UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, United States Department of Labor, Complainant, v. BWAY CORPORATION, Respondent.	DOCKET NOS.	17-1715 17-1723 17-1724

SETTLEMENT AGREEMENT

I.

Scope and Intent of Settlement Agreement

Complainant, Secretary of Labor, United States Department of Labor ("Complainant"), by and through his attorneys, and Respondent, BWAY Corporation ("Respondent" or "Company"), hereby stipulate and agree that:

(A) In the above docket numbers, Respondent received citations and notifications of proposed penalties alleging violations of the Occupational Safety and Health Act of 1970, 29 USC §§ 651 et seq. ("the Act").

(B) Respondent, an employer within the meaning of Section 3(5) of the Act, duly filed with a representative of Complainant notices of intent to contest the citations and proposed penalties. These notices were duly transmitted to the Occupational Safety and Health Review Commission ("Commission") and it is agreed that jurisdiction of these proceeding is conferred upon said Commission by Section 10(c) of the Act.

(C) Complainant has filed Complaints in each case herein stating with particularity the violations alleged, the penalties proposed and the issues in contest before the Commission.

(D) Complainant and Respondent ("the Parties") have agreed in this Settlement Agreement ("SA" or "Agreement") to resolve in full and as described below all matters in the cases identified by the above-referenced docket numbers.

(E) The Parties have also agreed to Third-Party Monitoring, Internal Corporate Monitoring, a Safety and Health Management System and other terms described below, and that all such measures shall be applied on a corporate-wide basis to Respondent's metal can manufacturing facilities where non-cord-and-plug machinery is used to manufacture paint cans, steel pails, aerosol cans, hybrid paint cans, F-style containiners, monotop cans, pour top cans, ammunitition boxes oil cans, and other metal products, covered under the jurisdiction of Federal OSHA. The attached Appendix A identifies all facilities covered by this Agreement.

(F) The Parties to this Agreement recognize that some of Respondent's facilities are located in states that have assumed authority for the enforcement of Occupational Safety and Health standards pursuant to Section 18 of the Act ("State Plan States"). OSHA will notify and encourage these State Plan States to honor or agree to the terms of this Agreement.

(G) BWAY represents that it has already begun to address machine guarding and hazards from uncontrolled energy during maintenenace and servicing; that it has retained management consultants as described in Section V who have begun their review; and that it has begun implementation of interim controls in the Chicago S. Kilbourn Ave. facility. Further, BWAY represents that it has begun examining potential controls such as barrier guards, light curtains, and interlocked guards and controls on equipment.

II.

Resolution and Amendment of Citation Items

(A) Complainant hereby amends Item 2-1 in Docket 17-1724 from "Repeat" to "Serious." All other Citations in Dockets No. 17-1715, 17-1723, and 17-1724 will be maintained as issued in terms of classification.

(B) The total amended, combined penalty for all dockets totals will be reduced to $380,000.00.

(C) Respondent certifies that the specific violative conditions alleged at its facility located at 3200 S. Kilbourn Ave., Chicago, IL 60623, in the above-referenced cases have been abated or will be abated by the abatement date described in the citations or within 30 days of the execution of the Agreement, whichever is later. For each of those items in each of those cases, abatement verification and certification, as required by 29 CFR § 1903.19(c), shall be submitted to the issuing Area Director of the local Occupational Safety and Health Administration Area Office within 30 days of final execution of this agreement. Such abatement verification and certification shall be signed by Respondent's Designated Person referenced in Section XIV of the Agreement. Respondent also agrees to submit at the same time abatement documentation required by 29 CFR § 1903.19(d).

(D) The Citations and Notifications of Penalties are deemed amended to include the full terms of this Agreement, including all abatement measures, all agreements as to actions to be taken by Respondent, and all implementation dates, that are described in this Agreement.

III.

Interim and Final Abatement Measures -Engineering and Administrative Controls

(A) Scope and Terminology

(1) This section applies to portions of BWAY facilities listed in Appendix A in which non-cord-and-plug machinery is used to manufacture paint cans, steel pails, aerosol cans, hybrid paint cans, F-style containiners, monotop cans, pour top cans, ammunitition boxes oil cans, and other metal products.

(2) An operator-employee (or "operator") under this Agreement is an employee other than a maintenance employee who is assigned by an BWAY supervisor or manager to use non-cord-and-plug machinery to manufacture paint cans, steel pails, aerosol cans, F-style containiners, monotop cans, pour top cans, ammunitition boxes oil cans, and other metal products.

