

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of New York State's potential claims for ecological harm and injuries to natural resources of the Grasse River, pursuant to Articles 3, 11, 15 and 71 of the Environmental Conservation Law and Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act,

STIPULATION

and

ADMINISTRATIVE  
SETTLEMENT  
Site ID No. 645015

And

**Arconic Corporation**

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**WHEREAS:**

1. The Commissioner ("the Commissioner") of the New York State Department of Environmental Conservation ("the Department") is the trustee for the natural resources of New York State ("the State" or "New York") pursuant to: Subpart G of the National Contingency Plan, 40 CFR §300.605; Section 107(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9607(f)(2); Article 12 of the New York Navigation Law ("NL") (e.g., NL §170); the Oil Pollution Act of 1990, 33 U.S.C. §2706(b) and the Federal Water Pollution Prevention And Control Act, 33 U.S.C. §1321(f)(5).

2. The Department and the Commissioner are responsible for protecting fish and wildlife resources in the state, including protecting threatened and endangered species, pursuant to Environmental Conservation Law ("ECL") Articles 11 and 15.

3. This Stipulation and Administrative Settlement ("Stipulation and Settlement") is issued pursuant to the Commissioner's authority under the New York Environmental Conservation Law ("ECL") §3-0301 and §71-2727 to protect and restore the environment and natural resources of New York.

4. Defendant Arconic Corporation ("Arconic") is a Delaware corporation with its principal offices in Pittsburgh, Pennsylvania. Arconic's former parent company, previously known as Arconic Inc. and before that Alcoa Inc., owned and operated an aluminum product manufacturing facility located in Massena, NY since 1903.

5. In 2013, the Environmental Protection Agency (“EPA”) selected a remedial program for the Grasse River Federal Superfund Site in Massena, NY (State Site # 645015), in a Record of Decision (“ROD”). The ROD selected a combination of dredging and capping as the remedial approach to PCB-contaminated sediments in the Grasse River. Importantly, the ROD also required that several measures be taken, pursuant to state law, including incorporation of all Appropriate and Applicable Requirements (ARARs) into the remedial action.

6. As set forth by the Department in multiple correspondence between the parties, the Department believes that the design of the remedy, as overseen by EPA, does not adequately address ARARs and ECL requirements related to habitat protection and habitat replacement.

7. In March 2019, EPA approved the remedial design proposed by Arconic Inc., and the Department subsequently contacted Arconic Inc. regarding potential violations of the ECL and of previously-settled claims for damages to natural resources between Arconic Inc. and the Department.

8. As of the date of this Stipulation and Settlement, the remedy in the Grasse River is being implemented. The remedy consists of implementation of the ROD and associated EPA-approved remedial plans described in paragraphs 5 and 7 above (hereafter referred to as the “Site remedy”). Additionally, in the summer 2019 construction season, the Department collected mussels to prevent them from being disturbed during the implementation of the Site remedy. This Stipulation and Settlement will further those efforts during the continued implementation of the Site remedy. EPA, Arconic, and the Department will work collaboratively to incorporate the components of this Stipulation and Settlement into the project as quickly and efficiently as possible.

9. Arconic, without any acknowledgement of responsibility or liability under the ECL or previous agreements, agrees to pay mussel relocation costs and implement certain habitat restoration actions to the habitat reconstruction design, as set forth below in this Stipulation and Settlement, and hereby waives any right to a hearing as may be provided by law for those matters expressly addressed in this Stipulation and Settlement, and agrees not to contest the authority or jurisdiction of the Commissioner and/or the

Department to enter into or enforce this Stipulation and Settlement.

NOW, having considered this matter and being duly advised, IT IS HEREBY AGREED THAT:

I. PAYMENTS

A. Arconic shall pay \$2,250,000 for the Department to conduct salvage and relocation of freshwater mussels in the Grasse River. Salvage and relocation efforts will be coordinated so as to not interfere with or disrupt Arconic's current and future dredging and capping activities under the ROD. Arconic agrees that it will implement the actions in Exhibit A – Scope of Work to supplement the Department mussel collection activities all in an effort not to place caps in areas of the river bottom that the Department has not yet been able to perform salvage operations. The Department and its subcontractors agree that they will work around Arconic's dredging and capping activities or related operations required to implement the ROD.

