UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

US EPA RECORDS CENTER REGION 5
403824

UNITED STATES OF AMERICA, Plaintiff,	)	CIVIL ACTION NO. H-79-556
v.	)	
MIDWEST SOLVENT RECOVERY, INC., et al., Defendants, and	)	
AMERICAN CAN COMPANY, INC., et al., Third Party Plaintiffs,	)	
v.	)	
ACCUTRONICS, et al., Third Party Defendants.	)	

PARTIAL CONSENT DECREE

WHEREAS, in November 1979 the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in this case under § 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, against Midwest Solvent Recovery, Inc., Midwest Industrial Solvent, Inc., Ernest and Lovie DeHart, Industrial Tectonics, Inc., Luther G. Bloomberg, V & E Corporation, Eugene and Jeanette Klisiak,

Edward D. Conley, Helga C. Conley, Robert J. Dawson, Jr., and John and Mary Miletich for the clean up of the Midco I and Midco II hazardous waste disposal sites in Gary, Indiana; and

WHEREAS, on January 19, 1984, the United States filed its First Amended Complaint adding claims for injunctive relief under § 106 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606, and for the recovery of Response Costs incurred by the United States in connection with the Midco I and Midco II sites under § 107 of CERCLA, 42 U.S.C. § 9607, and by adding defendant Penn Central Corporation as an owner of a portion of the Midco II site, and defendants Insilco Corporation, Rust-Oleum, Inc., Zenith Radio Corporation, Standard T Chemical Company, Inc., American Can Company, Inc., Pre Finish Metals, Inc., Premier Coatings Inc., Motorola, Inc., and DeSoto, Inc. as generators of hazardous substances that were disposed of at the Midco I and II sites; and

WHEREAS, U.S. EPA has caused to be removed and disposed of certain hazardous substances from the surface of the Midco I and II sites pursuant to its authority under 42 U.S.C. § 9604, and in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq; and

WHEREAS, on January 17, 1985, defendants Penn Central Corporation, John and Mary Miletich, Insilco Corporation, Rust-Oleum, Inc., Zenith Radio Corporation, Standard T Chemical Company, Inc., American Can Company, Inc., Pre Finish Metals, Inc., Premier Coatings Inc., Motorola, Inc., and DeSoto, Inc. filed a Third Party Complaint against 134 persons; and

WHEREAS, a portion of the relief sought by the United States in its First Amended Complaint would require the defendants to reimburse the United States for the costs incurred by it in connection with the Midco I and Midco II sites, to conduct an investigation of the soil and ground water conditions at and near the Midco I and Midco II sites, and to identify remedial alternatives to abate alleged releases and threatened releases of hazardous substances at and from the sites; and

WHEREAS, it is Plaintiff's present intention, subject to its prosecutorial discretion, i) to consider seeking to amend its First Amended Complaint to add as parties defendant certain persons who are not Participants in this Partial Consent Decree and to seek appropriate relief, and ii) to consider executing first on any judgment obtained by Plaintiff in this action against non Participants; and

WHEREAS, the parties to this Partial Consent Decree recognize that the partial settlement of this litigation is in the public interest; and

WHEREAS, the Plaintiff and Participants, by and through their representatives, have each agreed to the execution of this Partial Consent Decree;

NOW THEREFORE, it is Ordered, Adjudged and Decreed as follows:

I.

DEFINITIONS

The following definitions shall apply in this Partial Consent Decree:

A. "Participants" -- means those defendants and Third Party Defendants who have agreed among themselves to enter into this Partial Consent Decree with the United States. The Participants are identified in Exhibit A, which is attached hereto and incorporated herein by reference.

B. "Waste Materials" -- means any hazardous substance, pollutant or contaminant and any solid or hazardous wastes, as defined by CERCLA and RCRA.

C. "Midco I Site" -- means the waste disposal facility which is located at 7400 15th Avenue, Gary, Indiana, and which is described in the United States' First Amended Complaint.

