

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and Implementation of a Remedial Program for an Inactive Hazardous Waste Disposal Site, Under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York by

ORDER ON CONSENT

Site #3-44-035
(Formerly #3-44-018)

COSCO INDUSTRIES, INC.,
SARA LEE CORPORATION,

Respondents.

WHEREAS,

1. The New York State Department of Environmental Conservation ("DEC") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued by DEC pursuant to DEC's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.

2. The New York State Department of Health ("DOH") is responsible for enforcement of Article 13, Title XII-A of the Public Health Law of the State of New York ("PHL") entitled "Inactive Hazardous Waste Disposal Sites."

3. Michael D. Zagata, Commissioner of the New York State Department of Environmental Conservation (the

"DEC Commissioner"), is the designated Trustee of natural resources pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9607(f)(2), designated Trustee of natural resources pursuant to the Oil Pollution Act ("OPA") of 1990, 33 U.S.C. 2706(b), an "authorized representative of the State" within the meaning of Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321(f)(5), and Trustee of the New York State environment pursuant to ECL Sections 1-0101 and 3-0301 (collectively the "Trustee").

4. Respondent, Cosco Industries, Inc. ("Cosco"), is a corporation organized and existing under the laws of the State of Delaware, and is doing business in the State of New York in that it has an office at 56 Church Street, Spring Valley, New York.

5. Respondent, Sara Lee Corporation ("Sara Lee"), is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business at Three First National Plaza, Chicago, Illinois. Certain of the assets of Cosco were owned previously by Consolidated Foods Corporation, the predecessor in name to Sara Lee.

6. Cosco and Sara Lee ("Respondents") previously owned and operated a manufacturing facility on West Street (the "West Street Facility") in Spring Valley, Rockland County, New York.

7. The Spring Valley Water Company (the "Water Company") is a New York corporation with its principal place of business

at 360 West Nyack Road, West Nyack, Rockland County, New York. It operates a public drinking water utility with a well field (the "Well Field") in the Village of Spring Valley (the "Village"), Rockland County, New York.

8. There is now pending in the United States District Court for the Southern District of New York an action over the alleged contamination of the Well Field entitled Spring Valley Water Company v. Cosco Industries, Inc., Sara Lee Corporation, et al. v. J. Fletcher Creamer & Son, Inc. and The Village of Spring Valley, 91 Civ. 0410 (PKL) (the "Water Company Lawsuit").

9. DEC listed the Well Field property in the Registry of Inactive Hazardous Waste Disposal Sites as the "Spring Valley Well Field Site" (Site # 3-44-018) ("SVWF site"), classified as a "2" pursuant to ECL Section 27-1305(4)(b).

10. During 1987 to 1990, a State funded Remedial Investigation/Feasibility Study at the SVWF site was performed.

11. A Record of Decision was issued by the State for the SVWF site dated March 29, 1990 entitled "New York State Superfund, Record of Decision, Spring Valley Well Field, ID Number 344018" (the "ROD").

12. In April 1990, DEC changed the name of the SVWF Site to the "Cosco/CPC site" numbered #3-44-035 which site is in the Village approximately 3000 feet from the Well Field and includes the West Street Facility and property on North Cole Avenue (the "Cosco/CPC site").

13. DEC has found that the Cosco/CPC site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Cosco/CPC site has now been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 3-44-035. DEC has classified the Cosco/CPC site as a "2" pursuant to ECL 27-1305.4.b.

14. For the purposes of this Order and settlement, the term "Site" as used herein includes the former SVWF site, the Cosco/CPC site and areas in between those sites which may have been impacted, may have impacted, or may be impacting the Well Field or ground water in between those sites.

15. Pursuant to an Order issued June 8, 1990, Cosco and Sara Lee conducted a Supplemental Remedial Investigation ("SRI") during the summer of 1990. The SRI report was submitted to the DEC on September 6, 1990.

16. Pursuant to Orders dated January 17, 1992, the Water Company, Cosco and Sara Lee conducted a Focused Supplemental Remedial Investigation of the groundwater flow between the Cosco/CPC site and the SVWF site. Reports were submitted on March 17, 1992.

