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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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September 15, 1995

MEMORANDUM

SUBJECT: U. S. District Court Decision Interpreting Certain CERCLA ARARs Provisions Favorably to the United States

FROM: Laurence M. Groner LMG.
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On August 15, 1995, Judge Nangle issued an order in U.S. v. Bliss, et al., C.A. No. 84-200C-1 et seq., slip opinion (E.D. Mo. Aug. 15, 1995), which concerns operation of the incineration remedy selected for cleanup of the "Missouri Dioxin sites".[1] This order provides precedent favorable to the United States which may be useful in disputes concerning the elements of Applicable or Relevant and Appropriate Requirements ("ARARs") under CERCLA and the National Contingency Plan ("NCP"). A copy of the order is attached for your review.

[1] These are twenty-eight discrete sites in eastern Missouri which were contaminated with dioxin in the early 1970's.

Background

In September, 1988, EPA signed the Record of Decision ("ROD") selecting an incineration remedy for disposition of hazardous substances from these sites. In December, 1990, the Court entered a consent decree settling the "Syntex Defendants'" ("Syntex") liability to the United States and to Missouri in this matter. Syntex agreed in the decree, among other things, to construct the incinerator and to obtain two permits concerning its operation: a RCRA/Hazardous Waste Management Permit from the United States and Missouri (the "RCRA Permit"), and an air emissions permit from St. Louis County (the "County Permit").

In December, 1994, EPA and Missouri jointly issued the draft RCRA Permit, which permitted a dioxin emission level of 1 nanogram ("ng") per cubic meter. In February, 1995, St. Louis County promulgated an ordinance and issued the County Permit, each of which allowed a far more stringent dioxin emission level of .15 ng/cubic meter. In April, 1995, EPA and Missouri issued the final RCRA permit, with the dioxin emission limit unchanged from their draft permit.

The Litigation

In May, 1995, Syntex filed a motion to construe and enforce the consent decree, representing among other things that it believed it was not required to comply with the County Permit. The United States filed a memorandum in support of the Syntex motion. The United States argued among other things that the understanding of all the parties at the time of entry of the consent decree was that the County Permit would concern exclusively "conventional" pollutants, that only the RCRA Permit would concern dioxin emissions, and that in any event the County Permit air emissions level did not constitute an ARAR which Syntex would be required to meet.[3]

The Decision

Judge Nangle decided for the United States and Syntex. He ruled that the applicable dioxin air emission standards for the incinerator are limited to those set forth in the RCRA Permit, and that the scope of the County Permit is limited to conventional air pollutants.

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[3] This notwithstanding § 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), which provides that "[n]o Federal, State, or local permit shall be required for the portion of any [response] action conducted entirely onsite . . . "

Also before the Court were St. Louis County's motion to intervene as plaintiff, either as of right or permissively, and its memorandum in opposition to the Syntex motion, filed in June and July, 1995, respectively.

In his ARARs analysis, Judge Nangle concluded that "ARARs can be State or federal ARARs but not local", slip op. at 9 (citing § 121(d)(2)(A)(ii) of CERCLA, 42 U.S.C. § 9621(d)(2)(A)(ii)), and that therefore

> the County permit . . . cannot be an ARAR even if it were to otherwise meet the requirements for an ARAR, which it does not.

Id. This is, so far as we are aware, the first time that this issue has been addressed in a court decision.

Continuing this analysis, the Court found that the County Permit would fail to qualify as an ARAR on two additional grounds. First, the Court found that, "to be an ARAR, a standard must be of general applicability", id.(citing 40 C.F.R. § 300.400(g)(4)), and it determined that the County Permit was not, applying as it did only to the single incinerator in the State "intended" to burn dioxin. Second, the Court found that the County failed to show that the County Permit's requirements, promulgated as they were well after issuance of the ROD, were "necessary to ensure that the remedy is protective of human health and the environment". The Court noted that this showing must be made in order to impose requirements established after ROD signature, because ARARs are "frozen" at the time of signature except in unusual circumstances. Id. at 10, 12 (quoting 40 C.F.R. § 300.430(f)(1)(ii)(B)(1) and citing § 121(d)(2)(A)(ii) of CERCLA, 42 U.S.C. § 9621(d)(2)(A)(ii)).

