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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 7, 2007

Ms. Jane B. McAllister, Esquire
Ahlers & Cooney, P.C.
Attorneys at Law
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

Re: Tru-Fit Battery Superfund Site
Carroll, Iowa

Dear Ms. McAllister:

Enclosed is a copy of the fully executed Administrative Order on Consent for Response Action and Agreement for Recovery of Past Response Costs, Docket No. CERCLA-07-2004-0300, in the above-referenced matter. Also enclosed is the original of the Environmental Covenant, which should be filed within 30 days of your receipt of this letter.

If you have any questions regarding this matter, please contact me at (913) 551-7276.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Scott Pemberton".

J. Scott Pemberton
Senior Assistant Regional Counsel

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Tru-Fit Battery Superfund Site)
Carroll, Carroll County, Iowa)

T.J.'s Enterprises, Inc.)

Settling Party.)

PROCEEDING UNDER SECTIONS)
106(a), 107 and 122(h)(1) OF CERCLA,)
42 U.S.C. §§ 9606(a), 9607 and 9622(h)(1).)

Docket No.
CERCLA-07-2004-0300

**ADMINISTRATIVE ORDER ON CONSENT
FOR RESPONSE ACTION AND
AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS**

TABLE OF CONTENTS

I.	JURISDICTION	1
II.	BACKGROUND	1
III.	PARTIES BOUND	2
IV.	DEFINITIONS	2
V.	ACTION TO BE PERFORMED	4
VI.	PAYMENT OF RESPONSE COSTS	4
VII.	FAILURE TO COMPLY WITH AGREEMENT	4
VIII.	COVENANT NOT TO SUE BY EPA	6
IX.	RESERVATIONS OF RIGHTS BY EPA	6
X.	COVENANT NOT TO SUE BY SETTLING PARTY	7
XI.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	7
XII.	RETENTION OF RECORDS	8
XIII.	NOTICES AND SUBMISSIONS	9
XIV.	INTEGRATION/APPENDICES	9
XV.	PUBLIC COMMENT	10
XVI.	EFFECTIVE DATE	10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)	
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Tru-Fit Battery Superfund Site)	
Carroll, Carroll County, Iowa)	Docket No.
)	CERCLA-07-2004-0300
T.J.'s Enterprises, Inc.)	
)	
Settling Party.)	
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PROCEEDING UNDER SECTIONS)	
106(a), 107 and 122(h)(1) OF CERCLA,)	
42 U.S.C. §§ 9606(a), 9607 and 9622(h)(1))	
)	

I. JURISDICTION

1. This Administrative Order on Consent for Response Action and Agreement for Recovery of Past Response Costs ("Agreement") is entered into pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622(h)(1). This authority was delegated to the Administrator of the U.S. Environmental Protection Agency ("EPA") and was further delegated to the Regional Administrators of EPA. This authority was subsequently re-delegated to the Director of EPA Region VII's Superfund Division.

2. The EPA has notified the state of Iowa of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

3. This Agreement is made and entered into by EPA and T.J.'s Enterprises, Inc. ("Settling Party"). The Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

4. This Agreement concerns the Tru-Fit Battery Superfund Site ("Site") located in Carroll, Carroll County, Iowa. The EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5. 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. In April 1998, response actions were initiated by EPA to address the release of lead to surface and subsurface soils at the Site. Excavation of lead-contaminated soils began in December 1998, resulting in the excavation, on-Site treatment and off-Site disposal of approximately 2,650 tons of lead-contaminated material. The soils were excavated to below 1000 parts per million, a level suitable only for limited uses of the property. EPA's response action has been completed and all costs incurred.

6. In performing the response action, EPA has incurred response costs at or in connection with the Site.

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

8. The EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

9. The EPA and the Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The EPA has determined that the response action to be undertaken by the Settling Party under this Agreement is necessary to protect the public health, welfare or the environment, and the Settling Party has agreed to undertake such action.

III. PARTIES BOUND

10. This Agreement shall be binding upon EPA and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Administrative Order on Consent for Response Action and Agreement for Recovery of Past Response Costs and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

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

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, 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.

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

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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

g. "Parties" shall mean EPA and the Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the date of this Agreement, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "Settling Party" shall mean T.J.'s Enterprises, Inc.

k. "Site" shall mean the Tru-Fit Battery Superfund Site, encompassing approximately 1.0 acres, located on West 6th Street & Highway 71 in Carroll, Carroll County, Iowa, and generally shown on the map included in Appendix A.

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

V. ACTION TO BE PERFORMED

12. Within thirty (30) days of receipt by Settling Party of an EPA executed Environmental Covenant (in the same form as Appendix B), the Settling Party shall cause the Environmental Covenant to be filed in the Recorder's Office of Carroll County, Iowa, and shall

request a certified copy of same. Within thirty (30) days of Settling Party's receipt of the certified copy of the Environmental Covenant, the Settling Party shall provide EPA with a certified copy of the original recorded Environmental Covenant showing the County Clerk's recording stamp.