17. The investigations and data underlying this Order include investigations conducted by or for the DEC, the Water Company and the Respondents. However, the parties to this Order, including the DEC, are not deemed, by their execution of this Order, to accept or approve the accuracy or conclusions of

these studies and reports. Such investigations and reports include:

Leggette, Brashears & Graham, Inc., "The Hydrogeological Assessment of Rockland County," 1979

Leggette, Brashears & Graham, Inc., "1982 Well Testing and Monitoring Program at Spring Valley Well Field," November 1982

Wehran Engineering, P.C., "Spring Valley Well Field Phase 1 Investigation Report," June 1983

Hackensack Water Company, "Volatile Chemical Groundwater Contamination," Rockland County, New York, 1985

NYS Department of Environmental Conservation Hazard Ranking Score of 27.16 (1985)

GHR Engineering Associates, Inc., "Proposal for Remedial Investigation/Feasibility Study," November 20, 1986

GHR Engineering Associates, Inc., "Revised Scope of Work, Remedial Investigation/Feasibility Study," March 23, 1987

NYS Department of Environmental Conservation Public Participation Plan for Spring Valley Well Field Site, July 1987

GHR Engineering Associates, Inc., "Work Plan for Remedial Investigation," August 1987

GHR Engineering Associates, Inc., "Report on Initial Investigation," April 1988

GHR Engineering Associates, Inc., "Remedial Investigation Report, Spring Valley Well Field Site, Volumes I and II," February 1989

GHR Engineering Associates, Inc., "Feasibility Study Report," July 1989

NYS Department of Environmental Conservation, Spring Valley Well Field Public Meeting, November 23, 1989

GHR Engineering Associates, Inc., "Feasibility Study Report," January 1990

Work Plan for Supplementing Remedial Investigation of Spring Valley Well Field with Additional Potentiometric Data, January 5, 1990

Addendum 2 to "Work Plan for Supplementing Remedial Investigation of Spring Valley Well Field with Additional Potentiometric Data," February 19, 1990

New York State Superfund, Record of Decision, Spring Valley Well Field, ID Number 344018, March 1990

Woodward-Clyde letter to Edward Blackmer of DEC regarding "Response to Comments on Work Plan for Supplemental Remedial Investigation, Spring Valley Well Field Site," March 22, 1990

Woodward-Clyde Consultants Work Plan for Supplementing Remedial Investigation of Spring Valley Well Field with Additional Potentiometric Data, Revision 1, April 27, 1990

Woodward-Clyde Consultants Work Plan for Supplementing Remedial Investigation of Spring Valley Well Field with Additional Potentiometric Data, Revision 2, May 11, 1990

Woodward-Clyde Consultants letter to Susan McCormick of DEC regarding "Proposed Schedule for Reading Piezometers, Spring Valley Well Field Site, Supplemental Remedial Investigations," May 30, 1990

Woodward-Clyde Consultants Supplemental Remedial Investigation Report, Spring Valley Well Field, Spring Valley, New York, August 31, 1990

Woodward-Clyde Consultants Technical Comments on the Spring Valley Water Company Site ROD Document, September 5, 1990

NYSDEC Response to Woodward-Clyde Consultants' comments on ROD for Spring Valley Well Field Site, November 1990

Woodward-Clyde Consultants Draft 1, Initial Outline of Work Plan for Supplemental Remedial Investigation--Phase 2, Source Identification and Characterization Study in Reach B Drainage Basin, Spring Valley, New York, December 7, 1990 (transmitted to DEC in draft form on April 11, 1991)

Woodward-Clyde Consultants Procedure for Determining Accuracy and Precision of Digital Pneumatic Pressure Indicator Used to Measure Water Levels during Supplemental

Remedial Investigation at Spring Valley Well Field, Spring Valley, New York, February 1, 1991

Woodward-Clyde Consultants Work Plan Outline for Remedial Investigation and Feasibility Study, Cosco/CPC Site, Spring Valley, New York, May 7, 1991

Woodward-Clyde Consultants Response to DEC's Comments on the Work Plan Outline for the Cosco/CPC Remedial Investigation, June 26, 1991

