UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE TALLABOA INDUSTRIAL PARK SITE: TALLABOA INDUSTRIAL PARK, LLC, and HOMECA RECYCLING, 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-02-2019-2013

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 ("Settlement Agreement") is entered into voluntarily by Tallaboa Industrial Park, LLC ("Respondent Tallaboa") and Homeca Recycling, Inc. ("Respondent Homeca") (collectively referred to as the "Respondents") and the United States Environmental Protection Agency ("EPA") and requires Respondents to perform a removal action as defined herein in connection with the Tallaboa Industrial Park Complex in Peñuelas, 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 Superfund and Emergency Management.

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 Superfund and Emergency Management Division or his or her delegate to issue this Settlement

Agreement, and Respondents 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. Payments made by Respondents to EPA under 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. Respondents' rights and defenses are fully reserved with regard to response costs that are not the subject of this Settlement Agreement.

II. PARTIES BOUND

4. This Settlement Agreement applies to and is binding upon EPA and Respondents and their respective 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 under this Settlement Agreement at the Area II, as described in the attached **Appendix A**. In the event of the insolvency or other failure of any one of the Respondents to implement the requirements of this Settlement Agreement at the Area II, 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 the obligations set forth in 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 that 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" shall mean 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, or federal holiday, the period shall run until the close of business on the next Working Day.

b. "Effective Date" shall mean the date specified in Paragraph 129.

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

d. "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.

e. "Facility" shall mean the Tallaboa Industrial Park Complex located at Road 385 Km. 5.4, Tallaboa Poniente Ward, in Peñuelas, Puerto Rico. The Facility is approximately ten (10) acres in size and includes buildings, distillation towers, pipelines, boilers, tanks, and piles of debris, as identified in the attached **Appendix A**. For purposes of this Settlement Agreement, the Facility will be subdivided into Area I (7 acres) and Area II (3 acres), as identified in the attached **Appendix A**.

f. "Parties" shall mean EPA and Respondents.

g. "Respondents" shall mean Tallaboa Industrial Park, LLC and Homeca Recycling, Inc; and "Respondent Tallaboa" shall mean Tallaboa Industrial Park, LLC, and "Respondent Homeca" shall mean Homeca Recycling, Inc.

h. "Response Costs" shall mean: (a) all direct and indirect costs incurred by EPA after the Effective Date in overseeing Respondents' implementation of the Work (defined below) until the date of EPA's written notification pursuant to Paragraph 126 of this Settlement Agreement that the Work has been completed; and (b) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.

i. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for a Removal Action, Index Number CERCLA-02-2019-2013, and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "Site" shall mean the Facility and any additional areas affected by contamination emanating therefrom.

k. "Waste" shall mean (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.

l. "Work" shall mean those activities required under Section VII of this Settlement Agreement and any other activities that Respondents are required to perform pursuant to this Settlement Agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Respondent Tallaboa, a Puerto Rico limited liability company registered to do business in the Commonwealth of Puerto Rico ("Commonwealth"), is the owner and an operator of the Facility.

9. Since 2010, Respondent Homeca, a corporation registered to do business in the Commonwealth, has operated at the Facility and conducted activities related to scrap metal removal, asbestos mitigation, and demolition and renovation at the Facility.

10. From September 2010 until November 2013, Respondent Homeca conducted asbestos abatement activities at the Facility pursuant to three yearly permits granted by the Puerto Rico Environmental Quality Board ("PREQB").

11. On May 12, 2017, EPA conducted a visit to the Facility and found friable suspected asbestos containing materials ("SACM"), including thermal insulation, on the ground and exposed to surface water run-off, and several compressed gas cylinders and unknown chemicals improperly stored in a shed.

12. On June 6, 2017, Respondent Tallaboa conducted an asbestos survey of the thermal insulation found on above-ground pipelines located in the southern portion of the Facility as well as a survey of the shed with unidentified chemicals. All of the samples collected and analyzed revealed more than 1% of asbestos was present.

13. On September 20, 2017, Hurricane María made landfall in Puerto Rico.

14. On October 11, 2017, EPA conducted a visit to the Facility and continued to identify the presence of friable SACM on the ground and otherwise exposed to surface water run-off that could potentially migrate from the Facility. In addition, EPA observed that the storage areas where the unidentified chemicals and compressed gas cylinders were located were severely impacted by Hurricane María.

