UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE NORTH TOWER OF THE MINILLAS GOVERNMENT COMPLEX SITE PUERTO RICO PUBLIC BUILDING AUTHORITY and EVIRORESOURCES, INC. Respondents, Proceeding under Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9606(a) and 9622.	Index Number CERCLA-02-2012-2022

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Agreement") is entered into voluntarily by Puerto Rico Public Building Authority ("PBA"), and Enviroresources, Inc. ("Enviroresources"), (collectively the "Respondents") and the United States Environmental Protection Agency ("EPA") and requires Respondents to perform a removal action and pay certain response costs in connection with the North Tower of the Minillas Government Complex, (the "Site") located in san Juan, Puerto Rico.

2. The Settlement Agreement is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Fed. Reg. 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region 2 to the Director of the Emergency and

Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

3. Respondents' participation in this Settlement Agreement shall neither constitute nor be construed as an admission of liability or an admission of the Findings of Fact or Conclusions of Law contained in this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondents, Respondents agree to comply with and be bound by the terms of this Settlement Agreement. Respondents agree not to contest the authority or jurisdiction of the Director of the Emergency and Remedial Response Division or his delegate to issue this Settlement Agreement, and further agree that they will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

II. PARTIES BOUND

4. This Settlement Agreement applies to and is binding upon EPA and Respondents and their successors and assigns. Any change in the ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondents under this Settlement Agreement.

5. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one of the Respondents to implement the requirements of this Settlement Agreement, the remaining Respondent shall complete all such requirements.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement. With regard to the activities undertaken pursuant to this Settlement Agreement, each contractor and subcontractor shall be deemed to be in a contractual relationship with Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, Commonwealth or Federal holiday, the period shall run until the close of business on the next working day.

b. "Effective Date" means the date specified in Paragraph 124.

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

d. "Party" or "Parties" means EPA and/or Respondents.

e. "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.

f. "Response Costs" means (a) all direct and indirect costs incurred and paid by EPA through the Effective Date of this Settlement Agreement with respect to the Site and all interests that have accrued pursuant to 42 U.S.C. § 9607(a); (b) all direct and indirect costs incurred by EPA with respect to the Site in overseeing Respondents' implementation of the Work

(defined below) until the date of EPA's written notification pursuant to Paragraph of this Settlement Agreement that the Work has been completed; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement

g. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2012-2022, and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

h. "Site" shall mean the North Tower of the Minillas Government Complex, and the cargo area ("Cargo Area"), in De Diego Avenue, San Juan, Puerto Rico.

i. The "North Tower Minillas Government Complex Superfund Asbestos Removal Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

j. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

k. "Work" means all work and other activities that Respondents are required to perform pursuant to this Settlement Agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. PBA is a public corporation of the Commonwealth of Puerto Rico created under Law No. 56, of June 19, 1958, as amended. PBA is responsible for designing, constructing and providing maintenance to public buildings, including schools, hospitals and government buildings.

9. PBA is the owner/operator of the Minillas Governmental Complex ("Minillas Complex") in De Diego Avenue, Municipality of San Juan, consisting of two Towers, the North and South Towers. The Minillas Complex also includes a third building housing the Puerto Rico Government Development Bank.

10. PBA began a renovation project of the North Tower of the Minillas Complex on or around 2010. The renovation project was ongoing at least as of May 13, 2012.

11. Enviroresources, Inc. is a corporation duly authorized to do business in Puerto Rico. Enviroresources was at all relevant times to this Order, under contract with Aireko Construction, Corp., ("Aireko") for the asbestos abatement work in the North Tower of the Minillas Complex.

12. Aireko is a corporation duly authorized to do business in Puerto Rico. Aireko was and is at all relevant times to this Order, under contract with PBA for the asbestos demolition and renovation in the North Tower of the Minillas Complex.

13. An EPA Notification for Demolition and Renovation Form was submitted by PBA on May 7, 2012 at 5:01pm. This form was signed by Leonardo Torres Berrios, PBA Legal Services Director. According to 40 C.F.R. § 145(b), a period of ten (10) working days must elapse after the submission of the notification before commencing any asbestos removal. This period expired on May 21, 2012.

