SFUND RECORDS CTR
44181

Robert B. Ogilvie
Assistant Regional Counsel, RC-3-3
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 744-1332

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of: TRW Microwave Site (Building 825) EPA ID CAD009159088 825 Stewart Drive Sunnyvale, California TRW Inc. 1900 Richmond Road Cleveland, Ohio Respondent. Proceeding Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9622(h)(1)), as amended by the Superfund Amendments and Reauthorization Act of 1986	ADMINISTRATIVE CONSENT ORDER Docket No. 92-25

This Order is issued by the United States Environmental Protection Agency ("EPA") and is agreed to by TRW Inc. ("Respondent"). The purpose of this Order is for EPA to recover response costs incurred and response costs to be incurred by the United States at or in connection with the TRW Microwave Site ("Site") at 825 Stewart Drive in Sunnyvale, California, and to resolve the liability of the Respondent for such response costs. EPA is authorized to enter into this Order pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Sept. 13, 1987), and redelegated to the Director, Hazardous Waste Management Division, EPA Region IX.

WHEREAS, EPA alleges that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. section 9601(14), are present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

WHEREAS, EPA alleges that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will require further response action to be undertaken in the future;

WHEREAS, EPA alleges that in performing this response action, it has incurred response costs at or in connection with the Site totaling $157,326.18 as of July 31, 1991, and that further response costs will be incurred in the future;

WHEREAS, EPA alleges that the Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, the Regional Administrator of EPA Region IX has determined that the total response costs incurred by the United States to date at or in connection with the Site do not exceed $500,000, excluding interest, and that, based upon information currently available to EPA, total United States response costs at or in connection with the Site are not anticipated to exceed $500,000, excluding interest, in the future; and

WHEREAS, EPA and the Respondent desire to settle certain claims arising from the Respondent's alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, in consideration of the promises herein, and intending to be legally bound hereby, it is ordered and agreed as follows:

1. This Order shall be binding upon EPA and shall be binding upon the Respondent and its successors and assigns. Each signatory to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or her. The Respondent agrees to undertake all actions required by this Order. The Respondent consents to the issuance of this Order and will not contest EPA's authority to enter into this Order or to implement or enforce its terms.

2. The Respondent agrees to pay to the Hazardous Substance

ED_006475C_00001716-00002

Superfund $157,326.18 within ten days of the effective date of this Order.

3. The Respondent's payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name and address of the Respondent, the site name and identification number, and the EPA docket number for this action and shall be sent by the Respondent to:

EPA Region IX
ATTN: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

4. The Respondent shall simultaneously send a copy of its check to:

James C. Hanson
Mail Code H-6-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

5. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), and to civil penalties pursuant to Sections 122(l) and 109 of CERCLA, 42 U.S.C. §§ 9622(l) and 9609.

6. Respondent agrees to pay United States' future response costs incurred at or in connection with the Site, including response costs incurred from and after July 31, 1991. EPA shall provide a cost summary of its response costs annually to Respondent. Upon request, EPA shall provide Respondent with reasonable documentation evidencing such expenditures. Respondent reserves the right to demonstrate that EPA's costs are inconsistent with the National Contingency Plan, contain accounting errors or are not adequately documented. Any such disputed costs shall be resolved in accordance with the dispute resolution provision contained in Section 9 of this Order. The Respondent shall reimburse EPA for all undisputed response costs within thirty (30) days from receipt of EPA's annual cost summary, in accordance with the procedures set forth in Sections 3 and 4 of this Order.

7. Subject to Section 10 of this Order, upon payment of the amount specified in Section 2 of this Order, EPA agrees that the Respondent shall have resolved any and all civil liability to EPA under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of EPA response costs incurred at or in connection with the Site as of July 31, 1991. The Respondent shall also

ED_006475C_00001716-00003

have resolved any and all civil liability to EPA under Section 107(a) of CERCLA for reimbursement of future response costs paid by the Respondent under Section 6 above.

8. A cost shall be deemed to have been "incurred" for purposes of Sections 6 and 7 as of the date it is paid by EPA, or, if applicable, as of the date it is paid by the agency or entity administering CERCLA funds granted by EPA. If a cost was paid prior to July 31, 1991 but was not yet recorded against the relevant site-specific account number in EPA's accounting system, or, if applicable, in the grantee agency's or entity's accounting system, the cost shall not be considered to have been incurred as of the July 31, 1991 cutoff date set forth in Sections 6 and 7, and shall be deemed to be a "future response cost" which Respondent shall reimburse in accordance with Section 6.

9. a. Any disputes concerning the United States' future response costs shall be resolved in the following manner. Within thirty (30) days from receipt of EPA's annual cost summary, Respondent shall notify the EPA program contact listed in paragraph 4 of its objections to EPA's costs. Respondent's objections shall be made in writing and shall define the dispute, state the basis of Respondent's objections and be sent certified mail, return receipt requested. All costs not disputed shall be paid pursuant to Section 6 of this Order. EPA and the Respondent shall have fourteen (14) days from the date of EPA's receipt of Respondent's objections to reach agreement on the disputed costs. EPA may extend this period as needed to provide substantiation of its costs. If an agreement is reached, Respondent shall pay the agreed amount within fourteen (14) days after the date of such agreement.

b. If an agreement is not reached within said time period including extensions, Respondent may request a determination by EPA's Hazardous Waste Management Division Director. The Hazardous Waste Management Division Director's determination shall constitute EPA's final decision. Respondent shall pay the costs owed pursuant to EPA's final decision, regardless of whether Respondent agrees with the decision, within fourteen (14) days after the date of said decision. Respondent's payment shall include interest on the amount due, calculated from the date of Respondent's receipt of EPA's annual cost summary to the date of payment, at the rate established by the Department of Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

c. If Respondent fails to make payment when due under this paragraph, EPA reserves the right to seek statutory penalties and/or any other appropriate relief.

10. Nothing in this Order 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 the Respondent for:

a) any liability as a result of failure to make the payments required by Sections 2 and 6 of this Order or other failure to comply with the terms of this Order; or

b) any liability not expressly included in Section 7 above, including, without limitation any liability for i) injunctive relief at the Site; ii) response costs other than those specifically described under Sections 2 and 6 above; iii) damages for injury to or loss or destruction of natural resources; or iv) criminal liability.

11. Nothing in this Order 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 Order.

12. The Respondent agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at, or relating in any way to, the Site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at, or relating in any way to, the Site. The Respondent waives any right it might have to seek reimbursement from EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for any costs pertaining to the Site.

13. With regard to claims for contribution against the Respondent for matters addressed in this Order, the parties hereto agree that the Respondent is entitled, as of the effective date of this Order, to such protection from contribution actions or claims as is provided in Section 122(h)(4) of CERCLA.

14. This Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate.

15. The effective date of this Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Section 14 of this Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Order.

ED_006475C_00001716-00005

IT IS SO AGREED:

TRW Inc.

By: _____ July 10, 1992
Its: Associate General Counsel and Assistant Secretary — Date

The above being agreed and consented to, IT IS SO ORDERED

this 28th day of September, 1992.

U.S. Environmental Protection Agency

By: _____
Jeff Zelikson, Director
Hazardous Waste Management Division
Region IX

ED_006475C_00001716-00006