Impact of the Decision

The principal impact of this decision may be to provide useful precedent for the proposition that requirements established by governmental entities smaller than states may not constitute ARARs under CERCLA. In addition, it may signal that courts in analogous ARARs disputes will not defer to state-established environmental requirements without a searching analysis of whether they comport with CERCLA and NCP ARARs requirements. In particular, while the concepts of "freezing" ARARs, and of requiring "general applicability", are already contained in the NCP, it will be helpful to have a decision in which the court affirmed the application of the NCP to a specific set of facts.

The Court also cited the fact that the County had not nominated its standard as an ARAR before the ROD was finalized. This provides helpful precedent for cases where states and other parties seek to raise issues for the first time after the ROD is signed.

Please contact me at (202) 260-4022 if you have any questions regarding this decision.

Attachment

cc: Jon Cannon
Scott Fulton
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(Attachment)

FILED

AUG 13 1996

U. S. DISTRICT COURT
E. DISTRICT OF MO.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RUSSELL MARTIN BLISS, et al., Defendants.	Civil Action Nos. 84-200C-1, 89-351C-1 through 89-371C-1 and 90-656C-1 (Consolidated)
STATE OF MISSOURI, Plaintiff, vs. INDEPENDENT PETROCHEMICAL CORPORATION, et al., Defendants.	Civil Action No. 83-2670C(2)
STATE OF MISSOURI, Plaintiff, vs. RUSSELL MARTIN BLISS, et al., Defendants.	Civil Action No. 84-1447C(4)
STATE OF MISSOURI, Plaintiff, vs. SYNTEX (U.S.A.) Inc., et al., Defendants.	Civil Action No. 85-2856C(6)

ORDER

This matter is before the Court on the Motion of the Syntex defendants[1] asking the Court to construe, effectuate and enforce the Consent Decree as to the Syntex defendants' obligations to proceed with the implementation of the Decree in light of a recent ordinance enacted by the St. Louis County Council. Also before the Court is St. Louis County's Motion to Intervene as plaintiff and St. Louis County's Memorandum Opposing the Syntex Defendants' Motion to Construe, Effectuate and Enforce Compliance.

I. Motion to Intervene

St. Louis County seeks to intervene in this litigation as plaintiff as of right. Fed.R.Civ.P. 24(a). Plaintiff asserts that because the Court has been asked to interpret an ordinance of St. Louis County, no other party will adequately represent St. Louis County's interest. Alternatively, St. Louis County argues that it should be allowed to permissively intervene in the litigation. Fed.R.Civ.P. 24(b).

In order to intervene as a matter of right, one must make a timely application, must have a recognizable interest in the subject matter of the litigation, the interest must be one that might be impaired by the disposition of the litigation, and the interest must not be adequately protected by the parties. Mille Lacs Band of Indians v. State of Minnesota, 989 F.2d 994, 997 (8th

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[1] Syntex Corporation, Syntex (U.S.A.) Inc., Syntex Laboratories, Inc., and Syntex Agribusiness, Inc. are herein collectively referred to as "the Syntex defendants." The entity performing work pursuant to this Court's Consent Decree is Syntex Agribusiness, Inc., referred to as "Agribusiness."

Cir. 1993). "The timeliness of the motion to intervene is a threshold consideration." United States v. Bliss, 132 F.R.D. 58, 59 (E.D.Mo. 1990). Timeliness is left to the Court's discretion and is determined by all of the circumstances. Three factors receive special consideration, however: how far the proceedings have gone when intervention is sought, the prejudice which delay may cause to the parties, and the reason for the delay. Id. (quoting Arkansas Electric Energy Consumers v. Middle South Energy, Inc., 772 F.2d 401, 403 (8th Cir. 1985)).

St. Louis County's motion to intervene clearly does not meet the timeliness requirement in this case. The litigation was commenced in 1984 and the Consent Decree entered in 1990. The County has long been aware of the litigation as evidenced by its comments in September, 1990, on the proposed Consent Decree through its then County Executive H.C. Milford. Moreover, this case had a high media profile. The prejudice of any delay to the original parties would be great given that both the Syntex defendants and the United States have spent millions of dollars proceeding under the Consent decree. Accordingly, St. Louis County does not meet the requirements to intervene as a matter of right.

