

34988

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:)	
)	
United States Environmental	)	Proceeding Under
Protection Agency	)	Section 122(h)(1) of the
	)	Comprehensive Environmental
	)	Response, Compensation and
v.	)	Liability Act of 1980,
	)	42 U.S.C. Section 9622(h)(1),
J. Trockman & Sons, Inc.	)	as amended by the Superfund
	)	Amendments and Reauthorization
Respondent.	)	Act of 1986,
	)	Pub. L. No. 99-499
)	
	)	EPA Docket No: <u>98-11-C</u>

COST RECOVERY AGREEMENT

This Agreement is made and entered into by the U.S. Environmental Protection ("EPA") and Respondent ("Settling Party"). The purpose of this Agreement is for EPA to recover past response costs incurred at or in connection with the Gray PCB Superfund Site, 4012 Mayon Drive, Hopkinsville, Kentucky (hereinafter referred to as the "Site") and to resolve the liability of the Settling Party for such response costs. EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (September 13, 1987) and redelegated to the Chief of the Program

Services Branch (f/k/a Waste Programs Branch) by Regional Delegation 14-13-D (November 8, 1994).

This Agreement shall be binding upon EPA and shall be binding upon the Settling Party, its directors, officers, employees, agents, successors and assigns. Each signatory to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party represented by him or her. The Settling Party agrees to undertake all actions required by this Agreement. The Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

WHEREAS, EPA alleges that hazardous substances, pollutants, and/or contaminants as defined in Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(33), have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that such releases or threatened releases required response actions at the Site including the cleanup and removal of all contaminated materials and the arrangement for the transportation, disposal, and treatment of hazardous substances, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604;

WHEREAS, EPA alleges that it has incurred response costs at or in connection with the Site in the amount of at least

\$541,000 as of the effective date of this Agreement (hereinafter referred to as "Past Response Costs").

WHEREAS, EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, the Settling Party specifically denies EPA's allegations and legal conclusions and the Settling Party does not admit to any liability or fact relating to any of EPA's allegations or legal conclusions; and

WHEREAS, EPA and the Settling Party desire to settle certain claims arising from the Settling Party's alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, EPA and the Settling Party, in consideration of the premises and covenants herein, and intending to be legally bound hereby, agree as follows:

1. The Settling Party agrees to pay to the Hazardous Substances Superfund a total of \$35,000 for Past Response Costs, plus interest as specified in Attachment A hereto.

2. Payment shall be made by certified or cashier's checks, made payable to "EPA-Hazardous Substances Superfund." The checks shall reference the name of the Settling Party, the Site and the Site/Spiller ID#: 046J, and shall be sent to:

U.S. Environmental Protection Agency - Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

3. The Settling Party shall simultaneously send a copy of its checks to Ms. Paula V. Batchelor at:

U.S. Environmental Protection Agency - Region 4
Program Services Branch
Waste Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

4. In addition to any other remedies or sanctions available to EPA, Settling Party's failure or refusal to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3).

5. Except as specifically provided in Paragraph 7 of this Agreement, the United States covenants not to sue Settling Party under Section 107 of CERCLA, 42 U.S.C. § 9607, to recover past response costs incurred at or in connection with the Site and paid by EPA. This covenant not to sue extends only to the Settling Party, its shareholders, officers, agents and employees and does not extend to any other person. This covenant not to sue shall take effect upon the effective date of this Agreement.

6. The United States reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters. Except as provided in the preceding paragraph, nothing contained in this Agreement shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision

of law, against Settling Party or against any other person or entity not a party to this Agreement.

7. The covenant not to sue set forth in Paragraph 5 above does not apply, inter alia, to the following:

- (a) claims based upon failure of Settling Party to meet the requirements of this Agreement;
- (b) claims for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6);
- (c) claims for costs incurred by any natural resources trustee;
- (d) claims based upon criminal liability;
- (e) claims for response costs incurred by any federal agencies other than the EPA; and
- (f) claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA;

8. The Settling Party reserves, and this Agreement is without prejudice to, all rights against the United States or any other person or entity with respect to all matters, except as specifically provided in this Agreement. Nothing contained in this Agreement shall in any way limit or restrict the Settling Party from initiating or defending any action against the United States or against any other person or entity not a party to this Agreement except as otherwise specifically provided by this Agreement.

9. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person or entity not a party to this Agreement. Each of the parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which either 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.

10. In consideration of EPA's covenant not to sue, contained in Paragraph 5 of this Agreement, the Settling Party agrees not to assert any claims or causes of action against the United States or the Hazardous Substances Superfund arising out of Past Response Costs, or response activities previously undertaken at the Site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities previously undertaken at the Site.

11. Subject to Paragraph 7 of this Agreement, EPA agrees that by entering into and carrying out the terms of this Agreement, the Settling Party will have resolved its liability to the United States for matters addressed and shall not be liable for claims for contribution regarding matters addressed in this Agreement as provided by Sections 113(f)(2), and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Matters addressed in this Agreement are past response costs.

12. This Agreement shall be subject to a thirty-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) EPA may withdraw its consent to this Agreement if comments received disclose facts or considerations which indicated that this Agreement is inappropriate, improper or inadequate.

13. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Party that the public comment period pursuant to Paragraph 11 of this Agreement has closed and that comments received, if any, do not require modification of, or EPA withdrawal from, this Agreement.

IT IS SO AGREED:

BY: *Amr Dwanza*
Franklin Hill, Chief
Program Services Branch
Waste Management Division
U.S. EPA - Region 4

3/25/98
DATE

FOR J. TROCKMAN & SONS, INC.
By: *Jeffrey Trockman*
Name: JEFFREY TROCKMAN
Title: VICE PRESIDENT

Date: 7/10/97

ATTACHMENT A

PAYMENT SCHEDULE

Beginning Balance		<u>\$35,000</u>
First payment amount due on 9/30/97	\$11,666.67	
Interest due on 9/30/97 at rate of 5.7%		\$1,995.00
Total amount due 9/30/97 (Payment plus interest)		\$13,661.67
Remaining Balance		<u>23,333.33</u>
Second payment amount due on 9/30/98	11,666.67	
Interest due on 9/30/98 at rate of 5.7%		1,330.00
Total amount due 9/30/98 (Payment plus interest)		12,996.67
Remaining Balance		<u>11,666.66</u>
Final payment amount due on 9/30/99	11,666.67	
Interest due on 9/30/99 at rate of 5.7%		665.00
Total amount due 9/30/99 (Payment plus interest)		<u>12,331.66</u>