D. "Midco II Site" -- means the waste disposal facility which is located at 5900 Industrial Highway, Gary, Indiana, and which is described in the United States' First Amended Complaint.

E. "Remedial Investigation and Feasibility Study", "RI/FS" or the "Work" -- means the investigation support, site definition activities, detailed site characterization studies, site hazard assessments, remedial investigation reports, evaluation of remedial action alternatives and feasibility reports which are to be performed by the Participants at the Midco I and II sites pursuant to the specifications and schedules in this Partial Consent Decree and in Exhibit B (for the Midco I site), and in Exhibit C (for the Midco II site). Exhibits B and C are attached hereto and incorporated herein by reference.

F. "Response Costs" -- means all costs lawfully recoverable under CERCLA.

II.

JURISDICTION

This Court has subject matter jurisdiction over this matter and has personal jurisdiction over the Participants for the purposes of this Partial Consent Decree. The Participants and Plaintiff agree to be bound by the terms of this Partial Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

III.

PARTIES BOUND

This Partial Consent Decree shall apply to and be binding upon the Participants, their officers, directors, agents, servants, employees, successors, contractors and assigns, and upon all persons, firms, subsidiaries, divisions, and corporations acting under or for them and upon the United States on behalf of U.S. EPA. Each undersigned representative certifies that he or she is fully authorized to enter into this Partial Consent Decree and to execute and to legally bind such signatory to this document. The Participants shall provide a copy of this Partial Consent Decree to each contractor or subcontractor retained to perform the RI/FSs at the Midco I and II sites and shall condition any contract for the RI/FSs on compliance with this Partial Consent Decree.

IV.

OBJECTIVE OF THIS PARTIAL CONSENT DECREE

The objective of the United States and the Participants, through entry of this Partial Consent Decree, is to protect public health and the environment from hazardous conditions which may be presented by any release or threatened release of Waste Materials from the Midco I and II sites by (a) requiring that Participants perform Remedial Investigation and Feasibility Studies necessary to determine the full extent of contamination and to

evaluate remedial alternatives to abate such contamination, if any, at the Midco I and II sites, and reimburse the United States for certain Response Costs incurred by it at the Midco I and II sites, and (b) providing for the deferral of certain discovery and litigation in this case until the Remedial Investigation and Feasibility Studies are completed and there has been an opportunity to attempt to reach a final settlement of this litigation, including a privately-funded remedial action, if necessary. The United States and the Participants agree that the RI/FSs shall be performed in a manner which is consistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq.

V.

COMMITMENT OF THE PARTICIPANTS TO PERFORM REMEDIAL INVESTIGATION AND FEASIBILITY STUDIES AT THE MIDCO I AND II SITES

A. In order to achieve the objective of this Partial Consent Decree, the Participants shall undertake and perform, at their expense, complete Remedial Investigation and Feasibility Studies at the Midco I and II sites, as defined by the work plans for the RI/FSs, which are attached hereto as Exhibit B for the Midco I site and Exhibit C for the Midco II site as modified pursuant to Subparagraph B, below. The Participants shall commence the RI/FSs at the Midco I and II sites within fourteen (14) days of the lodging of this Partial Consent Decree. The RI/FSs shall be implemented pursuant to the time schedules in Exhibits B and C.

B. The Participants and the Plaintiff understand that during the course of reviewing analytical data, draft or final reports and public comments thereon, U.S. EPA may determine that modifications to the Work, including without limitation, additional data collection or evaluation, should be performed. The Participants shall perform all such modifications that are necessary to achieve the objective of this Partial Consent Decree, pursuant to a schedule approved by U.S. EPA. Any dispute concerning the necessity or schedule for such modifications shall be presented to the Court for resolution pursuant to Paragraph XIV, herein. Provided that, in lieu of presenting the matter to the Court for resolution, U.S. EPA shall have the right, without limitation, to perform any modifications that Participants do not agree to perform pursuant to this Subparagraph. Any Response Costs incurred by U.S. EPA in the performance of such modifications shall not be included within the scope of "Covered RI/FS matters" or "Covered Reimbursement Matters" for which the United States covenants not to sue pursuant to Paragraph XII.