(3) Training required by this section shall be certified in the same form used to comply with the certification requirements of § 1910.147(c)(7)(iv).

(B) Interim Abatement Measures—Lockout/Tagout

(1) Upon execution of the Agreement, Respondent shall:

Implement a work rule requiring any operator who is not an authorized employee to contact an authorized employee to perform shutdown and full lockout when and as required by 29 CFR 1910.147.

(2) No later than 60 days from the date that this Agreement is fully executed, Respondent shall, at the Chicago S. Kilbourn Ave. facility, to the extent it has not already done so:

(i) Train or have trained all operators in an overview of 29 CFR 1910.147, including recognition of situations in which lockout is required by 29 CFR 1910.147 and that, if such lockout is required, it must be performed by persons trained as "authorized employees," which may include maintenance employees. The training will include an explanation of the term "authorized employee" and a statement that one may perform lockout only if one has been trained as an authorized employee.

(ii) Train or have trained affected employees whose job duties require working in any operational area of Respondent's facilities under § 1910.147(c)(7)(i)(B) or (C) as appropriate.

(C) Final Abatement Measures—Lockout/Tagout

No later than 180 days from the date that this Agreement is fully executed, and to the extent these conditions are not already statisfied:

(1) The provisions of BWAY's lockout/tagout program, will be extended to apply to any operator in Respondent's facilities in Federal OSHA jurisdiction and listed in Appendix A. Where required by 29 C.F.R. §1910.147, operators will lockout by implementing BWAY's lockout/tagout program.

(2) Respondent will have completed authorized employee training compliant with 29 CFR 1910.147(c)(7)(i) for all operators who are required or permitted to lockout. No operator shall personally perform lockout/tagout unless this training has been completed. In addition, Respondent will have trained all operators who are required or permitted to lockout in its lockout/tagout program. Nothing in this Agreement restricts Respondent from amending its lockout/tagout program.

(3) Respondent will have completed training for all other employees who are affected employees as defined by 29 CFR 1910.147(b) as compliant with 29 CFR 1910.147(c)(7)(i)(B).

(4) In the event an operator has not completed the training noted in Paragraphs (C)(1) and (2) above, they shall not be permitted to perform lockout/tagout and shall instead adhere to the work rule described in Section III, Paragraph (B)(1) above.

(D) Use of Minor Servicing Exception to 29 CFR 1910.147.

(1) *Definitions*:

(a) The term "alternative measure" means an "alternative measure[s] which provide[s] effective protection (See Subpart O of this Part)" within the meaning of the minor servicing exception.

(b) The term "ANSI-compliant" refers to control circuit safeguarding devices that meet the provisions of ANSI B11.19-2010, "Performance Criteria for Safeguarding."

(c) The term "minor servicing exception" or "exception" means the minor servicing exception to 29 CFR 1910.147(a)(2)(ii).

2) The Company will refrain from using the minor servicing exception until a third-party consultant, selected in accordance with Article V of this Agreement, evaluates its possible use on a particular type of machine and its operation consistent with the requirements of 29 CFR 1910.147. Until the consultant completes his evaluation as to a type of machinery, the company shall lock out the machinery in full compliance with 29 CFR 1910.147, to the extent required by the Act. The Parties agree that any evaluations conducted by Pekron Consulting, Inc. prior to the execution of this Agreement can nonetheless satisfy the terms of this Agreement.

3) The Consultant shall evaluate whether the work can be performed using alternative measures. The results of this evaluation shall document the analysis used to select an effective form of employee protection.

4) If the Consultant determines that use of the minor servicing exception as to a work activity would meet the exception and is consistent with the regulation, the Company may use it. If the Consultant does not so determine, the Company may not use it and must comply with 29 CFR 1910.147.

5) If the Consultant recommends use of control circuitry as an alternative measure when applying the minor servicing exemption, the circuitry shall be ANSI-compliant and used in a manner consistent with the control circuitry manufacturer's established practices for its installation, maintenance and use.

6) For the purposes of the minor servicing exemption only, if a machine is manufactured with control circuit safeguarding devices that are ANSI-compliant, such devices shall only be used to meet the requirement of the minor servicing exception.

7) If Respondent selects ANSI-compliant control circuitry as an alternative measure, the Consultant will:

(a) Establish conditions of use for the protective measures, including specifying limitations or conditions, if any, that would preclude their use on a particular machine or work activity.

