



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 13 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Ferdinands
Mr. Lee Oakes
King and Spalding
1180 Peachtree Street, NE
Atlanta, Georgia 30309

Re: Cagle's, Inc.
Consent Agreement and Final Order
Docket Number EPCRA-04-2012-2048(b)

Dear Messrs. Oakes and Ferdinands:

Enclosed please find an executed copy of the Consent Agreement and Final Order that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket Number EPCRA-04-2012-2048(b)) involving Cagle's. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Security and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. If you or your client have any questions with regards to the SEC's environmental disclosure requirements, please refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Karl Wilson at (404) 562-9295.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK

2012 SEP 13 PM 8:29

RECEIVED
EPA REGION IV

IN THE MATTER OF:)
)
 Cagle's, Inc.)
)
 Respondent.)
 _____)

Docket Number: EPCRA-04-2011-2048

SETTLEMENT AND CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Cagle's, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Settlement and Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Cagle's, Inc., a corporation doing business in the State of Georgia.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. §11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 1385 Collier Road NW, Atlanta, Georgia 30318.

III. EPA's Allegation of Violation

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2010, 2009, and 2008, sulfuric acid was present at the facility in an amount equal to or greater than 500 pounds.

10. Sulfuric acid is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2010, 2009, and 2008, by March 1 of the following year.

12. EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2010, 2009, and 2008 and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying this CAFO.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

18. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

19. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Bankruptcy

20. On or about October 19, 2011, Respondent commenced a voluntary case under chapter 11 of title 11 of the United States Code (the Bankruptcy Code) with the United States Bankruptcy Court for the Northern District of Georgia (Bankruptcy Court), Bankr. No. 11-80202-pwb (USBC N.D. Ga.).

21. This CAFO is subject to the approval of the Bankruptcy Court and an EPA Regional Judicial Officer (RJO). The Respondent/Debtor shall promptly seek approval of this CAFO under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code; after the Bankruptcy Court enters an Order approving this CAFO, Complainant shall promptly seek approval of this CAFO by the RJO. If the Bankruptcy Court should fail to enter an Order approving this CAFO or if this CAFO is not approved by the RJO, the CAFO shall be deemed null and void.

22. The entry of an Order approving this CAFO by the Bankruptcy Court shall be deemed to satisfy any requirement for EPA to file in the Respondent's bankruptcy case any proof of claim, request, or demand for the payments provided for herein. No proof of claim or other request or demand by EPA shall be required. Any and all claims, requests, or demands deemed to be filed pursuant to this Paragraph shall be deemed satisfied in full in accordance with the terms of this CAFO. EPA expressly reserves, and this CAFO is without prejudice to, all rights against the Respondent/Debtor for liability under federal and state law for acts that occur after the date of lodging of this CAFO with the Bankruptcy Court for approval.

23. Respondent shall pay \$13,455 in full in cash, without reduction, to the United States as set forth in paragraphs 24-26 of this CAFO.

VI. Final Order

24. Within thirty (30) days after the later of entry of an Order of the Bankruptcy Court approving this CAFO and approval of this CAFO by the RJO, and consistent with Section V, Paragraph 23, Respondent shall pay a civil penalty of THIRTEEN THOUSAND FOUR HUNDRED FIFTY FIVE DOLLARS (\$13,455), for the violations alleged in Section III.

25. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to one of the following addresses:

BY MAIL

US Environmental
Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077 US
EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

26. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl D. Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

27. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

28. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

30. This CAFO shall be binding upon the Respondent, its successors and assigns.

31. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

32. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VII. Effective Date

33. The effective date of this CAFO shall be the later of the date upon which the Order approving the CAFO is entered by the Bankruptcy Court and the date this CAFO is approved by the RJO.

AGREED AND CONSENTED TO:

Cagle's, Inc.

By: [Signature] Date: 9/11/2012
Name: SEAN M. HAASING (Typed or Printed)
Title: VP of Restructuring (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 9/11/2012
Beverly H. Bahister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this 13 day of September, 2012.