B. Arconic shall pay the \$2,250,000 for mussel relocation efforts to the Department by check, money order, or by electronic funds transfer, payable to "NYSDEC-Natural Resource Damages Fund." Payment shall be made in accordance with the following schedule:

- \$1,000,000 within thirty days of the effective date of this Stipulation and Settlement.
- \$1,250,000 by January 15, 2021.

If mailed, the payments shall be sent to Andrew O. Guglielmi, Esq., Office of General Counsel, 625 Broadway, 14th Floor, Albany, N.Y. 12233-1500. The provisions of this Stipulation and Settlement are not intended to and shall not be interpreted to restrict the ultimate authority and discretion of the Commissioner to determine the use of the funds received for mussel salvage and relocation efforts in the Grasse River, in accordance with applicable law, except that the Department agrees that all of such funds shall be used on habitat improvements in and adjacent to the Grasse River.

## **II. HABITAT ENHANCEMENTS AND CHANGES TO REMEDIAL DESIGN**

Arconic will incorporate the restoration actions outlined in Exhibit A – Scope of Work for habitat requirements into the current remedial program at the Site. Within sixty (60) days of the effective date of this Stipulation and Settlement, Arconic will send to the Department for its review a written description of how the activities to be undertaken in conjunction with this settlement will be integrated into the Habitat Reconstruction Plan and/or Engineering Change Notices and submitted to EPA for approval. All such restoration actions outlined in Exhibit A – Scope of Work and incorporated into the project deliverables were generally accepted by EPA after they received a draft version of this Stipulation and Settlement.

## **III. RELEASE AND COVENANT NOT TO SUE**

A. Conditioned upon the satisfactory performance by Arconic of all its obligations under this Stipulation and Settlement, and in consideration of the payment(s) that will be made by Arconic to the Department pursuant to Section I, and the habitat restoration actions to be undertaken by Arconic pursuant to Section II, the Department, and the Commissioner covenant not to sue or take any civil, judicial or administrative action, whether at law or in equity, or otherwise, under any federal or State law or seek via any claim, action, suit, or proceeding against Arconic and its current or former affiliates, including but not limited to its former parent company, then known as Arconic Inc., and before that Alcoa Inc., and any of Arconic's successors and assigns (collectively, the "Arconic Parties"), and releases the Arconic Parties from all claims, causes of action, damages (including Natural Resource Damages), liabilities, costs and expenses pursuant to any federal or state law in any civil, judicial or administrative action challenging or contesting the adequacy and implementation of the Site remedy (collectively, the "Covenant Not To Sue"). This Covenant Not To Sue extends only to the Arconic Parties and to no other person or party, except as otherwise provided in Section IV(B).

B. The Department agrees that this Stipulation and Settlement (i) may not be used by any entity not a party to or protected by this settlement (whether governmental, corporate, or individual) as evidence of any fact or legal determination, and (ii) may not be introduced as evidence in any administrative or judicial proceeding.

#### **IV. RESERVATION OF RIGHTS, REOPENERS, AND VIOLATION OF STIPULATION AND SETTLEMENT**

A. Arconic reserves all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person or entity other than the Department, the State, or the Commissioner as trustee for the natural resources of the State.

B. Nothing in this Stipulation and Settlement shall be construed as barring, affecting or diminishing any rights or authorities of the State, the Department, the Commissioner, or the Commissioner's designee, to pursue any party other than the Arconic Parties with respect to this Site. However, the Department agrees that if Arconic satisfactorily implements this Stipulation and Settlement, the Department will not challenge the adequacy or implementation of the Site remedy against EPA in any civil, judicial, or administrative action.

C. Failure of Arconic to comply with the terms of this Stipulation and Settlement shall be deemed to be a violation of this Stipulation and Settlement and, in the event of any such violation, the Department shall be entitled to enforce the terms of this Stipulation and Settlement, and seek penalties and injunctive relief as provided by applicable law and regulation. Notwithstanding the foregoing or anything in this Stipulation and Settlement to the contrary, the Arconic Parties reserve all rights and defenses against any such action by the Department.

