

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JAN 21 1999

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO.
ST. LOUIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRYSLER CORPORATION,
ALLIED WASTE SYSTEMS INC. (d/k/a
LAIDLAW WASTE SYSTEMS, INC.),
ALLIED SERVICES, LLC, and
EVELYN K and CLARENCE J. CHOTT,

Defendants.

4:98CV01809CAS

CIVIL ACTION NO. _____

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA").

B. The United States in its complaint seeks reimbursement from Chrysler Corporation ("Chrysler"), Allied Waste Systems, Inc. (d/k/a Laidlaw Waste Systems, Inc.), and Allied Services, LLC (collectively "Allied"), and Evelyn K. and Clarence J. Chott (the "Chotts") (referred to together as the "Settling Defendants"), of response costs incurred and to be incurred by EPA for response actions in connection with the release or threatened release of hazardous substances at and from the Fenton Creek Dump Superfund Site ("Site"), located in Fenton, Saint Louis County,

#5

Missouri, a declaration of Settling Defendants' liability for future response costs, and such other relief as the Court finds appropriate. The complaint also seeks natural resource damages from the Settling Defendants to restore property at or near the Site.

C. The release or threatened release of hazardous substances at or from the Site has caused the United States to incur response costs of more than \$98,760, and future costs will be incurred. EPA incurred costs in removal site assessment work and planning for removal activities at the Site, as well as research for potentially responsible parties.

D. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. Paint waste containing hazardous substances, including lead and volatile organic chemicals, was disposed of at the Site from approximately 1957 to 1967. The hazardous substances are subject to surface erosion and groundwater infiltration and leaching. An action to remove the hazardous substances is necessary to protect public health, welfare and the environment from the release and threatened release of such hazardous substances at or from the Site.

E. On August 1, 1996, a Removal Action Memorandum was signed by the Regional Administrator, EPA Region VII, describing the Site, the releases and threats of releases of hazardous substances at and from the Site, and authorizing a removal response action to mitigate threats to public health, welfare and the environment posed by the release of hazardous substances from the Site. The Removal Action Memorandum was amended on , November 6, 1997, and is attached hereto at Appendix A.

F. The Settling Defendants do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States and the Settling Defendants agree, and this Court, by entering this Decree, finds that settlement of this matter will avoid further prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

H. Chrysler and Laidlaw (Allied's predecessor), pursuant to a letter agreement with EPA, performed a Site Investigation at the Fenton Creek Dump Site and prepared a Report of Findings and Recommendations, which was submitted to EPA on April 21, 1997. As part of the investigation process, Settling Defendants submitted periodic progress reports describing the investigation activities, and these reports are a part of the Administrative Record for the Site.

I. EPA has notified the Federal natural resource trustee of negotiations regarding this Consent Decree, in accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), and has also notified the natural resource trustee for the State of Missouri regarding such negotiations.

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Venue is proper in this District. The complaint of the United States states a claim upon which relief may be granted under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court and to venue in this District and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their officers, directors, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendants' responsibilities under this Agreement.

3. Until all payments provided for in this Consent Decree are made, Settling Defendants agree to provide notice to EPA of any change in corporate or legal status or transfer or assignment of a significant portion of its assets. Such notice shall be made at least thirty (30) days prior to transfer of assets or real or personal property, in accordance with Section XVI, Notices and Submissions, of this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

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

"Consent Decree" shall mean this Consent Decree and any attached appendices. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

"Escrow Account" shall mean the account established by Chrysler and Allied with First of America, Trust Division, account number 021899349, for deposit of the principle settlement amount required under Paragraph 5 of this Consent Decree. The Escrow Account shall be interest bearing. The Escrow Account, including the principle and any accrued interest, shall be established for the benefit of the United States, and made payable to the United States pursuant to the terms in Section V of this Consent Decree, with the express exception, that if this Consent Decree is not entered by the Court, upon notice by the United States of such failure of the Court to approve entry of the Consent Decree, the principle and any accrued interest in the Escrow Account shall revert to the benefit of the Settling Defendants.

"Future Response Costs" shall mean all Response Costs, as defined herein, incurred and/or paid, or to be incurred and/or paid by the United States for the Site, after the cut-off date for Past Response Costs, also as defined herein, except as reserved herein pursuant to Section X.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"National Contingency Plan" or "NCP" shall mean National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA,

42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all Response Costs, as defined herein, incurred and paid by the United States at or in connection with the Site as of September 27, 1997.

"Plaintiff" shall mean the United States.

"Removal Action" shall mean those activities to be undertaken to remove hazardous substances and contaminated soils at the Site, as described in the Removal Action Memorandum dated August 1, 1996, and amended on November 6, 1997.

