



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

AOC-2

Shpack  
10.7

BY FACSIMILE and CERTIFIED MAIL

August 14, 1991

Patricia L. Truscelli, Esq.  
Parker, Chapin, Flattau & Klimpl  
1211 Avenue of the Americas  
New York, New York 10036

Richard L. Joosten, Esq.  
Corporate Counsel  
Texas Instruments Incorporated  
13510 N. Central Expressway  
MS 241  
Dallas, Texas 75243

Re: Shpack Landfill Superfund Site - Cost Recovery  
Administrative Agreement

Dear Counsel:

I am hereby transmitting the executed cost recovery agreement, signed by Paul Keough as Acting Regional Administrator on June 18, 1991. The public comment period ran from June 9, 1991 until August 8, 1991, and no comments were received during this period. The agreement therefore becomes effective upon the date of this notice, pursuant to paragraph 24 of the agreement.

Sincerely,

Andrew Raubvogel  
Assistant Regional Counsel

cc: Pamela Shields, Remedial Project Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

IN THE MATTER OF: )  
Shpack Landfill )  
Norton and Attleboro, Massachusetts )

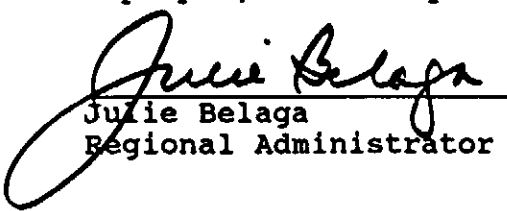
) U.S. EPA Region I  
) CERCLA Docket No.  
) I-90-1114  
)

Proceedings under Section 122(h)(1) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act, as amended, 42 U.S.C. )  
§ 9622(h)(1) )

RESPONSIVENESS SUMMARY

Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), requires EPA to publish notice of a proposed § 122(h) settlement in the Federal Register, and, for a 30-day period beginning on the date of publication of notice in the Federal Register, to provide an opportunity to persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) also requires that EPA consider any comments filed during the 30-day period, and provides that EPA may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Regarding the above-referenced action, EPA published notice of the proposed settlement in the Federal Register on July 9, 1991. EPA did not receive any written comments on the settlement during the 30-day period beginning on July 9, 1991. Therefore, EPA has not received comments which disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

  
Julie Belaga  
Regional Administrator

Aug. 13 1991  
Date /

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of: )

**SHPACK LANDFILL SITE** )  
**Norton and Attleboro, Massachusetts** )

RESPONDENTS: )

Texas Instruments Incorporated, )  
CONOCO, Inc., Handy & Harman, )  
Swank, Inc., Kewanee Industries, Inc., )  
Goditt & Boyer, Inc. )

Proceeding Under Section 122(h)(1) )  
of the Comprehensive Environmental )  
Response, Compensation, and Liability )  
Act, as amended, 42 U.S.C. § 9622(h)(1) )

**U.S. EPA Region I**  
**CERCLA Docket No.**  
**I-90-1114**

**COST RECOVERY**  
**ADMINISTRATIVE**  
**AGREEMENT**

**ADMINISTRATIVE AGREEMENT**

WHEREAS, the United States Environmental Protection Agency (EPA) alleges that hazardous substances, pollutants, and/or contaminants as defined by Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601(14) and 9601(33), have been or are threatened to be released into the environment from the Shpack Landfill Site located in the towns of Norton and Attleboro, Massachusetts (hereinafter "Site" or "Facility");

WHEREAS, the Site was listed on the National Priorities List (NPL) in June 1986, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B);

WHEREAS, EPA alleges that releases or threatened releases

required response actions to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and state law;

WHEREAS, EPA alleges that, in performing these response actions, response costs, including interest, have been incurred by EPA at or in connection with the Site totalling \$272,468.67 as of May 2, 1990, and that additional response costs will be incurred in the future;

WHEREAS, EPA alleges that the response actions performed to date and the response costs incurred in connection with the Site are consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