C. The Participants agree to have the RI/FSs performed at the Midco I and II sites in compliance with all applicable federal, state and local laws, and all regulations promulgated thereunder. The Participants shall obtain, or cause their contractors to obtain, all permits or approvals necessary under such laws and regulations. U.S. EPA will use its best efforts

to expedite the issuance of all such permits within its jurisdiction. In addition, the Participants shall use quality assurance, quality control and chain of custody procedures in accordance with a U.S. EPA approved plan as required in Exhibits B and C.

D. The Participants shall provide written progress reports to U.S. EPA by the tenth day of every month during the implementation of the RI/FSs which describe in detail the actions which have been taken during the previous month toward achieving compliance with this Partial Consent Decree. Said reports shall, at a minimum, provide the following information:

1) The date any task required to be performed was completed;

2) An identification of any event which may cause delay in achieving any future tasks and a summary of efforts made, if any, to mitigate the delay;

3) The overall progress made toward completing the RI/FSs;

4) The activities which are scheduled for the next month;

5) A summary of analytical results and preliminary evaluations prepared during the preceding month, and of the analytical results or evaluations which will be prepared in the upcoming month; and

6) A summary of the changes in the work plans agreed to by the Participants and U.S. EPA during the preceeding month.

E. In accordance with the schedules set forth in Exhibits B and C, the Participants shall submit the final RI and FS reports to U.S. EPA for review. Within sixty (60) days of its receipt of each RI and FS report, U.S. EPA shall review and comment upon each report. If U.S. EPA takes the position that a RI or FS has not been performed in accordance with the specifications in Exhibits B or C as amended pursuant to this Partial Consent Decree, U.S. EPA shall notify the Participants in writing as to what should be done to complete the RI or FS. If the Participants agree that an RI or FS has not been satisfactorily completed pursuant to the terms of Exhibit B or C as amended by this Partial Consent Decree, then they shall so complete the Work. If Participants do not agree that an RI or FS has not been completed satisfactorily or that additional data collection or evaluation is necessary to complete the RI or FS pursuant to the terms of this Partial Consent Decree, then the matter shall be resolved pursuant to Paragraph XIV., herein. Where the Participants agree, or are ordered by the Court, to perform additional work pursuant to this Subparagraph, they shall commence such work within ten (10) days of notice from U.S. EPA or an order from the Court, whichever is later, and complete such work in accordance with a schedule approved by U.S. EPA or the Court.

F. Upon U.S. EPA approval of a final FS report, U.S. EPA shall make available to the public each such report for review and comment for a period of, at a minimum, twenty-one (21) days, pursuant to U.S. EPA Community Relations Policy. Within fourteen (14) days following the expiration of the public comment period, U.S. EPA will notify the Participants of any modifications to the final report which must be made. The Participants agree to make these modifications in the report.

G. Upon satisfactory completion of the final modifications required to be performed, if any, pursuant to Subparagraphs V. B., E. and F., U.S. EPA will approve the completion of the RI/FSs.

H. The United States and the Participants recognize that, by entering into this Partial Consent Decree, U.S. EPA has approved the implementation of the RI/FSs pursuant to the terms of this Partial Consent Decree. The Plaintiff agrees, and the Court finds, that upon approval by U.S. EPA of the activities completed in the performance of the RI/FS pursuant to this Partial Consent Decree, such activities will be deemed to be consistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq.

I. The Participants shall be responsible for completion of the RI/FSs and shall assume any and all liability arising from

their acts or omissions in the performance of them. Beginning with the commencement and ending upon U.S. EPA or Court approval of completion of the RI/FSs, the Participants shall be responsible, pursuant to this Partial Consent Decree, for addressing any releases or threatened releases of Waste Materials which may occur at or from the Midco I and II sites which are determined by the On Scene Coordinator ("OSC"), whose duties are set forth in Paragraph X herein, to be caused by the Participants' performance of the RI/FSs. Further, the Participants shall take such action in the performance of the RI/FSs as is reasonably necessary to assure that further contamination of soil and ground water at the Midco I and II sites does not occur as a result of the performance of the RI/FSs.

