fund Transfer by Fedwire message as provided in Paragraph 13, they may make arrangements with EPA for such an option.

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045

When the Past Response Costs identified in the previous paragraph are less than \$10,000, payment may, in lieu of the described EFT method, be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund." Each check, or letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number (B5VP), and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

14. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number (B5VP) and the EPA docket number for this action.

15. The total amount to be paid pursuant to Paragraph 12 shall be deposited in the Ultimate Industries, Inc. Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

As of 05/06-Electronic Fund Payments (wire transfers) should be sent to Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045, and include the ABA No. 021030004, and Account No. 68010727. In the Field Tag 4200 of the Fedwire message enter: "D68010727 Environmental Protection Agency." A note identifying the name and address of the party making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number (B5VP) and the Court Docket Number (if applicable) shall also be included.

VI. FAILURE TO COMPLY WITH AGREEMENT

16. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

17. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." A check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number (B5VP), and the EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Payments made by wire transfer (Electronic Funds Transfer or EFT) shall be sent with a Fedwire message to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045²

c. At the time of payment, Settling Party shall also send notice that payment as been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number B5VP and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party 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 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, should Settling Party fail or refuse to comply with the requirements of this Agreement, it 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, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. The obligation of Settling Party to pay amounts owed to EPA under this Agreement is joint and several.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

21. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

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

23. Nothing in this 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 the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

24. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, 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 claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

25. Nothing in this 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).

26. Settling Party agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

27. The waiver in Paragraph 26 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

28. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

29. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

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

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

XI. SITE ACCESS

32. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Party, Settling Party shall, commencing on the Effective Date of this Agreement, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or their agents, consistent with Section XII (Access to Information); and
- g. Assessing Settling Party's compliance with this Agreement.

33. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

34. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement", 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 related to the Site.

35. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement 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 determined to be confidential by EPA 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 Party 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 Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

36. Until 5 years after the effective date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

37. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

38. Settling Party hereby 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, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this 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 Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, and Settling Party.

As to EPA:

Thomas Turner, ORC, U.S. EPA (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604; and

James Augustyn, OSC, Superfund Div., U.S. EPA (ME-W), Region 5, 77 W. Jackson Blvd., Chicago, IL 60604

As to Settling Party:

Citizens Banking Co., c/o: Louis E. Tosi, Esq., Shumaker, Loop & Kendrick, LLP, 1000 Jackson Street, Toledo, OH 43604-5573

XV. INTEGRATION/APPENDICES

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

XVI. PUBLIC COMMENT

41. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments

received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. EFFECTIVE DATE

42. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 36 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

Richard C. Karl, Director
Superfund Division, Region 5

Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of [U.S. EPA Docket No.], relating to the Ultimate Industries, Inc. Superfund Site-Sandusky, Ohio:

FOR SETTLING PARTY: _____
Citizens Banking Co.

100 E. Water Street, Sandusky, OH

By: _____ [Name] _____ [Date]