[Signature]
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, In the Matter of, Cagle's, Inc., Docket Number: EPCRA-
04-2012-2048(b), on the parties listed below in the manner indicated:


Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Lee Oakes (Via Certified Mail - Return Receipt
King and Spalding Requested)
1180 Peachtree Street, NE
Atlanta, Georgia 30309

Mr. Paul Ferdinands (Via Certified Mail - Return Receipt
King and Spalding Requested)
1180 Peachtree Street, NE
Atlanta, Georgia 30309

Date: 9-13-12


Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511



IT IS ORDERED as set forth below:

Date: September 7, 2012

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:) **Chapter 11**
)
CAGLE'S, INC.,) **Case No. 11-80202-PWB**
CAGLE'S FARMS, INC.,)
)
Debtors.) **Jointly Administered**
)
)
)

ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO RULE 9019(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING AND APPROVING A SETTLEMENT AGREEMENT BETWEEN CAGLE'S, INC. AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY

This matter is before the Court on the *Motion for Entry of an Order Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure Authorizing and Approving a Settlement Agreement between Cagle's, Inc. and the U.S. Environmental Protection Agency* (the "Motion")



of Cagle's, Inc. and Cagle's Farms, Inc. (collectively, the "Debtors"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion on September 6, 2012. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to the parties on the Master Service List established in these cases and the EPA; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their stakeholders; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion [Docket No. 783] is GRANTED.
2. The Settlement Agreement is approved.
3. The Debtors are authorized to take any and all actions as may be necessary, desirable or appropriate to consummate the settlement described in the Settlement Agreement. The EPA shall not be required to file a proof of claim evidencing the amount due under the Settlement Agreement.
4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.
5. Counsel to the Debtors is directed to serve a copy of this Order on the parties on the Master Service List and the EPA within three (3) days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

[END OF DOCUMENT]

Prepared and presented by:

/s/ Paul K. Ferdinands
KING & SPALDING LLP
Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jeffrey R. Dutson
Georgia Bar No. 637106
jdutson@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5131

COUNSEL FOR THE
DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
)
CAGLE'S, INC.,) Case No. 11-80202-PWB
CAGLE'S FARMS, INC.,)
Debtors.) Jointly Administered

DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO RULE 9019(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING AND APPROVING A SETTLEMENT AGREEMENT BETWEEN CAGLE'S, INC. AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Cagle's, Inc. ("Cagle's") and Cagle's Farms, Inc. (together with Cagle's, the "Debtors") file this Motion for Entry of an Order Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure Authorizing and Approving a Settlement Agreement between Cagle's, Inc. and the U.S. Environmental Protection Agency (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

- 1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are Section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

- 3. On October 19, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code.



4. The Debtors' chapter 11 cases have been consolidated for procedural purposes only.

5. The factual background relating to the Debtors' commencement of these cases is set forth in detail in the *Declaration of Mark M. Ham IV in Support of First Day Motions and Applications* [Docket No. 14] filed on the Petition Date and incorporated herein by reference.

6. As of the date of this filing, no request has been made for the appointment of a trustee or examiner.

7. An official committee of unsecured creditors (the "Committee") was appointed in these cases on October 27, 2011, and the Committee retained counsel and a financial adviser.

THE PROPOSED SETTLEMENT

8. On or about September 1, 2011, the U.S. Environmental Protection Agency (the "EPA") inspected the Cagle's facility located at 1385 Collier Road NW, Atlanta, Georgia 30318 (the "Facility") to determine whether Cagle's was in compliance with the Emergency Planning and Community Right-to-Know Act of 1986 (the "EPCRA").

9. On December 5, 2011, the EPA notified Cagle's that the EPA believed that Cagle's was in violation of certain federal laws and regulations due to the alleged failure of Cagle's to properly report the presence of certain hazardous substances for the calendar years 2008, 2009 and 2010. Specifically, the EPA alleged that Cagle's was in violation of Section 312 of 42 U.S.C. § 11022 and the regulations found at 40 C.F.R. Part 370 by failing to submit for calendar years 2008, 2009, and 2010 a completed Emergency Hazardous Chemical Inventory Form for sulfuric acid to the State Emergency Response Commission, the Local Emergency Planning Committee, and the fire department with jurisdiction over the Facility. The EPA also

notified Cagle's that it believed that the maximum base penalty for the alleged violations was \$56,130.