St. Louis County's request to permissively intervene in this case has effectively been granted. It appears from the County's motion to intervene that the County merely seeks to address the issues raised in Syntex's motion. The County has filed its brief opposing the motion and the Court has considered it in

its ruling on Syntex's motion. Therefore, the County has had its views on this matter represented as to those issues.

II. Motion to Construe, Enforce, and Effectuate Compliance with the Consent Decree

In their motion, the Syntex defendants have represented that they do not believe that they are required to attempt to comply with the St. Louis County ordinance. However, the Syntex defendants have indicated that they are fearful of proceeding without clarification and guidance from this Court as to whether or how the St. Louis County ordinance affects their obligations under the Consent Decree. Having considered the motions and pleadings of the parties, including St. Louis County's memorandum opposing Syntex's motion, the Court finds as follows:

A. FINDINGS OF FACT

1. This litigation has been before this Court since 1984. It initially involved twenty-eight different sites in Eastern Missouri that were contaminated with dioxin in the early 1970's. Dioxin-contaminated materials from eleven of these sites have already been excavated and stored.

2. After years of heavily-contested litigation and lengthy negotiations, the United States and the State of Missouri reached a settlement with the Syntex defendants that calls for the parties to remediate Times Beach and twenty-six other Eastern Missouri sites. This Court, in its Memorandum Opinion, reviewed in great detail the Consent Decree, EPA's September 29, 1988 Record of Decision (sometimes referred to herein as the "ROD") selecting the incineration remedy, and the five Syntex Work Plans incorporated by

reference into the Decree, including the Site Administration, Demolition, Remediation, Thermal Treatment, and Restoration Work Plans. United States v. Bliss, 133 F.R.D. 559 (E.D.Mo. 1990). This Court concluded that the Consent Decree, calling for incineration as the selected remedy, "was not arbitrarily or capriciously selected, but that it is in fact technically sound, appropriate and sufficient for remediation of the . . . sites." Id. at 570.

3. The Consent Decree and its Work Plans contemplated that the Syntex defendants would apply for a Hazardous Waste Management Permit from the United States Environmental Protection Agency ("EPA") and the State of Missouri to construct and operate the incinerator. By reviewing this permit application and conducting any necessary health risk assessments concerning the incinerator, EPA and the State of Missouri would fulfill their statutory mandates to protect human health and the environment. Agribusiness submitted its permit application on July 30, 1993. This application exceeded 10 volumes of material and required over six months to produce. It involved a massive effort by a full range of health, safety and environmental experts. A governmental review of the permit application and the attendant health issues has been ongoing since July of 1993, which has required input from numerous governmental agencies, including EPA, the Agency for Toxic Substances and Disease Registry (a component of the United States Public Health Service), the Missouri Department of Health, the Missouri Department of Natural Resources ("MDNR"), and the St.

Louis County Department of Health, as well as numerous independent consulting firms retained by those agencies.

4. A draft EPA/Missouri Hazardous Waste Management Facility Permit ("Draft Permit") was issued on December 16, 1994. This Draft Permit proposed to establish the allowable quantity of dioxin and metals emissions by way of a formula designed to assure that these emissions did not exceed health-based standards established by law. This formula was based upon a site-specific Times Beach Risk Assessment, also issued by the EPA in draft form in late 1994, analyzing risks conservatively projected for the initial phase of this particular incineration project. The Permit and the Risk Assessment concluded that, so long as less than approximately one nanogram of dioxin per dry standard cubic meter of air[2] was emitted from the incinerator at any time, the project could be conducted safely. For this project, the term "safely" has been defined by EPA and the State of Missouri as not subjecting even the most heavily exposed individuals to more than a one in a million chance of developing cancer. This level of risk, which is also often expressed as 1×10^{-6}, constitutes the most stringent level that EPA is authorized to impose upon any Superfund project. 40 C.F.R. 300.430(e)(2). On January 31, 1995, a public hearing was held concerning the Draft Permit. Written comments were also invited and several hundred pages of suggestions and reactions were received.

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[2] One nanogram is one billionth of a gram. Hereafter, this unit will be referred to as "1 ng/m^3".