14. On May 14, 2012, EPA received a complaint alleging the following: employees of the Respondents had disposed asbestos containing materials ("ACM") from the renovation activities going on in the North Tower of the Minillas Complex, in an outside Cargo Area; the asbestos removal was being performed by un-trained and un-certified personnel; and construction debris from the North Tower, containing asbestos, was removed on Sunday, May 13, 2012, and disposed at the building's Cargo Area using the elevators and the service stairways.

15. EPA personnel were informed by Respondent PBA that demolition and renovation activities, which involved the

handling of what appeared to be ACM, had taken place at the Site, specifically on the 9th floor, on Sunday, May 13, 2012, and that these activities were performed by Respondent Aireko and by a subcontractor. PBA confirmed that the materials were transferred from the 9th floor of the Site to the Site's Cargo Area (outside of the building) using elevators and the service stairways and were eventually returned to the 9th floor. The materials were returned to the 9th floor by PBA's contractor Enviroresources, reportedly at the request of Aireko, with PBA's knowledge.

16. On May 15, 2012 EPA conducted an inspection under the CAA, which revealed the following findings:

a. A heavy dust buildup was observed on the walls, steps, hand rails, and other areas; in general, all surfaces exhibited large amounts of dust.
b. The heating, ventilation, and air-conditioning (HVAC) system was operating while heavy construction work was being performed.
c. ACM that was being improperly abated by un-trained and un-supervised individuals. Improper abate procedures included not adequately wetting the material so as to prevent emission of ACM fibers.
d. No emission control devices were in place.
e. ACM, which was returned from the Cargo Area to the 9th floor, was stored in 3 piles and only one of these piles had a precautionary label concerning the temporary storage of ACM. The ACM piles were not adequately wet nor sealed in leak-tight containers.
f. Construction workers were working without wearing proper respiratory protection equipment.
g. The Cargo Area of the North Tower, where the ACM from the demolition and renovation activities that took place on May 13, 2012 was initially taken, had materials consisting of mixed construction debris that were covered with a plastic sheet and were not adequately wet.
h. Essential information concerning the asbestos renovation project including building survey reports, asbestos management plans and permitting information, was not presented at the time of the inspection.

17. On May 16, 2012, two EPA inspectors, including an EPA On-Scene Coordinator ("OSC"), conducted a follow-up inspection of the Site (inside and outside of the building), under the authority of the Clean Air Act ("CAA") 42 U.S.C § 7401 *et seq.*, and CERCLA, to address what was believed to be an imminent release of asbestos fibers into the outside environment. EPA conducted sampling to determine the presence of ACM at the North Tower.

18. A total of twenty-one (21) bulk, dust, and wipe samples were taken in strategic locations to determine the presence of ACM in areas throughout the building. Sampling results revealed the presence of asbestos fibers outside the building in the Cargo Area, as well as inside the building in walls, floors, elevators and functional spaces, suggesting widespread contamination.

19. The OSC issued a Field Notice of Federal Interest ("FNFI") to the PBA on May 20, 2012. The OSC indicated in the FNFI that the release and/or threat of release was discovered on May 14, 2012 in the North Tower. Such release consisted of ACM in a friable form, and in high concentrations. Due to high concentrations of ACM at the main entrance of the North Tower, he recommended restricting access to the building. EQB concurred with the recommendation. PBA notified all the other government agencies with offices in the building and requested them to activate their Continuity of Operations Plans to prevent/minimize interruptions of their respective government services.

20. Since the issuance of the FNFI, emergency removal activities were conducted by EPA to prevent the ACM, located in the ground open level of the building, from being released to the environment. EPA's work included: mitigating the ACM in the Cargo Area (wetting, collecting, encapsulating and storing the waste) and removal of contaminated dust at the ground entrance of the Building. With EPA oversight, PBA cleaning up the Cargo Area corridor and the ground lobby area. With EPA oversight, PBA removed bags of debris and sealed the stairway entrance of each of the floors of the Building.

21. Asbestos is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The route of exposure to the asbestos at the Site is through inhalation. Migration of asbestos could occur through, among other things: inadvertent transfer of asbestos particles outside of the Site on workers' clothing, hair or shoes. Weather conditions, especially wind, could also make the asbestos more friable and lead to asbestos particles being transferred off-site.