Woodward-Clyde Consultants Site Activity Plan for Remedial Investigation and Feasibility Study, Cosco/CPC Site, Spring Valley, New York, July 19, 1991

Woodward-Clyde Consultants Response to Leggette, Brashears & Graham's comments to Site Activity Plan for Cosco/CPC Remedial Investigation, August 26, 1991

Woodward-Clyde's Comments on Part 1 of Leggette, Brashears & Graham's Field Operations Plan for the Pump Test at the Spring Valley Well Field, October 1991

Woodward-Clyde Consultant's Comments on the "Ground Water Pumping Test, Spring Valley Well Field, Spring Valley, New York Field Operations Plan (Part 2)," Sections 3 and 4, October 1991

Leggette, Brashears & Graham, Inc., "Groundwater Pumping Test, Spring Valley Well Field, Field Operations Plan," October 1991

Woodward-Clyde Consultants Appendix for Pump Test Work Plan, "Appendix B-1 Modifications to the Detailed Procedures Contained in Sections 2 and 3," December 1991

DEC, Draft Pump Test Work Plan, December 3, 1991

Woodward-Clyde Consultants comments on Draft "Work Plan for Pump Test at the Spring Valley Well Field, Spring Valley, New York," prepared by DEC, December 6, 1991

NYS Department of Environmental Conservation, Leggette, Brashears & Graham, Woodward-Clyde Consultants "Work Plan for Pump Test, Spring Valley Well Field," December 9, 1991

Woodward-Clyde Consultants Focused Supplemental Remedial Investigation Report, Spring Valley Well Field, Spring Valley, New York, Volumes 1 and 3, March 1992

Leggette, Brashears & Graham, Inc., "Spring Valley Well Field Drilling and Pump Test Program," March 1992

Woodward-Clyde Consultants' Review of Report prepared by Leggette, Brashears & Graham for the Spring Valley Well Field Pump Test, April 1992

Appendix A of Review of Report prepared by Leggette, Brashears & Graham for the Spring Valley Well Field Pump Test, May 1992

Water Level Data and Structural Geologic Data collected in Spring Valley, New York by Woodward-Clyde Consultants on April 27 and 28, 1992, May 14, 1992

Woodward-Clyde Consultants' letter to Kernan Davis of DEC from Woodward-Clyde Consultants regarding "Request for Investigation of Potential Sources of Trichloroethylene and Tetrachloroethylene Contamination in the Spring Valley Area, Spring Valley, New York," June 11, 1992 (Note: Also submitted to David S. Rubinton of DEC on November 23, 1993)

Woodward-Clyde Consultants letter to John Barnes of DEC regarding rebuttal of DEC's position regarding 340 ft Control Point of Figure 20 of Focused Supplemental Remedial Investigation Report (Pump Test Report), June 25, 1992

DEC "Analysis of a Pump Test in a Heterogeneous, Anisotropic Bedrock Aquifer," by J.D. Barnes and C. Magee, August 1992

Woodward-Clyde Consultants memorandum and attachments to Kernan Davis of DEC regarding "Presence of Tetrachloroethylene (PCE) and 1,2 Dichloroethane (DCA) at former J. Fletcher Creamer Company Yard, Spring Valley Well Field, Spring Valley, New York," August 26, 1992

Woodward-Clyde Consultants letter to John Barnes of DEC regarding piezometer maintenance and description of spring in Monsey Glen, November 2, 1992

Woodward-Clyde Consultants letter Work Plan to Messrs. John Barnes and David Rubinton of DEC, May 13, 1993

Woodward-Clyde Consultants Soil Gas Survey Results, former J. Fletcher Creamer Yard, Spring Valley Well Field, Spring Valley, New York, August 1993

18. A. Pursuant to ECL 27-1313.3.a, whenever the DEC Commissioner "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to

the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of DEC, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. DEC also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

19. Pursuant to 6 NYCRR 375-2.1(b)(8)(v) Respondents may be required to "restore any natural resource belonging to or managed by or held in trust by or appertaining to or otherwise controlled by the State that has sustained significant adverse impact attributable to the disposal of hazardous waste at the site."