(b) Establish a timetable for preventive maintenance, including specifying the maintenance tasks that must be performed to ensure equipment continues to function safely and properly;

(c) Establish a timetable for inspections, including the procedures required to ensure that the inspection covers any deficiency that would affect the safe and effective function of the safeguarding devices;

(d) Establish a timetable and procedure for records retention and review so that problem trends are identified and corrected before presenting a hazard;

(e) Identify the knowledge and competencies required for effective installation, maintenance or inspection of safeguarding devices, if specialized knowledge, skills or experience is required to perform those tasks.

Respondent will make these findings available to OSHA upon request.

9) If Respondent learns that an employee injury covered by 29 CFR 1904.7(a) or 29 CFR 1904.39(a)(2) is caused by the performance of a minor servicing activity under the minor servicing exception, Respondent shall immediately discontinue application of the minor servicing exception to the particular machine involved in the incident and implement a full lockout/tagout procedure compliant with 29 CFR 1910.147 until the use of the exception, as developed by the Consultant, is reviewed by the Consultant to determine whether it should be modified to prevent a recurrence of the accident. The Company will provide to OSHA, upon request, a statement of the steps it has taken to prevent recurrence of any such injuries.

10) Notification to OSHA. If the Consultant's evaluation includes a determination that the only alternative measure used to comply with the exception will be a Subpart O-compliant guard or ANSI-compliant control circuitry, the Consultant's evaluation shall be provided to OSHA. The dispute resolution provisions of Article X of this Agreement apply if OSHA notifies BWAY within 30 days that it rejects the consultant's determination.

11) For the purposes of this Agreement, and, unless there is a change to the Lockout Standard or precedent under it, thereafter, merely shutting off a machine (for example, to change a tool bit or blade) does not make the minor servicing exception inapplicable.

(E) Interim Abatement Measures – Machine Guarding

1) If, at any time following the execution of this Agreement, Respondent determines that a non-cord-and-plug machine used in the production of its metal products is not guarded as required by 29 C.F.R. Part 1910, Subpart O, Respondent shall either (1) bar employees from the use of the machine, through provisions such as an out of service lock, red tag, or other comparable measures, to prevent employee exposure to the non-compliant conditions, or

(2) implement interim abatement measures which prevent employee exposure to hazardous conditions, until the machine is guarded in compliance with OSHA standards or can otherwise be used in compliance with the Act.

(F) Final Abatement - Machine Guarding

No later than 60 days from the date that this Settlement Agreement is fully executed:

1) A third party consultant, to be selected in accordance with the procedures in Article V below, will complete or will have completed a corporate-wide audit of all non-cord- and-plug production machinery used on a large scale to manufacture metal products within Respondent's facilities listed in Appendix A for the purpose of verifying that guarding compliant with 29 C.F.R. Part 1910, Subpart O is in place and operational. The consultant, beginning with the Chicago S. Kilbourn Ave. facility, will evaluate each facility for guarding compliance for each category of machines at the facility. A separate evaluation will only be required for machines that are substantially different in construction, function, placement, or other reasons that necessitate different guarding. Each audit will include the following provisions:

a) specific machine identification and/or machine group classification,

b) all machine energy sources,

c) the typical tasks performed on the machine,

d) potential exposures to hazards of machine movement during normal operation covered by 29 C.F.R. Part 1910, Subpart O, and

e) any additional guarding required to protect employees from potential exposure to hazards associated with machine movement covered by 29 C.F.R. Part 1910, Subpart O during normal production operations.

For the purposes of this Agreement, The Parties agree that any evaluations conducted by Pekron Consulting, Inc. prior to the execution of this Agreement can nonetheless satisfy the terms of this Agreement.

(2) At the conclusion of the evaluation, the third-party consultant will develop a written plan, along with a schedule for each facility, to abate any hazards found as a result of guarding not compliant with 29 C.F.R. Part 1910, Subpart O. A copy of the written plan and abatement schedule shall be provided to OSHA. The schedule will detail verification audits and required abatements such that abatement will be completed at 25% of the covered facilities every 90 days. All covered facilities must be abated within one year of OSHA's acceptance of the abatement schedule.

