

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

on **Bench Filed**
10/27/03

In re: : Jointly Administered
: Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION, :
a Delaware corporation, et al., : Chapter 11
: :
Debtors. : D.I. 2791
: Agenda Item 5

ORDER APPROVING CONSENT DECREE SETTLING ENVIRONMENTAL CLAIMS OF THE UNITED STATES, THE STATES OF CALIFORNIA, RHODE ISLAND AND WASHINGTON AND THE PUYALLUP TRIBE OF INDIANS

This matter coming before the Court on the Motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an order approving a consent decree (the "Consent Decree") among the Debtors, the United States of America (on behalf of the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA"), (collectively, the "Settling Federal Agencies"), the California Department of Toxic Substances Control and the California Department of Fish and Game (collectively, the "State of California"), the State of Rhode Island, the Washington Department of Ecology and the Washington Department of Fish & Wildlife (collectively, the "State of Washington") and the Puyallup Tribe of Indians (the "Tribe"); the Court having reviewed the Motion and all pleadings related thereto, including:

- (i) United States' Joinder in the Debtors' Motion to Approve Consent Decree and Memorandum of Law In Support Thereof, including the public comments attached thereto or otherwise described therein (D.I. 3034);
- (ii) (A) Objection of Atofina Chemicals, Inc. to Motion of Debtors and Debtors in Possession for Approval of a Consent Decree Settling Environmental Claims of the United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians (D.I. 2866) and (B) Withdrawal of Objection of Atofina Chemicals, Inc. to

Motion of Debtors and Debtors in Possession for Approval of a Consent Decree Settling Environmental Claims of the United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians (D.I. 2996);

- (iii) (A) General Metals of Tacoma's Objection to Kaiser's Request for Approval of Consent Decree Settling Certain Environmental Claims (D.I. 2871) and (B) Withdrawal of General Metals of Tacoma's Objection to Kaiser's Request for Approval of Consent Decree Settling Certain Environmental Claims (D.I. 2995);
- (iv) Conditional Non-Opposition to Consent Decree (City of Richmond; the Richmond Redevelopment Agency; Penterra Company; Penterra Builders; and Penterra Marina Bay) (D.I. 2875);
- (v) Letter from Bob E. Olinger regarding Milpitas, CA (D.I. 2876);
- (vi) (A) Objection of Tremont City Landfill Site PRP Group to Motion of Debtors and Debtors in Possession for Approval of Consent Decree Settling Environmental Claims of the United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians (D.I. 2905) and (B) Withdrawal of Objection of Tremont City Landfill Site PRP Group Response to Motion of Debtors and Debtors in Possession for Approval of Consent Decree Settling Environmental Claims of the United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians;
- (vii) (A) Limited Objection of St. Paul Fire and Marine Insurance Company to the Proposed Consent Decree Among Certain Debtors and Certain Governmental and Tribal Entities Related to Certain Environmental Claims (D.I. 2925) and (B) the Withdrawal of (A) St. Paul Fire and Marine Insurance Company Limited Objection to the Proposed Consent Decree Among Certain Debtors and Certain Governmental and Tribal Entities Related to Certain Environmental Claims and (B) Related Filings;
- (viii) Associated International Insurance Company's Joinder to the Limited Objection of St. Paul Fire and Marine Insurance Company to the Proposed Consent Decree (D.I. 2926); Joinder of the Ace Companies to the Limited Objection of St. Paul Fire and Marine Insurance Company to the Proposed Consent Decree Among Certain Debtors and Certain Governmental and Tribal Entities Related to Certain Environmental Claims (D.I. 2927) [withdrawn under (vi)(B) above];
- (ix) Reply of Debtors and Debtors in Possession to the Letter of Bob E. Olinger in response to the motion of Debtors and Debtors in Possession for Approval of Consent Decree Settling Environmental Claims of the

United States, the States of California, Rhode Island and Washington and the Puyallup Tribe of Indians (D.I. 3040);

- (x) Stipulation and Agreed Order Regarding Claim of the Port of Tacoma (D.I. 3036);
- (xi) Stipulation and Agreed Order Regarding Claims Related to the Tremont City Site (D.I. 3037);
- (xii) Corrected Stipulation and Agreed Order Regarding Claims of Applera Corporation (D.I. 3039);

and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the settlement embodied in the Consent Decree is fair, reasonable, in the best interests of the Debtors' estates and consistent with environmental law, including the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein:

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED;
2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion or in the Consent Decree.
3. The Debtors are authorized to enter into the Consent Decree, which is hereby approved.
4. The automatic stay is modified to the extent necessary to permit the Debtors, the Settling Federal Agencies, the State of California, the State of Rhode Island, the State of Washington and the Tribe to consummate the Consent Decree.