J. 1) Within fourteen (14) days of the lodging of this Partial Consent Decree, the Participants shall obtain a performance bond in the amount of two (2) million dollars, which bond shall assure Plaintiff the complete performance of the RI/FSs pursuant to the terms of this Partial Consent Decree. The bond shall provide in the event of default, that the RI/FSs shall be completed satisfactorily and fully. The bond shall not in any manner authorize the surety to avoid its obligations to have the RI/FSs completed.

2) The Participants or their contractor shall maintain in force insurance policies for liability arising out

of the acts or omissions of the Participants in the performance of the RI/FSs in the following amounts:

a) Comprehensive General Liability Insurance (including broad-form contractual liability and completed operations, explosion, collapse and underground hazards) in the amount of One Million Dollars ($1,000,000) covering personal injury, bodily injury and property damages.

b) Worker's Compensation - Statutory

c) Public Liability -

Bodily Injury -	$500,000/occurrence
	$500,000/aggregate
	$500,000/accident
Property Damage -	$500,000/occurrence
	$500,000/aggregate

d) Automobile Liability -

Bodily Injury -	$300,000/person
	$500,000/accident
	$500,000/accident

VI.

REIMBURSEMENT

A. Within fourteen (14) days of the entry of this Partial Consent Decree, the Participants shall pay a total of three million one hundred thousand dollars ($3,100,000) to the United States in reimbursement of Response Costs incurred by the United States with respect to the Midco I and II sites prior to April 1, 1985. This amount shall be made payable by certified or cashiers check to the "EPA Hazardous Substances Response Fund", and shall be delivered to U.S. EPA Superfund, P. O. Box 371003 M, Pittsburgh, Pennsylvania 15251.

B. In addition to the amounts identified in Subparagraph A herein, the Participants shall reimburse the United States in an amount not to exceed $100,000 for the costs incurred by U.S.

EPA in connection with its oversight of the Participants' performance of the RI/FSs. Payment shall be made to the United States as provided above within thirty (30) days of the Participants' receipt of a demand for a sum certain for such costs from the United States after entry of this Partial Consent Decree. Participants' liability, if any, for any such oversight costs incurred by the United States in excess of $100,000 shall not be included within the scope of "Covered Reimbursement Matters" for which the United States covenants not to sue pursuant to Paragraph XII, hereof.

C. Payments made pursuant to this Paragraph VI shall not be considered payments of a civil or criminal fine or penalty.

VII.

PARTIAL STAY OF THE LITIGATION

Upon the lodging of the Partial Consent Decree, and except as otherwise provided in this Paragraph, all proceedings in this litigation shall be stayed and suspended until that date upon which the stay is lifted pursuant to Paragraph VIII, below. The process of discovery and litigation between Participants and non-Participants shall not be stayed hereby, and such discovery and litigation may continue. Without in any manner impairing the foregoing right of Participants to pursue their action against non-

Participants, it is expressly provided that during the pendency of the stay, (i) Plaintiff shall not be considered a party to the third party litigation or cross claims for purposes of discovery or otherwise (although Plaintiff shall receive service copies of all papers filed with the Court); and (ii) Plaintiff shall have the right to file memoranda with respect to legal issues raised in the third party litigation or cross claims. Furthermore, no Participant shall be prohibited from filing, pursuing or otherwise continuing a cross-claim against anyone not a party to this Partial Consent Decree. Subject to the foregoing, the rights and remedies of Plaintiff and the Participants against any non-Participants shall not be compromised, waived, released or affected, except as expressly provided in subparagraph XII.A.

VIII.