(3) Any recommended abatement as to machine guarding or lockout will meet OSHA standards, except to the extent the Act or standards otherwise permits or provides, in which case Respondent shall notify OSHA of the consultant's determination, as well as document the determination and alternative measures the Consultant recommends be used to protect employees. The dispute resolution provisions of this Agreement set forth in Section X, Dispute Resolution, shall apply if OSHA notifies Respondent within 30 days that it rejects the consultant's determination. The plan and schedule shall be submitted to OSHA within 15 days of the end of the 60 day period. Within 15 days of the receipt of this report, OSHA will provide

written comments to the Respondent either accepting or rejecting the recommended abatement. Any disagreement will be resolved in accordance with Section X, Dispute Resolution. Any production machinery or section of production machinery found by the consultant to have inadequate guarding shall either be immediately removed from service or have its use restricted so as to prevent employee exposure to the non-compliant condition, until the machine is guarded in compliance with OSHA standards or can otherwise be used in compliance with the Act.

(4) Upon OSHA's acceptance of the abatement schedule, each machine at the scheduled facility will be audited for verification of guarding on the machine. Where an individual machine lacks compliant guarding that is present on other similar machines, the consultant will identify the machine, and BWAY will immediately install guarding similar to the other machines in its category or otherwise restrict the use of the machine so as to prevent employee exposure to the non-compliant condition. Where no machine in that category operates using compliant guarding, the consultant will develop guarding compliant with OSHA standards, and BWAY will install that guarding in accordance with the schedule in (2), above.

IV.

Safety and Health Management System

With 210 days of this Agreement being fully executed, Respondent agrees to ensure that it has developed and instituted a comprehensive Safety and Health Management System (SHMS) that substantially adheres to the following points:

1. Institute and maintain in their establishment a SHMS which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. The program will include systematic identification, evaluation, and prevention or control of general workplace hazards, specific job

hazards, and potential hazards which may arise from foreseeable conditions consistent with concepts included in *Recommended Practices for Safety and Health Programs* published in October, 2016 at https://www.osha.gov/shpguidelines/docs/OSHA_SHP_Recommended_Practices.pdf. The SHMS shall be implemented at all of Respondent's facilities in Federal OSHA jurisdiction within one year from the date this Agreement is fully executed.

2. Develop written guidance to ensure clear communications of policies and priorities and consistent and fair application of rules. The employer's occupational SHMS will include 1) management commitment and employee involvement; 2) worksite analysis; 3) hazard prevention and control; and 4) safety and health training.

3. The management commitment and adequate communication of the safety and health program shall address the following elements:

i. Establish goal and objective.
ii. Communication of worksite health and safety policy.
iii. Assign and communicate responsibility.
iv. Management accountability and employee involvement.
v. Annual review.

4. Implement and maintain processes for identifying, assessing and documenting hazards in the workplaces. This process will include the following elements:

i. Safety and health surveys: conduct surveys or assessments of the workplace to identify hazards and potential hazards, utilizing baseline survey and updated surveys.

5. The employer shall encourage employee involvement and establish and implement a process to consult with employees in developing and updating the safety and health program.

6. Injury and illness data: The employer shall analyze injury and illness trends every six months, to identify patterns with potential common causes and implement preventative measures.

7. Hazard reporting: The employer shall provide a reliable system for employees and their authorized representatives to notify management personnel about conditions that appear hazardous. The employer must encourage employees and their authorized representatives to report safety and health concerns, such as hazards, injuries, illnesses, near misses and deficiencies in the health and safety program, and take appropriate action for such reports in a reasonable period of time (e.g., 3-5 days for serious hazards and a maximum of two weeks for all other hazards).

8. Evaluation: The employer shall evaluate each hazard identified in the workplace and identify control measures and means of abatement.

9. Incident investigation: The employer shall implement a process for investigation of accidents and "near miss" incidents" so that their causes and means for prevention can be identified. Investigations must be initiated within a reasonable time of learning of the incident. The Safety and Health Management System must include a system for timely addressing deficiencies, hazards, and control failures identified by the investigation.

10. The Safety and Health Management System will provide a mechanism to ensure that hazards are abated. For hazards that the employer cannot control immediately, the safety and health program must provide for interim controls and concrete measures of progress toward implementing controls to protect employees. Employee participation and input shall be considered throughout the process. To ensure the abatement of hazards, the safety and health program will include the following elements:

i. A process for assigning responsibilities, tasks, and schedules to ensure abatement of the hazards.

ii. Discussion of the employer's hazard control plans with affected employees and any authorized employee representatives.

iii. Document and make available the hazard control measures to all employees and their authorized representatives.

iv. Use the following measures to abate hazards:

A. Engineering techniques that are feasible and appropriate;

B. Procedures for safe work which are understood and followed by all affected parties, as a result of training, positive reinforcement, correction of unsafe performance, and, if necessary, enforcement through a clearly communicated disciplinary system;

C. Provision of personal protective equipment;

D. Administrative controls, such as reducing the duration of exposure;

E. Provision for facility and equipment maintenance, so that the risk of hazardous breakdown is mitigated;

F. Plan and prepare for emergencies, and conduct training and drills as needed, so that the response of all parties to emergencies will be "second nature;"

G. Establish a medical program which includes availability of first aid on site and facilitation of access to physician and emergency medical care nearby, so that harm will be minimized if any injury or illness does occur.