5. On February 8, 1995, shortly after the hearings concerning the EPA/Missouri Draft Permit, the County Council of St. Louis County, Missouri, approved Ordinance No. 17,420, which amended St. Louis County's Air Pollution Control Code by adding the following provision to Section 612.180:

> No [County air] permit shall be issued for operation of an incinerator intended to burn known concentrations of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) unless it is first demonstrated in emissions burns that emissions of toxic equivalents shall not exceed 0.15 ng./dry standard cubic meter as demonstrated on feed stock, nor may any such incinerator continue to operate if this emission standard is violated. The operator of any such incinerator shall conduct periodic testing of emissions and shall maintain a log of testing results which shall be open for inspection.

Among other things, this ordinance purported to establish (without any supporting findings or justification) a dioxin emissions standard of .15 ng/m^3, more than six times as restrictive as the 1 ng/m^3 standard that EPA and the State of Missouri had determined (in their Draft Permit and Risk Assessment) to be appropriate to protect human health and the environment.

6. On April 14, 1995, EPA and Missouri issued the final Hazardous Waste Management Facility Permit ("Final Permit") in conjunction with a "Responsiveness Summary", in which they discussed the comments received from the public concerning the Draft Permit. After careful consideration, and based upon their Risk Assessment, which had been finalized on March 28, 1995, EPA and the State left intact their original formula for establishing dioxin and metals emission limits that had been introduced in the Draft Permit. As a consequence, under their Final Permit,

emissions from the incinerator are restricted to less than approximately 1 ng/m³ of dioxin at any time, and the conservative and protective 1 x 10^{-6} health-based standard has been retained from their Draft Permit. Although EPA and Missouri were well aware of the issuance of the County ordinance more than two months earlier, they did not adopt the more restrictive 0.15 ng/m³ standard established by that ordinance; they found instead that approximately 1 ng/m³ was protective of human health and the environment.

7. The Consent Decree calls for this Court to retain jurisdiction over the Decree and the parties. Specifically, the Decree provides as follows:

> This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to this Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or modification of this Decree or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with the Dispute Resolution provisions herein.

Paragraph 97.

8. Syntex has demolished and landfilled more than 600 houses and structures at Times Beach. It has successfully remediated all dioxin contamination at Times Beach, and more than 20,000 cubic yards of excavated material are safely stored in buildings at Times Beach. The company has constructed a massive ring levee to protect the excavated materials and the incinerator from flooding events. It has prepared and submitted hazardous waste, air and water permit applications for activities at Times

Beach. Work has already begun to prepare the site for installation.

B. Conclusions of Law

1. ARARs can be State or federal ARARs but not local. The EPA points out in its brief that all references to non-federal applicable or relevant and appropriate requirements ("ARARs") in both CERCLA and the National Contingency Plan refer to State, rather than local, ARARs. See e.g., 42 U.S.C. § 9621(d)(2)(A)(ii). Therefore, the County permit at issue cannot be an ARAR even if it were to otherwise meet the requirements for an ARAR, which it does not, as discussed below.

2. The County Permit is not of one of general applicability. To be an ARAR, a standard must be of general applicability.

> For purposes of identification and notification of promulgated state standards, the term promulgated means that the standards are of general applicability and are legally enforceable.

40 C.F.R. § 300.400(g)(4)(emphasis in original). The emissions standard in the County Ordinance applies only to incinerators "intended to burn known concentrations of 2,3,7,8-tetracholorodibenzo-p-dioxin." Since the Times Beach incinerator is the only incinerator in the County and State "intended" to burn dioxin, the standard is not one of general applicability.

3. Applicable Standards are Frozen as of 1988. The Consent Decree, the Work Plans, and the Federal regulations applicable to all Superfund projects generally require that the remedial action selected in the Record of Decision (the "ROD") must

attain only those ARARs identified at the time of the ROD, which in this case was September 29, 1988. Requirements promulgated after the ROD is issued must be determined by EPA to be "necessary to ensure that the remedy is protective of human health and the environment" in order to become applicable:

> Requirements that are promulgated or modified after ROD signature must be attained (or waived) only when determined [by EPA] to be applicable or relevant and appropriate and necessary to ensure that the remedy is protective of human health and the environment.

40 C.F.R. 300.430(f)(1)(ii)(B)(1)(emphasis added). This regulatory requirement was incorporated into the Consent Decree and its attached Thermal Work Plan:

> The Work, as defined in the Consent Decree, must attain a requirement that is promulgated or modified after September 29, 1988 (the date of signature of the ROD) only when the EPA Administrator (or his delegate) determines, upon a finding based on the best scientific judgment available to EPA, that such requirement is . . . necessary to ensure that the Work is protective of human health and the environment . . . .