WHEREAS, EPA alleges that the parties who have signed this Agreement and who are listed in Appendix A ("Settling Parties") are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, the Settling Parties do not admit any of EPA's allegations; and

WHEREAS, EPA and the Settling Parties desire to settle certain claims arising from the Settling Parties' alleged involvement with the Site without litigation and without admission or adjudication of any issue of fact or law;

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

JURISDICTION

1. This Agreement is made and entered into by the United States Environmental Protection Agency and the Settling Parties whose names appear in Appendix A and who have executed the attached signature pages. This Agreement concerns the recovery of costs incurred by EPA at the Shpack Landfill Site as of May 2, 1990. The authority to enter into such an Agreement is vested in the President by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). This authority was delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), and further delegated to the Regional Administrator, Region I, of EPA, by EPA Delegation No. 14-14-D (Sept. 13, 1987).

2. The Settling Parties consent to and will not contest EPA's authority to enter into this Agreement, and agree and submit to the jurisdiction asserted in this Agreement for the purpose of any subsequent proceedings for the enforcement of this Agreement.

PARTIES BOUND

3. This Agreement shall be binding upon the Settling Parties, their directors, officers, employees, agents, successors and assigns. Each signatory to this Agreement represents that

she or he is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by her or him. The Settling Parties agree to undertake all actions required by this Agreement. The Settling Parties shall be jointly and severally liable for any payments specified in this Agreement and for any penalties arising from this Agreement as specified herein.

STATEMENT OF PURPOSE

4. In entering into this Agreement, the mutual objective of EPA and the Settling Parties is to settle EPA's claims against the Settling Parties for response costs incurred at or in connection with the Site as of May 2, 1990.

REIMBURSEMENT FOR RESPONSE COSTS

5. The Settling Parties shall make payment to EPA by certified or cashier's check in the amount of \$175,000.00 (the "Settlement Payment") within thirty (30) days after the effective date of this Agreement.

6. The EPA and the Settling Parties agree that the Settlement Payment includes any interest obligation related to response costs covered by this Agreement. In addition, the Settling Parties shall pay interest on the Settlement Payment at the rate earned during the applicable time period for non-taxable accounts in a representative bank or savings and loan institution

in Boston, Massachusetts from the date on which the Settlement Payment becomes overdue.

7. Payment of the entire Settlement Payment will constitute payment to EPA for all response costs incurred by it in connection with the Site as of May 2, 1990.

8. Within thirty (30) days after EPA receives the Settlement Payment, EPA shall provide the Settling Parties a past cost documentation package which will include the following documents, to the extent such documents exist: EPA timesheets, EPA travel vouchers, contractor monthly invoices, work assignments and/or letter reports, cooperative agreements, interagency agreements, and VIAR vouchers.

**STIPULATED PENALTIES**

9. If the Settling Parties fail to tender the entire Settlement Payment within thirty (30) days after the effective date of this Agreement, the Settling Parties who are signatories to this Agreement shall be jointly and severally liable to pay the sums set forth below as stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st - 5th day	\$1,000.00
6th - 10th day	\$2,000.00
each day thereafter	\$5,000.00

10. Any such penalty shall be due and payable within ten (10) days of the receipt of a written demand from EPA. Payment

for stipulated penalties shall be made as set forth in Paragraph 13 below. Penalties shall accrue regardless of whether EPA has notified the Settling Parties of their failure to make a timely payment.

11. In the event that the Settling Parties fail to pay stipulated penalties as provided in Paragraphs 9 and 10, EPA may institute proceedings in the United States District Court to recover such stipulated penalties and any other appropriate relief. In any such action the terms of this Agreement shall not be subject to judicial review. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of a refusal or failure to comply with the terms or conditions of this Agreement, including, but not limited to, an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3).

12. EPA may, in its non-reviewable discretion, waive or demand less than the full stipulated penalty amounts otherwise due under Paragraphs 9 and 10.