11. The employer shall conduct safety and health training and education. The

education and training program will be conducted in a manner to address any language barriers and can be understood by all employees. The training shall ensure:

i. All employees understand the hazards to which they may be exposed and how to recognize them and prevent harm to themselves and others from exposure to these hazards, before they may be exposed.

ii. Employees understand, accept and follow established safety and health protections.

iii. All employees understand the employer's responsibility under the safety and health program including the identity of the person(s) assigned overall responsibility for the development and ongoing implementation of the program.

iv. All employees have the knowledge and skills necessary to understand and fulfill their respective roles and responsibilities in the safety and health program.

v. All employees have knowledge of the procedures for reporting injuries, illnesses and safety and health concerns.

vi. All employees understand their rights to participate in the program without fear of retaliation or discrimination from the employer.

vii. Supervisors understand their safety and health responsibilities and the reasons for them.

viii. The employer provide additional and supplementary training to employees whenever safety and health information or a change in workplace condition indicates that an employee may be exposed to a new or increased hazard, or when an employee is assigned to a new task that may include exposure to a new or increased hazard.

ix. Employer provide training in a language and vocabulary that is

understandable to employees.

12. The employer shall include appropriate employees or their authorized representatives in workplace inspections and incident investigations.

13. The employer shall not retaliate or discriminate against employees for, or otherwise engage in practices or implement policies that deter employees from, participating in the program, including reporting safety and health concerns.

14. The employer must establish a process to undertake an internal review of the safety and health program wherein deficiencies may be discovered, but at least annually. Such reviews are intended to verify and determine whether the program meets the requirements detailed in the Agreement and whether it is making progress towards meeting its goals. As a result of the review, the employer must modify the program as necessary to correct deficiencies identified.

15. Not later than one (1) year following its implementation, Respondent's Safety and Health Management System shall be audited by its Third-Party Consultant. The consultant(s) shall meet with Respondent's management to convey its findings and recommendations and so that management will have the opportunity to address any findings.

V.

Third-Party Consultant Selection and Monitoring

(A) Respondent agrees to engage at its own cost qualified third-party safety consultant(s) to:

(1) assist in the implementation of interim and final abatement measures described above; and

(2) to monitor Respondent's implementation of the Interim and Final abatement measures described above.

(3) Respondent may engage the same consultant to conduct both activities or, alternatively, may retain separate third-party consultants for each task.

(B) OSHA acknowledges that Respondent has engaged Pekron Consulting, Inc. to conduct consulting activities, accepts Pekron Consulting, Inc.'s credentials, and agrees to the continued retention of Pekron Consulting, Inc. as the third-party consultant for purposes of this agreement. Respondent may replace an agreed consultant at any time, with notice to OSHA, with another consultant acceptable to OSHA pursuant to the provisions of this section. In selecting any replacement or additional third party consultant(s), Respondent agrees to provide the credentials of the third-party consultant(s), who shall have appropriate training and experience in workplace safety, for review by OSHA within 30 calendar days prior to a formal retention of services by the Respondent. OSHA shall have 15 calendar days thereafter to object to Respondent's selections. If OSHA objects, the agency shall indicate to Respondent the grounds for the objection, and Respondent will then continue to search until it locates no more than two additional persons. If OSHA objects to them, then OSHA shall within 20 days nominate three persons acceptable to it, for consideration by Respondent. If none are acceptable to Respondent, the parties shall confer. Respondent shall certify retention of any agreed consultant(s) to OSHA within ten business days of the execution of its retention agreement with the consultant. If, at any point, OSHA or Respondent determines that a selected consultant(s) is not effectively executing its responsibilities with respect to the terms of this Agreement, OSHA or Respondent will notify the other Party and the Parties shall engage in reasonable efforts to address the consultant's lack of effectiveness. If the Parties cannot resolve the situation in a reasonable time, either Party may notify the other Party that a new consultant must complete the tasks required by the Agreement. Within 60 days of such notice, Respondent shall terminate the

current consultant. Retention of a new consultant will not extend the termination date of the Agreement.

