

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)

PCB Treatment, Inc. Superfund Site)
2100 Wyandotte Street)
Kansas City, Missouri)

EPA Docket No.
CERCLA-07-2007-0008

45 Ewing Street)
Kansas City, Kansas)

ADMINISTRATIVE ORDER
ON CONSENT

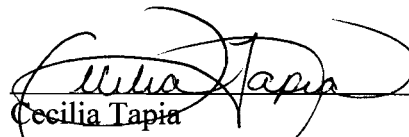
Cargill, Inc.)
Respondent)

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))

DECLARATION OF FINAL ORDER AND EFFECTIVE DATE

The public comment period that ran on this Administrative Order on Consent in accordance with Section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9622(i) has closed. No comments were submitted.

Now therefore, the United States Environmental Protection Agency – Region VII declares this Administrative Order on Consent a final order having an Effective Date of this 22 day of February, 2007.


Cecilia Tapia
Director
Superfund Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)
)
PCB TREATMENT, INC.)
SUPERFUND SITE)
)
2100 Wyandotte Street)
Kansas City, Missouri)
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45 Ewing Street) EPA Docket No.
Kansas City, Kansas) CERCLA-07-2007-0008
)
Cargill, Inc.)
Respondent)
)
Proceeding under Section) ADMINISTRATIVE ORDER
122(g)(4) of the Comprehensive) ON CONSENT
Environmental Response,)
Compensation, and Liability)
Act of 1980, as amended,)
42 U.S.C. § 9622(g)(4))
_____)

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).

**In the Matter of PCB Treatment, Inc. Superfund Site, Cargill, Inc. Respondent
CERCLA Docket No.07-2007-0008**

2. This Administrative Order on Consent is issued to Cargill, Inc. ("Respondent"). Respondent agrees to undertake all actions required by this Consent Order. Respondent further consents to and will not contest the EPA's jurisdiction to issue this Consent Order or to enforce its terms.

3. EPA and Respondent agree that the actions undertaken by Respondent in accordance with this Consent Order do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains 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 Respondent are:

a. to reach a final settlement between EPA and Respondent with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its 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; and

b. to obtain settlement with Respondent for its fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide for full and complete contribution protection for Respondent 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:

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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 States 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 Respondent.

i. "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).

j. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

k. "Site" shall mean the PCB Treatment, Inc. Superfund Site, consisting of two buildings, one located at 45 Ewing Street in Kansas City, Wyandotte County, Kansas, and the other located

at 2100 Wyandotte Street in Kansas City, Jackson County,
Missouri.

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

IV. FINDINGS OF FACT

6. The Site consists of two locations used by PCB
Treatment, Inc. and its subsidiaries or affiliates to treat and
store polychlorinated biphenyls ("PCBs") present in used
transformers, capacitors, and other materials and equipment.

7. PCB Treatment, Inc. and its subsidiaries or affiliates
operated at 2100 Wyandotte Street in Kansas City, Missouri, from
1982 through 1987 and at 45 Ewing Street in Kansas City, Kansas
from 1984 through 1987.

8. The treatment and storage of materials contaminated with
PCBs resulted in the release or threat of release of PCBs at both
the Wyandotte Street and the Ewing Street locations.

9. As a result of the release or threatened release of
hazardous substances at the Site, EPA conducted response actions,
including the oversight of parties performing a Site
Characterization (SC) and Engineering Evaluation/Cost Analysis
(EE/CA) pursuant to Administrative Order on Consent, EPA Docket
No. VII-96-F-0018, from 1995 to the present. This work was
performed pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604,
and the National Contingency Plan, 40 C.F.R. § 300.415. On the
basis of all Site information available to EPA, including the
results of the SC and EE/CA, EPA determined that further response
actions were necessary to address the release and threatened
release of hazardous substances from the Site.

10. In performing response actions, the United States
incurred approximately \$8,000,000 in costs to date.

11. Respondent generated or transported materials
contaminated with hazardous substances that were sent to PCB
Treatment, Inc.

