



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8ENF-L

March 23, 2011

Mrs. Cricket Mascarenas  
10,000 Havana Street  
Henderson, CO 80604-8439

Re: Settlement Agreement for 10,000 Havana Superfund Site in Henderson, Adams County,  
Colorado.

Dear Mrs. Mascarenas,

Enclosed please find your copy of the signed and finalized 122(h) Settlement Agreement. As there were no comments received on the Settlement Agreement, EPA signed and filed the document. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amelia Piggott".

Amelia Piggott  
Enforcement Attorney  
U.S. EPA Region 8  
303.312.6410

cc: Judith Binegar 8ENF-RC  
Dianna Lim 8EPR-PS  
Paul Peronard 8EPR-SA  
Site File

2011 MAR 23 AM 10:53

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY SECTION 122(h)  
ABILITY TO PAY SETTLEMENT AGREEMENT

EPA REGION VIII  
HEARING CLERK

Settlement Agreement for Recovery of Past Response Costs

IN THE MATTER OF:	)	Settlement Agreement
	)	
10,000 Havana	)	U.S. EPA Region 8
Henderson, Adams County, Colorado	)	CERCLA Docket No. <u>CERCLA-08-2011-0007</u>
	)	
Cricket Mascarenas	)	PROCEEDING UNDER SECTION
SETTLING PARTY	)	122(h)(1) OF CERCLA
_____	)	42 U.S.C. § 9622(h)(1)

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FILED  
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10,000 Havana	)	U.S. EPA Region 8
Henderson, Adams County, Colorado	)	CERCLA Docket No. <u>CERCLA-08-2011-0007</u>
	)	
Cricket Mascarenas	)	PROCEEDING UNDER SECTION
SETTLING PARTY	)	122(h)(1) OF CERCLA
_____	)	42 U.S.C. § 9622(h)(1)

**I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and re-delegated to the Supervisors in the Legal and Technical Enforcement Programs.

2. This Settlement Agreement is made and entered into by EPA and Cricket Mascarenas ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

**II. BACKGROUND**

3. This Settlement Agreement concerns the 10,000 Havana Site ("Site") located in Henderson, Adams County, Colorado. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. On May 20, 2010, representatives from EPA, Commerce City, and the Colorado Department of Public Health and the Environment ("CDPHE") conducted a joint Removal Site Evaluation ("RSE"). During the RSE, several bulk solid samples were collected from demolition debris and evaluated for asbestos content. Samples were collected from 20 containers, and were subject to basic hazard

categorization testing on site. After correlating the hazard categorization information with the labeling on the containers, it was determined that there were flammable liquids, used oil, acidic aqueous solutions, and one pressurized cylinder containing liquid ammonia. Many of the containers showed signs of previous spills and/or leaks, and the areas around the abandoned containers were stained. Samples taken from other debris proved positive for chrysotile asbestos. Based on the toxicity information of the drums and the presence of asbestos, EPA determined that there was a release or threatened release of hazardous substances, pollutants or contaminants from the Site and that a time-critical removal action was necessary to protect public health and welfare and the environment.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party, as a current owner, is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has no financial ability to pay for those response costs.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and Settling Party's heirs, successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

#### **IV. STATEMENT OF PURPOSE**

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to address its alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

#### **V. DEFINITIONS**

11. 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 in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVII.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- e. "Financial Information" shall mean those financial documents identified in Appendix 1.
- f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded 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.
- g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- h. "Parties" shall mean EPA and Settling Party.
- i. "Section" shall mean a portion of this Settlement Agreement identified by a

Roman numeral.

j. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

k. "Settling Party" shall mean Cricket Mascarenas.

l. "Site" shall mean the 10,000 Havana Superfund site, encompassing approximately 5 acres, located at 10,000 Havana in Henderson, Adams County, Colorado, and generally shown on the map included in Appendix 2.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

## **VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

12. If Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

## **VII. COVENANT NOT TO SUE BY EPA**

13. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon signing by EPA. This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, the covenant not to sue shall be null and void. EPA shall retain its right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

### **VIII. RESERVATIONS OF RIGHTS BY EPA**

14. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 13. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

15. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 26(b), is false or, in a material respect, inaccurate.

16. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

### **IX. COVENANT NOT TO SUE BY SETTLING PARTY**

17. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA 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 Colorado 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.

Except as provided in Paragraph 19 (Waiver of Claims) and Paragraph 22 (Waiver of Claim-Splitting Defenses), 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 Paragraph 15(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. 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).

19. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

20. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States pursuant to Section 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 give rise to contribution protection pursuant to Section 113(f)(2).

21. The Parties agree that this settlement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). Settling Party is entitled, as of the Effective Date of this Settlement Agreement, 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), or as may be otherwise provided by law for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, provided, however, that if the United States exercises rights under the reservations in Section VII (Covenant Not to Sue by EPA), other than in Paragraphs 12 (claims for failure to meet a requirement of the settlement) or 14(b) (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Each Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 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 give rise to contribution protection pursuant to Section 113(f)(2).

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VII.

#### **XI. SITE ACCESS**

23. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **XII. CERTIFICATION**

24. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections

104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

### **XIII. NOTICES AND SUBMISSIONS**

25. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

#### As to EPA:

Judy Binegar  
Technical Enforcement Specialist  
8ENF-RC  
1595 Wynkoop St.  
Denver, CO 80202

#### As to Settling Party:

Cricket J. Mascarenas  
10,000 Havana Street  
Henderson, CO 80604-8439

### **XIV. INTEGRATION/APPENDICES**

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

Appendix 1 is a map of the Site.

**XV. PUBLIC COMMENT**

27. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

**XVI. EFFECTIVE DATE**

28. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 31 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

Cricket Mascarenas

By: Cricket Mascarenas  
Cricket Mascarenas

March 3, 2011  
[Date]

U.S. Environmental Protection Agency

By: Matthew Cohn  
Matthew Cohn  
Supervisory Attorney, Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

3/23/11  
[Date]

By: Kelcey Land  
Kelcey Land  
Director, Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

3/23/11  
[Date]



100 The 10000 Havana

Figure 2  
Site Details Map

TDC County Adams TDC 1005-06  
TDC State CO Date 06.2010

Projection System:  
Universal Transverse  
Mercator Zone 13 North  
North American Datum 1983

1" = 100 Feet  
Page Size 8.5 x 11"

HAVANA ST