



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 27 1992

REPLY TO THE ATTENTION OF:

Thomas MacCormack, Esquire
990 Hillcrest
Baldwin, Wisconsin 54002

Re: Lee Farm Site Section 122(h) Administrative Agreement
Docket No. V-W-92-C-143

Dear Tom:

Section III, Paragraph 8 of the above-captioned Administrative Agreement for Theresa B. Lee (the "Agreement") states that the effective date of the Agreement shall be the date upon which the United States Environmental Protection Agency ("U.S. EPA") issues written notice to Theresa Lee that the public comment period pursuant to Section III, Paragraph 7 of the Agreement has closed, and the comments do not require modification or withdrawal of the Agreement.

In accordance with Section III, Paragraph 7, the Agreement was noticed in the Federal Register on January 23, 1992, beginning at page 2743, and the public was asked to comment within thirty (30) days as required by Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"). No public comments were received during the public comment period.

Therefore, this letter constitutes written notice to Theresa B. Lee that the public comment period on the Agreement has closed, and as no comments were received, the Agreement is effective.

If you have any questions, please call me at (312) 886-6237.

Sincerely,

A handwritten signature in cursive script that reads "Mary McAuliffe".

Mary McAuliffe
Assistant Regional Counsel

Enclosure

cc: Steve Faryan, OSC
Thomas Mariani, DOJ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:) U.S. EPA DOCKET NO. V-W-92-C-1
)
LEE'S FARM) ADMINISTRATIVE AGREEMENT
WOODVILLE, WISCONSIN) RE: SETTLEMENT OF
) RESPONSE COSTS
_____) AND ACCESS FOR
RESPONSE ACTIONS

(I)

PURPOSE, AUTHORITY, DEFINITIONS, AND BINDING EFFECT

This Administrative Agreement ("Agreement") is made and entered into by the U.S. Environmental Protection Agency (EPA) and Theresa B. Lee, regarding the facility known as the Lee's Farm/Rosen Metals Site ("Facility"), which is located in Woodville, Wisconsin and which includes real property owned by Theresa B. Lee ("the Farm") -- which is described in Attachment C -- as well as six other locations located near the Farm which were used for the burning of electric batteries (known hereinafter as "the satellite burn sites").

Among the purposes of this Agreement are for: i) EPA to covenant not to sue Theresa Lee for past response costs and presently authorized response costs (all of which are defined in Attachment A to this Agreement) incurred at or in connection with the Facility, and for ii) Theresa Lee (by executing Attachment C) to allow EPA access to her property and to carry out response actions on those portions of the Facility she owns ("the Farm"), including but not limited to the transfer of hazardous substances from other parts of the Facility to the Farm and the treatment of

hazardous substances already present at or transferred to the Farm. By this Agreement the parties intend to resolve the liability of Theresa Lee for the response costs described in Attachment A.

EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Sections 104(e) and 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), 42 U.S.C. Sections 9604(e) & 9622(h)(1), which authorities have been delegated to the Regional Offices of EPA by EPA Delegation Nos. 14-6 (Sep't. 14, 1987) and 14-14-D (Feb. 26, 1987).

This Agreement shall be binding upon EPA and shall be binding upon Theresa Lee and her successors, heirs, and assigns. Theresa Lee agrees to undertake all actions required by this Agreement. Theresa Lee consents to and will not contest or legally challenge EPA's authority to enter into this Agreement or to implement or enforce its terms.

(II)

INTRODUCTION

WHEREAS, EPA alleges that lead found in battery casings is a hazardous substance, within the meaning of Sections 101(14) and 104 of CERCLA as amended, 42 U.S.C. Sections 9601(14) and 9604,

and has been or is threatened to be released into the environment at the Facility;

WHEREAS, EPA alleges that used battery casings were disposed of at the satellite burn sites, and that these used battery casings containing lead are hazardous substances, within the meaning of Sections 101(14) and 104 of CERCLA as amended, 42 U.S.C. Sections 9601(14) and 9604, have been or are threatened to be released into the environment at these locations, and EPA desires to remediate those areas;

WHEREAS, EPA alleges that such releases or threatened releases require response action to be undertaken pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604;

WHEREAS, EPA alleges that in performing response action at the Facility, it has incurred or is authorized to incur response costs in connection with the Facility in the amount described in Attachment A;