23. Exposure to ACM can cause a variety of adverse human health impacts. Asbestos exposure may cause two primary classes of health effects. The first is asbestosis, a non-malignant disease characterized by a progressive scarring of the lung and pleura. The second includes potential carcinogenic effects, including development of mesothelioma and lung cancer.

24. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. Respondent PBA is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

26. Respondent Enviroresources is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. Respondents PBA and Enviroresources owned and/or operated at the Site at a time of disposal of a hazardous substance at the Site. Respondents are thus responsible parties within the meaning of Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2).

28. The presence of asbestos, both in the air and throughout the Site, constitutes a "release" or threat of "release" of a hazardous substances into the environment, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. DETERMINATIONS

29. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of NCP. These factors include, but are not limited to, the following conditions:

a. actual or potential exposure to nearby human populations from a hazardous substance or pollutant or contaminant; or

b. the unavailability of other appropriate federal or Commonwealth response mechanisms, to respond to the release.

30. EPA has determined that a removal action at this Site is necessary to address the release or threat of release of a hazardous substance or pollutant or contaminant at the Site.

31. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the NCP.

32. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of a hazardous substance from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondents shall undertake a removal action at the Site, as set forth in Section VII, (Work To Be Performed), below.

VII. WORK TO BE PERFORMED

A. Designation Of Contractor and Designated Project Coordinator

33. Within ten (10) days after the effective date of this Settlement Agreement, or three (3) days prior to commencement of cleanup activities, whichever if sooner, if not previously

submitted, Respondents shall select a coordinator, to be known as the Project Coordinator, and shall submit the name, address, qualifications, and telephone number of the Project Coordinator to EPA. The Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of this Settlement Agreement. The Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Settlement Agreement. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in the State shall be reviewed and certified by such. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

34. Selection of the Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days following EPA's disapproval. Respondents may change their Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

35. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondents. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a notice of completion of the Work in accordance with Paragraph 120. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

36. All activities required of Respondents under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, Commonwealth, and/or local governments consistent with Section 121 of CERCLA,

42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

37. Respondents shall retain at least one contractor to perform the Work. If not done already before the execution of this agreement, Respondents shall notify EPA of the name and qualifications of a proposed contractor within ten (10) days of the effective date of this Settlement Agreement. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

38. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents to conduct the Work. If EPA disapproves in writing of any of Respondents' proposed contractors to conduct the Work, Respondents shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

39. Respondents shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondents shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including its agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

40. Respondents shall perform, at a minimum, to the extent not previously completed by EPA, or previously conducted by Respondents with EPA's approval, all actions necessary to implement the Work set forth in this paragraph. The actions to

be implemented include, but may not be limited to, the following:

a. Maintaining access control to the Site until the Work is complete;
b. Completing an ACM survey with the objective of identifying all ACM remaining in the North Tower;
c. Characterizing the impact of the ACM release throughout the building;
d. Decontaminating impacted areas identified during building characterization sampling, which shall include but not be limited to, any applicable and relevant asbestos fibers removal technique(s) as per the Asbestos School Hazard Abatement Reauthorization Act (ASHARA)and applicable CERCLA removal approved clean-up methodologies in order to remove asbestos fibers and materials containing such asbestos fibers;
e. Removing disposing, and/or using in a beneficial means, as appropriate, any hazardous substances found in structures, and containers during performance of the Work;
f. Sampling to ensure that indoor air within building meets risk-based criterion of 0.002 fibers per cubic centimeter ("f/cc") utilizing aggressive air sampling procedures to determine appropriateness of building re-occupancy;
g. Characterizing, transporting and off-Site disposal of the contaminated material and waste generated during building decontamination;
h. Performing air monitoring inside and outside of the building, as appropriate; and
i. Conducting other investigations, studies, and response actions as Respondents may deem appropriate and EPA may approve in accordance with this Settlement Agreement.

41. Within ten (10) days of the effective date of this Settlement Agreement, if not previously submitted, Respondents shall submit to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work in accordance with this Settlement Agreement, CERCLA, the NCP, EPA's relevant guidance documents and other applicable Federal and State laws and regulations. This SOP shall include the following:

a. A Technical Memorandum explaining the Work to be performed;
b. A Building Characterization Sampling Plan;
c. A Site Health and Safety Plan ("HSP");
d. An Asbestos Removal Action Work Plan to address the impacted areas identified during the building characterization sampling;
e. A Re-entry/Clearance Building Sampling Plan;
f. A Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis.

