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AJ, CH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 OLIN CORPORATION,)
)
 Defendant.)

Case No: 4:91CV 1731
Judge Aldrich

CONSENT DECREE

WHEREAS Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed the Complaint in the above-captioned action alleging that the Defendant is liable to the United States, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607, for costs incurred by Plaintiff in responding to the release or threat of release of hazardous substances at the Big D Campground site (Site) in Ashtabula County, Ohio;

WHEREAS this Consent Decree ("Decree") is made and entered into by and between Plaintiff, the United States of America, and Olin Corporation to resolve the claims of the United States for reimbursement of response costs that it has incurred as alleged in the Complaint.

WHEREAS the participation by the Olin Corporation in this Decree or any act taken pursuant thereto shall not be

considered an admission of liability for any purpose, and the fact of such participation or act shall not be admissible in any judicial or administrative action or proceeding. This Decree may be admissible in any action to enforce the terms hereof.

NOW THEREFORE, before the taking of any testimony, before adjudication of the merits of this case or any underlying fact, and with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties to this Decree, pursuant to 28 U.S.C. §§ 1331 and 1345 and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b). The Complaint states a claim upon which the Court may grant relief pursuant to CERCLA. The parties agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding.

2. Venue is proper in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613(b), and under 28 U.S.C. §1391(b) and (c).

II. DEFINITIONS

The following definitions shall apply in this Decree:

3. "Parties" means the United States and the Olin Corporation, as defined in this Decree.

4. "Olin Corporation" or "Olin" means the corporation of the same name with headquarters at 120 Long Ridge Road in Stamford, Connecticut.

5. "Big D Campground" and "Site" mean the former sand and gravel quarry on property located at or near Creek Road, north of Conneaut Creek, west of what is known as "Big D Kampground" or "Big D Campground" in Kingsville, Ashtabula County, Ohio.

6. "Past Response Costs" means all costs that have been incurred by EPA in connection with the Site as of September 30, 1992, including all interest on such costs, but does not include Past Oversight Costs as defined herein or costs incurred by the Department of Justice on behalf of EPA.

7. "Future Oversight Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA incurs in connection with the Site after September 30, 1992 for overseeing remedial design or remedial actions undertaken by persons other than EPA at the Site, reviewing or developing plans, reports and other items in connection with the Site, negotiating and obtaining entry of this Consent Decree, or implementing, overseeing, or enforcing this Consent Decree, and all costs incurred or to be incurred by the U.S. Department of Justice on behalf of EPA in connection with the Site, including the negotiation of this Decree. Future Oversight Costs include, but are not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of

obtaining access to the Site including any just compensation, and any payments to the State through a cooperative agreement.

8. "Past Oversight Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA incurred in connection with the Site prior to September 30, 1992, for overseeing remedial design or remedial actions undertaken by persons other than EPA at the Site, or reviewing or developing plans, reports and other items in connection with the Site. Past oversight costs include but not limited to payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to the Site including any just compensation, any payments to the State through a cooperative agreement, and interest on all such costs.

III. PARTIES BOUND

9. This Decree shall apply to and be binding upon the United States and Olin Corporation and its successors and assigns. Each undersigned representative of Olin Corporation certifies that he or she is fully authorized to enter into the terms and conditions of this Decree, to execute this Decree, and to bind Olin Corporation to this Decree.

IV. PAST RESPONSE COST PAYMENT

10. Within thirty (30) calendar days of the entry of this Decree, the Olin Corporation, through its designated

representative, shall pay to the United States the sum of \$1,542,540.82 in reimbursement of Past Response Costs.

11. Payment made pursuant to paragraph 10 of this Decree shall be made by ELECTRONIC FUNDS TRANSFER to the U.S. Department of Justice lockbox bank, with reference to the CERCLA Site I.D. Number, 5 B1, and the U.S. A.O. File number 9101795. Payment shall be made in accordance with instructions provided by the United States to Olin Corporation. EFTs must be received by 11:00am (Eastern Time) in order to be credited on that day. Copies of evidence of the wire transfer shall be sent to the United States in accordance with section VI of this Consent Decree.

12. If Olin Corporation fails to make any payment required by this Decree, Olin Corporation shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Decree or otherwise obtain such payments.

