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LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

#22544

ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff
v.
FARMER OIL CORP., et al.
Defendants.

Enterprise

CIVIL ACTION NO. 95-CV-3231 *Ch*

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LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

CONSENT DECREE

This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the United States of America, and Defendant Enterprise Waste Oil Company, Inc., a Tennessee corporation ("Enterprise").

WHEREAS, the United States of America, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), has filed an amended complaint ("the complaint") herein against, among others, Enterprise, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607(a), for recovery of the costs incurred by the United States in conducting an immediate removal action in response to the release and threatened release of hazardous substances at a facility located at 542 Butler Street, S.E. in Marietta, Cobb County, Georgia, known as the Daytona Antifreeze site ("the Site"); and

WHEREAS, Plaintiff alleges that Enterprise arranged for disposal of hazardous substances at the Site; and

WHEREAS, Plaintiff alleges that Enterprise is jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the reimbursement of all funds expended by Plaintiff not inconsistent with the National Contingency Plan for response actions related to the Site; and

WHEREAS, Enterprise has claimed that it is financially unable to reimburse Plaintiff for all its response costs incurred in connection with the removal of hazardous substances from the Site; and

WHEREAS, Enterprise has provided certain financial information to the United States to substantiate its claim of inability to pay Plaintiff's response costs; and

WHEREAS, the United States has evaluated the financial information and determined, based upon this information, that Enterprise is unable to pay all costs incurred by the United States in responding to the release or threat of release of hazardous substances at the Site; and

WHEREAS, the United States, and Enterprise agree and this Court, by entering this Partial Consent Decree, finds that settlement of this matter, in accordance with the terms of this Partial Consent Decree, will avoid further prolonged and complicated litigation and that this Partial Consent Decree is fair, reasonable and in the public interest;

NOW, THEREFORE, without trial, adjudication or admission of any issue of law or fact

IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), 28 U.S.C. §§ 1331, 1345 and 1367.

B. For the purposes of this Consent Decree and the underlying complaint, Enterprise waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Enterprise shall not challenge the terms of this Consent Decree so long as the terms and conditions hereof are reasonably applied, nor will Enterprise challenge this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

This Consent Decree applies to and is binding upon the Plaintiff, Enterprise, and its successors and assigns. No change in ownership or corporate or other legal status, nor any transfer of assets or real or personal property of Enterprise shall alter the responsibilities of the parties under this Consent Decree.

III. DEFINITIONS

Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

A. "Enterprise" or "Settling Defendant" shall mean Enterprise Waste Oil Company, Inc., a Tennessee corporation

engaged in the waste oil wholesaling business registered and located in the State of Tennessee.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

C. The "Effective Date" of this Consent Decree means the date upon which it is signed collectively by the United States and Enterprise.

D. The date of "Entry" of this Consent Decree means the date it is signed by the Court.

E. The term "days" means calendar days.

F. "Past Response Costs" mean all cleanup costs, including administrative, investigative, and legal expenses (including attorneys fees) and prejudgment interest, incurred prior to the date of Entry of the Consent Decree by the United States pursuant to CERCLA in connection with the removal action conducted at the Site.

G. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

H. "Parties" shall mean the United States and Enterprise.

I. "Site" shall mean the facility located at 542 Butler Street, S.E. in Marietta, in Cobb County Georgia, known as the Daytona Antifreeze site.

J. "United States" shall mean the EPA and the United States Department of Justice acting on behalf of the EPA.

K. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or in the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, in which case, the definition in CERCLA or the NCP shall control.

IV. CERTIFICATION OF INFORMATION

A. Enterprise certifies to the best of its knowledge and belief that the financial information is as provided to the United States true, correct and complete. The United States reserves all rights it may have to bring any action against Enterprise, and the covenant not to sue in Section VII of this Decree shall not be effective, if any information provided by or on behalf of Enterprise is not true, correct, and complete.

B. Enterprise also certifies that to the best of its knowledge and belief it has provided the United States with all information and documents (except for duplicates) in its possession, custody or control relating to the transportation of hazardous substances or waste materials to the Site or to the placement, disposal, or treatment of hazardous substances or waste materials at the Site. The United States reserves all rights it may have to bring any action against Enterprise, and the covenant not to sue in Section VII of this Decree shall not be effective, if Enterprise has not provided all such information and documents to the United States.

V. REIMBURSEMENT OF RESPONSE COSTS

A. Defendant Enterprise shall pay a total of \$20,000 (twenty thousand dollars) to the United States for reimbursement of Past Response Costs (hereafter referred to as the "Reimbursement Sum") incurred by the United States with respect to the Site. Enterprise shall pay this Reimbursement Sum to the United States according to the schedule and terms set forth in this Section.