15. On October 27, 2017, EPA issued a Federal Notification of Interest under CERCLA ("FNFI") indicating, among other things, that a release and/or threat of release of hazardous substances, pollutants, or contaminants had been detected on October 11, 2017. Such release and/or threat of release consisted of friable SACM on the ground, unidentified chemicals and compressed gas cylinders haphazardly stored at the Facility. The October 27, 2017 FNFI recommended that certain response activities be performed at the Facility.

16. Respondent Tallaboa did not perform the work and/or removal activities described in the FNFI to correct, clean up, minimize or mitigate the release and/or threat of release of friable SACM and unidentified chemicals. The gas cylinders were removed from the Facility in April 2018.

17. On July 13, 14 and 16, 2018, EPA conducted a sampling event at the Facility. The sampling was aimed to confirm the presence of asbestos-containing material ("ACM") at the

Facility and the extent, if any, that it had been released at the Site. Multimedia samples, including bulk SACM, soil, and surface water samples, were collected from locations throughout the Facility.

18. During the July 13-16, 2018 sampling event, EPA observed several black plastic bags stored inside a building on the western portion of the Facility. The materials found inside the black plastic bags were suspected to contain asbestos. Based upon this finding, a total of six (6) bulk SACM samples were collected from the bags. In addition, multimedia samples collected throughout the Facility included thirty-nine (39) bulk SACM samples (including obtaining samples of thermal system insulation material located on the ground and scattered throughout the Facility), thirteen (13) surface soil samples, and four (4) surface water samples.

19. Moreover, during the July 13-16, 2018 sampling event, friable SACM and compressed gas cylinders were found beyond the Facility boundary at a stormwater ditch and along State Road PR-127.

20. The analytical results of the bulk SACM samples collected at the Facility during the July 13-16, 2018 sampling event revealed that all but one (1) of the forty-five (45) bulk samples collected at the Facility were found to contain asbestos above 1%. Amosite asbestos was detected at concentrations above 1% in forty-two (42) of the forty-five (45) bulk SACM samples, while Chrysotile asbestos was detected at concentrations above 1% in two (2) bulk samples. All the insulation sampled that was obtained from beyond the Facility boundary revealed that it was ACM.

21. On August 17, 2018, EPA issued a second a FNFI indicating, among other things, that a release and/or threat of release of hazardous substances, pollutants, or contaminants was detected during the July 13, 2018 sampling event, at and beyond the Facility. Such release consisted of friable ACM on the ground, unknown chemicals and compressed gas cylinders at the Facility, and friable ACM and compressed gas cylinders at the stormwater channel located downstream of the southwest boundary of the Facility and along State Road PR-127.

22. The second FNFI recommended that Respondent Tallaboa conduct removal activities to correct, clean-up, minimize, or mitigate the friable ACM and gas cylinders located at the stormwater channel downstream of the southwest boundary of the Facility and along State Road PR-127.

23. On August 16, 2018, EPA issued an information request letter to Respondent Tallaboa, pursuant to Section 104 (e) of CERCLA, 42 U.S.C. § 9604(e), requesting, among other things, information on previous owners and operators, asbestos management and work plans, permitting information, and releases or threats of releases of SACM or ACM into the environment.

24. Also, in August 17, 2018, EPA met with Respondent Tallaboa to discuss with its representatives, among other things, the issuance of the second FNFI and the information request letter.

25. From September 18 through September 24, 2018, Respondent Tallaboa performed the work recommended in the second FNFI, consisting of the removal of the friable ACM and gas

cylinders located at the stormwater ditch l downstream of the southwest boundary of the Facility and along State Road PR-127.

26. On September 26, 2018, Respondent Tallaboa submitted a response to EPA's information request letter. On November 13, 2018, EPA notified Respondent Tallaboa that it had failed to adequately respond to the information request letter and that a resubmission of a supplemental response was required.

27. On December 27, 2018, Respondent Tallaboa resubmitted a response to EPA's August 17, 2018 information request letter.

28. Respondent Tallaboa's resubmitted response to EPA's information request letter revealed, among others, the following:

a. Respondent Homeca has worked at the Facility since 2010 to remove asbestos and demolish and dispose of metal structures;

b. insulation material was detached from pipelines and fell on the ground as result of Hurricane María. On October 2017, Respondent Tallaboa collected an estimated three (3) cubic yards of this material in plastic bags and has stored it in a shed at the Facility since then; and

c. SACM was observed beyond the Facility boundary after Hurricane María.