V. PAYMENT OF PAST AND FUTURE OVERSIGHT COSTS.

13. **Payment.** Olin Corporation shall reimburse the United States for all Past Oversight Costs and all Future Oversight Costs not inconsistent with the National Contingency Plan incurred by the United States. With regard to Past Oversight Costs, Olin shall also pay interest at the rate specified for interest under CERCLA, 42 U.S.C. §9607(a). Interest shall accrue at the rate specified for interest on investments in the Hazardous Substances Superfund established

under Subchapter A of Chapter 98 of title 26 of the United States Code, in accordance with 42 U.S.C. §9607(a). After entry of this Consent Decree, the United States shall send Olin Corporation a bill requiring payment of the sum of \$281,037.74, plus interest, in reimbursement of Past Oversight Costs. Thereafter, on an annual basis, the United States will send Olin Corporation a bill requiring payment of Future Oversight Costs that includes an oversight cost summary, which shall describe direct and indirect costs incurred by EPA and its contractors. Failure to include a cost item on any particular bill to Olin Corporation will not waive the United States' right to those costs. Olin Corporation shall make all payments within 30 days of Olin Corporation's receipt of each bill requiring payment, except as otherwise provided in subparagraph (c) of paragraph 14. The Olin Corporation shall make all payments required by this Paragraph in the form of a certified check made payable to "United States Environmental Protection Agency, Hazardous Substances Superfund," shall reference the CERCLA Site I.D. Number, 5 B1, and the U.S. A.O. File number 9101795, and shall send the check to U.S. Environmental Protection Agency, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673, noting "Big D Campground, #5 B1" on the face of the check. Olin Corporation shall send a copy of such check and its transmittal letter to the Director, Waste Management Division, CERCLA Enforcement Support Unit, United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois, 60604, and to

the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and to the United States Attorney's Office for the Northern District of Ohio. Payment shall be deemed accomplished upon receipt by EPA of the check.

14. Dispute Resolution for Future Oversight Costs.

a. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding the Olin Corporation's obligation to reimburse the United States for its Future Oversight Costs.

b. Standard. Olin Corporation may contest payment of any Future Oversight Costs billed by the United States only if it determines that the United States has made an accounting error or if it alleges that an included cost item is inconsistent with the NCP.

c. Dispute Resolution Procedure

(1) Notice. Any objection to the payment of the United States' Future Oversight Costs shall be made in writing within 30 days of receipt of EPA's bill submitted pursuant to paragraph 13 and must be sent to the United States in accordance with Section VI. Any such objection (hereinafter referred to as the "Notice of Objection") shall specifically identify the contested Future Oversight Cost(s) and the basis for objection.

(2) Payment of Undisputed Amounts. In the event of an objection to some but not all Future Oversight Costs, the Olin Corporation shall, within the 30 day period, pay all uncontested Future Oversight Costs to the United States in the manner described in Paragraph 13.

(3) Escrow for Disputed Amounts. Within 30 days of receipt of a bill for Future Oversight Costs which are disputed, the Olin Corporation shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Future Oversight Costs. The Olin Corporation shall send to the United States, as provided in Section VI, a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

(4) Informal Dispute Resolution. Any dispute with respect to Future Oversight Costs shall in the first instance be the subject of informal negotiations between the United States and the Olin Corporation.

(5) Formal Dispute Resolution.

(a) Initiation. If the dispute is not resolved by informal dispute resolution, either party may commence formal dispute resolution by sending a Notice of Formal Dispute Resolution to the other party to the dispute. The Notice of

Formal Dispute Resolution shall be accompanied by a written Statement of Position by the party who serves the Notice, stating the basis of that party's position and citing all factual data, analysis, opinion or other material on which that party relies to support its position. The opposing party shall have 30 days in which to serve a Response setting forth the same information supporting its position.

(b) Administrative Record and Decision. EPA shall maintain an administrative record of any dispute as to Future Oversight Costs for which formal dispute resolution has been initiated. The administrative record shall include the disputed bill and cost summary sent by EPA to the Olin Corporation, the Notice of Objection served by Olin Corporation, the Notice of Formal Dispute Resolution and accompanying Statement of Position, the opposing party's Response, and any other documents or information sent to EPA by Olin Corporation for inclusion in the record or relied on by EPA in reaching an administrative resolution of the dispute. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision determining whether the disputed Future Oversight Costs, or any part of them, shall be disallowed as inconsistent with the NCP or the result of an accounting error.

