



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

CAMBREX CORPORATION, NEPERA, INC,  
WARNER-LAMBERT COMPANY, LLC, and  
PFIZER, INC.,

Defendants.  
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08 Civ. 5815 (RMB)

**ORDER**

On or about June 27, 2008, the United States of America ("Government") filed a complaint ("Complaint") against Cambrex Corporation, Nepera, Inc., Warner-Lambert Company, LLC, and Pfizer, Inc. (collectively, "Defendants"), alleging, among other things, that Defendants "disposed of material at the [Nepera Chemical Company Superfund Site ("Site")] located in the Town of Hamptonburgh, Orange County, New York] containing 'hazardous substances,' within the meaning of section 101(14) of the [Comprehensive Environmental Response, Compensation, and Liability Act ('CERCLA')], 42 U.S.C. § 9601(14), including, without limitation, pyridine compounds, chlorobenzene, ethylbenzene, toluene and xylenes," and "the actual and threatened release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health and welfare or the environment." (Compl. ¶¶ 20, 29.)

Also on June 27, 2008, the Government filed a proposed Consent Decree for Remedial Design/Remedial Action, dated June 26, 2008 ("Consent Decree"), which states, among other things, that Defendants "shall finance and perform the [required remediation of the Site] in accordance with [the] Consent Decree, the [Record of Decision ('ROD')], the

Statement of Work ('SOW')), and all work plans . . . developed by [Defendants] and approved by the EPA,” and Defendants “shall reimburse the United States for past response costs and future response costs.” (Consent Decree ¶ 6(a).) “Pursuant to 28 C.F.R. § 50.7, notice of the Consent Decree was published in the Federal Register on July 7, 2008” for a 30-day comment period and the Government “received just one cursory comment.” (Gov’t Mot. to Enter Consent Decree, dated September 15, 2008 (“Motion”), at 2.)

On or about September 15, 2008, the Government filed an unopposed motion to enter the Consent Decree, (see Motion at 3–4), and having reviewed the Complaint, the proposed Consent Decree, the Government’s Motion, the applicable law, and the record herein, the Court finds and directs the following:

The Government’s motion to enter the Consent Decree is granted. See United States v. Ashland, Inc., No. 04 Civ. 904S, 2008 U.S. Dist. LEXIS 39157, at \*8 (W.D.N.Y. May 14, 2008). “In examining a proposed consent decree in the environmental context, a court must satisfy itself that the settlement is reasonable, fair, and consistent with the purposes of the statute under which the case was brought.” Id. “The function of the reviewing court is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree meet this standard.” 55 Motor Ave., Co. v. Liberty Indus. Finishing Corp., 332 F. Supp. 2d 525, 530 (E.D.N.Y. 2004).

“In determining whether the consent decree[] [is] reasonable, this Court must consider whether the consent decree[] allows for an efficacious clean-up and adequate compensation of the public for the cost of that clean-up.” State of N.Y. v. Panex Indus., Inc., No. 94 Civ. 0400E(H), 2000 U.S. Dist. LEXIS 7913, at \*6 (W.D.N.Y. June 6, 2000). The Government correctly argues that “the work to be performed by the Defendants will be

technically adequate to address the environmental problems at the Site, as they will be implementing the remedy selected by the [Environmental Protection Agency (“EPA”)] and set forth in the [ROD].” (Mot. at 11); see also *55 Motor Ave. Co.*, 332 F. Supp. 2d at 532. And, the Defendants “shall finance and perform” the remediation of the Site, “pay to [the] EPA all future response costs,” and pay the Government \$495,000 “in past response costs [expended by the EPA] at, or with respect to, the Nepera Site.” (See Decl. of Mark E. Dannenberg, dated September 8, 2008 (“Dannenberg Decl.”) ¶ 3); (see also Consent Decree ¶¶ 6, 54, 55.) “Because the remedial plan will adequately decontaminate the Site, [and] the public will not be saddled with an unjust portion of the costs of the cleanup . . . this proposed consent decree is reasonable.” *55 Motor Ave. Co.*, 332 F. Supp. 2d at 533.

“The fairness of a CERCLA settlement is judged on both substantive and procedural terms.” *Id.* at 530. “The terms of a consent decree are substantively fair if they are based on the comparative fault and if liability is apportioned in relation to rational estimates of the harm each party has caused.” *Ashland*, 2008 U.S. Dist. LEXIS 39157, at \*6. “The Defendants have agreed among themselves how the response costs and past costs are to be paid by each of them pursuant to the Consent Decree.” (Mot. at 10.) And, “the Defendants have all expressed to the [Government] that they have no objection to the entry of the Consent Decree.” (*Id.*) “Thus, this Court finds that the parties have fully considered the issue of comparative fault and have allocated liability accordingly.” *Ashland*, 2008 U.S. Dist. LEXIS 39157, at \*7. And, “neither party has complained of procedural unfairness, and indeed, both sides [agree to] approval of the Consent Decree. This Court is therefore satisfied that the consent decree is procedurally sound.” *Ashland*, 2008 U.S. Dist. LEXIS 39157, at \* 5–6; (see also Mot. at 10).

“In considering whether a consent decree is consistent with the purpose and intent of CERCLA, the court must consider whether the decree allows for prompt clean-up, does not unnecessarily use superfund monies, and reduces the need for the expenditure of resources of enforcement.” State of N.Y. v. City of Johnstown, Nos. 87 Civ. 636, 87 Civ. 637, 1998 U.S. Dist. LEXIS 5037, at \*13–14 (N.D.N.Y. Apr. 2, 1998). “No party has asserted – and the record does not show – that the consent decree[] address[es] environmental and public health concerns in a manner that is inconsistent with CERCLA’s purposes.” Panex Indus. Inc., 2000 U.S. Dist. LEXIS 7913, at \*7 n.2. The Consent Decree requires “Defendants’ immediate implementation of comprehensive injunctive measures,” (Mot. at 3) and “by agreeing to [this] settlement[] the public is assured not only that the shares of liability assigned to these parties will be greater than zero but also that the [Government] will not have to expend its limited resources unnecessarily, to the detriment of other areas in the [Government].” Id. at \*7. The Consent Decree “fully comports with the two main objectives underlying CERCLA.” In re: Cuyahoga Equip. Corp., 980 F.2d 110, 119 (2d Cir. 1992).

During the 30-day public comment period following the Government’s filing of the Consent Decree, the Government received only one comment from “B. Sachau,” (Mot. at 2), who “appears to live in New Jersey, and to the Government’s knowledge has no connection to the Site.” (Mot. at 2.) B. Sachau’s comment is as follows: “It is my opinion these polluters are getting off easy. After all, they cause deaths and injury to all – animals, people, the environment. This is a measly sum. I think Warner Lambert and Pfizer had competent people who knew they were polluting and did it anyway. Such deliberate pollution deserves severe punishment.” (Mot. at 2.) The Government persuasively answers that CERCLA does not “impose fines related to the prior disposal of hazardous substances.” (Mot. at 12.) And,

“CERCLA is a ‘broad remedial statute,’ enacted to assure that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions,” Prisco v. A & D Carting Corp., 168 F.3d 593, 602 (2d Cir. 1998); “CERCLA does not recognize claims for punitive damages,” Prisco v. New York, 902 F. Supp. 400, 411 (S.D.N.Y. 1995).

**Order**

For the reasons stated above, the Government’s unopposed motion [#4] is granted and the Consent Decree shall be entered simultaneously with this Order. The Clerk is respectfully requested to close this case.

Dated: New York, New York  
October 3, 2008

  
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RICHARD M. BERMAN, U.S.D.J.