
IN THE MATTER OF:

Elkhorn St. Pesticide Site
Elbert County, CO

Elkhorn Land Company, LLC
and
Lennar Colorado, LLC,
SETTLING PARTIES.

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EPA REGION VIII
HEARING CLERK

SETTLEMENT FOR DEMAND
AMOUNT

U.S. EPA Region 8
Docket No. CERCLA-08-2015-0007

PROCEEDING UNDER
SECTION 122(h)(1) OF CERCLA
42 U.S.C. § 9622(h)(1)

CERCLA SECTION 122(h)(1) SETTLEMENT FOR DEMAND AMOUNT

July 2015

1. This Settlement for Demand Amount (“Settlement”) 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 (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the supervisors of the Technical Enforcement Program and the Legal Enforcement Program, Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, on October 17, 1997.

2. This Settlement concerns the Elkhorn St. Pesticide Site (“Site”) located in Elbert County, CO, a residential housing development, which EPA alleges is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. The parties to this Settlement are EPA, Elkhorn Land Company LLC and Lennar Colorado LLC (“Settling Parties”), collectively “the Parties.” This Settlement is binding upon EPA and upon Settling Parties and their successors and assigns.

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook a removal action at the Site from April 13, 2013 until May 1, 2013 (“the Removal Action”). EPA incurred response costs pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), for the Removal Action.

5. On April 8, 2015, EPA issued a demand for payment of \$52,104.24 to Settling Parties for the full amount of response costs incurred by EPA at or in connection with the Removal Action. The demand letter included a demand for EPA’s direct and indirect costs paid as of that date at or in connection with the Site plus accrued “Interest” on all such costs from the date of demand (such interest and costs are collectively referred to herein as “EPA’s Response Costs”). For purposes of this Settlement, “Interest” means 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 is the rate in effect at the time the interest accrues.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for EPA’s Response Costs.

7. Within 30 calendar days of the “Effective Date” as defined in Paragraph 18, Settling Parties shall together pay \$52,104.24, plus Interest accrued from the date of the demand to the date of payment. If the 30th calendar day falls on a Saturday, Sunday, or federal holiday, the due date shall be the close of business of the next working day.

8. Settling Parties may make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street, New York, NY 10045
Field Tag 4200 of the Fedwire message should read: "D 68010727
Environmental Protection Agency"

Settling Parties' payment shall reference Site/Spill ID Number A8-83 and the EPA docket number for this action. EPA will deposit the total payment into the EPA Hazardous Substance Superfund.

9. In lieu of the payment mechanism set out in paragraph 8, above, Settling Parties may make payment by official bank check made payable to "EPA Hazardous Substance Superfund" sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check, or a letter accompanying the check, shall identify Settling Party's name and address, the Site name, Site/Spill ID Number A8-83 and the EPA docket number of this action. EPA will deposit the total payment into the EPA Hazardous Substance Superfund.

10. At the time of payment, Settling Parties shall send notice that payment has been made to Steven B. Moores, Legal Enforcement Attorney at moores.steven@epa.gov, and to the EPA Cincinnati Finance Center at cinwd_acctsreceivable@epa.gov. Such email notice shall reference Site/Spill ID Number A8-83 and the EPA docket number for this action.

11. If Settling Parties fail to make the payment required by Paragraph 7 above, Interest shall continue to accrue on the unpaid balance from the date of demand through the date of payment, and Settling Parties shall pay to EPA, as a stipulated penalty, \$500 for each day that payment is late for the first day through the twentieth day, and \$1,000 for each day for the twenty-first day and beyond. Any such stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties, but payment need only be made upon demand.

12. EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA to recover EPA's Response Costs. This covenant is effective on the Effective Date and is conditioned on Settling Parties' payment in accordance with this Settlement. This covenant extends to Settling Parties and does not extend to any other person.

13. EPA reserves all rights against Settling Parties with respect to all other matters, including but not limited to: (a) liability for failure to make payment as required by this Settlement, (b) liability for costs incurred or to be incurred by the United States that are not

within the definition of EPA's Response Costs, (c) liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, (d) criminal liability, and (e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments. EPA further reserves all rights as to any matter relating in any way to the Site against any person who is not a party to this Settlement.

14. Settling Parties covenant not to sue and agrees not to assert any claims or causes of action against the United States (including its departments, agencies, and instrumentalities), or its contractors or employees, with respect to EPA's Response Costs, EPA's response actions at the Site, or this Settlement, including but not limited to, any claim against the Hazardous Substance Superfund. This Settlement does not 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).

15. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is 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, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are EPA's Response Costs. The Parties further agree that this Settlement is an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

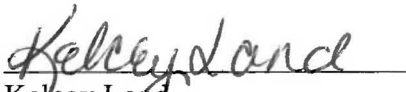
16. This Settlement does not constitute an admission of any liability by any Settling Party. Settling Parties retain the right to contest all findings and allegations contained in this Settlement, except in any proceeding to implement or enforce its terms.

17. Each signatory to this Settlement certifies that he or she is authorized to enter into this Settlement and to bind legally the party represented by him or her.

18. This Settlement shall be effective on the date of signature by EPA. On that date, EPA will notify Settling Parties by email at tedshipman@thebromleycompanies.com and fphillips@gardere.com that this Settlement is effective and that payment is due in accordance with Paragraph 7. EPA's notice will include a calculation of the Interest due in accordance with Paragraph 7.

IT IS SO AGREED:

U.S. Environmental Protection Agency
Region 8

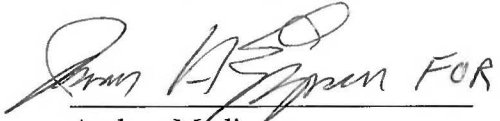


Kelcey Land

Director, Technical Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

8/6/15

Date



FOR

Andrea Madigan
Acting Director, Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

8/6/15

Date

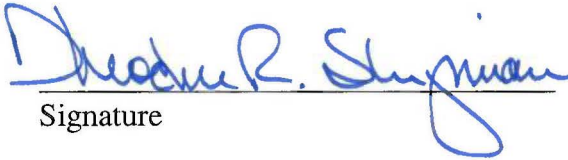
Signature Page for Settlement for Demand Amount Regarding Elkhorn St. Pesticide Superfund Site

NAME AND ADDRESS OF SETTling PARTY:

Elkhorn Land Company, LLC
8301 E. Prentice Ave, #100
Greenwood Village, Colorado 80111

NAME AND TITLE OF SIGNATORY:

Ted Shipman
~~President~~ **MANAGER TRS.**
Elkhorn Land Company LLC


Signature

7-28-2015
Date

NAME AND ADDRESS OF SETTling PARTY:

Lennar Colorado, LLC
9781 S. Meridian Blvd, Suite 120
Englewood, CO 80012

NAME AND TITLE OF SIGNATORY:

Rusty Crandall
Division President
Lennar Colorado, LLC

Signature

Date