WHEREAS, EPA alleges that Theresa Lee may be a responsible party in connection with the Facility pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Facility;

WHEREAS, Theresa Lee does not admit any of U.S. EPA's allegations, and specifically denies liability;

WHEREAS, EPA and Theresa Lee desire to settle certain issues arising from Theresa Lee's alleged involvement with the Facility without litigation and without the admission or adjudication of any issue of fact or law;

NOW THEREFORE, EPA and Theresa Lee, in consideration of the promises and covenants herein, and intending to be legally bound hereby, agree as follows:

(III)

EXCHANGE OF CONSIDERATION

1. Theresa Lee agrees to allow EPA to transport hazardous substances from the six satellite burn sites onto the Farm for purposes of conducting further response actions with respect to the hazardous substances now present at any part of the Facility, including treatment by fixation, to be conducted by EPA (or its designee) at the Farm.

2. In exchange for Theresa Lee's executing and signing the Access Agreement (Attachment C), which allows EPA to bring material from the satellite burn locations onto her property for purposes of treatment, and her execution and signing of the deed restrictions in Attachment B (as well as the proper, legally binding recordation of this deed restriction by Mrs. Lee within sixty days of the effective date of this Agreement),

EPA covenants not to sue or take any civil or administrative action against Theresa Lee for any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the response costs defined in Attachment A.

3. Nothing in this Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity other than Theresa B. Lee.
4. In consideration of EPA's covenant not to sue in Paragraph 2 of this Agreement, Theresa B. Lee agrees not to assert any claims or causes of action against the United States (including the Hazardous Substance Superfund) relating to the Facility, including: i) the costs of any response which Theresa B. Lee or her relatives undertook, or which they undertake in the future, and ii) any other costs, damages, or attorney's fees, from the United States, its agencies, employees or contractors relating to the Facility.
5. It is the intent of the parties that by entering into and carrying out the terms of this Agreement, Theresa Lee will have resolved her liability to the United

States for any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the response costs described in Attachment A.

6. It is the intent of EPA and Theresa B. Lee that by thereby resolving her liability, Theresa Lee is entitled to contribution protection to the extent provided by Section 122(h)(4) of CERCLA, 42 U.S.C. Section 122(h)(4).

7. This Agreement shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. Section 9622(i)(3), EPA may withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate, or as otherwise provided by CERCLA Sections 122(i)(3) or 122(h)(1).

8. The effective date of this Agreement shall be the date upon which EPA issues written notice to Theresa Lee:
 - i) that the public comment period pursuant to Paragraph 7 of this Agreement has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement, and further,
 - ii) that the Attorney General of the United States or

his designee has issued prior written approval of this Agreement pursuant to Section 122(h)(1) of CERCLA.

9. Certification of Financial Information and Limits on Covenant Not to Sue: By her signing this Agreement, Theresa Lee certifies to the best of her knowledge and belief that the information she and her attorney have given EPA and the United States Department of Justice regarding her income and financial status is true and correct. EPA materially relied upon this information, and accordingly reserves all rights it may have to bring any action against Theresa B. Lee if that information is incorrect. The covenant not to sue in Paragraph 2 and the provisions of Paragraphs 5 and 6 shall not be effective if this information is not true and correct, nor shall those provisions be effective if Theresa B. Lee fails to carry out any other obligation under this Agreement. Nothing in this Agreement is intended to be nor shall 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 EPA may have against Theresa B. Lee for:

a) any liability as a result of failure to provide access as required in Attachment C; or

b) any matters not expressly included in the covenant not to sue provided in paragraph 2 above, including without limitation:

- 1) response costs other than those listed in Attachment A;
- 2) injunctive relief;
- 3) damages for injury to or destruction of natural resources; or
- 4) criminal liability.

IT IS SO AGREED:

By: Theresa B. Lee
Theresa B. Lee

4-2-91
Date

U.S. Environmental Protection Agency

Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency
Region V

Signature Page: In Matter of: Lee's Farm; Woodville, Wisconsin
U.S. EPA Administrative Agreement

ATTACHMENT A

In November 1990, the United States Environmental Protection Agency (Region V) received authorization to spend additional sums at the Facility to finance response actions intended to consolidate the lead-contaminated soil from six satellite burn sites at the Farm, chemically fix the lead-contaminated material, and clay cap the treated material at the Farm. Past response costs incurred at the Facility plus those authorized for the response action noted above, which either have been incurred or will be incurred as part of the authorization for this latest response, total \$6,868,000. Those actions are detailed in the series of Action Memoranda prepared by EPA in the course of incurring or authorizing the incurrence of those response costs, dated as follows: December 11, 1984, December 21, 1984, June 28, 1985, July 5, 1987, July 25, 1985, June 12, 1987, July 6, 1987, October 12, 1989, November 14, 1989, and September 17, 1990.

