

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

M. SWIFT & SONS, INC.,

Defendant.

CIVIL ACTION NO. _____

STATE OF CONNECTICUT,

Plaintiff,

v.

M. SWIFT & SONS, INC.,

Defendant.

CIVIL ACTION NO. _____

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"), seeking reimbursement of response costs incurred at or in connection with the Solvents Recovery Service of New England, Inc. Superfund Site in Southington, Connecticut ("the Site").

B. The State of Connecticut (the "State") also filed a complaint against the defendant in this Court alleging that the defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Conn. Gen. Stat. § 22a-451. The State in its complaint seeks reimbursement of response costs incurred at or in connection with the Site.

C. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

D. Settling Defendant asserts it has a limited ability to pay response costs incurred and to be incurred at the Site. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant has a limited ability to pay but is able to pay the amounts specified in Section VI.

E. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, 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. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. 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. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

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

c. "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.

d. "DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

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

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Financial Information" shall mean those financial documents identified in Appendix B.

i. "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.

j. "Natural Resources" shall mean "natural resources" as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

k. "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

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

m. "Parties" shall mean the United States, the State of Connecticut, and the Settling Defendant.

- n. "Plaintiffs" shall mean the United States and the State of Connecticut.
- o. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- q. "Settling Defendant" shall mean M. Swift & Sons, Inc. and its officers and directors, including M. Allen Swift, and their successors.
- r. "Site" shall mean the Solvents Recovery Service of New England Superfund Site, encompassing approximately 45 acres, located on Lazy Lane in Southington, CT, including the aerial extent of contamination resulting from operations of the former Solvents Recovery Service of New England facility, and depicted generally on the map attached as Appendix A.
- s. "State" shall mean the State of Connecticut.
- t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make cash payments to resolve its liability for response costs and for Natural Resource Damages regarding the Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservations of Rights by the United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay \$903,861 to EPA.

6. Payment to EPA shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referring to USAO File Number ____, EPA Site/Spill ID Number 01-08, and DOJ Case Number 90-7-1-23/6. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Connecticut following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendant shall send notice that payment has been

made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio, 45268.

8. The total amount to be paid to EPA pursuant to Paragraph 5 shall be deposited in the Solvents Recovery Service of New England Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. Payment to DOI. Within 30 days of entry of the Consent Decree, Settling Defendant shall pay \$2,775 to DOI. Payment to DOI shall be made by check made payable to "United States Treasury" and delivered to the U.S. Attorney's Office, District of Connecticut. The check shall reference the full caption and Civil Action number of this action, USAO File Number _____, EPA Site/Spill ID Number 01-08, and DOJ Case Number 90-7-1-23/6. Notice that this payment has been made should be sent to: Department of the Interior, Natural Resource Damage Assessment and Restoration Fund, Attn: Restoration Fund Manager, 1849 C Street, N.W., Washington, DC 20240.

10. Payment of State Response Costs. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the State \$43,364, in the form of a certified or cashier's check. The check shall be made payable to Treasurer, State of Connecticut and shall refer to the Solvents Recovery Service of New England Superfund Site. Settling Defendant shall send the check to: Office of the Attorney General, 55 Elm Street, Hartford, CT 06106, Attn. J. Looney, Environment.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 5, 9 or 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 5, 9 or 10 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to each party (EPA, DOI or the State) that has not received the amount owed to it under Paragraph 5, 9 or 10 as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA, DOI or the State. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter

accompanying the check, shall refer to the name and address of the party making payment, the Site name, the EPA Region and EPA Site/Spill ID Number 01-08, and DOJ Case Number 90-7-1-23/6 and shall be sent to:

(By regular mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

(By overnight mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA, DOI and DOJ in accordance with Section XIII (Notices and Submissions) and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio, 45268.

d. All payments to DOI under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "United States Treasury" and delivered to the U.S. Attorney's Office, District of Connecticut. The check shall reference the full caption and Civil Action number of this action, USAO File Number ____, EPA Site/Spill ID Number 01-08, and DOJ Case Number 90-7-1-23/6. Notice that this payment has been made should be sent to: Department of the Interior, Natural Resource Damage Assessment and Restoration Fund, Attn: Restoration Fund Manager, 1849 C Street, N.W., Washington, DC 20240.

e. All payments to the State under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to Treasurer, State of Connecticut. The check, or a letter accompanying the check, shall refer to the name and address of the party making payment, the Site name, and shall be sent to Office of the Attorney General, 55 Elm Street, Hartford, CT 06106, Attn. J. Looney, Environment.

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA, DOI or the State has notified Settling Defendant 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 Consent Decree.

13. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

15. 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. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

16. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA and DOI, respectively, of all amounts required to be paid to EPA and DOI pursuant to Section VI (Payment of Response Costs and Natural Resource Damages) and any amount due EPA and DOI under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 26 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

17. In consideration of the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), Paragraphs 20 and 21, the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 107(a) of CERCLA, Conn. Gen. Stats. §§ 22a-16, 22a-432, 22a-451 or 22a-471 relating to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by the State of all amounts required to be paid to the State by Section VI (Payment of Response Costs and Natural Resource

Damages) and any amount due the State under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information is subsequently determined by the State to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 26 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the State's right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 16. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability, based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- 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.

19. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 31, is determined by EPA to be false or, in an material respect, inaccurate.

20. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the State in Paragraph 17. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability, based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

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.

21. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 31, is determined by the State to be false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANT

22. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their 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 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 claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, 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; or

c. 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.

Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 18 (c) - (d) and Paragraph 20 (c) - (d), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

23. 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).

24. Settling Defendant agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraph 24, 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 preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 24, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which 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.

26. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are (a) all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, and (b) Natural Resource Damages. The "matters addressed" in this Consent Decree do not include those response costs or response actions or Natural Resource Damages as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

27. 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 EPA, DOI, DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. 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 EPA, DOI, DOJ and the State in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA, DOI, DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

28. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant 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 by the United States or the State 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 Plaintiffs set forth in Section VIII.

XII. RETENTION OF RECORDS

29. Until such time as Settling Defendant has complied with its payment obligations pursuant to this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to (a) response actions taken at the Site or (b) the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ and the State at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ or the State, Settling Defendant shall deliver any such records to EPA or the State. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

31. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances 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; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Consent Decree, 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 the Consent Decree with respect to the United States, EPA, DOJ, DOI, the State, and Settling Defendant, respectively.

As to the United States and DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-7-1-23/6

As to EPA:

Audrey Zucker
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

As to DOI:

Mark Barash
Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158

As to the State :

John M. Looney
Assistant Attorney General
55 Elm Street
Hartford, CT 06106

As to the Settling Defendant:

Alfred E. Smith, Jr.
Martha Culling LLP
2 Whitney Avenue
New Haven, CT 06510

XIV. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

34. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements 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 map of the Site;

“Appendix B” is a list of the financial documents submitted to EPA by Settling Defendant.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

XVII. SIGNATORIES/SERVICE

37. Each of the undersigned representatives of Settling Defendant and of Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

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

39. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 200__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Connecticut v. M. Swift & Sons, Inc., Civil Action Nos. _____, relating to the Solvents Recovery Service of New England Superfund Site.

FOR THE UNITED STATES OF AMERICA:

9/26/08
Date

Bruce S. Gelber, Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

9/30/08
Date

Mark A. Gallagher
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

William M. Brown, Jr.
Assistant United States Attorney
District of Connecticut
157 Church Street
New Haven, CT 06510

2/11/08
Date

Robert W. Varney
Regional Administrator, Region 1
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

2-8-08
Date

Wesley Kelman
Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Connecticut v. M. Swift & Sons, Inc., Civil Action Nos. _____, relating to the Solvents Recovery Service of New England, Inc. Superfund Site.

FOR THE STATE OF CONNECTICUT:

RICHARD BLUMENTHAL
ATTORNEY GENERAL

9-26-08
Date

By: JOHN M. LOONEY
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Federal Bar # CT08279JML

9/26/08
Date

LORI D. DIBELLA
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Federal Bar # CT19101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Connecticut v. M. Swift & Sons, Inc., Civil Action Nos. _____, relating to the Solvents Recovery Service of New England Superfund Site.

FOR DEFENDANT M. SWIFT & SONS, INC.

Date: 1/16/08

C
Name: Robin Murdock-Meggers
Address: 113 East Center Street
Manchester, CT 06040

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robin Murdock-Meggers

Title: Executrix/Attorney

Address: 113 East Center Street
Manchester, CT 06040
860-649-5278

Appendix A

Appendix B

Appendix B – Financial Documents Submitted

1. October 31, 2006 Response of M. Swift & Sons, Inc. and Estate of Matthew Allen Swift to EPA Request for Information. This response included a 10-page written response signed by Alfred E. Smith, Jr. and the following attachments:
 - a. Federal tax returns of M. Swift & Sons, Inc., 1998-2005.
 - b. Fiduciary's probate certificate, Estate of M. Allen Swift, Connecticut Court of Probate, June 8, 2006.
 - c. Acceptance of Business Filing by W.H. Coe, Inc., Connecticut Secretary of State, February 9, 2006.
 - d. Federal tax returns of W.H. Coe, Inc., 2003-2005.
 - e. Acceptance of Business Filing by Ralph W. Grauert, Inc., Connecticut Secretary of State, February 9, 2006.
 - f. Federal tax returns of Ralph W. Grauert, Inc., 2003-2005.
 - g. Papers related to transfers of money by M. Allen Swift to M. Swift & Sons, Inc., various dates.
 - h. Federal tax returns or parts of federal tax returns of M. Allen Swift, 1997-2005, with IRS examination letters of September 12, 2005 and October 4, 2005.
 - i. Articles of trust for the M. Allen Swift Trust, July 29, 2003.
 - j. Last will and testament of M. Allen Swift, September 3, 2005, with probate court inventories of August 29, 2006 and May 16, 2006.
 - k. Letter of Morrow Morgan Smith, Inc. appraising properties at 15 Canton Springs Road and 20 Canton Springs Road, Canton, CT, March 6, 2006.

2. M. Swift & Sons, Inc. balance sheet as of December 31, 2006 and 2006 profit & loss statement, with January 11, 2007 cover letter from James G. Russell, CPA.