42. The Building Characterization Sampling Plan shall discuss the proper sampling methodology and design to be used at each floor. The sampling shall include, but not limited to: asbestos in air, asbestos dust on smooth/hard surfaces, and asbestos dusts in porous surfaces.

43. The Asbestos Removal Action Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis of all materials containing asbestos at the Site, and at a minimum, address the following:

a. Mobilization, including set-up of offices, as necessary to properly support activities under this Settlement Agreement and establishment of work zones including, but not limited to a support zone, contamination reduction zone, and exclusion zone.
b. Construction of temporary containment barrier.
c. Proposed schedule for the completion of all Work required under this Settlement Agreement. The schedule shall provide for completion of all field work no later than sixty (60) days from the date of approval of the SOP;
d. Decontamination requirements including detailed procedures for construction of the decontamination area and the final decontamination of all personnel and equipment used at the Site during all field activities including exiting the hot zone;
e. Cleaning and clearance certification of each individual floor, elevator shafts, elevator cabins, elevator pits, air Conditioning system (as described in the work plan), and the elevator machine room.

f. Procedures for handling and storing of hazardous substances, including decontamination materials or wastes, to prevent the release of hazardous substances to the environment.
g. Transportation and disposal procedures for the proper transportation and disposal of asbestos and any wastes generated during the Work. Procedures shall address at a minimum the identification of the proposed disposal facilities for all waste streams, waste profiling, analytical characterization of each waste stream, and appropriate documentation to demonstrate proper management of aforementioned materials.

44. Health and Safety Plan. Within ten (10) days after the Effective Date, if not previously submitted, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of On-Site Work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable OSHA regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents will incorporate all changes to the plan recommended by EPA and shall implement the plan for the duration of the removal action. The HSP shall also include, but not be limited to:

a. Ensuring that all contractors comply with OSHA's occupational safety regulations to protect workers including, but not limited to, using certified asbestos handlers with documentation of their training courses, current medical evaluations, and respirator fit tests;
b. Ensuring that all contractors have the proper Asbestos Abatement Licensing required by the Commonwealth of Puerto Rico;
c. Using appropriate measures for containment, personal and waste decontamination units, and High Efficiency Particulate Air filtered units for all operational areas; and
d. Providing for a continuously monitored air sampling program that will identify any potential off-site

fugitive releases that may impact public health and the environment.

45. The QAPP shall contain the following:
    a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondents shall incorporate these procedures in accordance with the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to Respondents of such amendments, shall apply only to procedures conducted after such notification.
    b. If performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the QAPP, Respondents shall submit to EPA for review and approval proposed amendments to the QAPP.
    c. Respondents shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
    d. The QAPP shall require that any laboratory utilized by Respondents is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation ("A2LA"), or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondents to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion,

approve Respondents' utilization of a laboratory that is not certified. EPA approval shall be based on Respondents' submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.

e. In its contract(s) with laboratories utilized for the analyses of samples, Respondents shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.

f. For any analytical work performed under this Agreement and Order, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondents shall submit to EPA, within thirty (30) days after acceptance of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA OSC, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
USEPA, Division of Environmental Science and Assessment, MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837

46. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing Work under this Settlement Agreement. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity.

47. EPA either will approve the SOP, or will require modifications thereto pursuant to Section VIII (Plans and Reports Requiring EPA Approval), below. Upon its approval by

EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

48. Within five (5) days after EPA's approval of the SOP, if not already commenced, Respondents shall commence the Work described in the EPA-approved SOP. Respondents shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement. All Work requirements of this Settlement Agreement shall be completed within six (6) months of the effective date of this Settlement Agreement.

49. Respondents shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondents to receive Wastes from the Site. Respondents shall provide such notification to EPA for approval at least five (5) days prior to off-Site shipment of such Wastes.

50. At the time of completion of all activities required by this Settlement Agreement, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the cleanup.