**V. FORCE MAJEURE**

If Arconic cannot comply with a deadline or requirement of this Stipulation and Settlement because of an act of nature, act of war, act of terrorism, strike, riot, catastrophe, pandemic or other condition which is not caused by the negligence or willful misconduct of Arconic and which could not have been avoided by Arconic through the exercise of due care, it shall make reasonable efforts to comply nonetheless and shall, within a reasonable time under the circumstances (unless notice is required sooner by State or Federal law), notify the Department in writing, pursuant to the communications provision of this Stipulation and Settlement, after Arconic obtains knowledge of any such condition or event, and may request an appropriate extension or modification of this Stipulation and Settlement. The Department's consent to such a request will not be unreasonably withheld or delayed.

**VI. BINDING EFFECT**

The provisions of this Stipulation and Settlement shall bind Arconic, and shall bind the Commissioner and the Department.

**VII. MODIFICATION**

No change in this Stipulation and Settlement shall be made or become effective except by written amendment to this Stipulation and Settlement duly executed by Arconic and by the Commissioner or the Commissioner's designee.

**VIII. ENTIRE AGREEMENT**

The provisions hereof shall constitute the complete and entire Stipulation and Settlement between Arconic and the Department concerning the Site.

**IX. COMMUNICATIONS**

All written communications required by this Stipulation and Settlement to the Department shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail to:

Andrew Guglielmi, Esq.  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, N.Y. 12233-1500  
[andrew.guglielmi@dec.ny.gov](mailto:andrew.guglielmi@dec.ny.gov)

To Arconic:

Rick Dworek, Esq.  
Chief Environmental & Real Estate Counsel  
Arconic Corporation Legal Department  
201 Isabella Street  
Pittsburgh, PA 15212-5858  
[richard.dworek@arconic.com](mailto:richard.dworek@arconic.com)

Either party may change its designated notice recipient upon notice of such change to the other party.

**X. HEADINGS**

The section headings set forth in this Stipulation and Settlement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Stipulation and Settlement.

**XI. EFFECTIVE DATE**

The effective date of this Stipulation and Settlement is the date that the Commissioner or the Commissioner's designee signs it below.

DATED: Albany, New York July 15, 2020

By: 

Basil Seggos

Commissioner

New York State Department of Environmental  
Conservation



Exhibit A  
Scope of Work

Arconic shall implement the following restoration actions and changes to the Site remedy:

- Arconic will source bank run material from the same borrow pit that is currently being used to provide the chemical isolation layer material for the project for all capping in the main channel in 2021 required by the ROD, other than the slope grading fill (SGF) discussed below. The only screening of this bank run material is for particles >3”.
- Arconic will source slope grading fill (SGF) from the same borrow pit that it’s currently getting SGF from, and use it for at least the top 6” of the requested transects<sup>1</sup> T25.5-T27; T30-32; T38-41; T47-T55; T60-63; T65-67. This material is expected to have a similar grain-size distribution, fines composition and total organic content (TOC) as the current slope grading fill.
- Arconic will agree to install 400 structures in the form of large (150) and small (250) cribs in the river. Arconic will agree to place these cribs in strategic areas as directed by DEC.
- Arconic agrees to augment the TOC in the restored wetlands at T27N, T43S, and T64S with at least 6 inches of high organic carbon material and additional native plantings, as soon as conditions allow for that restoration. If wetlands are inundated when Arconic is planning to restore them, Arconic will wait for low water conditions and will place the required fabric, substrate and agreed upon plantings in the previously-identified wetland areas.
- Monitoring and associated success criteria of the restored wetlands will be governed by the OM&M plan to be determined between EPA and Arconic, with DEC and Saint-Regis Mohawk Tribe (SMRT) input.
- Arconic agrees to retain a dive crew and support equipment from its primary remediation contractor, J.F. Brennan Company, Inc. (“Brennan”), for up to 10 weeks during the 2020 Grasse River construction season to work at the direction of the Department in assisting the Department meet its 2020 mussel collection and salvaging objectives, and to ensure that between the Department and Brennan enough mussel collection and salvaging work gets completed in 2020 to minimize any disruption to Arconic’s capping schedule in 2021. The Department agrees that its dive crew will stay out of the main channel of the Grasse River while Arconic is transporting barges during the hours of 6 a.m. to 6 p.m Monday through Saturday. Arconic will inform the Department of any sustained periods of

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<sup>1</sup> These transects are described in the approved Final Design Report for the Site remedy.

barge transport cessation, during which time diving operations could be performed in the main channel.