B. Payment of the Reimbursement Sum shall be made by Enterprise according to the following schedule:

1. Within 60 (sixty) days of the entry of this Decree, Enterprise shall pay to the United States \$6,700 (six thousand seven hundred dollars). The date of this payment shall be known as the Date of the First Payment.

2. Within 365 (three-hundred sixty-five) days of the Date of the First Payment, Enterprise shall make a second payment to the United States equal to \$6,700 (six thousand seven hundred dollars), plus interest accrued on the balance of the Reimbursement Sum from the Date of the First Payment. The date of this payment shall be known as the Date of the Second Payment.

3. Within two years of the Date of the First Payment, Enterprise shall make a third and final payment to the United States equal to \$6,600 (six thousand six hundred dollars), plus interest accrued on the balance of the Reimbursement Sum from the Date of the Second Payment. The date of this payment shall be known as the Date of the Third Payment.

C. For the purpose of this Consent Decree, interest on the unpaid balance of the Reimbursement Sum shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest shall accrue daily and shall be compounded annually. Interest shall accrue beginning on the Date of the First Payment.

D. In the event that Enterprise fails to timely make any payment as required in this Section, EPA may elect to accelerate the obligation, and the total remaining balance of the Reimbursement Sum shall, if EPA so elects, become due immediately upon receipt of a written notice of acceleration from EPA. If within ten days receipt of a written notice of acceleration from EPA, Enterprise fails to make payment of the total remaining balance of the Reimbursement Sum, then without further order of the Court, this Partial Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, and other applicable federal authority. In that event, Enterprise shall be liable to the United States for the total remaining balance of the Reimbursement Sum, any interest that has accrued on the unpaid balance, and all attorneys fees and other costs incurred by the United States in connection with collecting any part of the unpaid balance of the Reimbursement Sum.

E. If Enterprise fails to comply with any requirement set forth in this Section V, it shall pay a stipulated penalty in the amount of \$100 (one hundred dollars) for each of the first

fourteen days for each such failure to comply. Thereafter, Settling Defendant shall pay a stipulated penalty in the amount of \$50 (fifty dollars) for each day for each such failure to comply. Stipulated penalties shall begin to accrue on the day following the date that payment is due and shall continue to accrue through the day the payment is received by the United States Attorney's Office for the Northern District of Georgia, except that accrual of stipulated penalties shall cease and be capped at \$5,000 for each failure to comply with a requirement set forth in this Section V. Notwithstanding the accrual of stipulated penalties, interest shall continue to accrue on the unpaid balance of the Reimbursement Sum, as provided in this Section. Payment shall be deemed to have been received by the United States Attorney's Office for the Northern District of Georgia if sent in accordance with the instructions set forth in Section G, below.

F. Nothing herein shall be construed to limit the authority of the United States to seek such other relief, in law or in equity, available to it for Settling Defendant's violation of this Partial Consent Decree, and the United States expressly reserves all such remedies available to it to enforce the provisions of this Partial Consent Decree.

G. Payments tendered to the United States pursuant to this Consent Decree shall be by electronic funds transfer ["EFT"] or wire transfer to the U.S. Department of Justice lockbox bank, referencing DOJ Case Number 90-11-2-755. Payment shall be made

in accordance with instructions provided by DOJ to Enterprise upon execution of the Consent Decree. EFTs and wire transfers must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) in order to be credited on that day. When sending the EFT, the Settling Defendant shall also send a copy of its EFT notice to:

Andrea Madigan
U.S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Ga. 30365

and

Steven C. Silverman
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

H. Enterprise shall bear its own costs and attorneys fees in this matter.

VI. COVENANTS NOT TO SUE

A. Subject to the reservations of rights in Section IV, Paragraph B of this Section, and Section VII, upon payment in full of the amount specified in Section V of this Consent Decree, the United States covenants not to sue or to take any other civil or administrative action against Enterprise pursuant to Section 107(a) of CERCLA for its Past Response Costs.

B. Nothing in this Partial Consent Decree shall release Enterprise from liability for response costs, if any, incurred by the United States after the Effective Date of this Decree or in

connection with any future responses to the release or threatened release of hazardous substances into the environment at the Site.

