

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:)	
)	
Environmental Waste Control, Inc.,)	
General Motors Corp., The Budd)	CERCLA 106(b) Petition No.
Company, and the Ford Motor)	94-21
Company)	
)	

ORDER APPROVING CONSENT AGREEMENT AND
AUTHORIZING PAYMENT

Pursuant to § 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") , 42 U.S.C. § 9606(b), on April 14, 1994, Environmental Waste Control, Inc., General Motors Corp., The Budd Company and the Ford Motor Company ("Petitioners") filed a petition for reimbursement of approximately \$5.3 million' for costs allegedly incurred in performing a response action required by a unilateral administrative **order** issued by U.S. EPA Region V on October 23, 1992. On August 17, 1995, the Board issued an order directing the parties to file supplemental briefs. Since that time, the parties have sought and obtained from the Board at least ten extensions of time to initiate and pursue settlement

'The petition for reimbursement claims that the Petitioners incurred response costs of approximately \$6.385 million. Petition for Reimbursement of Costs at 9. The motion for approval of the consent order, however, indicates that Petitioners incurred approximately \$5.3 million in response costs. Joint Motion for Approval of Consent Agreement at 1.

tions.² On May 18, 1997, Petitioners and the Region filed a joint motion asking this Board to approve a consent agreement evidencing a settlement reached by the parties in this matter, and to issue an order directing the Hazardous Substances Superfund ("Fund") to pay Petitioners **\$143,535.00** pursuant to the consent **agreement.**³

As grounds for the motion, the parties represent that they have reached a settlement of the **matter** after "lengthy **arms-length**" negotiations. According to the parties, the key considerations in reaching a settlement were: 1) the litigation risks to each party, including the risks associated with potential appeals, and 2) the desire of each party to minimize the cost and delay of continued litigation. The parties have agreed to settle the matter for a payment of **\$143,535.00** from the Fund. The parties indicate that in arriving at this figure, they:

(1) negotiated a percentage of the total response costs which would be equitable to be borne by the Fund; (2) determined a gross reimbursement amount by multiplying that percentage by the total response costs; and (3) subtracted U.S. EPA's outstanding response costs related to the Site from the gross reimbursement amount. The net amount proposed to be reimbursed to Petitioners is \$143,535. Thus, if the Board approves this settlement, Petitioners will essentially have, paid U.S. EPA's

²**Several** extensions were sought and obtained for purposes of assuring that all affected EPA Headquarters offices were consulted by the Region about the settlement.

³**The** authority to make determinations on petitions for reimbursement under CERCLA § 106 was delegated by the President of the United States to the Administrator of EPA in 1987, and **re-**delegated to the Environmental Appeals Board in June 1994. See Executive Order No. 12580 (Jan. 23, **1987**), 52 Fed. Reg. 2923 (Jan. 29, **1987**), and EPA Delegation of Authority No. 14-27 (June 1994).

response costs by consenting to have that amount subtracted from the gross amount.

Joint Motion at 2. The parties further represent that in performing the response actions required under the unilateral administrative order, Petitioners incurred response costs totaling **approximately** \$5.3 million.

Under the settlement agreement, the payment from the Fund would occur within 120 days from the Board's approval of the consent agreement. In return for this payment, the Petitioners agree to a covenant not to sue the United States, or its contractors or employees as set forth in the agreement. The parties represent that this is a fair and reasonable settlement in light of the circumstances of this case. The consent agreement has been approved, and signed, by a representative from each Petitioner, an associate regional counsel for Region V, and the Director of the Office of Superfund in Region V, and each party represents that it is authorized to enter into this agreement.

The Board has carefully considered the representations made in the parties' joint motion and the consent agreement, as well as the petition for reimbursement and response thereto. The parties negotiated this settlement at arms length over a two-year period, and in so doing considered the risks of litigating the issues raised by the petition and the response thereto. Further, we note that the settlement was reached after consultations by the Region with affected U.S. EPA Headquarters offices, and has been approved by the appropriate representatives from each party. The Board hereby grants the parties' joint motion. We hereby

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
)	
THE NORTHLINE DRUMS SITE)	
)	
ENVIRONMENTAL WASTE CONTROL, INC.,)	
GENERAL MOTORS CORPORATION, THE)	CERCLA 106(b)
BUDD COMPANY, AND FORD MOTOR)	Petition No. 94-21
COMPANY, =)	
)	
Petitioners.)	
)	

CONSENT AGREEMENT

I. JURISDICTION

1. This Consent Agreement (Agreement) is entered into by Respondent, the U.S. Environmental Protection Agency (EPA), and the Petitioners, for matters relating to the Petition for Reimbursement (Petition) filed before the Environmental Appeals Board (EAB) pursuant to Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2).

2. EPA and Petitioners agree that the EAB shall retain jurisdiction over this matter until such time as EPA and Petitioners fulfill all obligations under this Agreement.

II. PARTIES

3. This Agreement is entered into by EPA and the Petitioners. The Petitioners are Environmental Waste Control, Inc., Ford Motor Company, General Motors Corporation, and The Budd Company. Each Petitioner consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

III. BACKGROUND

4. This Agreement concerns the Northline Drums Site (Site) located in Romulus, Wayne County, Michigan.

5. On October 23, 1992, in response to the release or threatened release of hazardous substances at or from the Site, EPA issued a Unilateral Administrative Order (UAO), pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to certain respondents. The UAO was later amended to include all of the Petitioners as respondents. The Petitioners, pursuant to the UAO (as amended), undertook response actions at the Site.