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

30. The route of exposure to the asbestos at the Facility is through inhalation. Migration of asbestos could occur through, among other things: inadvertent transfer of asbestos particles outside of the Facility on vehicles or on workers' clothing, hair, or shoes. Weather conditions that can make the asbestos more friable, and asbestos particles could be transferred beyond the Facility boundary by stormwater and wind.

31. Exposure to asbestos containing material 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.

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

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

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

35. Respondents own and/or operated, the Facility at a time of the release of a hazardous substance. Respondents are thus responsible parties within the meaning of Section 107(a)(1) or (2) of CERCLA, 42 U.S.C. § 9607(a)(1) or (2).

36. The presence of asbestos, deposited throughout the Facility, constitutes a "release" or threat of "release" of 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

37. The conditions present at the Facility constitute a threat to public health, welfare, or the environment based upon factors set forth in 40 C.F.R. § 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following:

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

b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release;

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

d. threat of fire or explosion; and

e. the availability of other appropriate federal or Commonwealth response mechanisms to respond to the release.

38. EPA has determined that the work is necessary to address the release or threat of release of hazardous substances or pollutants or contaminants at the Facility.

39. The removal action required by this Settlement Agreement is necessary to protect the public health or welfare or the environment, is 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.

VI. SETTLEMENT AGREEMENT AND ORDER

40. 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 at the Facility 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 Facility, as set forth in Section VII (Work To Be Performed), below.

VII. WORK TO BE PERFORMED

A. Designated Project Coordinator and Designation of Contractor

41. Respondents have identified, and EPA has approved, Mr. Samuel Quiñones of SAQ Environmental Engineers, Inc. as the Project Coordinator. The Project Coordinator shall be responsible on behalf of Respondents for the implementation of this Settlement Agreement. The Project Coordinator shall not be an employee or official of Respondents nor 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. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

42. 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.

43. 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 at the 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 126. 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.

44. 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. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in the Commonwealth shall be reviewed and certified by such.

45. Respondents shall designate a contractor and/or subcontractors to perform the Work. Respondents shall notify EPA the name of the contractor and/or subcontractor and the qualifications of all the personnel who will be performing the Work within ten (10) days of the Effective Date of this Settlement Agreement. Respondents may change the contractor and/or subcontractor provided that EPA has received written notice at least seven (7) days prior to the desired change.

46. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed, or being utilized, 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.

B. Description of Work

47. Respondent Tallaboa shall perform, at a minimum, all actions necessary to implement the Work set forth in this paragraph. The actions to be implemented at the Facility include, but may not be limited to, the following:

a. maintain access control at the Facility, including access to buildings, until the Work is complete unless otherwise approved by EPA;

b. develop and implement procedures to immediately control asbestos fibers emissions from debris piles, ACM on the ground and exposed friable asbestos from structures that are still standing at the Facility;

c. remove and properly dispose of all friable ACM;

d. remove and properly dispose of soil and clean concrete surfaces that have been exposed to ACM;

e. monitor air at the Facility perimeter and work areas;

f. characterize, transport, and properly dispose of at an off-site location waste generated during the Work;

g. characterize, remove, and properly dispose of any liquids, sludges, and/or residues containing CERCLA hazardous substances, pollutants, or contaminants that are present within above-ground storage tanks, process vessels, piping, pits, drums, containers, and sumps;

h. evaluate, inventory, segregate and dispose of compressed gas tanks and cylinders found throughout the Facility; and

i. conduct any such other investigations, studies, and response activities as Respondents may propose and EPA may approve in accordance with this Settlement Agreement.

48. Respondent Homeca shall perform, at a minimum, all actions necessary to implement the Work set forth in this paragraph. The actions to be implemented at Area II of the Facility include, but may not be limited to, the following:

a. maintain access control at Area II of the Facility, including buildings, until the Work is complete unless otherwise approved by EPA;

b. develop and implement procedures to immediately control asbestos fibers emissions from debris piles, ACM on the ground and exposed friable asbestos from structures that are still standing at Area II of the Facility;

c. remove and properly dispose of all friable ACM e;

d. remove and properly dispose of soil that have been exposed to ACM; and

e. clean concrete surfaces that have been exposed to ACM.