(C) Beginning 180 days following the execution of the Agreement, and in accordance with the schedule set forth in Section V. Paragraph D, Respondent's third party consultant designated to perform monitoring shall evaluate Respondent's compliance with the terms of the Agreement and memorialize its findings.

(D) Respondent's third party consultant(s) shall complete a monitoring visit at each of Respondent's facilities listed in Appendix A of the Agreement at the following intervals from the date of execution of the Agreement:

1) 6 months

3) 15 months

4) 21 months

(E) Respondent shall permit, and the consultant(s) shall conduct, confidential interviews of non-managerial employees in the manner the consultant(s) deems necessary to assess Respondent's compliance with the Act and the terms of the Agreement, and to assure Respondent's ongoing and future compliance. The consultant(s) shall not disclose the names, statements or any notes of the confidential interviews of employees to Respondent, its officers, agents, servants, employees, or any persons acting or claiming to act on their behalf or interest.

(F) Following completion of any audits required by the Agreement or any monitoring visits to Respondent's facilities, the consultant(s) shall meet with Respondent's management to convey its findings and recommendations and so that management will have the opportunity to address any findings. Following the meeting, Respondent shall provide OSHA a copy of the report and results of the monitoring visits.

(G) Respondent shall, in response to any hazards and deficiencies identified by the consultant(s) responsible for monitoring the implementation of the Interim and Final abatement measures, and no later than 21 days after receipt (unless as noted in the final sentence of this paragraph), address all alleged hazards and deficiencies identified by the consultant(s), and shall memorialize its actions taken to do so. Such documentation shall be prepared by Respondent no later than 7 business days after ensuring that the hazards and deficiencies have been corrected. In addition, such documentation shall be made available to OSHA upon request and no later than 10 business days after such a request. If Respondent cannot or will not correct any hazard or deficiency identified by the consultant(s) within 21 business days of receipt from the consultant(s), within 30 business days it shall make available to OSHA upon request an explanation as to why such hazards and deficiencies were not corrected. Any dispute arising with regard to corrections of hazards and deficiencies shall be subject to the dispute resolution provisions in Section X, Dispute Resolution, of the Agreement. None of the terms of this Section are intended to conflict with the schedule for Interim and Final abatement provided for in this Agreement.

VI.

Internal Corporate Monitoring

(A) Within 30 days from the date this Settlement Agreement is fully executed, Respondent shall designate and provide to OSHA the name and contact information of a corporate officer or senior manager (the "Designated Official") who will have the responsibilities set forth below. Within the sole discretion of the Board of Directors, the Designated Official may be changed, but Respondent must provide fifteen days' advance notice to OSHA before finalizing the change.

(B) The Designated Official, subject to the oversight and management direction established by the Board of Directors of Respondent, shall be vested with the authority to: (i) issue directions implementing this Agreement; (ii) order abatement measures to be implemented that, when followed, will bring Respondent into compliance with both the Act and the terms of the Settlement Agreement; and (iii) implement and monitor Respondent's internal monitoring activities.

(C) Within 90 days from the date this Agreement is fully executed, the Designated Official shall establish and implement procedures to monitor, identify, and address deficiencies in the implementation of the interim and final abatement measures described in Section III above. These procedures shall be consistent with the provisions of Article IV, Safety and Health Management System, which require Respondent to develop an ongoing management system to continually identify and address any machine hazards. The Designated Official, or a qualified designee, shall perform internal monitoring throughout the term of the Agreement

VII.

Effective Date and Term of the Agreement

(A) This Agreement shall become effective on the date it is fully executed (the "Effective Date").

(B) The terms of this Agreement shall terminate on the date that is 2 years from the date of execution of the Agreement (the "Termination Date").

VIII.

OSHA Monitoring, Reporting, and Meeting

(A) Until this Agreement's Termination Date, Respondent shall permit OSHA to enter into and conduct monitoring inspections at the facilities covered by this Agreement to verify

compliance with the Agreement. The scope of the OSHA monitoring inspections shall be limited to the verification of compliance with this Agreement. Disputes related to compliance with this Agreement shall be addressed pursuant to Section X, Dispute Resolution. Respondent shall not require warrants for such entry by OSHA, and shall not require subpoenas for such access to documents, witnesses, or other information related to compliance with this Agreement.