NEGOTIATION OF SOIL AND GROUND WATER REMEDY

Following U.S. EPA approval of the final reports for the Midco I and II FSs pursuant to Paragraph V. above, U.S. EPA shall notify the Participants which remedial action alternative(s) is approved for the Midco I and the Midco II sites. The Participants and the United States shall thereafter attempt in good faith to reach an agreement involving all potentially responsible parties which resolves all outstanding issues in this action, including a

privately-funded remedial action, if necessary, and reimbursement of outstanding Response Costs of the United States. If such an agreement is not reached within sixty (60) days of the commencement of negotiations, or such additional time as may be mutually agreed, the Participants and Plaintiff shall jointly move the Court to lift the stay of this litigation and set the matter for trial within two hundred and seventy (270) days after the stay is lifted.

IX.

SUBMISSION OF DOCUMENTS; ACCESS; SAMPLING AND ANALYSIS

A. The Participants shall direct their contractors to submit copies of all documents containing technical information prepared or received by their contractor, including sample analyses, chain of custody records, contracts, bills, receipts, correspondence, reports, and other documents, produced during or as a result of the performance of the RI/FSs, in the monthly report immediately following their preparation.

B. U.S. EPA employees and their authorized representatives and contractors shall have unrestricted access to the Midco sites for any purpose which U.S. EPA deems appropriate, including observation and monitoring of the progress of the RI/FSs, obtaining samples, conducting response work, and performing its own investigations relating to the soil, surface and ground water contamination at and near the Midco sites. In all such

instances, Plaintiff's employees, representatives and contractors shall announce their presence and display their credentials to Participants' Project Coordinator and shall abide by all safety and health regulations. The Participants shall not assume any liability arising from the acts or omissions of U.S. EPA employees, representatives or contractors in the course of such activities. In addition, U.S. EPA employees and their authorized representatives shall have the authority to inspect laboratories utilized by the Participants' contractors for analyses. This provision shall be in addition to, and not in substitution of, U.S. EPA's right of entry and access under applicable federal laws.

C. The Participants shall take such samples as are required in Exhibits B and C. All sampling and analysis shall be done pursuant to U.S. EPA protocols and chain of custody procedures, or as otherwise specified by the OSC. The OSC shall have the authority to select the locations of wells and sampling points during the implementation of the RI/FSs.

D. U.S. EPA employees and authorized representatives shall have the right to take splits of any samples obtained by the Participants at the Midco sites during the implementation of the RI/FSs. It is agreed that the expenses incurred by Plaintiff in connection with such split sampling are not oversight costs for which Participants are liable to reimburse the Plaintiff pursuant

to Paragraph VI. B., and shall not be included within the scope of "Covered Reimbursement Matters" for which the United States covenants not to sue pursuant to Paragraph XII hereof. The Participants shall give U.S. EPA seven (7) days notice of sampling conducted by them at the Midco I and II sites, or where such is not possible, as much notice as is possible under the circumstances. Before the disposal of any sample by the Participants, U.S. EPA shall be given thirty (30) days notice and an opportunity to take possession of such samples.

X.

ON-SCENE COORDINATOR

A. U.S. EPA shall designate an on-scene coordinator ("OSC") to observe and to monitor the progress of the RI/FSs and to coordinate communication between U.S. EPA and the Participants. The U.S. EPA OSC shall have the authority vested by 40 C.F.R. § 300 *et seq.*, including but not limited to the authority to ensure that the RI/FSs are performed in accordance with all applicable statutes and regulations, and the authority to require a cessation of the performance of the RI/FSs or the cessation of any other activity at the sites which, in the opinion of the OSC, may present or contribute to an endangerment to public health, welfare of the environment or cause or threaten to cause the release of hazardous substances from the sites. In the event the OSC does require such a cessation, the OSC shall have the authority

to require the Participants to continue the RI/FSs in accordance with the instructions of the OSC, in a manner which avoids or mitigates the endangerment which the OSC believes may occur. All schedules, deadlines and milestone dates that Participants are subject to shall be adjusted by agreement between Plaintiff and the Participants to reflect any cessation of work or changes in the scope of work ordered by the OSC pursuant to this paragraph.