VI. PAYMENT OF RESPONSE COSTS

13. Within thirty (30) days of the effective date of this Agreement, the Settling Party shall pay to EPA \$45,000.

14. The Settling Party shall make the payment required by Paragraph 13 by certified or cashiers check made payable to the "EPA Hazardous Substance Superfund." The check and/or letter transmitting the check shall reference the name and address of the party making the payment, the Site name, the EPA Region VII Site/Spill ID Number 07ZC, and the EPA Docket Number (CERCLA-07-2004-0300) for this action. The Settling Party shall send the payment to the following address:

Mellon Bank, EPA, Region VII, Superfund
FNMG Section, P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

15. At the time of payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region VII Site/Spill ID Number 07ZC and the EPA Docket Number (CERCLA-07-2004-0300) for this action.

16. The total amount to be paid pursuant to Paragraph 13 shall be deposited in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

17. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalty.

a. If the Settling Party fails to record the Environmental Covenant as required by Paragraph 12, the Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$200.00 per day that the Environmental Covenant is not timely filed.

b. If any amounts due to EPA under Paragraph 13 are not paid by the required date, the Settling Party shall be in violation of this Agreement and shall pay to EPA, as a

stipulated penalty, in addition to the Interest required by Paragraph 17, \$200.00 per violation per day that such payment is late.

c. Stipulated penalties are due and payable within thirty (30) days of receipt by the Settling Party of a demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Party, the Site name, the EPA Region and Site Spill ID Number 07ZC, and the EPA Docket Number, CERCLA-07-2004-0300, for this action. The Settling Party shall send the check (and any accompanying letter) to:

US EPA Region VII
PO Box 371099M
Pittsburgh, Pennsylvania 15251

d. At the time of each payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions). Such notice shall identify the EPA Region VII Site Spill ID Number 07ZC and the EPA Docket Number, CERCLA-07-2004-0300, for this action.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Agreement, the Settling Party shall be subject to actions pursuant to Sections 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622, including an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse the Settling Party from payment as required by Section VI or from performance of any other requirement of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

21. Covenant Not to Sue by EPA. In consideration of the action that will be performed and the payment(s) that will be made by the Settling Party under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, EPA covenants not to sue or take administrative action against the Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the performance of the response action required by Paragraph 12 of this Agreement and for the recovery of Past Response Costs. This covenant shall take effect upon both the recording of the Environmental Covenant and receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amounts due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement and upon the certification provided by the Settling Party pursuant to Paragraph 33 of Section XII of this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

22. The EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Agreement, EPA reserves all rights against the Settling Party with respect to:

- a. liability for failure of the Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Nothing in this Agreement 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 Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

24. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund 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 claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Iowa, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

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

25. Nothing in this Agreement 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).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action that they may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a Party hereto.

27. The EPA and the Settling Party agree that the actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that the Settling Party is entitled, as of the effective date of this Agreement, 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 Agreement. The "matters addressed" in this Agreement are the recording of the Environmental Covenant and Past Response Costs.

29. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Party also agrees that,

with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA 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 Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs or other relief relating to the Site, the Settling Party 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 by EPA set forth in Section VIII.

XII. RETENTION OF RECORDS

31. Until two (2) years after the effective date of this Agreement, the Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") 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 under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the two (2) year document retention period in the preceding paragraph, the Settling Party shall notify EPA at least ninety (90) days prior to the destruction of any such record and, upon request by EPA, the Settling Party shall deliver any such record to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Party asserts such a privilege, the Settling Party shall provide EPA with the following: (a) the title of the record; (b) the date of the record; (c) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the record; and (f) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Settling Party shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no record created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that it is privileged.

33. The Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any record, report, or information relating to its potential liability regarding the Site since EPA initiated its response actions at the Site in April 1998, and that it has fully complied with any and

all EPA requests for information, including requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Agreement, 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 Agreement with respect to EPA and the Settling Party.

As to EPA:

J. Scott Pemberton, Esquire
Office of Regional Counsel
Region VII
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

As to the Settling Party:

Jane B. McAllister, Esquire
Ahlert & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

XIV. INTEGRATION/APPENDICES

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

Appendix A is the map of the Site
Appendix B is the Environmental Covenant

XV. PUBLIC COMMENT

36. This Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.


XVI. EFFECTIVE DATE

37. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 36 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

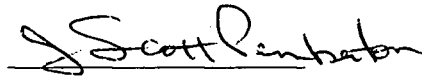
U.S. Environmental Protection Agency, Region VII

By:


Cecilia Tapia
Director, Superfund Division
U.S. Environmental Protection Agency
Region VII

3/1/07
[Date]

By:


J. Scott Pemberton
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII

MARCH 1, 2007
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of Docket No. CERCLA-07-2004-0300, relating to the Tru-Fit Battery Superfund Site, Carroll, Iowa:

FOR SETTLING PARTY: T.J.'s Enterprises, Inc.
1730 Highway 71N
Carroll, Iowa 51401

By: *Patricia Patis* 11 Nov. 18, 2006
Pres [Date]

T.J.'s Enterprises
1730 Highway 71N
Carroll, Iowa 51401

By: *Jane B. McAllister* 11-20-06
Jane B. McAllister, Esquire [Date]
Ahlers & Cooney, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

DOC ILLEGIBLE