"Response Costs" shall mean all expenses, costs, and disbursement, including but not limited to, direct and indirect costs, incurred or to be incurred by the United States for response actions at or in connection with the Site, including investigation, oversight, and removal actions, accrued interest of costs incurred prior to the date of lodging of this decree, and any other future costs incurred in implementing response actions at the Site after entry of this Consent Decree, except as reserved herein pursuant to Section X.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean Chrysler Corporation, Allied Waste Systems Inc., Allied Services, LLC and their respective officers and directors and Evelyn K. and Clarence J. Chott,

"Site" shall mean the Fenton Creek Dump Superfund site, at 478 Old South Highway 141, in Fenton, Saint Louis County, Missouri, located in the northwest 1/4 of the northeast 1/4 of the

southwest 1/4 of Section 35, Township 44 north, Range 5 east, and generally shown on the diagram attached hereto at Appendix B.

"State" shall mean the State of Missouri.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

5. Payment of Response Costs to the United States: Within thirty (30) days of signing this Consent Decree, Chrysler and Allied shall deposit into the Escrow Account, the principle sum of Two Million, Five Hundred Fifty Thousand Dollars (\$2,550,000). Within ten (10) days of receipt of notice of entry of this Consent Decree by the Court, the principle and all accrued interest in the Escrow Account shall be paid to the United States in the manner specified in Paragraph 6 of this Consent Decree.

6. Manner of Payment: Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 07RH, and the EPA docket number for this action, and shall be sent to:

EPA Region VII Regional Hearing Clerk
EPA Hazardous Substance Superfund
Superfund Accounting
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, PA 15251

At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

Patricia Gillispie Miller
Assistant Regional Counsel
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Timothy J. Curry
On Scene Coordinator
Superfund Division
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20045

Re: DOI # 90-11-2-1288

7. Of the total amount to be paid pursuant to Paragraph 5 of this Consent Decree, \$98,764 shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred and paid at or in connection with the Site as of September 27, 1997 by the EPA Hazardous Substance Superfund, and the remainder shall be deposited in the Fenton Creek Dump Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. The amount to be deposited in the Fenton Creek Dump Site Special Account includes a premium in the amount of \$254,936 to compensate the United States for the risk that costs incurred or to be incurred for performance of the selected Removal Action or amendments thereto exceed EPA's current cost estimate of \$2,196,300. Any balance remaining in the Fenton Creek Dump Site Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. PAYMENT FOR NATURAL RESOURCE DAMAGES

8. Within 120 days of signing of this Consent Decree, Chrysler and Allied shall pay to the United States on behalf of the Department of Interior ("DOI"), in accordance with the procedures set forth below, the amount of \$52,126 (including \$2,419 for past assessment costs) for purposes of restoration of natural resources damaged or injured at the Site.

9. Upon the direction of the United States at a later date, the Chotts shall either implement deed restrictions on or transfer title of acreage totaling 5.7 contiguous acres which shall be defined in a separate instrument (the "Property"). If required, the Property shall be transferred to an entity identified at a later date by the United States. All costs of implementation of deed restrictions or the transfer of title shall be borne by the Chotts. Such transfer of title to the Property shall be in accordance with all applicable laws and regulations.

10. Payment shall be made by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Account in accordance with current electronic funds transfer procedures and referencing DOJ Case Number 90-11-2-1288. This amount shall then be wire transferred to the U.S. Department of Interior (Agency Location Code 14160006) using the Department of Treasury's On-link Payment and Collection System ("OPAC"). In the OPAC documentation field, the Department of Justice will specify the U.S. Fish and Wildlife Service's Natural Resource Damage Assessment and Restoration Fund ("NRDAR") account number 14X5198 and include the following information: The funds shall be used solely to address injuries to, destruction of, or loss of natural resources with respect to the Site, including the restoration, replacement, or acquisition of habitat and the payment of assessment costs.

VII. ACCESS

11. Commencing upon the date of lodging of this Consent Decree, the Chott's agree to provide the United States, and its [their] representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of any work to be performed at the Site, to the extent access to the property is controlled by the Chott's, for the purposes of conducting any activity related to the Site including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples; and
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site.

Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

VIII. FAILURE TO MAKE TIMELY PAYMENTS OR MEET TIMELY OBLIGATIONS

12. Interest on payments: In the event that any payment required under Section V, Reimbursement of Response Costs, or Section VI, Payment for Natural Resource Damages, is not made when due, Chrysler and Allied shall pay Interest on the unpaid balance, which shall begin to accrue from the day after which payment is due and continue to accrue through the date of payment in full. Interest shall be paid in the manner set forth in Paragraph 6 and any interest payment(s) shall be due and payable upon demand by the Plaintiffs

13. Stipulated Penalties: Stipulated penalties shall accrue in the amount of One Thousand Dollars (\$1,000) per day that the Settling Defendants are in violation of the requirements set forth in Sections V, VI, XIII, and XIV of this Consent Decree. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with the instructions in Paragraph 6 of this Consent Decree. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States must bring an action to collect any payment or enforce any obligation required under Section V, Reimbursement of Response Costs, Section VI, Payment for Natural Resource Damages, or Section VIII, Failure to Make Timely Payments or Meet Timely Obligations, the Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to attorney fees.

15. Payment made under Paragraphs 12 and 13 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments or meet timely obligations required by this Consent Decree. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is collected herein, except in the case of a willful violation of the Consent Decree.

16. Notwithstanding any other provision of this section, Chrysler and Allied, and not the Chotts, are liable for stipulated penalties for failure to make timely payments required by this Consent Decree. The obligations of Chrysler and Allied to pay amounts owed to the United

States under this Consent Decree are joint and several. In the event of the failure of either Chrysler or Allied to make the payments required under this Consent Decree, the other shall be responsible for such payments.

17. Notwithstanding any other provision of this Section, the Chotts solely, and not Chrysler or Allied, are liable for stipulated penalties for failure to transfer title to the 5.7 contiguous acres to St. Louis County or provide access as required by this Consent Decree.

18. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

IX. COVENANT NOT TO SUE BY UNITED STATES

19. In consideration of the payments and obligations made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X, Reservations of Rights by United States, the United States covenants not to sue Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Response Costs, the performance of response actions, and natural resource damages with regard to the Site. With respect to present and future liability, except as to natural resource damages, this covenant shall take effect upon receipt by the United States of all amounts required by Section V, Reimbursement of Response Costs, and any amount due under Section VIII, Failure to Make Timely Payments, of this Consent Decree. With respect to liability for natural resource damages, this covenant shall take effect upon the successful transfer of the Property in accordance with Paragraph 9 in Section VI and upon receipt of all amounts required by Section VI, Payment for Natural Resource Damages and any amount due under Section VIII, Failure to Make Timely Payments or Meet Timely Obligations. This covenant not to sue is conditioned

upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

20. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to issue an administrative order or to take judicial action seeking to compel Settling Defendants (1) to perform response actions relating to the Site or (2) to reimburse the EPA for additional costs of response if:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Removal Action is not protective of human health or the environment.

21. For the purposes of Paragraph 20, the information and conditions known to EPA shall include only that information and those conditions known to EPA as of the effective date of this Consent Decree as set forth in the administrative record supporting the Removal Action.

22. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Defendants seeking recovery of Natural Resource Damages, based on:

a. conditions with respect to the Site, previously unknown to the federal trustee, that are discovered, and that result in the releases of hazardous substances that contribute to injury to, destruction of, or loss of said natural resources at the Site, or

b. information, previously unknown to the federal trustee, which demonstrates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude substantially greater than was known, to the federal trustee

23. For the purposes of Paragraph 22, the information and conditions known to the federal trustee shall include only that information and conditions known to the federal trustee as of the effective date of this Consent Decree as set forth in the EPA administrative record supporting the Removal Action and the U.S. Fish and Wildlife Service Preliminary Report dated October 20, 1997.

24. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 19. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability, based upon the ownership or operation of the Site or any activity with respect to a hazardous substance or a solid waste at or in connection with the Site, arising after signature of this Consent Decree by Settling Defendants;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site;
- e. liability for any future response action selected by EPA for the Site based on a determination that the selected Removal Action is not protective of health and the environment, provided that the conditions of Paragraph 20 have been met;

f. liability for any future response action selected by EPA to address groundwater contamination resulting from the release of hazardous substances at or from the Site; and

g. liability for response costs associated with handling, treating, storing, transporting and disposing of hazardous wastes, other than characteristic hazardous wastes identified as D001 or D008 pursuant to 40 C.F.R. Part 261, Subpart C, from or in connection with the Site.

25. Nothing in this Consent Decree 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 the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

26. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XI. COVENANTS BY SETTLING DEFENDANTS

27. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

-a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any other costs, damages or attorneys fees from the United States arising out of response activities at the Site;

c. any claims arising out of response activities at the Site; and

d. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

28. Nothing in this Consent Decree shall be deemed to constitute approval or 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).