1) The Participants shall designate a "Project Coordinator" to observe and to monitor the progress of the RI/FSs and to coordinate communication between U.S. EPA and the Participants.

2) The Participants shall notify the OSC immediately upon discovery of any significant spill or release of a Waste Material. Such notice shall be followed by written notification from the Participants within ten (10) days which explains the event, any actions taken to eliminate any threat, and each precaution taken to avoid occurrence of any similar threat.

XI.

STIPULATED CIVIL PENALTIES

Unless excused by the provisions of paragraph XVIII, or modified by the Court pursuant to paragraph XIV, the Participants shall pay to the United States stipulated civil penalties in the amount of $1,000 for each day after the seventh day of non-compliance with the major milestones identified in Exhibit D hereto. These stipulated civil penalties shall be paid

to the United States within fourteen (14) days following demand by the United States, and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions which may be available to the United States, including, but not limited to, civil penalties for non-compliance with Exhibit D for periods of less than seven days and penalties for failure to meet other schedules set forth in this Partial Consent Decree.

XII.

COVENANT NOT TO SUE

A. Upon payment by Participants to Plaintiff of the amounts described in Articles VI.A and VI. B., the United States covenants not to take any civil judicial or administrative action on behalf of U.S. EPA for "Covered Reimbursement Matters" against the Participants.

B. Except as provided in Subparagraph E herein, "Covered Reimbursement Matters" shall include any and all liability for the reimbursement of Response Costs incurred by the United States up to and including April 1, 1985, and, upon their payment, for the Response Costs identified in Subparagraph VI.B.

C. Upon approval of completion of the RI/FSs pursuant to Paragraph V.G., the United States covenants not to sue or to take any civil judicial or administrative action on behalf of U.S. EPA for "Covered RI/FS Matters."

D. Except as provided in Subparagraph E herein, "Covered RI/FS Matters" shall include any and all liability to the United States to perform the RI/FSs at the Midco I and Midco II sites which are to be performed pursuant to the terms of this Partial Consent Decree.

E. "Covered RI/FS Matters" and "Covered Reimbursement Matters" shall, without limitation, not include the following:

1) Any and all liability which the Participants or any other person may possess with respect to a release or a threatened release of Waste Materials at or from the Midco I and II sites which may occur during the performance, or after completion, of the RI/FSs.

2) Any and all liability which the Participants or any other person may possess for the remediation of soil, surface water and ground water contamination at or near the Midco I and II sites, except for such remediation as is performed by Participants, or performed by and reimbursed to Plaintiff by Participants, pursuant to the terms of this Partial Consent Decree.

3) Any and all liability which the Participants or any other person may possess with respect to recovery of Response Costs incurred by the United States after April 1, 1985, and not reimbursed to Plaintiff by the Participants pursuant to Paragraph VI. B.

4) Any and all liability which the Participants or any other person may possess to the United States for the recovery of its Response Costs associated with the completion of the Midco II partial clean-up which are incurred after March 15, 1985.

5) Any and all liability which the Participants or any other person may possess to the United States for the Recovery of its Response Costs associated with the U.S. EPA RI/FS preparatory site work incurred up to and including April 1, 1985.

6) Any and all liability which the Participants or any other person may possess with respect to any damages to natural resources.

F. The United States and the Participants expressly recognize that this Partial Consent Decree, the successful completion and approval of the RI/FSs, and the covenants not to sue, do not represent full satisfaction of, waiver or release of, covenant not to sue for, or otherwise prejudice the United States' claims against the Participants relating to matters other than "Covered RI/FS Matters", or "Covered Reimbursement Matters". Any claim or any defense which the Plaintiff on the Participants may have against any person or entity not a party to this Partial Consent Decree, including without limitation, claims for indemnity or contribution is expressly reserved.