51. Respondents shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance documents:

EPA Region 2's "Clean and Green Policy" which may be found at http://epa.gov/region2/superfund/greenremediation/policy.html, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and Modifications to EPA-Approved SOP

52. All activities required of Respondents under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other

authorizations required by the Federal government and the Commonwealth of Puerto Rico, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

53. The current EPA OSC for the Site is: Angel C. Rodriguez, of the Removal and Remediation Branch of the Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, City View Plaza II, Suite 7000, #48, Road 165, Km. 1.2, Guaynabo, Puerto Rico, 00968-8069, Phone (787) 977-5830. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for this Site.

54. EPA, including the OSC, or his authorized representative, will conduct oversight of the implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with this Settlement Agreement. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

55. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Settlement Agreement, Respondents or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the effective date of this Settlement Agreement, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved SOP. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondents.

VIII. PLANS AND REPORTS REQUIRING EPA APPROVAL

56. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement,

Respondents shall have seven (7) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

57. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

58. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Settlement Agreement. EPA may modify those documents and/or perform or require the performance of additional work unilaterally. EPA also may require Respondents to perform additional work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

59. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

IX. REPORTING AND NOTICE TO EPA

60. Commencing on the tenth day of the month after the Effective Date of this Settlement Agreement, unless there is work at the Site, Respondents shall provide monthly progress reports. Whenever, during the implementation of this Settlement Agreement, Respondents are engaged in active field work, Respondents shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7) days. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. All progress reports shall fully describe all actions and activities undertaken pursuant to this Settlement Agreement. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous week; (b) include all results of sampling and tests and all other data received by Respondents after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

61. Respondents shall provide EPA with at least one (1) week advance notice of any change in the schedule.

62. The Final Report referred to in Paragraph 64, below, and other documents submitted by Respondents to EPA which purport to document Respondents' compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondents or by the Project Coordinator designated pursuant to Paragraph 33. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

63. The SOP, the Final Report, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following:

3 copies to:

U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069
Attention: Angel C. Rodriguez, OSC

1 copy to:

U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069
Attention: Lourdes del Carmen Rodriguez, Esq.,
Office of Regional Counsel

2 copies to:

PR Environmental Quality Board
Attention: Carlos E. O'Neill
Environmental Emergency Response Area
P.O. Box 11488
San Juan, Puerto Rico 00910

64. Within thirty (30) days after completion of the work required by the SOP, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

a. A synopsis of all Work performed under this Settlement Agreement;
b. A detailed description of all EPA-approved modifications to the SOP which occurred during Respondents' performance of the Work required under this Settlement Agreement;

c. A listing of quantities and types of materials removed from the Site or handled on-Site;
d. A discussion of removal and disposal options considered for those materials;
e. A listing of the ultimate destination of those materials;
f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
g. Accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;
h. An accounting of expenses incurred by Respondents in performing the work; and
i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

> "I certify that the information contained in and accompanying this document is true, accurate, and complete."

65. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 52-55, above.

X. OVERSIGHT

66. During the implementation of the requirements of this Settlement Agreement, Respondents and their contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

67. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Settlement Agreement.

XI. COMMUNITY RELATIONS

68. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

XII. ACCESS TO PROPERTY AND INFORMATION

69. EPA, EQB, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondents shall at all times permit EPA, EQB, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

70. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as EQB and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time

period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

71. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondents from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Settlement Agreement.

72. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

73. a. All data, records, photographs and other information created, maintained or received by Respondents or their agents, contractors or consultants in connection with implementation of the Work under this Settlement Agreement, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. Upon request by EPA, Respondents shall provide copies of all such documents and other items. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

b. Upon request by EPA or its designated representatives, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Settlement Agreement, or allow EPA or its designated representatives to take such duplicate or split samples.

74. Respondents may assert a claim of business confidentiality under 40 C.F.R. § 2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information

determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

75. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, RCRA, the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., and any other applicable statute or regulation.

76. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or analyzed by EPA or Respondents in the performance or oversight of the Work under this Settlement Agreement that has been verified according to the QAPP required pursuant to this Settlement Agreement. If Respondents object to any other data relating to this Settlement Agreement which is submitted in a progress report in accordance with Paragraph 60 herein; Respondents shall submit to EPA a report that identifies and explains their objections, describes their views regarding the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within forty-five (45) days of the periodic progress report containing the data.