Thermal Treatment Work Plan at Page 6-11. See also Consent Decree at Paragraphs 6 and 7.

EPA's rationale for freezing the applicable standards as of the date the ROD was signed is explained in the preamble to its March 8, 1990 rulemaking concerning Superfund regulations:

> [I]t is necessary to "freeze ARARs" when the ROD is signed rather than at initiation of remedial action because continually changing remedies to accommodate new or modified requirements would . . . disrupt CERCLA cleanups, whether the remedy is in design, construction, or in remedial action. Each of these stages represents significant time and financial investments in a particular remedy . . . . If ARARs were not frozen . . . promulgation of a new or modified requirement could result in a reconsideration of the remedy and a re-start

> of the lengthy design process, even if protectiveness is not compromised. This lack of certainty could adversely affect the operation of the CERCLA program, would be inconsistent with the Congress' mandate to expeditiously cleanup sites . . . . Neither the explicit statutory language nor the legislative history supports a conclusion that a ROD may be subject to indefinite revision as a result of shifting requirements.

55 Fed. Reg. 8666, 8757.

EPA has not and could not logically make a determination that the County's new .15 ng/m³ standard is "necessary", since it has already determined in its recent Final Permit that approximately 1 ng/m³ is adequate. In fact, EPA was aware of the County ordinance standards when it issued its Final Permit and Risk Assessment and declined to adopt that ordinance's stricter standards. The County Ordinance had been approved in February and thus preceded EPA's Final Permit by more than two months. Finally, the most stringent level of protection that EPA is allowed to impose upon any Superfund project is one in a million (1×10^{-6}) risk. 40 C.F.R. 300.430(e)(2). Since the 1 ng/m³ emission standard in the Final Permit correlates with that one in one million risk level, EPA can go no lower than 1 ng/m³ in its emissions standards.

4. The County Ordinance is Inapplicable Because it Was Passed After 1988. Since the St. Louis County ordinance was not approved until February 8, 1995, more than seven years after the date the ROD froze the relevant standards, it is not applicable to the Times Beach project. Nor can the County alter this fact by inserting the more restrictive language of the ordinance into its county air permit. See 40 C.F.R. § 300.515(d)(1); U.S. v. Akzo

Coatings of America, Inc., 949 F.2d 1409, 1454-55 (6th Cir. 1991)(once a consent decree is entered by a federal court under CERCLA, alternative state remedies may not be pursued).

5. The County Did Not Avail Itself of Several Opportunities to Attempt to Make its Dioxin Emissions Standard Applicable to this Project. In the selection, of a Superfund Remedy, EPA has established a procedure whereby a state[3] can nominate candidates for ARARs, prior to the selection of the remedy in the Record of Decision. It is then EPA's responsibility to review each candidate requirement to determine if it meets the statutory prerequisites that will qualify it for inclusion in the Record of Decision. 40 C.F.R. 300.515(h)(2). The County did not nominate any standard regarding dioxin emissions to be included in the Record of Decision in 1988. Furthermore, the Superfund statute specifically requires that the nomination of more stringent ARARs must be "timely", i.e., before the ROD is finalized. 42 U.S.C. 9621(d)(2)(A)(ii). Seven years after the ROD is signed can hardly be considered timely. Moreover, as discussed above, only recently has the County requested to intervene in this litigation. For all of these reasons, the County's regulation concerning dioxin emissions is inapplicable to this project.

6. The Work Plan Does Not Authorize the County to Impose Dioxin Standards Passed After 1988. By statute and regulation, a Superfund project does not need to apply for federal, state, or

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[3] The County could have found a way to communicate its views through the State.

local permits in order to proceed. 42 U.S.C. §9621(e)(1); 40 C.F.R. 300.400(e)(1). However, the Thermal Treatment Work Plan appended to the Consent Decree reflects a limited agreement among the parties to the Consent Decree that Syntex would apply to the St. Louis County Department of Health for a permit regarding certain air emissions from the incinerator. That agreement among the parties to the Consent Decree discusses the understanding that a permit will be sought, mentioning certain conventional pollutants, not including dioxin. As this Court is well aware, this permit provision was intended to deal only with traditional air pollutants such as particulates, sulfur dioxide, nitrogen oxides, and carbon monoxide. It was never intended or contemplated that St. Louis County - seven years later - would add numerous dioxin limitations to its air ordinance in an effort to stop this project.

