

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)
)
OSAGE METALS SUPERFUND SITE)
)
Kansas City, Kansas)
)
)
)
Proceeding under Section)
122(g)(4) of the Comprehensive)
Environmental Response,)
Compensation, and Liability)
Act of 1980, as amended,)
42 U.S.C. § 9622(g)(4))
_____)

EPA Docket No. VII-98-F-0012

ADMINISTRATIVE ORDER
ON CONSENT

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by the EPA Delegation No. 14-14-E (issued Sept. 13, 1987, modified by memorandum June 17, 1988).

2. This Administrative Order on Consent is issued to the parties listed in Attachment 1 ("Respondents"), attached to and incorporated into this Order. Respondents agree to undertake all actions required by this Consent Order. Respondents further consent to and will not contest the EPA's jurisdiction to issue this Consent Order or to enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the EPA and Respondents are:

a. to reach a final settlement between EPA and Respondents with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 6922(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Section 107 of CERCLA, 42 U.S.C. § 9607, for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, and to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

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

b. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all attachments attached hereto. In the event of conflict between this Order and any attachment, the Order shall control.

c. "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 holiday, the period shall run until the close of business of the next working day.

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

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

f. "Interest" shall mean interest at the current 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).

g. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

h. "Parties" shall mean EPA and the Respondents.

i. "Respondents" shall mean those persons, corporations, or other entities listed in Attachment 1.

j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

k. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

l. "Site" shall mean the Osage Metals Superfund Site, encompassing approximately 1.7 acres, and located at 120 Osage Avenue in Kansas City, Wyandotte County, Kansas, and designated

by the following property description: the NE 1/4, Section 22, T49N, R25E (USGS 1964).

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

IV. FINDINGS OF FACT

6. The Site was the location of a metals salvage and reclamation facility between 1948 and 1993. During the 1980s, the Site accepted scrap metal taken from capacitors and transformers, and whole transformers, from AmerCo Environmental, Inc. and PCB Treatment, Inc.

7. The scrap metal from used capacitors that was accepted by the Site from PCB Treatment, Inc. was contaminated with polychlorinated biphenyls ("PCBs"), which are hazardous substances within the meaning of CERCLA, and disposal of the scrap metal at the Site resulted in the release or threat of release of PCBs or other hazardous substances at the Site.

8. As a result of the release or threatened release of hazardous substances at the Site, EPA conducted a response action between March and October 1995 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and the National Contingency Plan, 40 C.F.R. § 300.415.

9. In performing these response actions, the United States has incurred approximately \$1,360,533 in costs to date, \$80,000 of which the United States recovered through a consent decree with owners and operators of the Site in 1995.

10. Each Respondent listed in Attachment 1 arranged for the disposal of capacitors contaminated with hazardous substances by PCB Treatment, Inc. PCB Treatment, Inc. in turn arranged for disposal at the Site of scrap metal taken from these capacitors. The scrap metal disposed of at the Site was contaminated with hazardous substances.

11. The number of pounds of capacitors that each Respondent sent to PCB Treatment, Inc. for disposal does not exceed one (1) percent of the total number of pounds of materials containing hazardous substances that all known potentially responsible parties sent to PCB Treatment, Inc. for disposal; and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

12. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of the United States' costs.

V. DETERMINATIONS

13. Based upon the Findings of Fact set forth above and on the administrative record for this Site, the EPA has determined that:

a. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondents are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. §§ 9601(22) and (14).

e. The actual or threatened "release" of hazardous substances at the Site caused the incurrence of response costs at the Site.

f. Prompt settlement with Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of 42 U.S.C. § 9622(g)(1).

g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. Respondents are eligible for a de minimis settlement pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent is minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

14. Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

VII. PAYMENT

15. Within 30 days of the effective date of this Consent Order, Respondents shall each pay the amount designated on the same line as their name appears in Attachment 1.

16. Each Respondent's payment includes an amount for: a) past response costs incurred at or in connection with the Site; and b) a premium to cover the risks and uncertainties associated with this settlement.