G. The Participants and United States agree that nothing herein shall prevent the United States from itself undertaking any

work that the Participants have been requested to, but do not timely and satisfactorily perform. The Participants further agree that any and all liability they may possess with respect to such work activities undertaken by the United States, shall not be included in the scope of "Covered RI/FS Matters" or "Covered Reimbursement Matters" for which the United States covenants not to sue pursuant to Paragraph XII.

H. The United States and the Participants intend that this covenant not to sue shall not be considered a release of any kind.

I. In consideration of the entry of this Partial Consent Decree, the Participants agree not to make any claims against the Hazardous Substances Response Trust Fund established by CERCLA, including claims pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, for expenses related to performance of the Work or reimbursement of Response Costs pursuant to this Partial Consent Decree.

XIII.

ENFORCEMENT

A. The Court shall retain jurisdiction of this matter for the purposes of interpreting, implementing, and enforcing the terms and conditions of this Partial Consent Decree, and for adjudicating all matters of dispute among the parties.

XIV.

DISPUTE RESOLUTION

Unless otherwise provided in this Partial Consent Decree, any dispute which arises under this Partial Consent Decree shall in the first instance be the subject of informal negotiations. If the United States and the Participants cannot resolve the dispute within thirty (30) days, it shall be presented to the Court for appropriate resolution upon written notice by the Plaintiff or any Participant. The period for negotiations may be extended by mutual agreement. In an emergency, any such party may present the matter to the Court prior to the expiration of the 30 day period. Unless the United States is seeking a stipulated penalty or enforcement of this Decree, it shall be the responsibility of the Participants to notify the Court of the dispute and to bear the burden of proof. Thereafter, the Court shall order the parties to file such pleadings and shall hold such hearings as the Court deems necessary and proper.

XV.

FORM OF NOTICE

When notification to the United States or the Participants is required by the terms of this Partial Consent Decree, it shall be in writing and addressed to:

As to the United States:

Assistant Attorney General
Land and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530
Ref: DOJ 90-7-1-1

Director, Waste Management
Division
Attn: Midco On Scene Coordinator
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

As to the Participants:

Mr. William Klettke
Vice President, Finance
The Enterprise Companies
1191 S. Wheeling Road
Wheeling, Illinois 60090

Robert Olian, Esq.
Sidley & Austin
1 First National Plaza
Chicago, IL 60603

Mr. Timothy Harker, Esq.
Kadison, Phaelzer, Woodard,
Quinn & Rossi
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006

XVI.

MODIFICATION

The Plaintiff and the Participants may jointly agree in writing to modify Exhibits B and C. The Plaintiff and the Participants intend that, unless otherwise ordered by the Court, no modifications shall be made in this Partial Consent Decree without written approval of Plaintiff and Participants.

XVII.

NON-ADMISSION

This Partial Consent Decree and performance hereunder shall not constitute an admission, adjudication, or waiver of any right or defense of the Plaintiff or any Participant with respect to any allegation of the United States' First Amended Complaint or the Third Party Complaint or any fact or conclusion of law with respect to any matter alleged in or arising out of the First Amended Complaint or Third Party Complaint or evidence of any wrongdoing or misconduct or liability to any person, on the part of any Participant, its officers, directors, agents, servants, employees, successors, contractors and assigns, and any persons, firms, subsidiaries, divisions and corporations acting under or for them. Nothing in this Paragraph shall prohibit the use of this Partial Consent Decree by Plaintiff or any Participant as evidence to establish its existence or its terms.

XVIII.