The language from the Thermal Treatment Work Plan makes no mention of dioxin standards being a part of the County air permit process, for a very good reason - there <u>were no</u> State or local standards concerning dioxin emissions at the time. At the time the Consent Decree was entered, neither St. Louis County nor Missouri had any applicable requirements whatsoever concerning dioxin emissions in their air pollution codes, and no such standards had been identified in the ROD.

Finally, the Work Plans do not suggest in any way an intent by the parties to alter or waive the fundamental proposition in Federal law that ARARs are frozen as of the date of the ROD (in

this case in 1988), as described above. Nowhere does the Work Plan grant the County authority to unilaterally modify the ARARs established in the Record of Decision. To the contrary, the Thermal Treatment Work Plan specifically states as follows:

> The Work, as defined in the Consent Decree, must attain a requirement that is promulgated or modified after September 29, 1988 (the date of signature of the ROD) only when the EPA Administrator (or his delegate) determines, upon a finding based on the best scientific judgment available to EPA, that such requirement is applicable or relevant and appropriate, and necessary to ensure that the Work is protective of human health and the environment . . . .

Page 6-11. No such finding of necessity has been or can logically be made by EPA in this instance: since EPA has already determined that 1 ng/m³ is protective of human health and the environment, then the County's more restrictive standard of .15 ng/m³ is clearly not "necessary" to insure such protection. Consequently, the County ordinance cannot be made applicable to this project.

7. The Ordinance Will Impede Implementation of the Consent Decree. Upon inspection of the County's permit for this project, it appears that the County intends to apply its new ordinance to this project, notwithstanding the provisions of Federal law, the Consent Decree, the Work Plans and the EPA/Missouri Final Permit. The St. Louis County standard has an adverse effect on this critical Superfund project, because the incinerator operator may not be able to measure, much less consistently achieve this standard. Interference by other compounds may be such that laboratory equipment cannot detect dioxin emissions below .15 ng/m³, and, therefore, the Syntex

defendants could not "demonstrate" having achieved the standard as required by the St. Louis County ordinance and permit even if no dioxin were detected. In addition, the County ordinance contains other objectionable provisions that are at odds with the State/Federal permit.

8. Exclusive Jurisdiction lies with this Court. Exclusive jurisdiction for direct or indirect challenges or attacks concerning the response action pursuant to the Consent Decree in the United States v. Bliss matter lies with the United States district courts and, specifically, this Court, since continuing jurisdiction over the Decree has been retained. Consent Decree, Paragraph 97; 42 U.S.C. § 9613(b). The fact that EPA and the State issued permits for the project does not create any independent jurisdictions pursuant to the Resource Conservation and Recovery Act, or otherwise, in any other court. The fact is clearly stated in both EPA's and the State's permits.

WHEREFORE, for all the above stated reasons, this Court orders as follows:

1. The regulatory standards applicable to this Superfund project are limited to those enumerated in the 1988 Times Beach Record of Decision, along with any additional standards that EPA has subsequently determined to be applicable or relevant and appropriate, and necessary to protect human health and the environment; and

2. The only permits appropriate for this on-site Superfund project are those specifically identified in the Consent

Decree and Work Plans, and that the scope of said permits is limited to that described in the Consent Decree and Work Plans; and

3. The scope of the air permit to be secured from St. Louis County for the Times Beach incinerator is limited to control of conventional air pollutants, not including dioxin; and

4. St. Louis County Ordinance No. 17,420, and Conditions of the St. Louis County Air Pollution Control Permit #5942 related thereto are inapplicable to the Times Beach project for the reason that they are inconsistent with Federal law and regulations, the ROD, the Consent Decree, the Work Plans, and the EPA/Missouri Hazardous Waste Management Facility Permit; and

5. This Court will retain continuing jurisdiction over the Consent Decree and the Parties to this matter and, therefore, exclusive jurisdiction for direct or indirect challenges or attacks concerning this matter lies with this Court; no other court has jurisdiction pursuant to the Resource Conservation and Recovery Act, or otherwise, by virtue of the issuance of the EPA/Missouri Hazardous Waste Management Facility Permit.

UNITED STATES DISTRICT JUDGE

Dated: August 15, 1995