#### METHOD OF PAYMENT

13. The Settling Parties shall make all payments to EPA required under Paragraphs 5, 6 and 9 above by certified or cashier's check, payable to the "Environmental Protection Agency, Hazardous Substances Superfund". The check shall reference the

name of the Site and the EPA docket number for this Agreement. The transmittal letter accompanying each such payment shall reference that the payment is for response costs incurred at the Shpack Landfill Site, and shall be mailed to the following address:

Region I  
U.S. Environmental Protection Agency  
Attn: Hazardous Substance Superfund Accounting  
P.O. Box 360197M  
Pittsburgh, Pennsylvania 15251

The Settling Parties shall simultaneously send a copy of the transmittal letter and check to:

Andrew Raubvogel  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
John F. Kennedy Federal Building, RCV 23  
Boston, Massachusetts 02203

**RELEASE FOR COVERED MATTERS**

14. In consideration, and upon payment of the Settlement Payment, EPA agrees that such payment shall represent full satisfaction of the United States' claim against the Settling Parties for "Covered Matters." "Covered Matters" shall include any and all civil liability under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), for reimbursement of response costs incurred at or in connection with the Site as of May 2, 1990. Nothing in this Agreement shall be construed to require EPA to enter into any later agreement with respect to the Shpack Landfill Site with any Settling Party, or to prevent EPA from performing any response actions at the Site.

**COVENANT OF THE SETTLING PARTIES**

15. The Settling Parties hereby covenant not to sue the Hazardous Substances Superfund or EPA (whether directly or as the United States) for any claims related to or arising from this Agreement, including any direct or indirect claim for reimbursement. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.185(d).

**RESERVATION OF RIGHTS**

16. Except as expressly provided herein, 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 the Settling Parties for:

- a. Any liability as a result of failure to make timely payments as required by this Agreement; or
- b. Any matters not expressly included in Covered Matters, including, without limitation, any liability for:
  - (i) injunctive relief at the Site; ii) response costs incurred at the Site after May 2, 1990; or (iii) damages to natural resources.

17. 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 EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement. Except as specifically set forth herein as Covered Matters, this Agreement shall not estop or limit any legal or equitable claims of the United States against the Settling Parties, their agents, contractors, or assigns, including but not limited to, claims related to releases of hazardous substances or other pollutants or contaminants.

SETTLING PARTIES' RESERVATION OF RIGHTS

18. Except as expressly set forth herein, this Agreement shall not estop or limit any legal or equitable claims of the Settling Parties against the United States Environmental Protection Agency, its agents, contractors or assigns.

CONTRIBUTION PROTECTION

19. Subject to the reservation of rights contained in Paragraphs 16 and 17 of this Agreement, EPA agrees that by entering into and carrying out the terms of the Agreement, each Settling Party will have resolved its liability to the United States for Covered Matters, and pursuant to Section 122(h)(4) of CERCLA, 42 U.S.C. § 9622(h)(4), shall not be liable for claims

for contribution for Covered Matters.

ENFORCEMENT ACTIONS AGAINST NON-SETTLORS

20. It is the policy of the United States to identify potentially responsible parties who do not participate in CERCLA settlements and, subject to its non-reviewable prosecutorial discretion, to seek reimbursement of response costs not covered by settlement, and/or to take other appropriate action against such non-settling parties pursuant to the provisions of CERCLA.

PUBLIC COMMENT PERIOD

21. Final acceptance of this Agreement by EPA shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement (the Agreement) in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment on the proposed settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. Otherwise, EPA may execute this Agreement after consideration of such comments.

SEPARATE DOCUMENTS

22. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

APPROVAL FROM THE ATTORNEY GENERAL

23. This Agreement has received prior written approval from the Attorney General, pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

EFFECTIVE DATE

24. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Parties that the public comment period pursuant to Paragraph 21 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

By: Paul M. Keough, Acting  
Julie Belaga  
Regional Administrator


June 18, 1999  
Date

Andrew N. Raubvogel  
Andrew N. Raubvogel  
Assistant Regional Counsel

11/29/90  
Date

IT IS SO AGREED:

Name of Settling Party: Conoco Inc.