49. 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 Facility Operating Plan ("FOP") for the Work in accordance with this Settlement Agreement, CERCLA, the NCP, EPA's relevant guidance documents, and other applicable federal and Commonwealth laws and regulations. This FOP shall include the following:

a. Health and Safety Plan ("HASP") to be utilized in the performance of the Work at the Facility;

b. Removal Action Work Plan ("Work Plan") to address the impacted areas identified at the Facility, as set forth in **Appendix A**;

c. Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis.

50. The Work Plan shall set forth the proper characterization, staging, handling, sampling, and analysis of all materials at the Facility, and at a minimum, address the following:

a. mobilization, including set-up of offices, as necessary to support activities properly under this Settlement Agreement and the establishment of work zones including, but not limited to a support zone, contamination reduction zone, and exclusion zone;

b. construction of a temporary containment barrier(s);

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 twelve (12) months from the date of approval of the FOP;

d. decontamination requirements including detailed procedures for construction of the decontamination area and the final decontamination of all personnel and equipment used at the Work Area during all field activities, including exiting the hot zone;

e. procedures for handling and storing of hazardous substances, including decontamination materials or wastes, to prevent the release of hazardous substances to the environment; and

f. 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.

51. Health and Safety Plan. Within ten (10) days after the Effective Date, if not previously submitted, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of Work under this Settlement Agreement. The HASP 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 Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the HASP shall also include contingency planning. Respondents will incorporate all changes to the HASP recommended by EPA and shall implement the plan for the duration of the removal action. The HASP 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 as required by the Commonwealth;

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 fugitive releases beyond the Work Area that may impact public health and the environment.

52. Quality Assurance Project Plan. The QAPP shall achieve the following objectives:

a. all sampling and analysis 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 "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002),"Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines 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 that are to be conducted for any work performed pursuant to this Settlement Agreement, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program, National Environmental Laboratory Accreditation Program, American Association for Laboratory Accreditation, 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 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; and

e. in their contract(s) with laboratories utilized for the analyses of samples, Respondents shall require granting access to EPA personnel and authorized representatives of the EPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Work.

53. 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.

54. EPA either will approve the FOP or will require modifications thereto pursuant to Section VIII (Plans and Reports Requiring EPA Approval), below. Upon its approval by EPA, the FOP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

55. Within ten (10) days after EPA's approval of the FOP, if not already commenced, Respondents shall commence the Work described in the EPA-approved FOP. Respondents shall fully implement the EPA-approved FOP 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 twelve (12) months of the effective date of this Settlement Agreement.

56. 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 Facility.

Respondents shall provide such notification to EPA for approval at least five (5) days prior to off-site shipment of such Wastes.

57. 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.

58. 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 *Clean and Green* Policy" which may be found at https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy, and the "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 FOP

59. The current EPA On Scene Coordinator ("OSC") for the Facility is Carlos Huertas Hernández 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) 977-5861. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for this Facility.

60. 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 Facility consistent with this Settlement Agreement. Absence of the OSC from the Facility shall not be cause for stoppage of Work unless specifically directed by the OSC. Any such direction by the OSC concerning a material event regarding the Work will be memorialized by EPA in writing and transmitted to Respondents.

61. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Settlement Agreement, Respondents or their 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 FOP. 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

62. 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.

63. 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 documents and recover the costs of doing so from Respondents. Respondents shall implement any such documents as amended or developed by EPA.

64. 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 that work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

65. 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 an enforceable part of this Settlement Agreement.

IX. REPORTING AND NOTICE TO EPA

66. Commencing on the tenth day of the month after the Effective Date of this Settlement Agreement, Respondents shall provide monthly progress reports. When Respondents are engaged in active field work, Respondents shall provide EPA with 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 reporting period; (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 reporting period; (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.

67. Respondents shall provide EPA with at least one (1) week advance notice of any change in the schedule, unless EPA agrees to a shorter period, in its sole discretion.

