



IN THE MATTER OF:)	AGREEMENT
)	
New Hanover County Airport)	
Burn Pit Superfund Site)	U.S. EPA Region 4
Wilmington, New Hanover County, North Carolina)	CERCLA Docket
)	No. CER-04-2002-3766
)	
Axel Johnson Inc.)	PROCEEDING UNDER SECTION
Sprague Energy Corporation)	122(h)(1) OF CERCLA
Unocal Corporation)	42 U.S.C. §9622(h)(1)
)	
SETTLING PARTIES)	
_____)	

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. Authority to exercise concurrence, to consult or to receive notice has been further delegated to the Director of the Office of Waste Programs Enforcement by EPA Regional Delegation No. R-14-14-D. Due to a recent reorganization within EPA Region 4, the Waste Programs Branch is now referred to as the CERCLA Program Services Branch. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice ("DOJ").

2. This Agreement is made and entered into by EPA and by Axel Johnson Inc., Sprague Energy Corporation, and Unocal Corporation ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the New Hanover County Airport Burn Pit Superfund Site ("Site") located in Wilmington, New Hanover County, North Carolina. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

A. The New Hanover County Airport Burn Pit Site is located on Garner Road, west of the New Hanover County Airport in New Hanover County, 1 mile north of Wilmington, North Carolina. The burn pit occupied an area of approximately 1,500 square feet on a parcel of land which is approximately 4 acres in size. The burn pit was used from 1968 until 1979 by the Air Force and Cape Fear Technical Institute for firefighter training purposes. The Wilmington Fire Department and a number of fire departments in New Hanover County used the facility for firefighter training purposes from 1968 to 1974. Material such as jet fuel, gasoline, petroleum storage tank bottoms, fuel oil, kerosene, and sorbent materials, which were obtained from nearby petroleum facilities, were burned in the pit during the firefighter training. Water was the primary fire extinguishing agent, however, carbon dioxide and dry chemicals were also used. Each Settling Party sent petroleum waste materials from their local petroleum facilities to the Site. These waste materials contained lead and volatile organic compounds which are hazardous substances and which have contaminated the Site.

B. A Remedial Investigation and Feasibility Study was conducted between 1989 and 1992. The Record of Decision setting forth EPA's decision on the appropriate clean up remedy was issued on September 29, 1992. Currently, the Site is being cleaned up under an Unilateral Administrative Order with the City of Wilmington, New Hanover County, and Cape Fear Community College. Additionally, the Department of Defense has an agreement with these parties to aid in clean up activities. In 2000, the Record of Decision was amended to change the selected remedy to air sparging and the above parties are working towards implementing this remedy.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by Settling Parties. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. 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.

IV. STATEMENT OF PURPOSE

9. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and protracted litigation by allowing Settling Parties to make a cash payment to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section IX (Reservation of Rights by EPA).

V. 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 or in any appendix attached hereto, the following definitions shall apply:

- a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.
- b. "Amended ROD" shall mean the Amended Record of Decision executed by EPA on April 11, 2000, which is included in the Administrative Record.
- c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- d. "Day" shall mean a calendar day. In computing any period of time under this Agreement, 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.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Parties.

f. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

g. "Section" shall mean a portion of this Agreement identified by a roman numeral.

h. "Settling Parties" shall mean Axel Johnson Inc., Sprague Energy Corporation, and Unocal Corporation.

i. "Site" shall mean the New Hanover County Airport Burn Pit Superfund Site, described in Paragraph 4(a) and located at located on Garner Road, west of the New Hanover County Airport in New Hanover County, one mile north of Wilmington, North Carolina.

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

l. "Certification of Completion of the Remedial Action" shall mean the certification by EPA that the Remedial Action has been fully performed and the Performance Standards have been attained.

m. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA.

n. "Remedial Action" shall mean those activities, except for Operation and Maintenance, undertaken to implement the ROD, but including completion of construction of the Remedial Action, in accordance with the final Remedial Design and Remedial Action Work Plan and other plans approved by EPA.

o. "Remedial Action Work Plan" shall mean the document developed to implement the Remedial Action at the Site pursuant to the ROD.

p. "Remedial Design Work Plan" shall mean the document developed to implement the Remedial Design at the Site pursuant to the ROD.

VI. REIMBURSEMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement as defined by Paragraph 38, Settling Parties shall pay to the EPA Hazardous Substance Superfund \$460,000. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Parties by EPA Region 4, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID #045Q, and the EPA docket number for this action.