ATTACHMENT B
DEED RESTRICTIONS

Theresa B. Lee hereby imposes restrictions on the following described real estate known as Lee's Farm Site in Woodville, St. Croix County, in the State of Wisconsin, Part of the SE 1/4 - NE 1/4 and part of the NE 1/4 - SE 1/4 of Section 3, T28N, R16W, Town of Eau Galle, St. Croix County, Wisconsin, described as follows:

Commencing at the northeast corner of said Section 3;
thence S 00 degrees, 33' 35" W on the east line of said Section,
2289.47 feet to the point of beginning;
thence continuing S 00 degrees 33' 35" W on the east line of said
Section, 420.41 feet to the east one-quarter corner of said
Section;
thence S 00 degrees 00' 00" E on the east line of said Section,
460.75;
thence S 90 degrees 00' 00" W 159.51 feet;
thence N 65 degrees 00' 49" W, 264.11 feet;
thence N 02 degrees 58' 56" W, 372.20 feet;
thence N 86 degrees 55' 12" W, 130.51 feet;
thence N 06 degrees 39' 25" W, 426.14 feet;
thence S 86 degrees 55' 12" E, 602.96 feet to the point of
beginning;
that said boundary contains 420,304 square feet or 9.65 acres
including road right of way;
that said parcel is subject to easements, and rights of way of
record.

The following restrictions are imposed upon the Real Estate described in this Attachment for the purpose of preventing interference with the remedial action to take place at the Lee's Farm Site pursuant to the Access Agreement entered into by Theresa B. Lee and the United States Environmental Protection Agency (U.S. EPA):

1. There shall be no residential, agricultural and/or commercial use of the Real Estate that may interfere with the response action for the Lee's Farm Site as described in the Access Agreement;
2. There shall be no residential, agricultural and/or commercial use of the Real Estate on the portion of the property where the stabilized waste will be placed, namely the quarry area as described in the attached map, including but not limited to any building, farming or other development.

The restrictions in paragraphs 1 and 2 of this deed restriction shall run with the land and shall remain in full force and effect until U.S. EPA issues a determination in writing that no further maintenance of the clay cap described in the Access Agreement is required.

IN WITNESS WHEREOF, Theresa B. Lee has caused these Deed Restrictions to be executed this day of , 1991.

Seal

Theresa B. Lee
Theresa B. Lee

ATTEST:

Thomas A. McCormick
THOMAS A. MCCORMICK

State of Wisconsin)
) SS.
County of St. Croix)

Before me, a Notary Public in and for said County and State, personally appeared Theresa B. Lee, and I acknowledge the execution of the foregoing Deed Restriction on the Lee's Farm Site.

Witness my hand and Notarial Seal the 2nd day of April , 1991.

Thomas A. McCormick
THOMAS A. MCCORMICK
Notary Public

My County of Residence: St. Croix

My Commission Expires:

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
ACCESS AGREEMENT

I, Theresa Blanche Lee, am the owner of the parcels of real property which is described in the attached legal description (hereinafter referred to as the "Properties").

By execution of this Access Agreement, I hereby consent to access for officials and authorized representatives, agents, contractors and subcontractors of the United States Environmental Protection Agency ("U.S. EPA") (including officials and representatives of the Wisconsin Department of Natural Resources ("WDNR")) to enter into and move about certain areas of the Properties needed for the response action at the Lee's Farm Superfund Site (the "Site"), as indicated in Attachment 1 and described in Attachment 2 hereto, and to perform certain activities on the Properties which are authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA").

I understand that the work which will be performed on a portion of the Properties, as indicated on Attachment 1 will include the following activities: transportation and placement of lead contaminated material from the six outlying battery burn sites; treatment/fixation of the lead waste into a non-leachable mineral form; installation of a cap; installation of an access road and fence; installation of wells; relocation and/or removal of existing structures; disturbance and removal of vegetation; installation of a surface water diversion system; and any other activities authorized under CERCLA, as necessary to address the release or threat of release of hazardous substances from the Properties.

