Site: Medley Farm
Date: 109

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

MEMORANDUM

DATE:

SUBJECT: Recommended Concurrence on Settlement Agreement for U.S. v. Medley, et al.

FROM: James H. Sargent
Regional Counsel

TO: Jack E. Ravan
Regional Administrator

Attached for your signature is the Consent Decree for United States v. Medley, et al., a civil action brought to recover the Government's response costs for the cleanup of the Medley Farm Site in Gaffney, South Carolina. The Consent Decree provides for a cash-out settlement of $560,000. This figure represents reimbursement for approximately 83% of the Government's total response costs (including indirect and enforcement costs) and approximately 95% of the cleanup costs.

A. Background Information and Nature of the Case

The case involves the cleanup of a waste disposal site on the Medley property in 1983. The site was used for the disposal of drummed waste and dumped tanker loads of liquid from approximately 1966 to 1976. Defendant Ralph Medley owned the site while defendants Clyde, Grace, and Barry Medley operated the site. Defendants Milliken and Company, National Starch and Chemical Corporation, and Unisphere Chemical Corporation sent waste to the site. The original defendants alleged in a third-party complaint that ABCO Industries, Inc., BASF Corporation, Ethox Chemicals, Inc., Polymer Industries, and Tanner Chemical Company also sent waste to the site.

A cost recovery action was initiated in January 1986 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9607. The Government also sought a declaratory judgment against the defendants for any future response costs it

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might incur. In November of 1986 the judge issued an Order against the Medley defendants which found them liable for response costs under Section 107.

The Medley site was proposed for addition to the National Priorities List (NPL) in June 1986.

After negotiations over the past several months, a settlement has been worked out with regard to past response costs.

B. Terms of the Consent Decree

The Consent Decree provides that the defendants and third-party defendants will pay $560,000 to the United States. In consideration of this settlement, those parties will be given a release from civil liability for response costs incurred by the United States up to and including the date of entry of the Consent Decree. The Consent Decree specifically provides that the parties shall not be released from liability for response costs, if any, incurred by the United States after the date of entry of the Consent Decree. In addition, the agreement provides for dismissal without prejudice, as to the Government's right to institute any action for future response costs.

It should be noted that while the Medley defendants were found liable, they are not at this time a party to this Consent Decree. It is possible, however, that the Medleys will join in the settlement prior to its entry. A Stipulation of Dismissal without Prejudice will be executed in which the Medleys will agree not to contest the statute of limitations issue should they be a party to a future lawsuit regarding this site.

C. Resource Requirements

Assuming no default on the payment, implementing the agreement will require only very minimal EPA resources in processing payments as they are received.

D. Issues of National Significance

None.

E. Justification

This Consent Decree will provide the recovery of approximately 95% of the Government's actual cleanup costs and 83% of the total response cost. These costs will be recovered without costly and time-consuming litigation.

As stated above, response costs, including the RI-FS, incurred after the date of entry of the Consent Decree are not included in this agreement; however, EPA believes the settling defendants will pay for the RI-FS.

There are significant risks in proceeding to trial in this case. In the first instance, only two of the defendants, Milliken and National Starch, possess ample financial ability to pay. The individual defendants have limited resources, and Unisphere, having once gone through bankruptcy, appears to be heading there again. In addition, there are significant weaknesses in the evidence linking National Starch's waste to the site. National Starch has alleged that it only sent non-hazardous waste to the site. It may be that stronger evidence could be developed later, but there exists a significant risk in proceeding against National Starch.

F. Contact Person

The contact person is Kirk R. Macfarlane of my staff. His phone number is FTS 257-2641.

G. Recommendation

I recommend that you approve the proposed settlement by signing the enclosed Consent Decree.

Enclosure