77. Respondents shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Site, for ten (10) years after completion of the Work required by this Settlement Agreement. At the end of the ten (10) year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

XIV. OFF-SITE SHIPMENTS

78. All hazardous substances and pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the CAA;(d) RCRA, (e) TSCA, and (f) all other applicable Federal and Commonwealth requirements.

79. If hazardous substances from the Site are to be shipped outside of Puerto Rico, Respondents shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) working days prior to such Waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

XV. COMPLIANCE WITH OTHER LAWS

80. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and Commonwealth laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or Commonwealth environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

81. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a Federal or Commonwealth permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any Federal or Commonwealth statute or regulation.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

82. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondents shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

83. In the event of any action or occurrence during Respondents' performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondents shall take such action in accordance with applicable provisions of this Settlement

Agreement including, but not limited to, the Site Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

84. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVII. REIMBURSEMENT OF COSTS

85. Respondents shall pay to EPA $250,000 for Response Costs as follows: $100,000 within ten (10) days of the Effective Date and the remaining $150,000 within thirty (30) days of the Effective Date. When it is available, EPA will provide Respondents with a printout of cost data in EPA's financial management system covering this initial $250,000 in Response Costs. Respondent may dispute such costs in accordance with Section XVIII below.

86. Respondents hereby agree to reimburse EPA for all Response Costs in excess of $250,000 in connection with the Site. EPA will periodically send billings to Respondents for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondents shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

87. To effect payment via EFT, Respondents shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**
  33 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message should read:
  D 68010727 Environmental Protection Agency
- Name of remitter:
- Settlement Agreement Index number: **CERCLA-02-2012-2022**
- Site/spill identifier: **A21L**

At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, rice.richard@epa.gov and to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and:

Angel C. Rodriguez, OSC
U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069

as well as to:

Lourdes del Carmen Rodriguez, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency Region 2
Caribbean Environmental Protection Division
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondents' names and addresses.

88. The Two Hundred and Fifty Thousand ($250,000) Dollars amount to be paid by Respondents pursuant to this paragraph shall be deposited into the "North Tower Minillas Government Complex Superfund Asbestos Removal 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. Any payments made pursuant to future billings shall be deposited directly into EPA Hazardous Substances Superfund.

89. Respondents shall pay interest on any amounts overdue under Paragraphs 85-86 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XVIII. FORCE MAJEURE

90. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not

limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondents to perform such Work.

91. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA OSC or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region 2 at 732-321-6658 within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond its control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Settlement Agreement. Respondents' failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

92. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Settlement Agreement, which are not directly affected by the force majeure. Respondents shall use their best efforts to avoid or minimize

any delay or prevention of performance of their obligations under this Settlement Agreement.

XIX. STIPULATED AND STATUTORY PENALTIES

93. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 89 through 91 above (Force Majeure), Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 68, stipulated penalties shall accrue in the amount of $1,000 per day, per violation, for the first seven days of noncompliance, $1,500 per day, per violation, for the 8th through 15th day of noncompliance, $3,000 per day, per violation, for the 16th through 25th day of noncompliance, and $7,000 per day, per violation, for the 26th day of noncompliance and beyond.

b. For the progress reports required by Paragraph 60, stipulated penalties shall accrue in the amount of $500 per day, per violation, for the first seven days of noncompliance, $1,000 per day, per violation, for the 8th through 15th day of noncompliance, $2,000 per day, per violation, for the 16th through 25th day of noncompliance, and $4,000 per day, per violation, for the 26th day of noncompliance and beyond.

94. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondents that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 87 above. Respondents shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue

at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

95. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement Agreement.

96. Notwithstanding any other provision of this Settlement Agreement, failure of Respondents to comply with any provision of this Settlement Agreement may subject Respondents to civil penalties of up to thirty-seven thousand five hundred dollars ($37,500) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (January 7, 2009)), unless such failure to comply is excused by EPA under the terms of Paragraphs 90 through 92 above. Respondents may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

XX. OTHER CLAIMS

97. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this

Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

98. Except as expressly provided in Section XXIV (Covenants By by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

99. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. INDEMNIFICATION

100. Respondents agree to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondents or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondents.

101. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction

delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

102. Further, Respondents agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement.

XXII. INSURANCE

103. At least seven (7) days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Settlement Agreement. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

XXIII. FINANCIAL ASSURANCE

104. Within 60 days of the Effective Date, unless the Work has already been completed by Respondents, Respondents shall establish and maintain financial security for the benefit of EPA in an amount no less than the estimated cost of the Work to be performed by Respondents under this Settlement Agreement in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
c. a trust fund administered by a trustee acceptable in all respects to EPA;
d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
f. demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

105. If Respondents elect to utilize the forms provided in Paragraphs 104.e. and/or 104.f. and Respondents or guarantors have provided similar demonstration at other RCRA, CERCLA, TSCA, or other federally-regulated Sites, the amount for which Respondents are providing financial assurance at those Sites should be added to the estimated cost of the Work for purposed of determining the total dollar amount required to satisfy the requirements of 40 C.F.R. Part 264.143(f).

106. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for

approval one of the other forms of financial assurance listed in Paragraph 104, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

107. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount initially set, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA.

108. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section.

XXIV. COVENANTS BY EPA

109. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, and for recovery of Response Costs. This covenant not to sue shall take effect upon the effective date of this Settlement Agreement and is conditioned upon the complete and satisfactory performance by Respondents of all their obligations under this Settlement Agreement, including, but not

limited to, payment of Response Costs pursuant to Section XVII (Reimbursement of Costs), above. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXV. RESERVATION OF RIGHTS BY EPA

110. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

111. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
b. liability for costs not included within the definition of Response Costs;
c. liability for performance of response action other than the Work;
d. criminal liability;
e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
f. liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Site; and
g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

112. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this paragraph shall be considered Response Costs that Respondents shall pay pursuant to Section XVII (Reimbursement of Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXVI. COVENANT NOT TO SUE BY RESPONDENTS

113. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 Commonwealth of Puerto Rico 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.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 111 (b), (c), and (e)-(g), but only to the extent that Respondents' claims arise from the same response action, response costs, or

damages that the United States is seeking pursuant to the applicable reservation.

114. Nothing in this Settlement Agreement 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).

XXVII. CONTRIBUTION PROTECTION AND RIGHTS

115. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs.

116. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents has resolved their liability to the United States for the Work performed under this Settlement Agreement and for Response Costs. Except as provided in Section XXVI (Covenant Not to Sue by Respondents), above, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action or demands against any persons not parties to this Settlement Agreement for indemnification, contribution or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXVIII. MODIFICATIONS

117. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

118. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 117.

119. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. ADDITIONAL REMOVAL ACTION

120. If EPA determines that additional removal actions not included in an approved plan are necessary under applicable law, to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA an appropriate revision to the SOP for the additional removal actions. The SOP shall conform to the applicable requirements of Section VII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the SOP pursuant to Section VII, Respondents shall implement the SOP for additional removal actions in accordance with the provisions and schedule contained therein. This Section does

not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVIII (Modifications).

XXX. TERMINATION AND SATISFACTION

121. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 64, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondents in writing. Such notification shall not affect any continuing obligations of Respondents. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

XXXI. SEVERABILITY/INTEGRATION/APPENDICES

122. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

123. This Settlement Agreement and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement:

Appendix A - Asbestos Removal Action Work Plan (also referred to as the Asbestos Clean-up Response Action Work Plan) with all Attachments

XXXII. EFFECTIVE DATE

124. This Settlement Agreement shall become effective five (5) days after execution of the Settlement Agreement by EPA. All times for performance of actions or activities required herein will be calculated from said effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY, Region 2

for Dag Gale

Walter Mugdan
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

8/24/12
Date of Issuance

FOR RESPONDENTS:

CONSENT

The Respondents named below have had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondents hereby consent to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of each Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind said Respondent.

For: **Puerto Rico Public Building Authority**

(Signature)

24 agosto 2012
(Date)

EDUARDO RIVERA CRUZ
Executive Director

For: **Enviroresources, Inc.**

(Signature)

8/24/12
(Date)

Raúl Matos
NAME

President
TITLE

ENVIRORESOURCES, INC.
SINCE 2002
REG. 132,204
BARRANQUITAS, P.R.