20. "Natural Resources" include, but are not limited to, land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, or otherwise controlled by New York State. CERCLA Section 101(16), as amended, 42 U.S.C. 9601(16).

21. DEC, following a period of public comment, selected a final remedial alternative for the Site in a Record of Decision.

22. In order to promote the public interest in effecting a timely remediation of the Site, and in order to eliminate any further delay in remediation that litigation may cause, DEC has determined that it should undertake the remediation of the Site directly and obtain certain monies from the Respondents.

23. Respondents assert that they did not contribute to and are not responsible for the existence of contamination at either the Well Field or the Cosco/CPC site or elsewhere on the Site. Nevertheless, DEC, DOH and Respondents desire to settle all claims arising or which may arise from any releases at the Site without litigation and without the admission or adjudication of any issue of fact or law.

24. DEC may use the monies paid by Respondents in settlement of this matter for any purposes relating to the remediation of the Site, including, but not limited to, contractor and administrative costs.

25. Respondents have further agreed to settle, without admission of liability, the Water Company Lawsuit, which settlement will include the payment of a certain sum of money by the Respondents to the Water Company for remediation by the Water Company at the Well Field.

26. DEC and Respondents agree that the goal of this Order shall be to establish the terms and conditions under which the Respondents shall pay to DEC through periodic payments a certain sum which DEC shall use to help defray past and future costs, including costs expended or to be expended by the State for the investigation, development and implementation of a remedial program for the Site.

27. Respondents, having waived their right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, without the admission of any issue of fact or of law, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of DEC to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised,
IT IS ORDERED THAT:

I. Respondents shall pay DEC the amount of Two Million Five Hundred Thousand (\$2,500,000.00) Dollars to help defray past and future State costs, including costs the State has expended and will expend for the investigation, development and implementation of a Remedial Program at the Site, in accordance with the Schedule set forth in Paragraph II.A of this Order.

II. A. The Respondents shall make three (3) payments according to the following schedule:

- (1) \$833,333.33 within thirty (30) days of receiving notice of the effective date of this Order;
- (2) \$833,333.33 twelve (12) months after the effective date of this Order; and
- (3) \$833,333.33 twenty-four (24) months after the effective date of this Order

B. Payments shall be made by certified check payable to the "New York State Hazardous Waste Remedial Fund." The checks shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Room 260A, Albany, New York 12233-7010 with a copy of the cover letter and check sent to Louis P. Oliva, Esq., NYSDEC, 47-40 21st Street, Long Island City, New York 11101.

C. Respondents are making these payments to help defray the past and future State costs, including costs the State has expended and will expend for the investigation, development and implementation of a remedial program at the Site, including, but not limited to, contractor and administrative costs.

III. This Order and the tender of the payments required hereunder shall constitute full discharge and release of Respondents and each of them and their respective shareholders,

directors, officers, employees, former shareholders, directors, officers and employees, agents, successors and assigns and each of them by the DEC and DOH for all actions, claims, injunctions, damages, liabilities, fees, costs, expenses, fines, taxes and penalties, including past, present or future claims under the common law or any State or federal statutes administered or enforced by the State, arising out of (a) releases at or from the Site of hazardous wastes or substances, as those terms are used in the ECL, PHL, CERCLA and amendments to such statutes (hereinafter collectively referred to as "Hazardous Substances"), (b) DEC and DOH response and other costs as such costs are deemed recoverable pursuant to the ECL, CERCLA and PHL and amendments to such statutes, and (c) Natural Resources damages at or stemming from the Site.

IV. In consideration of Respondents' consent to the issuance of this Order and until the releases provided above take effect, DEC and DOH covenant not to sue, execute judgment, or take any civil, judicial, or administrative action under federal or State law, against either or both of the Respondents, their respective shareholders, directors, officers, employees, former shareholders, directors, officers and employees, agents, successors and assigns arising out of or relating to any releases of Hazardous Substances at the Site.