(B) Within 210 days of final execution of this Agreement and thereafter on the second anniversary of the final execution of this Agreement, Respondent shall submit a written compliance report to OSHA detailing Respondent's status of compliance with the terms of Section III and Section IV of this Agreement (each, a "Compliance Report"). Each Compliance Report shall include 1) a written certification by Respondent that it is then in compliance with all of the terms of this Agreement or, 2) if Respondent is not then in full compliance, a written statement by Respondent describing all areas of non-compliance, the remedial actions to be taken by Respondent at each facility, and the date by which Respondent states it shall achieve full compliance at each facility. Nothing in this paragraph shall be construed as a substitute or replacement for other reporting requirements set forth in this Agreement. Nor shall the reporting requirements in this paragraph be satisfied by only submitting reports required by any other provisions of this Agreement. Finally, nothing in this paragraph shall be construed as a waiver or limitation of OSHA's ability to monitor and/or enforce Respondent's compliance with the terms of this Agreement, as noted above in Paragraph (A) of this section.

(C) The Parties shall hold a meeting approximately one year after the Effective Date of the Agreement to discuss the status of abatement and Respondent's progress in implementation of the measures outlined in Section III and Section IV of this Agreement, as well as any other terms of the Agreement that either Party wishes to discuss. This meeting will

provide the Parties an opportunity to identify any concerns, issues and/or challenges and, if Respondent deems it necessary, to discuss the need for additional time to comply with the terms of this Agreement Respondent shall initiate contact with OSHA no later than 10 months after the Effective Date of the Agreement to set up this meeting, which the Parties agree shall be held at the U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue N.W., Washington, D.C. 20210, at a mutually agreed upon date and time as close as possible to the one year anniversary of the Effective Date of the Agreement. Points of contact for this meeting and discussions between the parties are Respondent's Designated Official (as referenced in Section XIV), and OSHA. However, nothing in this paragraph precludes meeting(s) at the local level.

IX.

Penalties

Respondent certifies that the total penalty of $380,000, as described in Section II (A) above, is being paid by Respondent within 30 days of the execution of this signed Agreement to Complainant. The check shall be made payable to "U.S. Department of Labor, OSHA" and shall be forwarded to:

Kathy Webb, Area Director
OSHA Chicago South Area Office
8505 W. 183rd St., Suite C
Tinley Park, IL 60487

X.

Dispute Resolution

If, during the term of this Agreement, OSHA determines Respondent is not or may not be in compliance with any portion of this Agreement, including from the review of any third party

consultants' report received from Respondent, review of any documents, receipt of a complaint, or by any other means, it shall promptly contact Respondent in writing to the person designated by Respondent and allow Respondent 15 working days from receipt of notification to provide a written response. Within 10 working days of receiving the written response, OSHA shall engage in good faith discussions, if necessary, and provide Respondent a reasonable amount of time to abate. If, by the expiration of that time period, Respondent reports and provides documentary evidence to support that it has fully abated the hazard, will have abated the condition within a reasonable time, or provides an otherwise satisfactory response, no citation shall issue. If the parties are unable to resolve the issue, OSHA, after review by the Directorate of Enforcement Programs, will determine the appropriate course of action. OSHA retains its right to use the enforcement methods provided by the Act and Respondent retains all rights afforded it by the Act. OSHA reserves the right to forego the provisions of this paragraph in cases where Respondent demonstrates a repeated pattern of noncompliance involving a similar condition at any and all facilities coverd by Appendix A of this Agreement.

XI.

Failure to Abate and Section 11(b) of the Act

(A) The Parties understand and agree that their inability to reach an agreement regarding the alleged non-compliance, as well as Respondent's failure to perform in good faith any of the terms or abatement measures required in the Agreement, including the payment of penalties as set forth herein, may be cited by Complainant as a failure to abate under Section 10(b) of the Act, 29 U.S.C. §659(b), and may be subject to an enforcement action brought by Complainant pursuant to Section 11(b) of the Act, 29 U.S.C. §660(b), to the same extent as if

these terms, abatement measures and Additional Abatement Measures had been set forth from the outset in the Citations and Notification of Penalties issued in these matters.

XII.

Service and Posting of the Agreement and Settlement Summary

(A) Respondent certifies that there are no authorized employee representatives at its facilities covered by the Agreement. Respondent further certifies that it will serve this Agreement on the employees at the Kilbourn facility by posting it on December 7, 2018, in a place where the Citations are required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure, for the duration of the Agreement.

(B) Respondent further certifies that this Settlement Agreement will be posted in the remaining facilities, listed in Appendix A, on December 17, 2018, in a place where the Citations are required to be posed, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure, for the duration of the Agreement.