I understand that another portion of the Properties, as indicated on Attachment 1 will be needed for the construction of the remedial action, as the location of an access road to the Site. I understand that a portion of the Properties will also be needed for the construction of the response action. The following activities, among others, will be performed in this area: installation of structures for the storage of equipment; storage of materials needed for construction; installation of facilities for personnel during construction; and other activities authorized under CERCLA. I understand that a deed restriction will be placed on a portion of the property, namely the quarry area where the stabilized waste will be placed, and that no building or farming will ever be allowed on the cap.

I understand that only those persons authorized by U.S. EPA will be given access to the Properties for the period beginning with

the construction of the response action, until the completion of response actions at the Site, and that I will be allowed no access to these parcels. I further understand that the period of response actions at the Site is currently estimated to be approximately thirty-one (31) years. The actual soil stabilization and capping will take approximately one (1) year, and the groundwater monitoring will then continue for a period of thirty (30) years.

I understand that U.S. EPA will make all reasonable efforts to minimize any disturbance or inconveniences to the businesses and residences in the area, including, in the areas needed only for the duration of construction, taking steps to restore the ground to its pre-existing condition.

I agree that, in the event of any conveyance by me, or by successors and assigns, of an interest in any of the Properties, I will convey the interest so as to ensure continued access by U.S. EPA and its representatives for the purpose of carrying out response activities pursuant to CERCLA, and that any such conveyance shall restrict the use of said Properties so that the use will not interfere with continued access and response actions by U.S. EPA and/or its representatives. I further agree that I will notify in writing the representative of U.S. EPA signing this Access Agreement below at least thirty (30) days before any conveyance of an interest in any of the Properties and to notify the other parties involved in the conveyance prior to the transfer of the provisions of this Access Agreement.

I, Theresa Lee, as owner of the aforementioned Properties, hereby authorize U.S. EPA officials and its duly authorized agents, representatives, contractors and subcontractors (including officials and representatives of the WDNR) to enter onto the Properties and to perform the activities noted above.

I agree and acknowledge that it is my intent to bind my heirs, successors and assigns to all aspects of this Access Agreement.

I acknowledge that I have received good and sufficient consideration for entering into this Access Agreement, to wit: all response actions, being taken by U.S. EPA to prevent, mitigate and otherwise reduce the threat of harm to human health, welfare or the environment presently existing or threatened upon the Properties.

Theresa B. Lee
Theresa Blanche Lee, Owner

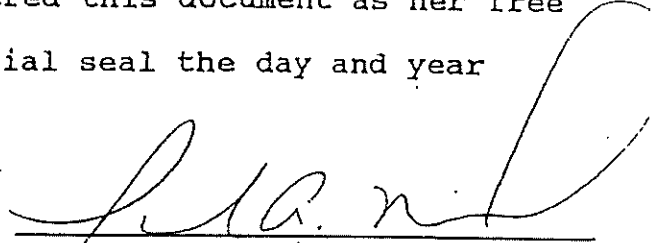
4-2-91
Date

United States of America)
State of Wisconsin) SS
County of St. Croix)

I certify that on Nov. 2, 1991, Theresa Blanche Lee personally came before me and acknowledged under oath, to my satisfaction, that she:

- (a) is named in and personally signed this document, and
- (b) signed, sealed and delivered this document as her free and voluntary act and deed.

Given under my hand and official seal the day and year stated above.



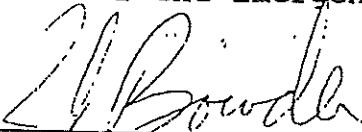
NOTARY PUBLIC in and for the State of Wisconsin

My Commission Expires: IS PERMANENT

ACCEPTANCE AND ACKNOWLEDGMENT

This Access Agreement is to take effect on the date it is executed by the Chief, Emergency Response Branch, U.S. EPA, Region V, whose address is 230 South Dearborn Street, Chicago, Illinois 60604.

IN WITNESS WHEREOF, the United States Environmental Protection Agency has caused this instrument to be executed through the Chief of the Emergency Response Branch, U.S. EPA, Region V.



Robert J. Bowden, Chief
Emergency Response Branch
Region V
U.S. Environmental Protection Agency

11/2/91
Date