(c) Judicial Appeal. The Olin Corporation may appeal EPA's administrative decision pursuant to the preceding subparagraph to this Court within 10 days of receipt of EPA's decision. The Court's review of EPA's decision shall be limited

to EPA's administrative record. Applicable principles of administrative law shall govern whether any supplemental materials may be considered by the Court. The Court shall uphold EPA's decision unless it is arbitrary and capricious or otherwise not in accordance with law.

(d) Payment Following Dispute Resolution. Payments determined to be owing to the United States following dispute resolution shall be paid from the escrow account (plus accrued interest on the amounts owed) to the United States in the manner described in Paragraph 13, within 10 days after receipt of the Court's decision or, if the decision is not timely appealed, within 10 days of EPA's decision. To the extent that any amounts are determined not to be owed, the Olin Corporation shall be disbursed the remainder of the escrow account.

VI. NOTICES AND SUBMISSIONS

15. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Olin Corporation, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-3-783

As to EPA:

Nancy-Ellen Zusman, Esq.
Office of Regional Counsel
U.S. EPA
77 West Jackson, CS-3T
Chicago IL 60604

Kevin Turner
Remedial Project Manager
U.S. EPA
77 West Jackson, HSRM-6J
Chicago IL 60604

As to Olin Corporation:

John Etheredge
Director of Engineering
Olin Chemical, Olin Corp
P.O. Box 248
Lower River Road
Charleston, TN 37310
(615) 336-4542

VII. COVENANT NOT TO SUE OLIN CORPORATION

16. In consideration of payments made by Olin Corporation as required under the terms of this Decree, and except as otherwise provided in this Decree, the United States covenants not to commence a civil judicial or administrative action under section 107 of CERCLA, 42 U.S.C. § 9607, against Olin Corporation for Past Response Costs, Past Oversight Costs and Future Oversight Costs as defined in this Decree. This

covenant not to sue will become effective only after the United States has timely received all payments by Olin Corporation required by this Decree.

17. Notwithstanding any other provision in this Decree, the United States expressly reserves, and this Decree shall be without prejudice to, any other claims, demands, rights, or causes of action the United States may have or which may yet accrue, including, without limitation, any claims against Olin Corporation under CERCLA for injunctive relief or for response costs not covered by this Decree, including the following:

- a. Claims of the United States for injunctive relief for the performance of any future response work at the Facility;
- b. Claims of the United States for any response costs not within the definition of Past Response Costs, Past Oversight Costs or Future Oversight Costs;
- c. Claims of the United States for damages to natural resources or costs incurred by any natural resource trustee;
- d. Claims of the United States under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- e. Claims for criminal liability.
- g. Claims based upon a failure of Olin Corporation to meet the requirements of the Consent Decree.
- h. Claims for response costs incurred by any

federal agencies other than those specified in the definition of Past Response Costs in this Decree.

18. Notwithstanding any other provision in this Decree, the covenant not to sue in this section shall not relieve Olin Corporation of its obligation to meet and maintain compliance with the requirements set forth in this Decree.

19. Nothing in this Decree is intended as a covenant not to sue or as a release from liability regarding any claim or cause of action against any person or entity not a signatory to this Decree. The United States expressly reserves all claims, demands and causes of action, either judicial or administrative, past, present, or future, in law or equity, against any person or entity not a party to this Decree for any matter arising at or in connection with the Site.

20. The covenants not to sue in this Decree are not and shall not be construed to be releases of any kind.

21. Olin Corporation shall be entitled, upon entry of this Decree, and so long as Olin Corporation remains in compliance with the terms and requirements of the Decree, to such protection from contribution actions or claims as is provided in CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2). The Olin Corporation agrees that the United States shall not be under any obligation to assist Olin Corporation in defense against any such suits or claims.