By: 

Title: Manager, Environmental Affairs

Date: 9/14/90

*MW  
XCT*

Agent Authorized to Accept Service on Behalf of Conoco Inc.:

Name: Sarah

Title: Senior Staff Environmental Engineer


Address: Conoco Inc.  
P.O. Box 2197  
Houston, TX 77252

Telephone: 713/293-4909

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IT IS SO AGREED:

Name of Settling Party: TEXAS INSTRUMENTS INCORPORATED  
By:   
By: WERNER SCHUELE  
Title: V. PRESIDENT MATERIALS & CONTROLS GROUP  
Date: SEPTEMBER 17, 1990

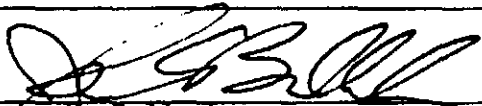
Agent Authorized to Accept Service on Behalf of Texas Instruments:

Name: Francis J. Veale, Jr.  
Title: Manager, Environmental Engineering/Industrial Hygiene  
Safety  
Address: Texas Instruments Incorporated  
34 Forest Street  
Attleboro, MA 02703  
Telephone: (508)699-1804

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IT IS SO AGREED:

Name of Settling Party: Handy & Harman  
By:   
Title: John C. Bullock  
Environmental Counsel  
Date: September 14, 1990

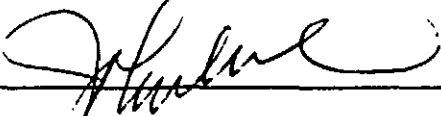
Agent Authorized to Accept Service on Behalf of Handy & Harman :

Name: John C. Bullock  
Title: Environmental Counsel  
Address: PO Box 120  
Waterbury, CT 06720  
Telephone: 203-757-9231

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IT IS SO AGREED:

Name of Settling Party: SWANK, INC.  
By:   
Title: Executive Vice President  
Date: September 14, 1990

Agent Authorized to Accept Service on Behalf of Swank, Inc.:

Name: Patricia L. Truscelli, Esq.  
Parker Chapin Flattau & Klimpl  
Title: Counsel to Swank, Inc.  
Address: 1211 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 704-6315  
fax (212) 704-6288

IT IS SO AGREED:

Name of Settling Party: Waste Management of Massachusetts, Inc.  
H/K/A Goddard & Boyer

By: Jennifer W. Catlin, Esq.

Title: authorized representative

Date: September 17, 1990

Agent Authorized to Accept Service on Behalf of Goddard & Boyer:

Name: JENNIFER W. CATLIN, ESQ.

Title:

Address: KIRKPATRICK & LOCKHART 7  
ONE LIBERTY SQUARE  
BOSTON, MA 02109

Telephone: 617-542-9500

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IT IS SO AGREED:

Chevron Chemical on behalf of

Name of Settling Party: Kewanee Industries, Inc.

By: *Frank W. Bingham*

Title: Manager, Environment & Health Protection

Date: Sept. 13, 1990

Agent Authorized to Accept Service on Behalf of \_\_\_\_\_:

Name: Daniel E. Vineyard  
Title: Attorney  
Address: 1301 McKinney  
Houston, TX 77010

Telephone: 713-754-3338

**APPENDIX A**

**BHPACK LANDFILL SITE ADMINISTRATIVE AGREEMENT**

**CERCLA DOCKET NO. I-90-1114**

CONOCO, Inc. (Continental Oil Company)  
P.O. Box 2197  
Houston, Texas 77252

Goditt & Boyer  
205 O'Neill Boulevard  
Attleboro, Massachusetts 02703

Handy & Harman  
850 Third Avenue  
New York, New York 10022

Kewanee Industries, Inc.  
c/o Chevron USA, Inc.  
575 Market Street  
San Francisco, California 94105

Swank, Inc.  
6 Hazel Street  
P.O. Box 839  
Attleboro, Massachusetts 02703

Texas Instruments Incorporated  
Richard L. Joosten, Jr., Corporation Counsel  
13510 North Central Expressway  
M/S 241  
Dallas, Texas 75243