6. On April 4, 1994, Petitioners submitted their Petition to the EPA, Office of Waste Programs Enforcement, pursuant to Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), requesting reimbursement from the EPA for approximately \$5.3 million for costs incurred in performing response actions required by the UAO. The Petition was subsequently transferred to the EAB in June 1994.

IV. DETERMINATION

7. EPA and Petitioners desire to resolve the Petition without further litigation and without the adjudication or admission of any issue of fact or law currently pending before the EAB.

V. PARTIES BOUND

8. This Agreement shall be binding only upon EPA and the Petitioners. 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.

VI. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "EAB" shall mean the Environmental Appeals Board and any successor instrumentality to which authority is delegated to determine petitions for reimbursement pursuant to CERCLA Section 106(b)(2), 42 U.S.C. 9606(b)(2);

b. "Response Costs" shall mean all costs accrued or paid in connection with the removal action described in the Action Memorandum for the Site dated February 23, 1993;

c. "Site" shall mean the Northline Drum Superfund Site, encompassing approximately 7.76 acres, the dimensions of which are approximately 1,300 feet long and 260 feet wide, located at 35500 Northline Road, Romulus, Wayne County, Michigan, designated by the following coordinates: north latitude 42 degrees 12 minutes 32 seconds and west longitude 83 degrees 23 minutes 14 seconds.

VII. REIMBURSEMENT OF RESPONSE COSTS

10. Within 120 days of the Effective Date of this Agreement, EPA shall disburse funds to the Petitioners in the amount of \$143,535.00, in settlement of the Petition. If not timely paid, interest will begin to accrue thereafter at the rate provided by 42 U.S.C. 9606(b)(2)(A).

11. Payment shall be made by check made payable to "Honigman Miller Schwartz and Cohn Trust Account", and shall be sent to:

Christopher J. Dunsky, Esq.
Honigman Miller Schwartz and Cohn

2290 First National Building
Detroit, Michigan 48226

VIII. COVENANT NOT TO SUE BY PETITIONERS

12. Petitioners agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising from any response actions that have been taken at the Site; and
- c. any other claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613 relating to Response Costs.

IX. RESERVATIONS OF RIGHTS BY EPA

13 Except as otherwise provided for in this Agreement, EPA reserves, and this Agreement is without prejudice to, all rights against Petitioners with respect to all matters, including but not limited to:

- a. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- b. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. §9606;
- c. criminal liability; and
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

14.. 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.

X. EFFECT OF CONSENT AGREEMENT

15. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Petitioners 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.

XI. EFFECTIVE DATE

16. The Effective Date of this Agreement shall be the date the EAB signs this Consent Agreement.

[Signatures begin on next page.]

CONSENT AGREEMENT
Re: Northline Drums Site
CERCLA 106(b) -- Petition No. 94-2 1
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The UNDERSIGNED SETTLING PARTY enters into this Consent Agreement in the matter of the Northline Drums Site, Romulus, Wayne County, Michigan, EAB Docket No. CERCLA 106(b) Petition No. 94-21.

FORD MOTOR COMPANY:

By: _____
Name: **Thomas DeZure**
Title: **Assistant Secretary**

Date: MAY 07 1997

[Signatures continue on next page.]

CONSENT AGREEMENT
Re: Northline Drums Site
CERCLA 106(b) -- Petition No. 94-21
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The UNDERSIGNED SETTLING PARTY enters into this Consent Agreement in the matter of the Northline Drums Site, Romulus, Wayne County, Michigan, EAB Docket No. CERCLA 106(b) Petition No. 94-21. 62

THE BUDD COMPANY:

By: _____ Date: 5-6-97
Name

Title: Assistant General Counsel

[Signatures continue on next page.]

CONSENT AGREEMENT
Re: Northline Drums Site
CERCLA 106(b) -- Petition No. 94-21
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The UNDERSIGNED SETTLING PARTY enters into this Consent Agreement in the matter of the Northline Drums Site, Romulus, Wayne County, Michigan, EAB Docket No. CERCLA 106(b) Petition No. 94-21.

ENVIRONMENTAL WASTE CONTROL, INCORPORATED:

By: [Signature]
Name

Date: 5/6/97

Title: CHAIRMAN

[Signatures continue on next page.]

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Reimbursement in the Matter of Environmental Waste Control, Inc., General Motors Corp., The Budd Company, and The Ford Motor Company, CERCLA 106(b) Petition No. 94-21, were sent to the following persons in the manner indicated:

First Class Mail
Postage Prepaid
and Facsimile: z

Larry L. Johnson
Assistant Regional Counsel
U.S. EPA, Region V
77 West Jackson Blvd.
(CM-29A)
Chicago, IL 60604

Christopher J. **Dunsky**
Honigman, Miller, Schwartz & Cohn
2290 First National Building
Detroit, MI 48226-3583

Dated: **JUN 16 1997**

Mildred ~~T~~ Johnson
Secretary