

ORDINANCE NO. 01-69 AC CMS

AN ORDINANCE AUTHORIZING THE PAYMENT OF \$19,057.51 IN SETTLEMENT OF POTENTIAL LIABILITY AT THE MISSOURI EPA SUPER-FUND SITE AND DECLARING AN EMERGENCY

WHEREAS, in the mid-1980's Oberlin Municipal Light and Power System contracted with PCB Treatment, Inc., for the disposal of transformers that contained polychlorinated biphenyls (PCB's); and

WHEREAS, PCB Treatment, Inc. disposed of said transformers in Missouri at a location that later became contaminated and is now subject to clean-up pursuant to U.S. E.P.A. regulations; and

WHEREAS, the City of Oberlin, as a result of having been the owner of said transformers, is now subject to potential liability for the costs of the site clean-up; and

WHEREAS, the U.S. E.P.A. has made an offer to "de minimis" parties, including Oberlin, to settle their potential liability for the costs of the clean-up; and

WHEREAS, the City of Oberlin finds that accepting such a settlement offer will very likely ultimately result in less expense to the City and, accordingly, desires to accept same.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City of Oberlin does hereby accept the offer of the U.S. E.P.A. tendered to "de minimis" parties involved in the pollution at the Missouri Superfund clean-up site and agrees to pay the 50% premium cost in the amount of \$19,057.51, and said payment is hereby authorized.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, and welfare of the citizens of the City of Oberlin, Ohio, to wit:

"to authorize a settlement and payment relating to a Federal Superfund clean-up site within the time constraints set by the U.S. E.P.A.",

and shall take effect immediately upon passage.

PASSED: 1st Reading - July 2, 2001(E)
2nd Reading -
3rd Reading -

ATTEST:

Kelly J. LaRosa
CLERK OF COUNCIL

James M. Farnsworth
CHAIR OF COUNCIL

POSTED: July 3, 2001

EFFECTIVE DATE: July 3, 2001

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)	
)	
45 Ewing Street)	EPA Docket No.
Kansas City, Kansas)	CERCLA-07-2001-0008
)	
)	
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).

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 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 Respondents.

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 \$2,000,000 in costs to date. EPA estimates that approximately \$16,000,000 will be incurred in performing further response actions at Wyandotte Street and approximately \$19,000,000 will be incurred in performing further response actions at Ewing Street.

11. Each Respondent listed in Attachment 1 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 each Respondent does not exceed 733,190 allocated pounds, or eight-tenths of a percent (.8%) of the allocated weight of all materials containing hazardous substances 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.

13. 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

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

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, Respondents shall each pay one of the two amounts designated on the same line as their name appears in Attachment 1.

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

18. As shown in Attachment 1, Respondents shall pay either a fifty percent (50%) premium with a cost overrun reopener if the removal costs exceed \$60,000,000 or a one hundred percent (100%) premium with no cost overrun reopener. Regardless of which premium Respondents select, all Respondents are subject to the reopeners described in Section XI (Reservation of Rights by the United States). If the cost overrun premium is triggered, Respondents who chose the fifty percent (50%) premium shall pay a percentage of the costs over \$60,000,000 equal to their percent of the total allocated weight of all materials containing hazardous substances sent to PCB Treatment, Inc. for disposal.

19. The total amount to be paid by each Respondent pursuant to Attachment 1 shall be deposited in the "PCB Treatment, Inc. Special Account" within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund. Each check shall reference the name and address of the party making the payment, the PCB Treatment, Inc. Superfund Site name, EPA

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(a); and

d. has not contributed an allocated weight of more than 733,190 pounds of materials to PCB Treatment, Inc. for disposal between 1982 and 1987.

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

23. 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), relating to the Site.

24. 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 21. 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.

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.

28. 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).

29. 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

30. 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.

31. 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

XVI. PUBLIC COMMENT

35. 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

36. 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

37. 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 35 of this Consent Order has closed, that the Attorney General or his designee has approved the settlement pursuant to Paragraph 36, 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:

50% PREMIUM WITH COST OVERRUN REOPENER

In the Matter of PCB Treatment, Inc. 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).

OBERLIN MUNICIPAL LIGHT & POWER
Oberlin, OH
For Respondent:

Steven R. Dupree
Signature

7-3-01
Date

Print name and title below

Name: Steven R. Dupree

Title: Director

ATTACHMENT 2

Legal Description of the Real Property Comprising PCB Treatment,
Inc. Superfund Site

45 Ewing Street: Lots 40, 42, 44, 46, 48, and 50 on Ewing Street,
in Kansas City, Kansas, an addition in Kansas City, Wyandotte
County Kansas

2100 Wyandotte Street: Lots 1, 2, 3, 4, 5 and 6, Block 21,
Goodrich Addition, in Kansas City, Jackson County, Missouri