VIII. FAILURE TO MAKE TIMELY PAYMENTS

22. Interest on Late Payments. In the event that any payment[s] required by Section IV or V are not made when due, Interest, as provided for in 42 U.S.C. §9607(a), shall continue to accrue on the unpaid balance. Interest shall accrue at the rate specified for interest on investments in the Hazardous Substances Superfund established under Subchapter A of Chapter 98 of title 26 of the United States Code, in accordance with 42 U.S.C. §9607(a).

23. Stipulated Penalty. If any amounts due to the United States under this Consent Decree are not paid by the required date or placed in escrow in accordance with paragraph 14, the Olin Corporation shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 22, \$500.00 per day that such payment is late. Stipulated penalties are due and payable within 30 days of the Olin Corporation's receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be made in accordance with the requirements of paragraph 13 of this Consent Decree.

24. If the United States brings an action to collect any payment required by this Consent Decree, the Olin Corporation shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

25. Payments made under Paragraph 23 shall be in addition to any other remedies or sanctions available to

Plaintiff by virtue of Olin Corporation's failure to make timely payments required by this Decree.

IX. RESERVATION OF RIGHTS

26. Nothing in this Decree limits the response authority of the United States under Sections 104 and 106 of CERCLA, 42 U.S.C. §§9604 and 9606, or any other applicable law.

27. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third party beneficiary of this Decree, nor shall any person other than a party executing this Decree have any authority to enforce its terms. The Parties to this Decree reserve all common law and statutory rights against persons or entities not a party to this Decree.

X. WAIVER OF CLAIMS

28. In consideration of the entry of this Decree, Olin Corporation shall not make any claim or demand or bring any action or suit against the United States, its Departments or Agencies, or the Hazardous Substances Superfund established under 26 U.S.C. §9507, including but not limited to any claim pursuant to Sections 106(b)(2), 107, 111, 112 and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 and 9613, for Past Response Costs, Past Oversight Costs and Future Oversight Costs, for attorneys' fees related to this action, or any claims arising out of past response costs or past oversight costs at the Site.

Nothing in this Decree shall be construed as EPA's preauthorization of a claim against the Superfund.

XI. RETENTION OF JURISDICTION

29. After entry of this Decree, the Court shall retain jurisdiction of this matter for the purpose of interpreting, implementing, and enforcing the terms of this Decree.

XII. NOTICE AND PUBLIC COMMENT

30. The Parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirement for notice and opportunity for public comment. The United States may withdraw consent to this Decree if comments received disclose facts or considerations which indicate the Decree is inappropriate, improper, or inadequate. Olin Corporation consents to entry of this Decree without further notice.

XIII. EXECUTION

31. This Consent Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ENTERED this ___ day of _____, 19__.

U.S. District Judge

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements.

UNITED STATES OF AMERICA

By: _____
LOIS J. SCHIFFER
Acting Assistant Attorney
General
Environment & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

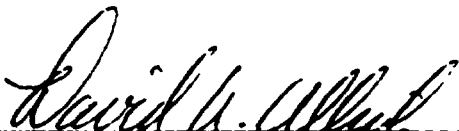
Date: _____

EMILY M. SWEENEY
United States Attorney

ARTHUR I. HARRIS
Assistant United States Attorney
1404 East 9th Street, Suite 500
Cleveland, OH 44114

By: _____
EDWARD A. BOLING
Attorney
Environment & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

By:  _____
fr VALDAS V. ADAMKUS
Regional Administrator
U.S. EPA, Region V
Chicago, Illinois 60604

Date: 1/21/94

By: Nancy-Ellen Zusman
Nancy-Ellen Zusman
Assistant Regional Counsel
U.S. EPA, Region V
Chicago, Illinois 60604

Date: 11/5/94

OLIN CORPORATION
120 Long Ridge Road
Stamford, Connecticut

By: Charles W. Newton, III

Charles W. Newton, III
Vice President - Environment, Health
(name and title) and Toxicology

*PK
FIAR*

Date: 12-20-93

If different from above, the following is the name and address of this Olin Corporation's agent for service of process:

CT Corporation System

Name

815 Superior Avenue, N.E.
Cleveland, Ohio 44114

Address

Prior Notice to all parties shall be provided by Olin Corporation of any change in the identity or address of the Olin Corporation or its agent for service of process.