

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

| | | |
|--------------------------|---|-----------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| The Valley Chemical Site |) | CERCLA § 106(b) Petition No. 97-5 |
| Shell Oil 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 July 23, 1997, petitioner, Shell Oil Company, filed a petition for reimbursement of approximately \$1.25 million for costs allegedly incurred in complying with a unilateral administrative order issued by U.S. EPA Region IV on March 1, 1994. Since that time, the parties have sought and obtained extensions of time from the Board for submission of a substantive response from the Region in order to initiate and pursue settlement negotiations.

On July 31, 1998, Shell Oil 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 Shell Oil \$625,000 pursuant to the consent agreement.¹ Joint Motion for Approval of Consent

¹The authority to make determinations on petitions for
(continued...)

Agreement ("Joint Motion"). As grounds for the motion, the parties represent that during the course of the lengthy negotiations they:

considered numerous factors including but not limited to the litigation risks for both sides, including the risk associated with potential appeals, and the desire of both parties to minimize the cost and delay of continued litigation. The proposed Consent Agreement is the result of good faith, arms length negotiations between EPA and Petitioner, and reflects the parties' careful -and informed assessment of the relative merits of each other's claims while taking into consideration the costs and risks associated with litigating complex issues. Compromise is the essence of settlement. This Consent Agreement embodies significant compromise on both sides.

Joint Motion at 2 (citation omitted). In addition, the motion states that "EPA's Office of Enforcement and Compliance Assurance, and its Office of General Counsel have worked closely with the Region assessing the **case** and developing parameters for this settlement. Both the Region and Headquarters believe the proposed settlement is fair, reasonable and in the public interest." *Id.* at 1.

Upon consideration, the Board grants the parties' joint motion. We hereby approve the consent agreement in the above-captioned matter and authorize a payment of \$625,000 to Shell Oil

¹(...continued)
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).

from the Fund in accordance with the provisions of the Consent Agreement, which is hereby incorporated into this order.

So Ordered.

Dated: 8/24/98

ENVIRONMENTAL APPEALS BOARD

By: _____
Ronald L. McCallum
Environmental Appeals Judge

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460-0158**

| | | |
|---------------------------------|---|---|
| In the Matter of: |) | |
| |) | |
| THE VALLEY CHEMICAL SITE |) | |
| Greenville, Mississippi |) | |
| |) | |
| SHELL OIL COMPANY |) | CERCLA §106(b) Petition No. 97-5 |
| |) | |
| Petitioner |) | |
| |) | |
| |) | |
| _____ |) | |

CONSENT AGREEMENT

I. Jurisdiction

1. This Consent Agreement ("Agreement") is entered into by the United States Environmental Protection Agency ("EPA", "Respondent"), and Shell Oil Company ("Shell", "Petitioner"), for the matter relating to the Petition for Reimbursement ("Petition") filed before the Environmental Appeals Board ("EAB") pursuant to Section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. Section 9606(b)(2).

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

II. Parties

3. This Agreement is entered into by EPA and Shell. Shell is the Petitioner in this matter and EPA is the Respondent. Shell consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

111. Background

4. This Agreement concerns the Valley Chemical Site ("Site") located in Greenville, Washington County, Mississippi.

5. On March 1, 1994, in response to the release or threatened release of hazardous substances at or from the Site, EPA issued a Unilateral Administrative Order ("UAO"), docket number 94-41-C, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to Shell and

five other companies ordering performance of a removal action at the Site. The UAO became effective on April 1, 1994.

6. Petitioner, and two other companies which were recipients of the UAO, undertook a removal action at the Site. The removal action was completed by the performing parties on July 15, 1997, when EPA approved the Final Closure Report for the PRP Removal Action at the Site, thereby concluding the activities required by the UAO.

7. On July 23, 1997, Petitioner submitted to the EAB its petition for reimbursement of approximately \$1.2 million incurred performing the removal action required by the UAO.

IV. Determination

8. EPA and Petitioner desire to resolve the Petition without further litigation and without the adjudication or submission of any issue of fact or law currently pending before the EAB.

V. Parties Bound

9. This Agreement shall be binding only upon EPA and the Petitioner. 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

10. 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)(Z);
- b. "Response Costs" shall mean all costs, including oversight costs, accrued or paid in connection with the removal action at the Valley Chemical Site ordered by the CERCLA §106 UAO, docket number 94-41-C, which was issued March 1, 1994, and became effective April 1, 1994.
- c. "Site" shall mean the Valley Chemical Site, encompassing approximately 9.96 acres of real property located on North Raceway Road in Greenville, Washington County, Mississippi.

VII. Reimbursement Of Response Costs

11. Within 90 days **after** EPA Region 4 receives an Order **from** the EAB approving the Agreement and authorizing payment, EPA shall disburse **funds** to the Petitioner in the amount of \$625,000, in **full** 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).

12. Payment to Shell shall be made through an electronic **fund** transfer based upon information provided to EPA by Shell.

VIII. Covenant Not To Sue BY EPA

13. EPA covenants not to sue or take administrative action against Petitioner for reimbursement of Response Costs accrued in connection with the removal action at the Site ordered by the CERCLA § 106(a) UAO, docket number 94-4 1 -C, which was issued March 1, 1994, and became effective April 1, 1994.

IX. Covenant Not To Sue BY Petitioners

14. Petitioner agrees 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 Consent Agreement including, but not limited to:

- a. any direct or indirect claims for reimbursement, with reference to the CERCLA § 106 UAO docket number 94-41-C, **from** the EPA Hazardous Substance **Superfund** established by 26 U.S.C. § **9607**, **based** on Sections 106(b)(2), 107, 111, 112 or 113 **of CERCLA**, 42 U.S.C. §§ 9606(b)(2), **9607, 96 11, 96 12**, or 9613, or any other provision of law;
- b. any claim arising **from** any response actions that have been taken at the Site pursuant to the CERCLA § 106 UAO docket number 94-41-C; 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.

X. Reservation Of Rights By EPA

15. Except as otherwise provided for in this Agreement, EPA reserves, and this Agreement is without prejudice to, all rights against Petitioner 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. criminal liability; and

- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

16. 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.

XI. Effect Of Consent Agreement

17. 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 Petitioner 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.

(Signatures on next page)

The UNDERSIGNED SETTLING PARTY enters into this Consent Agreement in the matter of the Valley Chemical Removal Site, Greenville, Washington County, Mississippi.
CERCLA 106(b) Petition No. 97-5.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: ~~Richard D. Green~~
Richard D. Green, Director
Waste Management Division

Date: 24 JUN 98

(Signatures continued on next page)

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Approving Consent Agreement and Authorizing Payment in the matter of The Valley Chemical Site, Shell Oil Company, CERCLA § 106(b) Petition No. 97-5, were sent to the following persons in the manner indicated:

By First Class Mail
Postage Prepaid:

Debra S. Benjamin
Associate Regional Counsel
U.S. EPA Region IV
Atlanta Federal Center
61 Forsyth St.
EAD-13th Floor
Atlanta, GA 30303

Phillip L. Conner
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
300 N. Main St.
P.O. Box 2757
Greenville, SC 29602

Dated:

AUG 26 1998

Annette Duncan
Secretary