12. The number of pounds of materials generated or transported by Respondent does not exceed one (1) percent of the allocated weight of materials containing hazardous substances sent to PCB Treatment, Inc. for disposal; and the hazardous substances contributed by Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

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

V. DETERMINATIONS

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

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

b. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

d. PCBs are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and the NCP, 40 C.F.R. § 302.4.

e. 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).

f. The actual or threatened release of hazardous substances at the Site has caused and will continue to cause the incurrence of response costs at the Site.

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

h. As to 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).

i. Respondent is 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 Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by 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

15. 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

16. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay \$ 47,844.97.

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

18. The total amount to be paid by Respondent shall be deposited in the Hazardous Substance Superfund. Respondent shall make payment by wire transfer. Respondent shall provide the following information to the bank where the funds will be transferred:

SWIFT Address MELNUS3P
MELLON BANK
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh PA 15235

The wire transfer shall reference Cargill, Inc. the PCB Treatment, Inc. Superfund Site, EPA Region VII, Site Spill ID Numbers 07RJ and 07RK, and the EPA Docket Number CERCLA 07-2007-0008.

19. Respondent shall send a copy of the confirmation of receipt of the wire transfer to: Audrey Asher, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas, 66101.

VIII. FAILURE TO MAKE PAYMENT

20. If Respondent fails to make full payment within the time required by Paragraph 16, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 16, the United States may, in addition to any other available remedies or sanctions, bring an action against 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

21. By signing this Consent Order, Respondent certifies, 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. has not contributed an allocated weight of more than 878,371 pounds of materials to PCB Treatment, Inc. for disposal between 1982 and 1986.

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

X. COVENANTS NOT TO SUE

22. In consideration of the payments that will be made by Respondent 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 Respondent 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), relating to the Site.

23. 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 16, including any Interest due under Paragraph 20. These covenants not to sue Respondent are conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Consent Order; and the veracity of the information provided by and certifications made by Respondent to EPA relating to Respondent's involvement with the Site. These covenants not to sue extend only to Respondent and do not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

24. The covenant not to sue by the EPA set forth in Paragraph 22 does not pertain to any matters other than those expressly specified in said Paragraph 22. The United States, including the EPA, reserves, and this Consent Order is without prejudice to, all rights against Respondent 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.

25. 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 Respondent seeking to compel Respondent to reimburse the United States for additional response costs, if:

a. information is discovered which indicates that Respondent no longer qualifies as a *de minimis* party at the Site, because Respondent contributed more than .8% of the total allocated weight of materials sent to the Site, 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; or

b. total response costs incurred or to be incurred at or in connection with the Site by the United States or any other person exceed \$ 50,000,000.

XII. COVENANT NOT TO SUE BY RESPONDENT

26. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of 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.

27. 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).

28. Respondent covenants not to sue and agrees 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

29. 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 Respondent 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.

30. 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, Respondent 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 22.

31. The Parties agree that 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

32. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its directors, officers, employees, agents, successors, and assigns. Any change in ownership or corporate or other legal status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Consent Order. The 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 Respondent represented by him or her.

XV. INTEGRATION/ATTACHMENTS

33. This Consent Order constitutes 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, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order.

XVI. PUBLIC COMMENT

34. This Consent Order shall be subject to a thirty (30) 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

35. Before commencement of the thirty (30) day public comment period, the Attorney General or his 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).

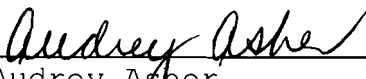
XVIII. EFFECTIVE DATE

36. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 34 of this Consent Order has closed, that the Attorney General or his designee has approved the settlement pursuant to Paragraph 35, 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:

IT IS SO AGREED AND ORDERED.

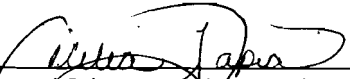
For the U.S. Environmental Protection Agency:



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

12/13/06

Date



Cecilia Tapia, Director
Superfund Division
U.S. Environmental Protection Agency
Region VII

12/13/06

Date

Steven K. Ellis

[Type name and title below]

Date 12/7/00

Name: SK Ellis

Title: A.V.P.

IN THE MATTER OF PCB Treatment, Inc. Superfund Site and Cargill, Inc, Respondent
Docket No. CERCLA-07-2007-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Order on Consent was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Audrey Asher
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William Ford, Esq.
Lathrop & Gage, PC
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2612

Dated: 2/23/07


Kathy Robinson
Hearing Clerk, Region 7