68. The Final Report referred to in Paragraph 70 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 41. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

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

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: Carlos Huertas Hernández, OSC

Or, by email at huertas-hernandez.carlos@epa.gov

1 copy to:

U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, Caribbean Team
City View Plaza, Suite 7000
#48, Road 165, Km. 1.2,
Guaynabo, Puerto Rico, 00968-8069
Attention: Suzette M. Meléndez Colón, Esq.,
Office of Regional Counsel

Or, by email at melendez-colon.suzette@epa.gov

1 copy to:

Department of Natural and Environmental Resources (/DNER)
Environmental Emergency Response Area
P.O. Box 11488
San Juan, Puerto Rico 00910
Attention: Manager of Environmental Emergency Response Area

When EPA is to contact or provide notification to Respondents under this Settlement Agreement, it will contact the Project Coordinator identified in paragraph 41, above, on behalf of

Respondents. However, if notification is required that pertains to a material event regarding the Work, including any instance of potential non-compliance, EPA shall also notify the following:

Counsel for Respondent Tallaboa
Gerardo González, Esq.
P.O. Box 1421
Boquerón, Puerto Rico 00622
Jerrygon6004@yahoo.com

and

Counsel for Respondent Homeca
Rafael Toro, Esq.
P.O. Box 11064
San Juan, Puerto Rico 00922-1064
rtoro@toro-arsuaga.com

70. Within thirty (30) days after completion of the work required by the FOP, 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 the following:

a. a synopsis of all Work performed under this Settlement Agreement;

b. a detailed description of all EPA-approved modifications to the FOP 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 Facility or handled at the Facility;

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. appendices containing all relevant documentation pertaining to the nature of Waste and disposal thereof that was 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."

71. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 62-65, above.

X. OVERSIGHT

72. 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 Facility and at laboratories where analytical work is being performed hereunder.

73. 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

74. 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 that may be held or sponsored by EPA to explain activities at or concerning the Facility, and provide a suitable location for public meetings, if needed.

XII. ACCESS TO PROPERTY AND INFORMATION

75. EPA, PREQB, 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, PREQB, and their designated representatives full access to and freedom of movement at the Work Area 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 Facility, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

76. Respondents shall use their best efforts to obtain access agreements from the present owners of those properties where Work is required to be performed within twenty (20) days of the Effective Date of this Settlement Agreement or within twenty (20) days of the need for access arises, whichever is later, 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 PREQB and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's

representatives with respect to liability associated with Facility activities. If such access agreements are not obtained by Respondents within the 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 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.

77. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Facility, hazardous substances found at or released from the Facility, 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 the 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.

78. 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

79. a. Respondents agree that 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 written 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.

80. 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 Facility conditions, sampling, or monitoring.

81. 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 statute or regulation which may be applicable.

82. 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 that is submitted in a progress report in accordance with Paragraph 66 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.

83. 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 Facility, 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

84. All hazardous substances and pollutants or contaminants removed from the Facility 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 Clean Air Act, 42 U.S.C. § 7401 et al, (d) RCRA, (e) TSCA, and (f) all other federal and Commonwealth requirements that may be applicable.

85. If hazardous substances from the Facility 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

86. 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 Section 121(e)(1) of CERCLA, 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 and as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal 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).

87. 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

88. Upon the occurrence of any event during performance of the Work required hereunder that, 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 OSC or, in the event of his/her unavailability, the Regional Duty Officer at 732-321-4370 of the incident or Facility 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.

89. In the event of any action or occurrence during Respondents' performance of the requirements of this Settlement Agreement that causes or threatens to cause a release of a hazardous substance or that 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 HASP. In the event that EPA determines that a threat to human health or the environment is posed by (a) the activities performed pursuant to this Settlement Agreement, (b) significant changes in conditions at the Facility, or (c) emergency circumstances occurring at the Facility, 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.

90. 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 Facility.

XVII. REIMBURSEMENT OF COSTS

91. Respondents hereby agree to reimburse EPA for all Response Costs in connection with the Work. 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.

92. To effect payment via EFT, Respondents shall instruct their bank(s) 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-02-2019-2013**
- Site/spill identifier: **A23J**

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

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

and:

Carlos Huertas Hernández, 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:

Suzette M. Meléndez Colón, Esq.
Office of Regional Counsel – Caribbean Team
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 Facility, the Settlement Agreement index number (CERCLA Index Number 02-2019-2013), and Respondents' names and addresses.