XIII.

Modification of Abatement Schedule

The Parties stipulate and agree that Respondent reserves its right to petition OSHA for modification of the abatement dates, pursuant to 29 C.F.R. §1903.14a, if Respondent is unable to meet any abatement deadlines set forth above because of factors beyond its reasonable control and despite its good faith effort to comply with the required abatement measures. OSHA agrees that any such Petition for Modification of Abatement Date ("PMA") submitted by Respondent to OSHA, and any extension of time approved by OSHA or the Occuapational Safety and Health Review Commission in response to such a PMA, need not be made specific to a single worksite, but may be made to apply to any or all of the facilities covered by the Agreement. The Parties

further stipulate and agree that any extension of time approved by OSHA or the Occupational Safety and Health Review Commission in response to a PMA submitted by Respondent during the term of this Agreement shall be automatically incorporated into this Agreement and binding upon the Parties.

XIV.

Notice and Communications

Any notice provided by a Party pursuant to this Agreement shall be in writing and delivered by certified mail and electronic mail to the addresses below:

(A) If to Complainant:

Kathy Webb, Area Director
OSHA Chicago South Area Office
8505 W. 183rd St., Suite C
Tinley Park, IL 60487

(B) If to Respondent:

Allen J. Coppolo, Director, Environmental Health and Safety
1515 W. 22nd Street, Suite 1000
Oak Brook, IL 60523
allen.coppolo@bwaycorp.com

With a copy to:

Amanda C. Machin
Gibson, Dunn & Crutcher LLP
Washington, DC 20036
amachin@gibsondunn.com

Any such notice shall be deemed provided on the date that the notice is deposited in the United States mail or sent as reported by the sender's electronic mail program. Each party shall immediately notify the other party of any change in the name, physical address, or electronic mail address to whom any notice is to be sent pursuant to this paragraph.

XV.

Non-Admission

Neither this Agreement nor Respondent's consent to entry of a final order by the Commission pursuant to this Agreement constitutes any admission by Respondent of a violation of the Occupational Safety and Health Act or regulations or standards promulgated thereunder. Neither this Agreement nor any order of the Commission entered pursuant to this Agreement shall be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal, except for proceedings and matters brought pursuant to the Occupational Safety and Health Act. Respondent is entering into this Agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before this Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future or existing conditions identical or similar to those alleged in the original citations, the citation as amended or the complaints do not violate the Occupational Safety and Health Act or any standard promulgated there under. By entering into this Agreement, Respondent does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged conduct or any of the conclusions set forth in the citations or amended citations issued in these matters.

XVI.

Costs

Each Party hereby agrees to bear its own fees and other expenses incurred by such Party in connection with any stage of these proceedings.

XVII.

No Alteration of Employee Rights

Nothing in this Agreement alters in any manner the rights afforded employees under the Act.

Respectfully submitted this 6thday of December, 2018,

FOR THE SECRETARY OF LABOR:

Kate S. O' Scannlain
Solicitor ofLabor

Christine Z. Heri
Regional Solicitor

Allen Bean
Counsel for OSHA

Edward V. Hartman
Senior Trial Attorney

U.S . Department of Labor
Office of the Solicitor
230 S. Dearborn St., Room 844
Chicago, IL 60604
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FOR BWAY CORPORATION:

Baruch A. Fellner , Esq.
Amanda C. Machin, Esq.
GIBSON . DUNN & CRUTCHER. LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 887-3705
amachin@gibsondunn.com

APPENDIX A

BWAY CORPORATION COVERED FACILITIES

3200 S. Kilbourn Avene
Chicago, IL 60623

8200 Broadwell
Cincinnati, OH 45244

1601 Valdosta Highway
Homerville, GA 31634

10277 Venice Drive
Sturtevant, WI 53177

599 Davies Drive
York, PA 17402

3737 Miller Park Drive
Garland, TX 75402

Six Litho Road
Trenton, NJ 08638

CERTIFICATE OF SERVICE

I certify that all parties have consented that all pap s required to be served may be filed and served using the E-Fil e system. I further certify that on December 6, 2018 , a copy of the foregoing **Stipulation and Settlement Agreement** was served through the £-file system on the following party:

Baruch A. Fellner . Esq.
Amanda C. Machin , Esq.
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 887-3705
amachin@gibsondunn.com

EDWARD V. HARTMAN
Attorney

United States Department of Labor
One of the Attorneys for
Complainant