10. After negotiations between the EPA and Cagle's, the parties agreed to enter into a Settlement and Consent Agreement and Final Order in the form attached hereto as Exhibit A (the "Settlement Agreement").¹ The significant terms of the Settlement Agreement are as follows:²

- a. Cagle's admits the jurisdictional allegations set out in the Settlement Agreement but neither admits nor denies the factual allegations set out in the Settlement Agreement.
- b. Cagle's waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Settlement Agreement.
- c. Cagle's consents to the assessment of and agrees to pay the civil penalty (in an amount equal to \$13,455) as set forth in the Settlement Agreement.
- d. Cagle's certifies that as of the date of its execution of the Settlement Agreement, it is in compliance with all relevant requirements of EPCRA at the Facility.
- e. Compliance with the Settlement Agreement shall resolve the allegations of violations contained in the Settlement Agreement. The Settlement Agreement shall not otherwise affect any liability of Cagle's to the United States other than as expressed therein. Neither the EPA nor Complainant waives any right to bring an enforcement action against Cagle's for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.
- f. Complainant and Cagle's agree to settle the matter by their execution of the Settlement Agreement. The parties agree that the settlement of the matter is in the public interest and that the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

² The following is a summary of the Settlement Agreement and is not intended to be comprehensive. To the extent that anything in this summary conflicts with the terms of the Settlement Agreement, the Settlement Agreement shall govern and control.

Settlement Agreement is consistent with applicable requirements of EPCRA.

- g. Within 30 days after the later of entry of an Order of this Court approving the Settlement Agreement and entry of an Order of an EPA Regional Judicial Officer (“RJO”) approving the Settlement Agreement, Cagle’s shall pay \$13,455 in full in cash, without reduction, to the United States.
- h. The EPA shall not be required to file any proof of claim evidencing the amounts due under the Settlement Agreement.
- i. The Settlement Agreement is subject to the approvals of this Court and the RJO. If this Court or the RJO should fail to enter an order approving the Settlement Agreement, the Settlement Agreement shall be deemed null and void.

RELIEF REQUESTED

- 11. By this Motion, the Debtors seek the entry of an order, substantially in the form Exhibit B, approving the Settlement Agreement.

BASIS FOR RELIEF

12. Rule 9019(a) states that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a); *see also In re Martin*, 91 F.3d 389, 395 n.2 (3d Cir. 1996).

13. This Court should approve and authorize Cagle’s compromise with the EPA based upon the standard articulated by the Supreme Court in *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In *TMT Trailer*, the Supreme Court held that compromises reached during the course of insolvency proceedings must be “fair and equitable.” *Id.* at 424. The Court stated that “basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.” *Id.* at 425.

14. The decision whether to approve a compromise lies within the sound discretion of this Court. *See Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). When determining whether to approve a proposed settlement, a bankruptcy court should consider “(a) [t]he probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors.” *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir.), *cert. denied*, 498 U.S. 959 (1990). Generally, however, approval of a compromise settlement is appropriate if it is in the best interest of the debtor’s estate. *See In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994).

15. The Court may consider the opinion of the debtor in possession that the settlement is fair and reasonable. *See In re Purofied Down Products Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, a bankruptcy court need not decide the numerous issues of law and fact raised by the dispute underlying the settlement, but rather should “canvas the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness’.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (citations omitted), *cert. denied*, 464 U.S. 822 (1983).

16. Moreover, it is not necessary for the court to conduct a mini-trial of the facts or the merits underlying the dispute. *See Purofied Down Products*, 150 B.R. at 522. In passing upon a proposed settlement, “the bankruptcy court does not substitute its judgment for that of the [debtor-in-possession].” *Depo v. Chase Lincoln First Bank, N.A.*, 77 B.R. 381, 384 (N.D.N.Y. 1987), *aff’d*, 853 F.2d 45 (2d Cir. 1988).

17. The Debtors believe that the proposed settlement as set forth in the Settlement Agreement is in the best interests of the Debtors' estates because it will eliminate the risks and costs associated with contesting the assessment by the EPA of a potentially larger penalty.

18. The Debtors submit that the Settlement Agreement is fair and equitable and should be approved.

NOTICE

19. Notice of this Motion has been provided to the parties on the Master Service List established in these cases and the EPA. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court grant the Motion, enter an order substantially in the form of Exhibit B attached hereto, and grant such other and further relief as the Court deems just and proper.

Dated: August 10, 2012

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands

Georgia Bar No. 258623

pferdinands@kslaw.com

Jeffrey R. Dutson

Georgia Bar No. 637106

jdutson@kslaw.com

1180 Peachtree Street

Atlanta, Georgia 30309-3521

Telephone: (404) 572-4600

Facsimile: (404) 572-5131

COUNSEL FOR THE
DEBTORS IN POSSESSION

EXHIBIT A

Settlement and Consent Agreement and Final Order