C. This Partial Consent Decree shall not bind any person or legal entity other than the United States, and Enterprise.

D. Enterprise hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any of its departments, agencies and instrumentalities, with respect to the Site or this Consent Decree, including but not limited to (1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9696(b)(2), 9611, 9612, 9613, or any other provision of law, (2) any claim against the United States, including any of its departments, agencies, or instrumentalities, under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9609 or 9613, related to the Site, or (3) any claims arising out of response activities at the Site, including any liability for action taken and expenditures made by the United States prior to the Effective Date of this Decree in responding to the release or threatened release of hazardous substances into the environment. Further, Enterprise agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, including claims pursuant to Sections 106(b)(2), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or assert any other claims or

demands for sums paid in settlement of response costs or arising from any activity performed or expenses incurred pursuant to this litigation or under this Partial Consent Decree or arising from response activities at the site.

E. Nothing in this Partial Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VII. RESERVATION OF RIGHTS

Except as provided in Section VI of this Partial Consent Decree, the United States reserves all claims, demands, and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any other person or entity, including Enterprise. Nothing contained herein, except as provided in Paragraph A of Section VI of this Partial Consent Decree, shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against Enterprise or against any other person or entity not a party to this Partial Consent Decree under Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or under any other law. Any claim, cause of action or defense which the United States or Enterprise may have against any other person or entity not a party to this Decree, including but not limited to, claims for indemnity or contribution, is expressly reserved.

VII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter to enforce the terms and conditions of this Consent Decree.

VIII. NOTICE TO PARTIES

Any notice required under this Consent Decree shall be sent by regular mail to Enterprise at the following address:

Enterprise Waste Oil Company, Inc.
Attention: Wayman Pritchard
P.O. Box 52044
Knoxville, Tennessee 37950

and to:

Mark Jendrek, Esq.
Gentry, Tipton, Kizer & Little, P.C.
P.O. Box 1990
Knoxville, Tennessee 37901

Notice to EPA and the Department of Justice shall be by registered mail and shall be to the addresses listed in E of Section V, above.

IX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Enterprise for matters addressed in this Consent Decree, the Parties hereto agree that Enterprise is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). For purposes of this Section, matters addressed in this Decree shall be Enterprise's liability pursuant to Section 107(a) of CERCLA for Past Response Costs.

X. MODIFICATION


No modification shall be made to this Consent Decree without written notification to and written approval of the parties

hereto and the Court. The notification required by this paragraph shall set forth the nature of and the reasons for the requested modifications. No oral modification of this Partial Consent Decree shall be effective.

XI. PUBLIC NOTICE AND COMMENT

This Partial Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment pursuant to 28 C.F.R. § 50.7. Plaintiff reserves the right to withdraw or withhold its consent to a judgment based on this Partial Consent Decree if comments received disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper or inadequate.

SO ORDERED THIS 8th DAY OF November, 1996


CHARLES A. MOYE, JR.
United States District Judge

ENTERED ON DOCKET

NOV 14 1996

By: L.D.T. CLERK
Deputy Clerk

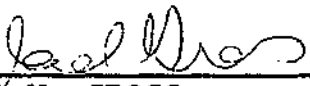
For Defendant Enterprise Waste Oil Company:

Date: _____


By:


WAYMAN PRITCHARD, President

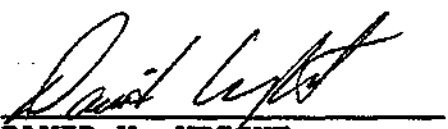
For Plaintiff United States of America:

By: 
JOEL M. GROSS
Chief
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Date: 10/19/96


By: 
STEVEN C. SILVERMAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7711
Washington, D.C. 20044

Date: 10/31/96

By: 
DAVID W. WRIGHT
Ga. Bar No. 777730
Assistant United States Attorney
Richard Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30335

Date: 11/1/96


By:


RICHARD D. GREEN
Acting Director
Waste Management Division
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

Date:

10/24/96

By:


ANDREA MADIGAN
Assistant Regional Counsel
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

Date:

10/9/96

CERTIFICATE OF SERVICE

This is to certify that on October 31, 1996, I served the following with a copy of the Consent Decree by sending a copy by regular mail to:


F. Edwin Hallman, Jr.
Decker & Hallman
Suite 1200, Marquis II Tower
285 Peachtree Center Avenue
Atlanta, GA 30303

Mark Jendrek
Gentry, Tipton, Kizer & Little
Suite 2610, Plaza Tower
Knoxville, TN 37929

Lisa Youngblood
Kilpatrick & Cody
Suite 2800
1100 Peachtree St.
Atlanta, Ga. 30309-4530

Robert L. Collings
Morgan, Lewis & Bockius LLP
2000 Once Logan Square
Philadelphia, PA 19103-6993

Respectfully submitted October 31, 1996.



Darlene Lyons