

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	
	:	Jointly Administered
KAISER ALUMINUM CORPORATION,	:	Case No. 02-10429 (JKF)
a Delaware corporation, <u>et al.</u>,	:	
	:	Chapter 11
Debtors.	:	

**CONSENT DECREE REGARDING
ENVIRONMENTAL CLAIMS RELATING TO MICA LANDFILL**

WHEREAS, on February 12, 2002, fifteen of the above-captioned debtors and debtors in possession (collectively with the other above-captioned debtors and debtors in possession, the "Debtors") commenced their respective reorganization cases by filing with the United States Bankruptcy Court for the District of Delaware (the "Court") voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). On March 15, 2002, two additional Debtors commenced their voluntary chapter 11 cases. The remaining nine Debtors commenced their voluntary chapter 11 cases on January 14, 2003. The Debtors' chapter 11 cases have been consolidated for procedural purposes and are being administered jointly, styled *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (JKF) (the "Chapter 11 Cases");

WHEREAS, the United States, on behalf of the Environmental Protection Agency (the "EPA"), has asserted that it has incurred \$136,583 in past unreimbursed environmental response ("EPA Costs") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.* ("CERCLA") relating to the Mica Landfill Superfund Site located in Spokane County, Washington (the "Site");

WHEREAS, Spokane County, a Washington municipal corporation (the "County"), and one of the Debtors, Kaiser Aluminum & Chemical Corporation ("KACC"), were named by the EPA as potentially responsible parties for the Site under CERCLA and the EPA contends that the County and KACC may be jointly and severally liable for the full amount of the EPA Costs;

WHEREAS, the County filed a proof of claim, Claim No. 1674, against KACC asserting a general nonpriority unsecured claim based on the County's allegation that KACC is liable under environmental laws, including CERCLA and the Washington Model Toxics Control Act, Chapter 70.105D RCW ("MTCA"), for KACC's equitable share of costs the County has incurred and may incur in the future for the investigation and cleanup of contamination at the Site;

WHEREAS, the Washington State Department of Ecology ("Ecology") is responsible, on behalf of the State of Washington, for administering and enforcing MTCA;

WHEREAS, on or about October 27, 2003, the Court entered an Order (D.I. 2791) approving a consent decree settling environmental claims and causes of action of the United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians (the "Multi-Site CD"), which settles, without admission of liability, several environmental claims and causes of action against Debtors but does not address or apply to the Site or other "Reserved Sites" as defined in the Multi-Site CD;

WHEREAS, KACC denies (a) that it is liable for any or all of the County's response costs or EPA Costs, and (b) that it has any liability in connection with the Site;

WHEREAS, the United States on behalf of EPA, the State of Washington at the request of Ecology, and the Debtors, without admission of liability by any party, desire to resolve their differences with respect to the Site, including relating to EPA Costs as provided herein, and, concurrent with the execution of this Consent Decree, KACC and the County are entering into a settlement agreement to settle, compromise and resolve the County's proof of claim, Claim No. 1674.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree by their attorneys and authorized officials, it is hereby agreed as follows;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Court, as follows:

1. In settlement and satisfaction of all claims of the EPA against the Debtors with respect to the Site under CERCLA and Section 7003 of RCRA, the United States, on behalf of the EPA, shall have an allowed, general nonpriority unsecured claim against KACC in the amount of Sixty-Eight Thousand Two Hundred Ninety-Two Dollars (\$68,292) (the "Allowed Claim"). The Allowed Claim shall be deemed allocated towards all past, present and future claims with respect to response costs and cleanup costs for the Site, whether to address matters known or unknown, for which a claim of any kind or nature has been or could be asserted against the Debtors pursuant to Sections 106 or 107 of CERCLA, or Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §6973, or MTCA by EPA,

the State of Washington, potentially responsible parties or potentially responsible party groups which have incurred or may incur such costs.

2. The Allowed Claim (a) will receive the same treatment under any plan of reorganization that includes KACC and is confirmed and becomes effective in the Chapter 11 Cases, without discrimination, as other allowed general unsecured claims against KACC with all attendant rights provided by the Bankruptcy Code and other applicable law and (b) will not be entitled to any priority in distribution. In no event shall the Allowed Claim be subordinated to any other allowed general unsecured claims against KACC pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including without limitation, Sections 105 and 510 of the Bankruptcy Code.
3. Cash distribution of the Allowed Claim shall be made by Fed Wire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to KACC by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware and shall reference Case No. 02-10429 (JKF) and DOJ File Number 90-11-3-07769/1. KACC shall transmit written confirmation of such payment to the U.S. Department of Justice at the address specified below. In the event that the United States sells or transfers the Allowed Claim, distributions will be made to a

transferee only at such time as KACC receives written instructions from the United States directing that payments be made to a transferee and instructions as to where such payments should be made, and, prior to the closing of the Chapter 11 Cases, after an evidence of claim transfer shall have been filed with the Court. Non-cash distribution of the Allowed Claim shall be made to:

U.S. EPA Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

Copies of all distributions and related correspondence to the United States shall be sent to:

Eric G. Williams
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Ref. DOJ File No. 90-11-3-07769/1

Lori Houck Cora
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
ORC-158
1200 Sixth Avenue
Seattle, WA 98101

4. Only the amount of cash received by the EPA (and net cash received by the EPA on account of any non-cash distributions) from KACC for the Allowed Claim for the Site, and not the total amount of the Allowed Claim, shall be credited by the

EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties for the Site by the amount of the credit.