At the time of payment, Settling Parties shall send notice that such payment has been made to:

Bryan M. Myers
Assistant Regional Counsel
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Paula Batchelor
CERCLA Program Services Branch
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

12. The total amount to be paid pursuant to Paragraph 11 shall be deposited in the New Hanover County Airport Burn Pit 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. Any balance remaining in the New Hanover County Airport Burn Pit Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

13. If Settling Parties fail to make any payment under Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. If any amounts due under Paragraph 11 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$250 per violation per day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID # 045Q, and the EPA docket number for this action, and shall be sent to:

United States Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia
ATTN: Collection Officer for Superfund

At the time of each payment, Settling Parties shall send notice that such payment has been made to:

Bryan M. Myers
Assistant Regional Counsel
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Paula Batchelor
CERCLA Program Services Branch
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

16. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses 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). If the United States brings

an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. The obligations of Settling Parties to pay amounts owed to EPA under this Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, the remaining Settling Parties shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Parties payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section VI or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

20. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). With respect to future liability, this covenant not to sue shall take effect upon EPA's issuance of the Certification of Completion of the Remedial Action. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of its obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

21. United States' Pre-certification Reservations. Notwithstanding any other provision of this Agreement, the United States reserves, and this Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

- A. to perform further response actions relating to the Site, or
- B. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:
 - 1. conditions at the Site, previously unknown to EPA, are discovered, or
 - 2. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

22. United States' Post-certification Reservations. Notwithstanding any other provision of this Agreement, the United States reserves, and this Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

- A. to perform further response actions relating to the Site, or
- B. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:
 - 1. conditions at the Site, previously unknown to EPA, are discovered, or
 - 2. information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

23. For purposes of Paragraph 21, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Amended ROD was signed and set forth in the administrative record supporting the Amended ROD and information received by EPA pursuant to the requirements of the Amended ROD prior to the Effective Date of this Agreement. For purposes of Paragraph 22, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Amended ROD, the administrative record supporting the Amended ROD, or in any information received by EPA pursuant to the requirements of this Agreement or the Amended ROD prior to Certification of Completion of the Remedial Action.

24. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 20. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Parties; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

f. liability for performance of response action or for reimbursement of response costs to the extent that total response costs at or in connection with the Site or to be incurred at or in connection with the Site by the United States and/or any other person exceed \$3,250,000.

25. 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 EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTIES

26. Settling Parties agree 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 Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 Agreement shall be deemed to constitute approval or preauthorization 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. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Except as provided in Paragraph 28, 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 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it 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. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which the United States has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that the United States asserts rights against Settling Parties coming within the scope of such reservation.

31. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties 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 case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 20.

X. RETENTION OF RECORDS

32. Until 5 years after the effective date of this Agreement, Settling Parties shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Settling Parties shall deliver such records or documents to EPA. Settling Parties may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient;

5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all documents and information that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor.

XI. CERTIFICATION

34. By signing this Agreement, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or 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 or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Agreement, 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 this Agreement with respect to EPA and Settling Parties.

As to EPA:

Bryan M. Myers
Assistant Regional Counsel
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Paula Batchelor
CERCLA Program Services Branch
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

As to Settling Parties:

Axel Johnson Inc.
Attn: General Counsel
300 Atlantic Street
Stamford, Connecticut 06901

Sprague Energy Corporation
Attn: General Counsel
300 Atlantic Street
Stamford, Connecticut 06901

Mr. John F. Ashburn, Jr. Esq.
Unocal Corporation
2300 Barrington Road, Suite 500
Hoffman Estates, Illinois 60195

XIII. INTEGRATION

36. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

XIV. PUBLIC COMMENT

37. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XV. EFFECTIVE DATE

38. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

The Undersigned Settling Party enters into this Agreement in the matter relating to the New Hanover County Airport Burn Pit Superfund Site in Wilmington, North Carolina:

FOR Axel Johnson Inc. and Sprague Energy Corporation:

By: Einar M. Rod 10/8/02
Einar M. Rod Date
Vice President,
General Counsel & Corporate Secretary

The Undersigned Settling Party enters into this Agreement in the matter relating to the New Hanover County Airport Burn Pit Superfund Site in Wilmington, North Carolina:

FOR Unocal Corporation:

By:  _____

10/10/02
Date

**

CONCUR:

Approved:



Anita Davis, Acting Chief
CERCLA Program Services Branch
Waste Management Division
U.S. Environmental Protection Agency, Region 4

Date: October 30, 2002

U.S. Department of Justice

By: Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Penn Ave., N.W., Room 2718
Washington, D.C. 20530

11.19.02
Date

By: Cheryl Smout
CHERYL SMOUT
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

11-5-02
Date