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

29. 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. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

30. The Parties agree that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Decree. The "matters addressed" are Past Response Costs and all response actions taken and to be taken by or at the direction of the United States and all response costs incurred and to be incurred in connection therewith, and all natural resource damages, in connection with the Removal Action at the Site. The "matters addressed" in this Consent Decree do not include those response actions or those response costs or natural resource damages as to which the United States has reserved its rights under Section X of this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of any such reservation.

31. Each Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States and EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim.

32. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the United States and EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

33. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 19.

XIII. ACCESS TO INFORMATION

34. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site. Settling Defendants shall also make available to EPA upon request, for purposes of investigation, information gathering, or testimony, their

employees, agents, or representatives with knowledge of relevant facts concerning the activities at the Site or the implementation of this Consent Decree.

35. Confidential Business Information and Privileged Documents:

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal or State law. If a Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other agreement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion

of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

36. No claim of confidentiality shall be made with respect to any documents or information evidencing conditions at or around the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data and materials, and information submitted pursuant to this Consent Decree.

XIV. RETENTION OF RECORDS

37. Until six (6) years after entry of this Consent Decree, each Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

38. At the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to the United States, except as set forth in, and in compliance with, Paragraph 35.b. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law in accordance with the requirements of Paragraph 35.b, of this Consent Decree.

XV. CERTIFICATION

39. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(c) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(c).

XVI. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20045

Re: DOJ # 90-11-2-1288

As to EPA:

Patricia Gillispie Miller
Assistant Regional Counsel
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Timothy J. Curry
On Scene Coordinator
Superfund Division
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

As to Settling Defendant Chrysler:

Lynn Y. Buhl
Senior Counsel
Chrysler Corporation
1000 Chrysler Drive
Mail Code 485-13-65
Auburn Hills, Michigan 48326-2766

As to Settling Defendant Allied:

Jo Lynn White, Esq.
Allied Waste Industries Inc.
Suite 100
15880 North Greenway-Hayden Loop
Scottsdale, Arizona 85620

Michael D. Hockley, Esq.
Spencer Fane Britt & Brown
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106

As to Settling Defendants the Chotts:

Alfred J. Rathert
Rathert Law Firm
Drawer G
334 Skinker Lane
Fenton, Missouri 63026

XVII. INTEGRATION/APPENDICES

41. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, Consent Decrees or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the Removal Action Memorandum, dated August 1, 1996,
as amended November 6, 1997

Appendix B is a diagram of the Site

XVIII. MODIFICATION OF CONSENT DECREE

42. No modification shall be made to this Consent Decree without written agreement of the Parties and approval of the Court. Nothing in this Section shall be deemed to alter the Court's power to interpret or enforce this Consent Decree or to modify this Consent Decree as the Parties have agreed.

XIX. EFFECTIVE DATE

43. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XX. RETENTION OF JURISDICTION

44. This Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the purposes, inter alia, of enforcing and effectuating its terms and resolving any disputes arising under this Consent Decree.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

45. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent to this Consent Decree if comments received regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

46. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any of the Parties and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXII. SIGNATORIES

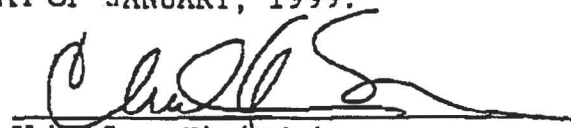
47. Each of the undersigned representatives of the Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute this document and legally bind such Party to it.

48. Unless the United States is notified to the contrary in accordance with Section XVI, Notices and Submissions, of this Consent Decree, the corporate official signing this Consent Decree on behalf of each Settling Defendant shall be authorized to accept service of process by

mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, service of a summons, and any applicable local rules of this Court.

49. Settling Defendants agree not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

SO ORDERED THIS 21st DAY OF JANUARY, 1999.


United States District Judge

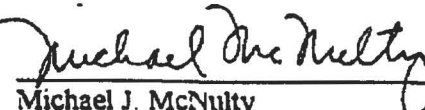
The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chrysler Corporation, Allied Waste Systems, Inc. (f/k/a Laidlaw Waste Systems, Inc.) and Allied Services, LLC, and Evelyn K. and Clarence J. Chott, Civil No. 4:98CV1809CAS relating to the Fenton Creek Dump Superfund Site.