FORCE MAJEURE

A. If a delay in meeting one or more requirements of this Partial Consent Decree is caused by circumstances beyond the control of Participants, the time for performance of such requirements shall be extended for a period equal to the delay resulting from such circumstances. In that event, the Participants shall not be liable for stipulated penalties. Participants shall use their best efforts to minimize any delay. If any event occurs which causes or may cause delay in the timely achievement of one or more requirements of this Partial Consent Decree, Participants shall notify U.S. EPA in writing as soon as possible after discovery by Participants of such event, but in any event, no later than ten (10) days after discovery by Participants. Such written notice to U.S. EPA shall describe in detail the anticipated length of the delay, the cause or causes of delay, the measures taken and to be taken by Participants to prevent or minimize the delay and the time table by which these measures will be implemented. In the event Participants fail to give such timely notice, this Paragraph shall not apply.

B. If Plaintiff and Participants agree that a delay is or was beyond the control of Participants and also agree upon the duration of such delay, the parties shall, with approval of the

Court, modify the schedule of work to be performed to the extent necessary to enlarge the schedule for completion of the requirements affected by such delay. If Plaintiff and Participants cannot agree that the reason for the delay is or was beyond the control of Participants, or cannot agree upon the duration of such delay, the provisions of Paragraph XIV shall apply, and the Participants shall submit the matter to the Court if necessary.

XIX.

RESPONSE AUTHORITY

Nothing in this Partial Consent Decree shall be deemed to limit the response authority of U.S. EPA under 42 U.S.C. § 9604 or the authority of the United States under 42 U.S.C. § 9606 with respect to matters other than "Covered RI/FS Matters" and "Covered Reimbursement Matters," or to alter the applicable legal principles governing the judicial review of any action taken by U.S. EPA pursuant to such authority.

XX.

RETENTION OF RECORDS

All parties shall preserve all records and documents now in their possession or control which relate in any manner to the Midco I and II sites despite any document retention policy to the contrary for one year after the completion of the Work.

XXI.

TERMINATION

Except for the covenants and promises herein, this Partial Consent Decree shall terminate upon the lifting of the stay of this litigation pursuant to Paragraph VIII herein.

APPROVED AND SO ORDERED THIS ___ DAY OF _____ 1985.

_____
Michael Kanne
United States District Judge

The Parties Enter Into This Partial Consent Decr

and Submit It To The Court, That It May Be Approved And Ent

THE UNITED STATES OF AMER

By: _____
F. HENRY HABICHT II
Assistant Attorney Genera
Land and Natural Resource
United States Department
Washington, D.C. 20530

By: _____
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By: _____
COURTNEY M. PRICE
Assistant Administrator f
Enforcement and Compli
United States Environment
Agency
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By: _____
VALDAS V. ADAMKUS
Regional Administrator
United States Environment
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

JAMES D. DRAGNA
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA, v. MIDWEST SOLVENT RECOVERY, INC., et al., Defendants, and AMERICAN CAN COMPANY, INC., et al., Third Party Plaintiffs, v. ACCUTRONICS, et al., Third Party Defendants	CIVIL ACTION NO. H-79-556

The United States Steel Corporation consents to this
(Name of Company)

Partial Consent Decree by its duly authorized representative

on this 20th day of May 1985.

United States Steel Corporation
(Name of Company)

600 Grant Street
Pittsburgh, PA. 15230
(412)433-2923
Company's Address & Telephone Number)

BY: Robert N. Clifford
(Signature of Representative)

Robert N. Clifford
(Name of Representative)

Vice President-Manufacturing & Commercial Services, USS Supply Division
(Title of Representative)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MIDWEST SOLVENT RECOVERY, INC., et al., Defendants, and AMERICAN CAN COMPANY, INC., et al., Third Party Plaintiffs, v. ACCUTRONICS, et al., Third Party Defendants.	Civil Action No. H-79-556

The United States Steel Corporation consents to this
(Name of Company)

Agreed Order Modifying Partial Consent Decree by its duly authorized representative on this 26th day of August, 1985.

United States Steel Corporation
(Name of Company)
600 Grant Street
Pittsburgh, PA 15230
(412)433-2923
(Company's Address & Telephone Number)

By: [signature]
(Signature of Representative)

Stephan K. Todd
(Name of Representative)

General Attorney-Environmental
(Title of Representative)