17. Each payment specified in Attachment 1 shall be made by certified cashier's check payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making the payment, the Osage Metals Superfund Site name, EPA Region VII, the Site Spill ID Number, 07JE, and the EPA Docket Number VII-98-F-0012 for this action and shall be sent to:

Hazardous Substances Superfund
United States Environmental Protection Agency
Attention: Region VII, Superfund Accounting
Post Office Box # 360748M
Pittsburgh, PA 15251

18. Respondents shall simultaneously send a copy of the check to: Ms. Audrey Asher, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

VIII. FAILURE TO MAKE PAYMENT

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, generation, treatment, transportation or to the ownership, possession, generation, treatment, transportation, storage or disposal of hazardous substances, pollutants, or contaminants at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since receipt of any information request letter from the EPA pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(a), notification of potential liability by EPA, or any other correspondence between EPA and Respondent regarding the Site;

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) of CERCLA, 42 U.S.C. § 9604(e); and

d. not sent more than 89,387 pounds of capacitors to PCB Treatment, Inc. for disposal between 1984 and 1993.

Provision of false, fictitious, or fraudulent statements or representations to the United States may subject any Respondent to criminal penalties under 18 U.S.C. § 1001.

X. COVENANTS NOT TO SUE

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a).

22. With respect to present and future liability, these covenants not to sue shall take effect upon receipt by the EPA of the payment as required by Paragraph 15, including any Interest due under Paragraph 19. These covenants not to sue Respondents are conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Consent Order; and the veracity of the information provided by and certifications made by Respondents to EPA relating to Respondents' involvement with the Site. These covenants not to sue extend only to each Respondent and do not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

23. The covenant not to sue by the EPA set forth in Paragraph 21 does not pertain to any matters other than those expressly specified in said Paragraph 21. The United States, including the EPA reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to the following:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages or injury to, destruction of, or loss of the natural resources; or
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

24. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to reimburse the United States for additional response costs, if information is discovered which indicates that such Respondent no longer qualifies as a de minimis party at the Site, because Respondent arranged for the disposal of more than 89,387 pounds of capacitors by PCB Treatment, Inc. and AmerEco Environmental, Inc., or contributed hazardous substances to the Site which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

XII. COVENANT NOT TO SUE BY RESPONDENTS

25. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but no 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 response activities at the Site; 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 the Site.

26. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

27. Respondents covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site including any or all claims pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

28. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

29. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents 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 action; provided, however, that nothing in this Paragraph

affects the enforceability of the covenant not to sue included in Paragraph 21.

30. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

XIV. PARTIES BOUND

31. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their heirs, directors, officers, employees, agents, successors, and assigns. Any change in ownership or corporate or other legal status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the Respondents represented by him or her.

XV. INTEGRATION/ATTACHMENTS

32. This Consent Order and Attachment 1 constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreement or understandings relating to the settlement other than those expressly contained in this Consent Order and Attachment 1.

XVI. PUBLIC COMMENT

33. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), the EPA may withdraw or modify its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

34. Before commencement of the thirty-day public comment period, the Attorney General or her designee must approve the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

35. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 33 of this Consent Order has closed, that the Attorney General or her designee has approved the settlement pursuant to Paragraph 34, and that comments received, if any, do not require modification of or the EPA withdrawal from this Consent Order.

IN WITNESS WHEREOF, the parties have affixed their signatures on the following pages:

In the Matter of Osage Metals Superfund Site
Proceeding Under Section 122(g)(4) of the Comprehensive
Environmental Response, Compensation, and Liability Act of
1980, as amended (CERCLA), 42 U.S.C. § 9622(g)(4).

IT IS SO AGREED AND ORDERED.

For the U.S. Environmental Protection Agency:

Audrey Asher
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

Date

Dennis Grams, P.E.
Regional Administrator
U.S. Environmental Protection Agency
Region VII

Date

In the Matter of Osage Metals Superfund Site
Proceeding Under Section 122(g)(4) of the Comprehensive
Environmental Response, Compensation, and Liability Act of 1980,
as amended (CERCLA), 42 U.S.C. § 9622(g)(4).

For Respondent: Gainesville, City Of

[Type name and title below]

Date

Name: _____

Title: _____