5. The Debtors' claims and noticing agent, Logan & Company, Inc., shall create an allowed unsecured claim (the "Commencement Bay Claim") in the amount of \$5,500,000.00 for the benefit of NOAA, DOI, the State of Washington and the Tribe in respect of claims related to the Commencement Bay (Hylebos Waterway) site. Cash and non-cash distributions in respect of the Commencement Bay Claim shall be made as set forth in the Consent Decree. To the extent that the proofs of claim filed by, or on behalf of, the NOAA, DOI, the State of Washington or the Tribe assert liabilities in respect of Commencement Bay, those claims or portions thereof are disallowed as duplicative of the Commencement Bay Claim.

6. As of the effective date of the Consent Decree, without any prejudice to the rights of (a) the Nuclear Regulatory Commission or (b) the Settling Federal Agencies with respect to any of the Reserved Sites, Claim No. 7135 shall be allowed as a general, non-priority unsecured claim on behalf of the EPA in the amount of \$17,828,839; provided, however, that the United States on behalf of DOI and NOAA shall also be entitled to its share of the distributions on the Commencement Bay Claim.

7. As of the effective date of the Consent Decree, Claim No. 7297 shall be reduced and allowed on behalf of the California Department of Toxic Substances Control as a non-priority general, unsecured claim in the amount of \$1,141,364, and reduced and allowed on behalf of the California Department of Fish and Game as a non-priority general, unsecured claim in the amount of \$15,818.

8. As of the effective date of the Consent Decree, without any prejudice with respect to any of the Reserved Sites, Claim No. 7111 filed by the State of Rhode Island shall be withdrawn, and the Debtors' claims and noticing agent is authorized and empowered to withdraw Claim No. 7111 as of the effective date of the Consent Decree.

9. While the Order and Consent Decree resolves as between the parties to the Consent Decree the matters therein stated, nothing in the Order approving the Consent Decree or the Consent Decree shall be deemed to operate to, or have the effect of, impairing the legal, equitable or contractual rights, if any, of the Debtors, on the one hand, or of an Insurer, on the other hand, under or pursuant to an insurance policy, including, without limitation, any right of an Insurer to dispute the validity and amount of any alleged claim for which payment is sought from an Insurer under or pursuant to an insurance policy. For purposes of this paragraph 9, Insurers shall be as follows: (a) St. Paul Fire and Marine Insurance Company; (b) Associated International Insurance Company; and (c) The Acc Companies, which include Century Indemnity Company (successor to CCI Insurance Company, successor to Insurance Company of North America; also successor to CIGNA Specialty Insurance Company, formerly known as California Union Insurance Company), ACE Property & Casualty Company (formerly known as CIGNA Property & Casualty Company, formerly known as Aetna Insurance Company), Pacific Insurance Company, Industrial Insurance Company and St. Paul Mercury Insurance Company.

10. With regard to all existing or future third-party Claims against the Debtors with respect to the Liquidated Sites, including claims for contribution, the Debtors are entitled to protection from actions or Claims to the maximum extent provided by Section 113(f)(2) of

CERCLA, 42 U.S.C. § 9613(f)(2), and Similar State Laws and Tribal Laws. *Notwithstanding any provision in this Order or the Consent Decree to the contrary, the Debtors shall not be entitled to contribution protection relative to Applera Corporation's claims pertaining to the Center for Technology Site in Pleasanton, California, by reason of the Consent Decree.*

Dated: _____, 2003

UNITED STATES BANKRUPTCY JUDGE

10/27/03

CPK Fitzgerald