V. (A) This Order, including the release with respect to Natural Resources damages, may be reopened by the DEC only upon the discovery of any release of Hazardous Substances from the West Street Facility or any other facility, previously or currently owned by Respondents, located on the Site, as described in Paragraph 14, for which Respondents were responsible and which were not known, detected or contemplated as reflected by the data or conditions reported in the studies and reports referred to in Paragraph 16 and 17 of this Order, or reasonably could not have been known, detected or contemplated on or before the effective date of this Order and which present an imminent and substantial endangerment to human health and the environment or a condition dangerous to life or health;

(B) A determination by the DEC Commissioner, as Trustee, which increases the assessment of the magnitude of injury, destruction or loss to Natural Resources or the estimated or actual Natural Resource damages, or concludes that a previously identified injury caused by the release of Hazardous Substances resulted from a release by one of the Respondents, shall not be considered cause for the application of this reopener.

VI. Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC or DOH may have against anyone other

than Respondents, their shareholders, their directors, officers, employees, former directors, officers and employees, agents, successors and assigns.

VII. With regard to claims against Respondents for matters addressed in this Order, Respondents are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2).

VIII. Respondents' failure to comply with any term of this Order shall constitute a violation of this Order and ECL § 71-2705.

IX. Nothing contained in this Order shall be construed to prohibit the DEC Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

B. Communication to be made from the Respondents to DEC shall be sent to:

Louis P. Oliva, Esq.
NYSDEC
47-40 21st Street
Long Island City, New York 11101

with copies to:

Susan McCormick, P.E.
NYSDEC
Div. of Haz. Waste Remediation
50 Wolf Road - Room 222
Albany, New York 12233-7010

and:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place - Room 205
Albany, New York 12203

C. Communication to be made from DEC to Respondents
shall be sent to:

Courtney M. Price, Esq.
Reid & Priest
Market Square
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

and

John Hanna, Jr., Esq.
Whiteman Osterman & Hanna
One Commerce Plaza
Albany, New York 12260

with copies to:

Steven D. Stern, Esq.
Assistant Counsel
Sara Lee Corporation
Law Department
8000 Centerview Parkway
Cordova, Tennessee 38018

and

Paul L. Becker, Esq.
General Counsel
Cosco Industries, Inc.
56 Church Street
Spring Valley, New York 10977

D. DEC and Respondents reserve the right to designate additional or different addressees for communication or written notice to the other.

XI. A. The terms of this Order shall constitute the complete and entire Order between Respondents and DEC concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by DEC regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondents of Respondents' obligation to obtain such formal approvals as may be required by this Order.

B. If Respondents desire that any provision of this Order be changed, Respondents shall make timely written application, signed by Respondents, to the DEC Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed in accordance with Paragraph X of this Order.

XII. The effective date of this Order shall be the date it is signed by the DEC Commissioner or his designee.

DATED: Albany, New York

6/3

, 1996

MICHAEL D. ZAGATA
Commissioner
New York State Department of
Environmental Conservation

By:



Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

COSCO INDUSTRIES, INC.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By:

Paul L. Becker

Vice President, Secretary/Treasurer &
Title: General Counsel

Date: March 28, 1996

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

On this 28th day of March, 1996 before me personally came Paul L. Becker, to me known, who being duly sworn, did depose and say that he resides in New City, New York; that he is the Vice Pres., Secretary/Treas. & General Counsel of Cosco Industries, Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Albert A. Smith
Notary Public

ALBERT A. SMITH
Notary Public, State of New York
No. 4342341
Residing in Rockland County
Commission Expires Apr. 30, 1997

CONSENT BY RESPONDENT

SARA LEE CORPORATION

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Janet Langford Kelly

Senior Vice President, Secretary

Title: and General Counsel

Date: March 22, 1996

ILLINOIS
STATE OF ~~NEW YORK~~)
COUNTY OF COOK) ss.:
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On this 22nd day of March, 1996 before me personally came Janet Langford Kelly, to me known, who being duly sworn, did depose and say that she resides in Chicago, Illinois; that she is the Senior Vice President, Secretary and General Counsel of Sara Lee Corporation, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

"OFFICIAL SEAL"
ROSEMARIE PISOWICZ
Notary Public, State of Illinois
My Commission Expires 10/5/99

Rosemarie Pisowicz
Notary Public