5. In consideration of the payments or distributions that will be made by KACC under the terms of this Consent Decree, and except as provided in paragraph 6, the United States on behalf of EPA and the State of Washington covenant not to bring a civil action or take administrative action against the Debtors pursuant to Sections 106 and 107 of CERCLA, Section 7003 of RCRA, or applicable sections of MTCA relating to the Site. This covenant not to sue shall take effect on the date on which this Consent Decree is approved by the Bankruptcy Court (the "Effective Date"). This covenant not to sue shall also apply to the Debtors' successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of any Debtor is based on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of any Debtor.
6. The covenant not to sue set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States on behalf of EPA and the State of Washington reserve, and this Consent Decree is without prejudice to, all rights against Debtors with respect to all other matters, and specifically with respect to claims based on a failure to meet a requirement of this Consent Decree and liability for any site other than the Site (subject to any separate settlement, including the Multi-Site CD, regarding such

other site); or criminal liability. Further, the United States or the State of Washington reserve the right to petition the court for approval to bring a civil action or administrative action against Debtors pursuant to Section 106 and 107 of CERCLA, Section 7003 of RCRA, or applicable sections of MTCA relating to the Site, if factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment.

7. With regard to all existing or future third-party claims against the Debtors with respect to the Site, including claims for contribution, the parties hereto agree that, as of the Effective Date, the Debtors are entitled to protection from actions or claims to the maximum extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and applicable sections of MTCA.
8. Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States and the State of Washington with respect to the Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States and the State of Washington, their departments, agencies or instrumentalities, and any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be construed to constitute 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).

9. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.
10. The Debtors' claims and noticing agent, Logan & Company, Inc., shall create an allowed, general nonpriority unsecured claim in the amount of the Allowed Claim for the benefit of the EPA. The United States on behalf of EPA shall be deemed to have filed a proof of claim for the Site, which proof of claim is and shall be deemed satisfied in full in accordance with the terms of this Consent Decree. To the extent that any proof of claim by the United States on behalf of EPA asserts a claim for the Site for a higher amount than that allowed by this Consent Decree, such claim for the Site shall be reduced and allowed as provided herein. To the extent that any proof of claim filed by Ecology asserts a claim for the Site, such claim for the Site is hereby withdrawn.
11. KACC's entry into this Consent Decree is subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. KACC agrees to exercise its best efforts to obtain the approval of the Court. This Consent Decree will be lodged with the Court and submitted for public comment following notice of the Consent Decree in the Federal Register. The United States and the State of Washington reserve the right to withdraw or withhold their consent if the public comments regarding this Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

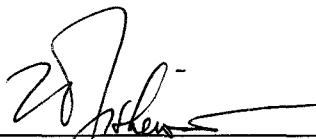
12. If this Consent Decree is not authorized and approved by the Court, this Consent Decree shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of any party with respect to the matters contained herein.
13. This Consent Decree in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Consent Decree.
14. This Consent Decree represents the complete agreement of the parties hereto with respect to the Site and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the Site, including the Multi-Site CD. Upon the Effective Date, the Site shall not be or be deemed to be a "Reserved Site" under the Multi-Site CD. This Consent Decree may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Court. This Consent Decree may be signed in counterpart originals.

[Signatures on the Next Page.]


THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE

FOR THE UNITED STATES OF AMERICA:

Date: 6/3/05

By: 
W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 5-27-05

By: 
Eric G. Williams
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

By: _____
Daniel D. Opalski
Director
Environmental Cleanup Office
U.S. Environmental Protection Agency
Region 10


Date: _____

By: _____
Lori Houck Cora
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10

THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE

FOR THE UNITED STATES OF AMERICA:

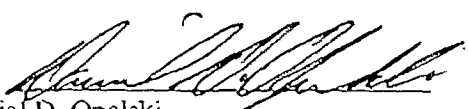
Date: 6/6/05

By: 
W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

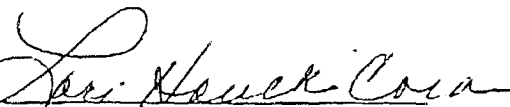
Date: _____

By: _____
Eric G. Williams
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 1-04-05

By: 
Daniel D. Opalski
Director
Environmental Cleanup Office
U.S. Environmental Protection Agency
Region 10

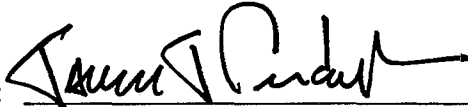
Date: 1/04/05

By: 
Lori Houck Cora
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10

FOR THE STATE OF WASHINGTON:

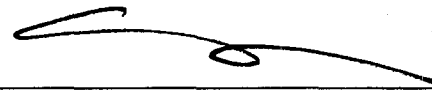
DEPARTMENT OF ECOLOGY

Date: 12/15/2004

By: 
James Pendowski
Program Manager
Washington Department of Ecology
Toxics Cleanup Program

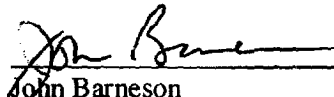
CHRISTINE O. GREGOIRE
Attorney General

Date: Dec. 15, 2004

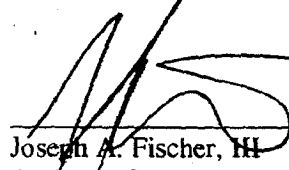
By: 
Steven J. Thiele, WSBA #20275
Assistant Attorney General
Attorney for State of Washington
Department of Ecology

FOR THE DEBTORS:
Kaiser Aluminum & Chemical Corporation

Date: DEC 10, 2004

By: 
John Barneson
Senior Vice President and
Chief Administrative Officer

Date: December 10, 2004

By: 
Joseph A. Fischer, III
Assistant General Counsel

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