FOR The UNITED STATES OF AMERICA

Date: 10/22/98

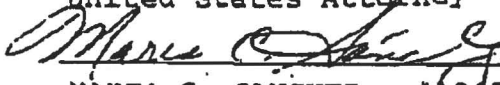

Joel M. Gross
Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 10/22/98


Michael J. McNulty
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-1210

EDWARD L. DOWD, JR.
United States Attorney

Date: 10/23/98


MARIA C. SANCHEZ #13672
Assistant United States Attorney
Eastern District of Missouri
1114 Market Street, Room 401
St. Louis, MO 63101
(314) 539-2200
FAX: (314)-539-2777

Date: 9/17/98

for NA Murray
Dennis Grams, P.E.
Regional Administrator
Region VII
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Date: Sept 14, 1998

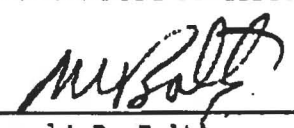
Patricia D. Miller
Patricia Gillispie Miller
Assistant Regional Counsel
Region VII
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

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I certify that I am a duly authorized representative of Chrysler Corporation, a Delaware corporation:

FOR CHRYSLER CORPORATION

Date: 6-12-98


[Name] Ronald R. Bolte
[Title] Vice President
Chrysler Corporation
[Address] c/o Lynn Y. Buhl
1000 Chrysler Drive
CIMS 485-14-18
Auburn Hills, MI 48326-2766

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chrysler Corporation, Allied Waste Systems, Inc. (f/k/a Laidlaw Waste Systems, Inc.) and Allied Services, LLC, and Evelyn K. and Clarence J. Chott, Civil No4: 98CV1809CAS, relating to the Fenton Creek Dump Superfund Site.

I certify that I am a duly authorized representative of Allied Waste Systems, Inc. (f/k/a Laidlaw Waste Systems, Inc.) a Delaware corporation:

FOR ALLIED WASTE SYSTEMS, INC. (f/k/a
LAIDLAW WASTE SYSTEMS, INC.)

Date: 7. 2. 98


[Name] Donald W. Slager
[Title] President
[Address] 15880 N Greenway-Hayden
Suite 100
Scottsdale, AZ 85260

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chrysler Corporation, Allied Waste Systems, Inc. (f/k/a Laidlaw Waste Systems, Inc.) and Allied Services, LLC, and Evelyn K. and Clarence J. Chott, Civil No. 4:98CV1809CAS relating to the Fenton Creek Dump Superfund Site.

I certify that I am a duly authorized representative of ~~Laidlaw Waste Systems, Inc., a Delaware corporation~~: Allied Services, LLC, a Delaware limited liability corporation:

FOR ALLIED SERVICES, LLC

Date: 7-2-98


[Name] Donald W. Slager
[Title] President
[Address] 15880 N. Greenway-Hayden
Suite 100
Scottsdale, AZ 85260

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v Chrysler Corporation, Allied Waste Systems, Inc (f/k/a Laidlaw Waste Systems, Inc) and Allied Services, LLC, and Evelyn K. and Clarence J. Chott, Civil No.4:98CV1809CAS, relating to the Fenton Creek Dump Superfund Site

I certify that I am a duly authorized representative of Evelyn K. and Clarence J. Chott:

FOR EVELYN K. AND CLARENCE J. CHOTT

Date 7/23/98

Alfred J. Rathert
[Name] Alfred J. Rathert
[Title] Attorney
~~xxxxxx/xxxxxx/xxxxxx/xxxxxx~~
[Address] 334 Skinker Ln.
Fenton, MO. 63026
(314) 343 2088
Fx (314) 343 8370

Clarence J. Chott
Clarence J. Chott
478 S. Old Highway 141, Fenton, MO. 63026

Evelyn K. Chott
Evelyn K. Chott
478 S. Old Highway 141, Fenton, Mo. 63026

FENTON CREEK DUMP SUPERFUND SITE
CONSENT DECREE
PAGE 30 of 30

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I certify that I am a duly authorized representative of Evelyn K. and Clarence J. Chott:

FOR EVELYN K. AND CLARENCE J. CHOTT

Date 7/23/98

Alfred J. Rathert
[Name] Alfred J. Rathert
[Title] Attorney

~~XXXXXXXXXXXXXXXXXXXX~~

[Address] 334 Skinker Ln.
Fenton, MO. 63026
(314) 343 2088
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UNITED STATES DISTRICT COURT - EASTERN MISSOURI
INTERNAL RECORD KEEPING

AN ORDER, JUDGMENT OR ENDORSEMENT WAS SCANNED AND FAXED TO THE FOLLOWING
INDIVIDUALS ON 01/21/99 by eliddy

4:98cv1009 USA vs Chrysler Corporation

42:9607 Real Property Tort to Land

Michael McNulty -
Patricia Miller -
Maria Sanchez -

Fax: 202-514-4180
Fax: 913-551-7925
Fax: 314-539-6844

2

SCANNED & FAXED BY:

JAN 21 1998

C. D. D.