93. Any payments made pursuant to future billings shall be deposited in the EPA Hazardous Substance Superfund.

94. Respondents shall pay interest on any amounts overdue as set forth in Paragraph 99 below. Such interest shall begin to accrue on the first day that payment is overdue.

XVIII. FORCE MAJEURE

95. 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* event. A "*force majeure* event" 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.

96. 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 or her 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) days after the date when Respondents first become aware or should have become aware of the circumstances that 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 their control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plan 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 that constitutes a *force majeure* event has occurred shall rest with Respondents.

97. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a *force majeure* event, the 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 that are not directly affected by the *force majeure* event. 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

98. 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 95 through 97 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 66, stipulated penalties shall accrue in the amount of $1,000 per day, per violation, for the first seven (7) days of noncompliance, $2,000 per day, per violation, for the eighth (8th) through fifteenth (15th) day of noncompliance, $4,000 per day, per violation, for the sixteenth (16th) through twenty-fifth (25th) day of noncompliance, and $7,000 per day, per violation, for the twenty-sixth (26th) day of noncompliance and beyond; and

b. for the progress reports required by Paragraph 66, 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.

99. 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 (EPA) 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 92 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.

100. 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.

101. 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 $57,317per 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, 84 Fed. Reg. 2056 (February 6, 2019)), unless such failure to comply is excused by EPA under the terms of Paragraphs 95 through 97 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

102. 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. Neither the United States nor EPA shall be held out as or deemed to be 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.

103. Except as expressly provided in Section XXIV (Covenants 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.

104. 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

105. 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.

106. 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 Facility, 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 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 Facility, including, but not limited to, claims on account of construction delays.

107. Further, Respondents agree to pay the United States all costs the United States 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

108. At least seven (7) days prior to commencing any Work at the Facility, 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

109. Within sixty (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 $3.5 million, which is 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 to EPA;

c. a trust fund administered by a trustee acceptable to EPA;

d. a policy of insurance issued by an insurance carrier acceptable 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. § 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. § 264.143(f).

110. If Respondents elect to utilize the forms provided in Paragraphs 109.e. and/or 109.f. and Respondents or their guarantors have provided similar demonstration at other RCRA, CERCLA, TSCA, or other federally-regulated facilities, the amount for which Respondents are providing financial assurance at those facilities 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. § 264.143(f).

111. Any 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 thirty (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 109, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (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.

112. 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.

113. 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

114. 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

115. 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 Facility (or at any other 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.

116. 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 a 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 Facility; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Facility.

117. Work Takeover. In the event EPA determines that Respondents have (1) ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that 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 after affording Respondents an opportunity to cure deficiencies related to activities associated with (1) and (2), above. 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

118. 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 the following:

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 Facility, including any claim under the United States Constitution, the Commonwealth 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 Facility.

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 116(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.

119. 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

120. 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), or as may be otherwise provided by law for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and those Response Costs paid to EPA.

121. 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 have 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

122. 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 (if appropriate) or written approval from the OSC pursuant to Paragraph 123.

123. The OSC may make non-material modifications to any plan or schedule in writing or by oral direction. Any oral modification must be memorialized in writing by the Parties promptly, but it 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.

124. 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

125. 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 FOP for the additional removal actions. The FOP shall conform to the applicable requirements of Section VII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the FOP pursuant to Section VII, Respondents shall implement the FOP 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

126. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 70, 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, after which time respondents may restate their request that EPA approve the Final Report.

XXXI.SEVERABILITY/INTEGRATION/APPENDICES

127. If a court issues an order that invalidates any provision of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated.

128. 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 - Removal Action Work Plan with all attachments.

XXXII. EFFECTIVE DATE

129. This Settlement Agreement shall become effective upon receipt by Respondents of a fully executed copy of the Settlement Agreement. All times for performance of actions or activities required herein will be calculated from said effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY, Region 2

_____ _____

Pat Evangelista
Acting Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 2

Date of Issuance

FOR RESPONDENT TALLABOA:

CONSENT

Respondent **TALLABOA INDUSTRIAL PARK, LLC** has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent Tallaboa 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.

_____ _____

(Signature) (Date)

_____

NAME

_____

TITLE

FOR RESPONDENT HOMECA**:**

CONSENT

Respondent **HOMECA RECYCLING, INC** has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent Homeca 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.

_____ _____

(Signature) (Date)

_____

NAME

_____

TITLE